

FILE START

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation, TOYOTA MOTOR
CORPORATION, a Japanese Corporation.**

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

Hereinafter all Defendants are referred to collectively as “Toyota” or the “Toyota Defendants.”

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration ("NHTSA") investigators. Specifically, Defendant Toyota Motor North America ("TMNA") was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

15. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

¹ Defect Petition DP04-003; Investigation PE04-021

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

² "long duration" is defined as lasting longer than one (1) second

reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

³ ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled “Analysis of the Effects of Unintended Acceleration on Vehicle Control,” also supports this action under the Consumers Credit and Protection Act. The agency’s analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a “Safety Advisory,” saying that the company had “taken a closer look” at the potential for the accelerator to get “stuck in the full open position” *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

- Toyota FJ Cruisers from MY 2007 through MY 2008;
- Toyota Highlanders from MY2004 through 2009;
- Toyota Tacoma pickup trucks from MY 2003 through 2008;
- Toyota Camrys from Model Year (MY) 2002 though 2009;
- Lexus models from MY 1998 through 2009;
- Toyota Tundra pickup trucks MY 2000 through 2009;
- Toyota 4Runner SUVs from MY 2001 through 2009;
- Toyota Avalons from MY 2005 through 2009;
- Toyota Land Cruisers from MY 2001 through 2009;
- Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?
- d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?
- e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?
- f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?
- g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?
- h. Did Plaintiff and others similarly situated suffer ascertainable loss?
- i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?
- j. Was Toyota unjustly enriched?
- k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

- l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?
- m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

65. Plaintiffs and each member of the Class are “consumers” within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia’s Consumer Credit and Protection Act (“CCPA”) codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota, via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of \$200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

76. The Toyota is a “manufacturer” within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia’s Consumer Protection – New Motor Vehicle Warranties Act (“Lemon Law”) codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because the stated legislative intent of this law is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs’ vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota has a duty to replace the Sub-Class Plaintiffs’ vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

- (1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;
- (2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
- (3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and
- (4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;
- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding each Plaintiff its actual damages or \$200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);
- g. Awarding attorneys' fees, expenses and costs;
- h. Punitive Damages
- i. Awarding pre- and post-judgment interest; and
- j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

/s/ Eric B. Snyder
BAILEY & GLASSER, LLP
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CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

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Nicholas S. Johnson (WWSB #10272)
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Counsel for Defendants
Toyota Motor Manufacturing, West Virginia, Inc.;
Toyota Motor North America, Inc.;
Toyota Motor Engineering & Manufacturing North America, Inc.; and
Toyota Motor Sales U.S.A., Inc.

/s/ Eric B. Snyder

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation,**

Defendants.

COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event should

occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation.

4. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

6. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary electronic and/or mechanical failsafes to enable

drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

7. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

8. Runaway acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, manufacturers must provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

9. Reports of unintended accelerations of vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

10. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

11. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving

Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles despite knowledge that they are unreasonably dangerous by virtue of their design.

12. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

13. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to NHTSA investigators.

14. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

15. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;

¹ Defect Petition DP04-003; Investigation PE04-021

- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

16. Toyota reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

² "long duration" is defined as lasting longer than one (1) second

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

17. Toyota thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

18. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

19. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the

³ ODI Resume, PE04-021, Date Closed 07/22/2004

agency and the manufacturer issued statements blaming the driver's-side floor mat as the knowing that floormats were almost never the cause.

20. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

21. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action under the Consumers Legal Remedies Act. The agency's analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

22. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than

1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added).

23. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States.

24. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the

driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

25. Without the remedies provided by West Virginia law there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

26. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

27. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

28. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

29. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new

vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

30. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

31. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

32. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

33. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

34. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles. Nor are they informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

35. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to them.

36. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the

systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not

limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

37. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007 through MY 2008

Toyota Highlanders from MY2004 through 2009

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

38. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

39. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

40. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000

individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

41. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

42. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Plaintiff and others similarly situated suffer damages?
- d. The extent of damages suffered by Plaintiff and the Class and the appropriate amount of compensation?
- e. Was Toyota unjustly enriched?
- f. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- g. Are the Plaintiff and the Class entitled to injunctive relief?

43. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

44. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a

large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

45. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

46. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

47. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

48. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

49. Toyota was negligent, and breached this duty owed to the Plaintiffs.

50. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of

the Engine Control Module, the ETCS-i and the braking system;

- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

51. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

52. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

53. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

54. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

55. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

58. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

59. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

JURY DEMAND

60. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding attorneys' fees, expenses and costs;
- g. Punitive Damages
- h. Awarding pre- and post-judgment interest; and
- i. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

/s/ Eric B. Snyder
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CIVIL COVER SHEET

This 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE FOLLOWING PAGE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL GRAVES, et. al.

(b) County of Residence of First Listed Plaintiff Fayette County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Benjamin L. Bailey, Esq/Eric B. Snyder, Esq/Robert P. Lorea Esq.; Bailey & Glasser, LLP; 209 Capitol Street, Charleston, WV 25301; 304-345-6555

DEFENDANTS

TOYOTA MOTOR MANUFACTURING WEST VIRGINIA INC., et. al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item.III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. 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 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332(d)

Brief description of cause: Class Action seeking relief for consumers who have purchased a Toyota or Lexus vehicle containing ETCS-Intelligent System

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/13/2009 /s/ Eric B. Snyder

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 1998 | Lexus | GS300 | 2JZ-GE |
| 1998 | Lexus | LX470 | 2UZ-FE |
| 1998 | Toyota | Land Cruiser | 2UZ-FE |
| 1999 | Lexus | GS300 | 2JZ-GE |
| 1999 | Lexus | LX470 | 2UZ-FE |
| 1999 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Lexus | GS300 | 2JZ-GE |
| 2000 | Lexus | LX470 | 2UZ-FE |
| 2000 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Toyota | Tundra | 2UZ-FE |
| 2001 | Lexus | GS300 | 2JZ-GE |
| 2001 | Lexus | GS430 | 3UZ-FE |
| 2001 | Lexus | IS300 | 2JZ-GE |
| 2001 | Lexus | LS430 | 3UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Toyota | 4Runner | 5VZ-FE |
| 2001 | Toyota | Land Cruiser | 2UZ-FE |
| 2001 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2001 | Toyota | Sequoia | 2UZ-FE |
| 2001 | Toyota | Tundra | 2UZ-FE |
| 2002 | Lexus | ES300 | 1MZ-FE |
| 2002 | Lexus | GS300 | 2JZ-GE |
| 2002 | Lexus | GS430 | 3UZ-FE |
| 2002 | Lexus | IS300 | 2JZ-GE |
| 2002 | Lexus | LS430 | 3UZ-FE |
| 2002 | Lexus | LX470 | 2UZ-FE |
| 2002 | Lexus | SC430 | 3UZ-FE |
| 2002 | Toyota | 4Runner | 5VZ-FE |
| 2002 | Toyota | Camry | 1MZ-FE |
| 2002 | Toyota | Camry | 2AZ-FE |
| 2002 | Toyota | Land Cruiser | 2UZ-FE |
| 2002 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2002 | Toyota | Sequoia | 2UZ-FE |
| 2002 | Toyota | Solara | 2AZ-FE |
| 2002 | Toyota | Tundra | 2UZ-FE |
| 2003 | Lexus | ES300 | 1MZ-FE |
| 2003 | Lexus | GS300 | 2JZ-GE |
| 2003 | Lexus | GS430 | 3UZ-FE |
| 2003 | Lexus | GX470 | 2UZ-FE |
| 2003 | Lexus | IS300 | 2JZ-GE |
| 2003 | Lexus | LS430 | 3UZ-FE |
| 2003 | Lexus | LX470 | 2UZ-FE |
| 2003 | Lexus | SC430 | 3UZ-FE |
| 2003 | Toyota | 4Runner | 1GR-FE |
| 2003 | Toyota | 4Runner | 2UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2003 | Toyota | Camry | 1MZ-FE |
| 2003 | Toyota | Camry | 2AZ-FE |
| 2003 | Toyota | Celica | 2ZZ-GE |
| 2003 | Toyota | Land Cruiser | 2UZ-FE |
| 2003 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2003 | Toyota | Sequoia | 2UZ-FE |
| 2003 | Toyota | Solara | 2AZ-FE |
| 2003 | Toyota | Tacoma | 5VZ-FE |
| 2003 | Toyota | Tundra | 2UZ-FE |
| 2003 | Toyota | Tundra | 5VZ-FE |
| 2004 | Lexus | ES330 | 3MZ-FE |
| 2004 | Lexus | GS300 | 2JZ-GE |
| 2004 | Lexus | GS430 | 3UZ-FE |
| 2004 | Lexus | GX470 | 2UZ-FE |
| 2004 | Lexus | GZ470 | 2UZ-FE |
| 2004 | Lexus | IS300 | 2JZ-GE |
| 2004 | Lexus | LS430 | 3UZ-FE |
| 2004 | Lexus | LX470 | 2UZ-FE |
| 2004 | Lexus | RX330 | 3MZ-FE |
| 2004 | Lexus | SC430 | 3UZ-FE |
| 2004 | Toyota | 4Runner | 1GR-FE |
| 2004 | Toyota | 4Runner | 2UZ-FE |
| 2004 | Toyota | Camry | 1MZ-FE |
| 2004 | Toyota | Camry | 2AZ-FE |
| 2004 | Toyota | Camry | 3MZ-FE |
| 2004 | Toyota | Celica | 2ZZ-GE |
| 2004 | Toyota | Highlander | 2AZ-FE |
| 2004 | Toyota | Highlander | 3MZ-FE |
| 2004 | Toyota | Land Cruiser | 2UZ-FE |
| 2004 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2004 | Toyota | Prius | 1NZ-FXE |
| 2004 | Toyota | RAV4 | 2AZ-FE |
| 2004 | Toyota | Sequoia | 2UZ-FE |
| 2004 | Toyota | Sienna | 3MZ-FE |
| 2004 | Toyota | Solara | 2AZ-FE |
| 2004 | Toyota | Solara | 3MZ-FE |
| 2004 | Toyota | Tacoma | 5VZ-FE |
| 2004 | Toyota | Tundra | 2UZ-FE |
| 2004 | Toyota | Tundra | 5VZ-FE |
| 2004 | Toyota | Yaris | 1SZ-FE |
| 2005 | Lexus | ES330 | 3MZ-FE |
| 2005 | Lexus | GS300 | 2JZ-GE |
| 2005 | Lexus | GS430 | 3UZ-FE |
| 2005 | Lexus | GX470 | 2UZ-FE |
| 2005 | Lexus | IS300 | 2JZ-GE |
| 2005 | Lexus | LS430 | 3UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2005 | Lexus | RX330 | 3MZ-FE |
| 2005 | Lexus | SC430 | 3UZ-FE |
| 2005 | Toyota | 4Runner | 1GR-FE |
| 2005 | Toyota | 4Runner | 2UZ-FE |
| 2005 | Toyota | Avalon | 2GR-FE |
| 2005 | Toyota | Camry | 1MZ-FE |
| 2005 | Toyota | Camry | 2AZ-FE |
| 2005 | Toyota | Camry | 3MZ-FE |
| 2005 | Toyota | Celica | 2ZZ-GE |
| 2005 | Toyota | Corolla | 1ZZ-FE |
| 2005 | Toyota | Highlander | 2AZ-FE |
| 2005 | Toyota | Highlander | 3MZ-FE |
| 2005 | Toyota | Land Cruiser | 2UZ-FE |
| 2005 | Toyota | Matrix | 1ZZ-FE |
| 2005 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2005 | Toyota | Prius | 1NZ-FXE |
| 2005 | Toyota | RAV4 | 2AZ-FE |
| 2005 | Toyota | Sequoia | 2UZ-FE |
| 2005 | Toyota | Sienna | 3MZ-FE |
| 2005 | Toyota | Solara | 2AZ-FE |
| 2005 | Toyota | Solara | 3MZ-FE |
| 2005 | Toyota | Tacoma | 1GR-FE |
| 2005 | Toyota | Tacoma | 2TR-FE |
| 2005 | Toyota | Tundra | 1GR-FE |
| 2005 | Toyota | Tundra | 2UZ-FE |
| 2005 | Toyota | Yaris | 1SZ-FE |
| 2006 | Lexus | ES330 | 3MZ-FE |
| 2006 | Lexus | GS300 | 3GR-FSE |
| 2006 | Lexus | GS430 | 3UZ-FE |
| 2006 | Lexus | GX470 | 2UZ-FE |
| 2006 | Lexus | IS250 | 4GR-FSE |
| 2006 | Lexus | IS350 | 2GR-FSE |
| 2006 | Lexus | LS430 | 3UZ-FE |
| 2006 | Lexus | LX470 | 2UZ-FE |
| 2006 | Lexus | RX330 | 3MZ-FE |
| 2006 | Lexus | RX400h | 3MZ-FE |
| 2006 | Lexus | SC430 | 3UZ-FE |
| 2006 | Toyota | 4Runner | 1GR-FE |
| 2006 | Toyota | 4Runner | 2UZ-FE |
| 2006 | Toyota | Avalon | 2GR-FE |
| 2006 | Toyota | Camry | 1MZ-FE |
| 2006 | Toyota | Camry | 2AZ-FE |
| 2006 | Toyota | Camry | 3MZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Highlander | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2006 | Toyota | Highlander | 3MZ-FE |
| 2006 | Toyota | Land Cruiser | 2UZ-FE |
| 2006 | Toyota | Matrix | 1ZZ-FE |
| 2006 | Toyota | Prius | 1NZ-FXE |
| 2006 | Toyota | RAV4 | 2AZ-FE |
| 2006 | Toyota | RAV4 | 2GR-FE |
| 2006 | Toyota | Sequoia | 2UZ-FE |
| 2006 | Toyota | Sienna | 3MZ-FE |
| 2006 | Toyota | Solara | 2AZ-FE |
| 2006 | Toyota | Solara | 3MZ-FE |
| 2006 | Toyota | Tacoma | 1GR-FE |
| 2006 | Toyota | Tacoma | 2TR-FE |
| 2006 | Toyota | Tundra | 1GR-FE |
| 2006 | Toyota | Tundra | 2UZ-FE |
| 2006 | Toyota | Yaris | 1NZ-FE |
| 2007 | Lexus | ES350 | 2GR-FE |
| 2007 | Lexus | GS350 | 2GR-FSE |
| 2007 | Lexus | GS430 | 3UZ-FE |
| 2007 | Lexus | GS450h | 2GR-FSE |
| 2007 | Lexus | GX470 | 2UZ-FE |
| 2007 | Lexus | IS250 | 4GR-FSE |
| 2007 | Lexus | IS350 | 2GR-FSE |
| 2007 | Lexus | LS460 | 1UR-FSE |
| 2007 | Lexus | LX470 | 2UZ-FE |
| 2007 | Lexus | RX350 | 2GR-FE |
| 2007 | Lexus | RX400h | 3MZ-FE |
| 2007 | Lexus | SC430 | 3UZ-FE |
| 2007 | Toyota | 4Runner | 1GR-FE |
| 2007 | Toyota | 4Runner | 2UZ-FE |
| 2007 | Toyota | Avalon | 2GR-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Corolla | 1ZZ-FE |
| 2007 | Toyota | FJ Cruiser | 1GR-FE |
| 2007 | Toyota | Highlander | 2AZ-FE |
| 2007 | Toyota | Highlander | 3MZ-FE |
| 2007 | Toyota | Land Cruiser | 2UZ-FE |
| 2007 | Toyota | Matrix | 1ZZ-FE |
| 2007 | Toyota | Prius | 1NZ-FXE |
| 2007 | Toyota | RAV4 | 2AZ-FE |
| 2007 | Toyota | RAV4 | 2GR-FE |
| 2007 | Toyota | Sequoia | 2UZ-FE |
| 2007 | Toyota | Sienna | 2GR-FE |
| 2007 | Toyota | Solara | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2007 | Toyota | Solara | 3MZ-FE |
| 2007 | Toyota | Tacoma | 1GR-FE |
| 2007 | Toyota | Tacoma | 2TR-FE |
| 2007 | Toyota | Tundra | 1GR-FE |
| 2007 | Toyota | Tundra | 2UZ-FE |
| 2007 | Toyota | Tundra | 3UR-FE |
| 2007 | Toyota | Yaris | 1NZ-FE |
| 2008 | Lexus | ES350 | 2GR-FE |
| 2008 | Lexus | GS350 | 2GR-FSE |
| 2008 | Lexus | GS450h | 2GR-FSE |
| 2008 | Lexus | GS460 | 1UR-FSE |
| 2008 | Lexus | GX470 | 2UZ-FE |
| 2008 | Lexus | IS F | 2UR-GSE |
| 2008 | Lexus | IS250 | 4GR-FSE |
| 2008 | Lexus | IS350 | 2GR-FSE |
| 2008 | Lexus | LS460 | 1UR-FSE |
| 2008 | Lexus | LS600h | 2UR-FSE |
| 2008 | Lexus | LX570 | 3UR-FE |
| 2008 | Lexus | RX350 | 2GR-FE |
| 2008 | Lexus | RX400h | 3MZ-FE |
| 2008 | Lexus | SC430 | 3UZ-FE |
| 2008 | Toyota | 4Runner | 1GR-FE |
| 2008 | Toyota | 4Runner | 2UZ-FE |
| 2008 | Toyota | Avalon | 2GR-FE |
| 2008 | Toyota | Camry | 2AZ-FE |
| 2008 | Toyota | Camry | 2GR-FE |
| 2008 | Toyota | Corolla | 1ZZ-FE |
| 2008 | Toyota | FJ Cruiser | 1GR-FE |
| 2008 | Toyota | Highlander | 2GR-FE |
| 2008 | Toyota | Highlander | 3MZ-FE |
| 2008 | Toyota | Land Cruiser | 3UR-FE |
| 2008 | Toyota | Matrix | 1ZZ-FE |
| 2008 | Toyota | Prius | 1NZ-FXE |
| 2008 | Toyota | RAV4 | 2AZ-FE |
| 2008 | Toyota | RAV4 | 2GR-FE |
| 2008 | Toyota | Sequoia | 2UZ-FE |
| 2008 | Toyota | Sequoia | 3UR-FE |
| 2008 | Toyota | Sienna | 2GR-FE |
| 2008 | Toyota | Solara | 2AZ-FE |
| 2008 | Toyota | Solara | 3MZ-FE |
| 2008 | Toyota | Tacoma | 1GR-FE |
| 2008 | Toyota | Tacoma | 2TR-FE |
| 2008 | Toyota | Tundra | 1GR-FE |
| 2008 | Toyota | Tundra | 2UZ-FE |
| 2008 | Toyota | Tundra | 3UR-FE |
| 2008 | Toyota | Yaris | 1NZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2009 | Lexus | ES350 | 2GR-FE |
| 2009 | Lexus | GS350 | 2GR-FSE |
| 2009 | Lexus | GS450h | 2GR-FSE |
| 2009 | Lexus | GS460 | 1UR-FSE |
| 2009 | Lexus | GX470 | 2UZ-FE |
| 2009 | Lexus | IS F | 2UR-GSE |
| 2009 | Lexus | IS250 | 4GR-FSE |
| 2009 | Lexus | IS350 | 2GR-FSE |
| 2009 | Lexus | LS460 | 1UR-FSE |
| 2009 | Lexus | LS600h | 2UR-FSE |
| 2009 | Lexus | LX570 | 3UR-FE |
| 2009 | Lexus | RX350 | 2GR-FE |
| 2009 | Lexus | SC430 | 3UZ-FE |
| 2009 | Toyota | 4Runner | 1GR-FE |
| 2009 | Toyota | 4Runner | 2UZ-FE |
| 2009 | Toyota | Avalon | 2GR-FE |
| 2009 | Toyota | Camry | 2AZ-FE |
| 2009 | Toyota | Camry | 2GR-FE |
| 2009 | Toyota | Corolla | 2AZ-FE |
| 2009 | Toyota | Corolla | 2ZR-FE |
| 2009 | Toyota | FJ Cruiser | 1GR-FE |
| 2009 | Toyota | Highlander | 1AR-FE |
| 2009 | Toyota | Highlander | 2GR-FE |
| 2009 | Toyota | Highlander | 3MZ-FE |
| 2009 | Toyota | Land Cruiser | 3UR-FE |
| 2009 | Toyota | Matrix | 2AZ-FE |
| 2009 | Toyota | Matrix | 2ZR-FE |
| 2009 | Toyota | Prius | 1NZ-FXE |
| 2009 | Toyota | RAV4 | 2AR-FE |
| 2009 | Toyota | RAV4 | 2GR-FE |
| 2009 | Toyota | Sequoia | 2UZ-FE |
| 2009 | Toyota | Sequoia | 3UR-FBE |
| 2009 | Toyota | Sequoia | 3UR-FE |
| 2009 | Toyota | Sienna | 2GR-FE |
| 2009 | Toyota | Tacoma | 1GR-FE |
| 2009 | Toyota | Tacoma | 2TR-FE |
| 2009 | Toyota | Tundra | 2UZ-FE |
| 2009 | Toyota | Tundra | 3UR-FBE |
| 2009 | Toyota | Tundra | 3UR-FE |
| 2009 | Toyota | Venza | 1AR-FE |
| 2009 | Toyota | Venza | 2GR-FE |
| 2009 | Toyota | Yaris | 1NZ-FE |

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation,**

Defendants.

COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event should

occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation.

4. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

6. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary electronic and/or mechanical failsafes to enable

drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

7. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

8. Runaway acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, manufacturers must provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

9. Reports of unintended accelerations of vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

10. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

11. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving

Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles despite knowledge that they are unreasonably dangerous by virtue of their design.

12. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

13. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to NHTSA investigators.

14. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

15. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;

¹ Defect Petition DP04-003; Investigation PE04-021

- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

16. Toyota reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

² "long duration" is defined as lasting longer than one (1) second

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

17. Toyota thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

18. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

19. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the

³ ODI Resume, PE04-021, Date Closed 07/22/2004

agency and the manufacturer issued statements blaming the driver's-side floor mat as the knowing that floormats were almost never the cause.

20. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

21. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action under the Consumers Legal Remedies Act. The agency's analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

22. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than

1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added).

23. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States.

24. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the

driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

25. Without the remedies provided by West Virginia law there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

26. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

27. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

28. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

29. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new

vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

30. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

31. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

32. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

33. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

34. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles. Nor are they informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

35. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to them.

36. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the

systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not

limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

37. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007 through MY 2008

Toyota Highlanders from MY2004 through 2009

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

38. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

39. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

40. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000

individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

41. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

42. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Plaintiff and others similarly situated suffer damages?
- d. The extent of damages suffered by Plaintiff and the Class and the appropriate amount of compensation?
- e. Was Toyota unjustly enriched?
- f. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- g. Are the Plaintiff and the Class entitled to injunctive relief?

43. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

44. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a

large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

45. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

46. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

47. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

48. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

49. Toyota was negligent, and breached this duty owed to the Plaintiffs.

50. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of

the Engine Control Module, the ETCS-i and the braking system;

- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

51. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

52. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

53. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

54. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

55. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

58. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

59. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

JURY DEMAND

60. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding attorneys' fees, expenses and costs;
- g. Punitive Damages
- h. Awarding pre- and post-judgment interest; and
- i. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

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| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 1998 | Lexus | GS300 | 2JZ-GE |
| 1998 | Lexus | LX470 | 2UZ-FE |
| 1998 | Toyota | Land Cruiser | 2UZ-FE |
| 1999 | Lexus | GS300 | 2JZ-GE |
| 1999 | Lexus | LX470 | 2UZ-FE |
| 1999 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Lexus | GS300 | 2JZ-GE |
| 2000 | Lexus | LX470 | 2UZ-FE |
| 2000 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Toyota | Tundra | 2UZ-FE |
| 2001 | Lexus | GS300 | 2JZ-GE |
| 2001 | Lexus | GS430 | 3UZ-FE |
| 2001 | Lexus | IS300 | 2JZ-GE |
| 2001 | Lexus | LS430 | 3UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Toyota | 4Runner | 5VZ-FE |
| 2001 | Toyota | Land Cruiser | 2UZ-FE |
| 2001 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2001 | Toyota | Sequoia | 2UZ-FE |
| 2001 | Toyota | Tundra | 2UZ-FE |
| 2002 | Lexus | ES300 | 1MZ-FE |
| 2002 | Lexus | GS300 | 2JZ-GE |
| 2002 | Lexus | GS430 | 3UZ-FE |
| 2002 | Lexus | IS300 | 2JZ-GE |
| 2002 | Lexus | LS430 | 3UZ-FE |
| 2002 | Lexus | LX470 | 2UZ-FE |
| 2002 | Lexus | SC430 | 3UZ-FE |
| 2002 | Toyota | 4Runner | 5VZ-FE |
| 2002 | Toyota | Camry | 1MZ-FE |
| 2002 | Toyota | Camry | 2AZ-FE |
| 2002 | Toyota | Land Cruiser | 2UZ-FE |
| 2002 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2002 | Toyota | Sequoia | 2UZ-FE |
| 2002 | Toyota | Solara | 2AZ-FE |
| 2002 | Toyota | Tundra | 2UZ-FE |
| 2003 | Lexus | ES300 | 1MZ-FE |
| 2003 | Lexus | GS300 | 2JZ-GE |
| 2003 | Lexus | GS430 | 3UZ-FE |
| 2003 | Lexus | GX470 | 2UZ-FE |
| 2003 | Lexus | IS300 | 2JZ-GE |
| 2003 | Lexus | LS430 | 3UZ-FE |
| 2003 | Lexus | LX470 | 2UZ-FE |
| 2003 | Lexus | SC430 | 3UZ-FE |
| 2003 | Toyota | 4Runner | 1GR-FE |
| 2003 | Toyota | 4Runner | 2UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2003 | Toyota | Camry | 1MZ-FE |
| 2003 | Toyota | Camry | 2AZ-FE |
| 2003 | Toyota | Celica | 2ZZ-GE |
| 2003 | Toyota | Land Cruiser | 2UZ-FE |
| 2003 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2003 | Toyota | Sequoia | 2UZ-FE |
| 2003 | Toyota | Solara | 2AZ-FE |
| 2003 | Toyota | Tacoma | 5VZ-FE |
| 2003 | Toyota | Tundra | 2UZ-FE |
| 2003 | Toyota | Tundra | 5VZ-FE |
| 2004 | Lexus | ES330 | 3MZ-FE |
| 2004 | Lexus | GS300 | 2JZ-GE |
| 2004 | Lexus | GS430 | 3UZ-FE |
| 2004 | Lexus | GX470 | 2UZ-FE |
| 2004 | Lexus | GZ470 | 2UZ-FE |
| 2004 | Lexus | IS300 | 2JZ-GE |
| 2004 | Lexus | LS430 | 3UZ-FE |
| 2004 | Lexus | LX470 | 2UZ-FE |
| 2004 | Lexus | RX330 | 3MZ-FE |
| 2004 | Lexus | SC430 | 3UZ-FE |
| 2004 | Toyota | 4Runner | 1GR-FE |
| 2004 | Toyota | 4Runner | 2UZ-FE |
| 2004 | Toyota | Camry | 1MZ-FE |
| 2004 | Toyota | Camry | 2AZ-FE |
| 2004 | Toyota | Camry | 3MZ-FE |
| 2004 | Toyota | Celica | 2ZZ-GE |
| 2004 | Toyota | Highlander | 2AZ-FE |
| 2004 | Toyota | Highlander | 3MZ-FE |
| 2004 | Toyota | Land Cruiser | 2UZ-FE |
| 2004 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2004 | Toyota | Prius | 1NZ-FXE |
| 2004 | Toyota | RAV4 | 2AZ-FE |
| 2004 | Toyota | Sequoia | 2UZ-FE |
| 2004 | Toyota | Sienna | 3MZ-FE |
| 2004 | Toyota | Solara | 2AZ-FE |
| 2004 | Toyota | Solara | 3MZ-FE |
| 2004 | Toyota | Tacoma | 5VZ-FE |
| 2004 | Toyota | Tundra | 2UZ-FE |
| 2004 | Toyota | Tundra | 5VZ-FE |
| 2004 | Toyota | Yaris | 1SZ-FE |
| 2005 | Lexus | ES330 | 3MZ-FE |
| 2005 | Lexus | GS300 | 2JZ-GE |
| 2005 | Lexus | GS430 | 3UZ-FE |
| 2005 | Lexus | GX470 | 2UZ-FE |
| 2005 | Lexus | IS300 | 2JZ-GE |
| 2005 | Lexus | LS430 | 3UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2005 | Lexus | RX330 | 3MZ-FE |
| 2005 | Lexus | SC430 | 3UZ-FE |
| 2005 | Toyota | 4Runner | 1GR-FE |
| 2005 | Toyota | 4Runner | 2UZ-FE |
| 2005 | Toyota | Avalon | 2GR-FE |
| 2005 | Toyota | Camry | 1MZ-FE |
| 2005 | Toyota | Camry | 2AZ-FE |
| 2005 | Toyota | Camry | 3MZ-FE |
| 2005 | Toyota | Celica | 2ZZ-GE |
| 2005 | Toyota | Corolla | 1ZZ-FE |
| 2005 | Toyota | Highlander | 2AZ-FE |
| 2005 | Toyota | Highlander | 3MZ-FE |
| 2005 | Toyota | Land Cruiser | 2UZ-FE |
| 2005 | Toyota | Matrix | 1ZZ-FE |
| 2005 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2005 | Toyota | Prius | 1NZ-FXE |
| 2005 | Toyota | RAV4 | 2AZ-FE |
| 2005 | Toyota | Sequoia | 2UZ-FE |
| 2005 | Toyota | Sienna | 3MZ-FE |
| 2005 | Toyota | Solara | 2AZ-FE |
| 2005 | Toyota | Solara | 3MZ-FE |
| 2005 | Toyota | Tacoma | 1GR-FE |
| 2005 | Toyota | Tacoma | 2TR-FE |
| 2005 | Toyota | Tundra | 1GR-FE |
| 2005 | Toyota | Tundra | 2UZ-FE |
| 2005 | Toyota | Yaris | 1SZ-FE |
| 2006 | Lexus | ES330 | 3MZ-FE |
| 2006 | Lexus | GS300 | 3GR-FSE |
| 2006 | Lexus | GS430 | 3UZ-FE |
| 2006 | Lexus | GX470 | 2UZ-FE |
| 2006 | Lexus | IS250 | 4GR-FSE |
| 2006 | Lexus | IS350 | 2GR-FSE |
| 2006 | Lexus | LS430 | 3UZ-FE |
| 2006 | Lexus | LX470 | 2UZ-FE |
| 2006 | Lexus | RX330 | 3MZ-FE |
| 2006 | Lexus | RX400h | 3MZ-FE |
| 2006 | Lexus | SC430 | 3UZ-FE |
| 2006 | Toyota | 4Runner | 1GR-FE |
| 2006 | Toyota | 4Runner | 2UZ-FE |
| 2006 | Toyota | Avalon | 2GR-FE |
| 2006 | Toyota | Camry | 1MZ-FE |
| 2006 | Toyota | Camry | 2AZ-FE |
| 2006 | Toyota | Camry | 3MZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Highlander | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2006 | Toyota | Highlander | 3MZ-FE |
| 2006 | Toyota | Land Cruiser | 2UZ-FE |
| 2006 | Toyota | Matrix | 1ZZ-FE |
| 2006 | Toyota | Prius | 1NZ-FXE |
| 2006 | Toyota | RAV4 | 2AZ-FE |
| 2006 | Toyota | RAV4 | 2GR-FE |
| 2006 | Toyota | Sequoia | 2UZ-FE |
| 2006 | Toyota | Sienna | 3MZ-FE |
| 2006 | Toyota | Solara | 2AZ-FE |
| 2006 | Toyota | Solara | 3MZ-FE |
| 2006 | Toyota | Tacoma | 1GR-FE |
| 2006 | Toyota | Tacoma | 2TR-FE |
| 2006 | Toyota | Tundra | 1GR-FE |
| 2006 | Toyota | Tundra | 2UZ-FE |
| 2006 | Toyota | Yaris | 1NZ-FE |
| 2007 | Lexus | ES350 | 2GR-FE |
| 2007 | Lexus | GS350 | 2GR-FSE |
| 2007 | Lexus | GS430 | 3UZ-FE |
| 2007 | Lexus | GS450h | 2GR-FSE |
| 2007 | Lexus | GX470 | 2UZ-FE |
| 2007 | Lexus | IS250 | 4GR-FSE |
| 2007 | Lexus | IS350 | 2GR-FSE |
| 2007 | Lexus | LS460 | 1UR-FSE |
| 2007 | Lexus | LX470 | 2UZ-FE |
| 2007 | Lexus | RX350 | 2GR-FE |
| 2007 | Lexus | RX400h | 3MZ-FE |
| 2007 | Lexus | SC430 | 3UZ-FE |
| 2007 | Toyota | 4Runner | 1GR-FE |
| 2007 | Toyota | 4Runner | 2UZ-FE |
| 2007 | Toyota | Avalon | 2GR-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Corolla | 1ZZ-FE |
| 2007 | Toyota | FJ Cruiser | 1GR-FE |
| 2007 | Toyota | Highlander | 2AZ-FE |
| 2007 | Toyota | Highlander | 3MZ-FE |
| 2007 | Toyota | Land Cruiser | 2UZ-FE |
| 2007 | Toyota | Matrix | 1ZZ-FE |
| 2007 | Toyota | Prius | 1NZ-FXE |
| 2007 | Toyota | RAV4 | 2AZ-FE |
| 2007 | Toyota | RAV4 | 2GR-FE |
| 2007 | Toyota | Sequoia | 2UZ-FE |
| 2007 | Toyota | Sienna | 2GR-FE |
| 2007 | Toyota | Solara | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2007 | Toyota | Solara | 3MZ-FE |
| 2007 | Toyota | Tacoma | 1GR-FE |
| 2007 | Toyota | Tacoma | 2TR-FE |
| 2007 | Toyota | Tundra | 1GR-FE |
| 2007 | Toyota | Tundra | 2UZ-FE |
| 2007 | Toyota | Tundra | 3UR-FE |
| 2007 | Toyota | Yaris | 1NZ-FE |
| 2008 | Lexus | ES350 | 2GR-FE |
| 2008 | Lexus | GS350 | 2GR-FSE |
| 2008 | Lexus | GS450h | 2GR-FSE |
| 2008 | Lexus | GS460 | 1UR-FSE |
| 2008 | Lexus | GX470 | 2UZ-FE |
| 2008 | Lexus | IS F | 2UR-GSE |
| 2008 | Lexus | IS250 | 4GR-FSE |
| 2008 | Lexus | IS350 | 2GR-FSE |
| 2008 | Lexus | LS460 | 1UR-FSE |
| 2008 | Lexus | LS600h | 2UR-FSE |
| 2008 | Lexus | LX570 | 3UR-FE |
| 2008 | Lexus | RX350 | 2GR-FE |
| 2008 | Lexus | RX400h | 3MZ-FE |
| 2008 | Lexus | SC430 | 3UZ-FE |
| 2008 | Toyota | 4Runner | 1GR-FE |
| 2008 | Toyota | 4Runner | 2UZ-FE |
| 2008 | Toyota | Avalon | 2GR-FE |
| 2008 | Toyota | Camry | 2AZ-FE |
| 2008 | Toyota | Camry | 2GR-FE |
| 2008 | Toyota | Corolla | 1ZZ-FE |
| 2008 | Toyota | FJ Cruiser | 1GR-FE |
| 2008 | Toyota | Highlander | 2GR-FE |
| 2008 | Toyota | Highlander | 3MZ-FE |
| 2008 | Toyota | Land Cruiser | 3UR-FE |
| 2008 | Toyota | Matrix | 1ZZ-FE |
| 2008 | Toyota | Prius | 1NZ-FXE |
| 2008 | Toyota | RAV4 | 2AZ-FE |
| 2008 | Toyota | RAV4 | 2GR-FE |
| 2008 | Toyota | Sequoia | 2UZ-FE |
| 2008 | Toyota | Sequoia | 3UR-FE |
| 2008 | Toyota | Sienna | 2GR-FE |
| 2008 | Toyota | Solara | 2AZ-FE |
| 2008 | Toyota | Solara | 3MZ-FE |
| 2008 | Toyota | Tacoma | 1GR-FE |
| 2008 | Toyota | Tacoma | 2TR-FE |
| 2008 | Toyota | Tundra | 1GR-FE |
| 2008 | Toyota | Tundra | 2UZ-FE |
| 2008 | Toyota | Tundra | 3UR-FE |
| 2008 | Toyota | Yaris | 1NZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2009 | Lexus | ES350 | 2GR-FE |
| 2009 | Lexus | GS350 | 2GR-FSE |
| 2009 | Lexus | GS450h | 2GR-FSE |
| 2009 | Lexus | GS460 | 1UR-FSE |
| 2009 | Lexus | GX470 | 2UZ-FE |
| 2009 | Lexus | IS F | 2UR-GSE |
| 2009 | Lexus | IS250 | 4GR-FSE |
| 2009 | Lexus | IS350 | 2GR-FSE |
| 2009 | Lexus | LS460 | 1UR-FSE |
| 2009 | Lexus | LS600h | 2UR-FSE |
| 2009 | Lexus | LX570 | 3UR-FE |
| 2009 | Lexus | RX350 | 2GR-FE |
| 2009 | Lexus | SC430 | 3UZ-FE |
| 2009 | Toyota | 4Runner | 1GR-FE |
| 2009 | Toyota | 4Runner | 2UZ-FE |
| 2009 | Toyota | Avalon | 2GR-FE |
| 2009 | Toyota | Camry | 2AZ-FE |
| 2009 | Toyota | Camry | 2GR-FE |
| 2009 | Toyota | Corolla | 2AZ-FE |
| 2009 | Toyota | Corolla | 2ZR-FE |
| 2009 | Toyota | FJ Cruiser | 1GR-FE |
| 2009 | Toyota | Highlander | 1AR-FE |
| 2009 | Toyota | Highlander | 2GR-FE |
| 2009 | Toyota | Highlander | 3MZ-FE |
| 2009 | Toyota | Land Cruiser | 3UR-FE |
| 2009 | Toyota | Matrix | 2AZ-FE |
| 2009 | Toyota | Matrix | 2ZR-FE |
| 2009 | Toyota | Prius | 1NZ-FXE |
| 2009 | Toyota | RAV4 | 2AR-FE |
| 2009 | Toyota | RAV4 | 2GR-FE |
| 2009 | Toyota | Sequoia | 2UZ-FE |
| 2009 | Toyota | Sequoia | 3UR-FBE |
| 2009 | Toyota | Sequoia | 3UR-FE |
| 2009 | Toyota | Sienna | 2GR-FE |
| 2009 | Toyota | Tacoma | 1GR-FE |
| 2009 | Toyota | Tacoma | 2TR-FE |
| 2009 | Toyota | Tundra | 2UZ-FE |
| 2009 | Toyota | Tundra | 3UR-FBE |
| 2009 | Toyota | Tundra | 3UR-FE |
| 2009 | Toyota | Venza | 1AR-FE |
| 2009 | Toyota | Venza | 2GR-FE |
| 2009 | Toyota | Yaris | 1NZ-FE |

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation, TOYOTA MOTOR
CORPORATION, a Japanese Corporation.**

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

Hereinafter all Defendants are referred to collectively as “Toyota” or the “Toyota Defendants.”

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as “throttle-by-wire” or “drive-by-wire” because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with “throttle-by-wire” electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota’s competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration (“NHTSA”) investigators. Specifically, Defendant Toyota Motor North America (“TMNA”) was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

15. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

¹ Defect Petition DP04-003; Investigation PE04-021

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

² "long duration" is defined as lasting longer than one (1) second

reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

³ ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled “Analysis of the Effects of Unintended Acceleration on Vehicle Control,” also supports this action under the Consumers Credit and Protection Act. The agency’s analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: “Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*” (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a “Safety Advisory,” saying that the company had “taken a closer look” at the potential for the accelerator to get “stuck in the full open position” *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

- Toyota FJ Cruisers from MY 2007 through MY 2008;
- Toyota Highlanders from MY2004 through 2009;
- Toyota Tacoma pickup trucks from MY 2003 through 2008;
- Toyota Camrys from Model Year (MY) 2002 though 2009;
- Lexus models from MY 1998 through 2009;
- Toyota Tundra pickup trucks MY 2000 through 2009;
- Toyota 4Runner SUVs from MY 2001 through 2009;
- Toyota Avalons from MY 2005 through 2009;
- Toyota Land Cruisers from MY 2001 through 2009;
- Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?
- d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?
- e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?
- f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?
- g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?
- h. Did Plaintiff and others similarly situated suffer ascertainable loss?
- i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?
- j. Was Toyota unjustly enriched?
- k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

- l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?
- m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF
(Unjust Enrichment)**

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)**

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

65. Plaintiffs and each member of the Class are “consumers” within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia’s Consumer Credit and Protection Act (“CCPA”) codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota, via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of \$200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

76. The Toyota is a “manufacturer” within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia’s Consumer Protection – New Motor Vehicle Warranties Act (“Lemon Law”) codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because the stated legislative intent of this law is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs’ vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota as a duty to replace the Sub-Class Plaintiffs’ vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

- (1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;
- (2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
- (3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and
- (4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;
- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding each Plaintiff its actual damages or \$200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);
- g. Awarding attorneys' fees, expenses and costs;
- h. Punitive Damages
- i. Awarding pre- and post-judgment interest; and
- j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

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CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

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Toyota Motor North America, Inc.;
Toyota Motor Engineering & Manufacturing North America, Inc.; and
Toyota Motor Sales U.S.A., Inc.

/s/ Eric B. Snyder

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 1998 | Lexus | GS300 | 2JZ-GE |
| 1998 | Lexus | LX470 | 2UZ-FE |
| 1998 | Toyota | Land Cruiser | 2UZ-FE |
| 1999 | Lexus | GS300 | 2JZ-GE |
| 1999 | Lexus | LX470 | 2UZ-FE |
| 1999 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Lexus | GS300 | 2JZ-GE |
| 2000 | Lexus | LX470 | 2UZ-FE |
| 2000 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Toyota | Tundra | 2UZ-FE |
| 2001 | Lexus | GS300 | 2JZ-GE |
| 2001 | Lexus | GS430 | 3UZ-FE |
| 2001 | Lexus | IS300 | 2JZ-GE |
| 2001 | Lexus | LS430 | 3UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Toyota | 4Runner | 5VZ-FE |
| 2001 | Toyota | Land Cruiser | 2UZ-FE |
| 2001 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2001 | Toyota | Sequoia | 2UZ-FE |
| 2001 | Toyota | Tundra | 2UZ-FE |
| 2002 | Lexus | ES300 | 1MZ-FE |
| 2002 | Lexus | GS300 | 2JZ-GE |
| 2002 | Lexus | GS430 | 3UZ-FE |
| 2002 | Lexus | IS300 | 2JZ-GE |
| 2002 | Lexus | LS430 | 3UZ-FE |
| 2002 | Lexus | LX470 | 2UZ-FE |
| 2002 | Lexus | SC430 | 3UZ-FE |
| 2002 | Toyota | 4Runner | 5VZ-FE |
| 2002 | Toyota | Camry | 1MZ-FE |
| 2002 | Toyota | Camry | 2AZ-FE |
| 2002 | Toyota | Land Cruiser | 2UZ-FE |
| 2002 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2002 | Toyota | Sequoia | 2UZ-FE |
| 2002 | Toyota | Solara | 2AZ-FE |
| 2002 | Toyota | Tundra | 2UZ-FE |
| 2003 | Lexus | ES300 | 1MZ-FE |
| 2003 | Lexus | GS300 | 2JZ-GE |
| 2003 | Lexus | GS430 | 3UZ-FE |
| 2003 | Lexus | GX470 | 2UZ-FE |
| 2003 | Lexus | IS300 | 2JZ-GE |
| 2003 | Lexus | LS430 | 3UZ-FE |
| 2003 | Lexus | LX470 | 2UZ-FE |
| 2003 | Lexus | SC430 | 3UZ-FE |
| 2003 | Toyota | 4Runner | 1GR-FE |
| 2003 | Toyota | 4Runner | 2UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2003 | Toyota | Camry | 1MZ-FE |
| 2003 | Toyota | Camry | 2AZ-FE |
| 2003 | Toyota | Celica | 2ZZ-GE |
| 2003 | Toyota | Land Cruiser | 2UZ-FE |
| 2003 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2003 | Toyota | Sequoia | 2UZ-FE |
| 2003 | Toyota | Solara | 2AZ-FE |
| 2003 | Toyota | Tacoma | 5VZ-FE |
| 2003 | Toyota | Tundra | 2UZ-FE |
| 2003 | Toyota | Tundra | 5VZ-FE |
| 2004 | Lexus | ES330 | 3MZ-FE |
| 2004 | Lexus | GS300 | 2JZ-GE |
| 2004 | Lexus | GS430 | 3UZ-FE |
| 2004 | Lexus | GX470 | 2UZ-FE |
| 2004 | Lexus | GZ470 | 2UZ-FE |
| 2004 | Lexus | IS300 | 2JZ-GE |
| 2004 | Lexus | LS430 | 3UZ-FE |
| 2004 | Lexus | LX470 | 2UZ-FE |
| 2004 | Lexus | RX330 | 3MZ-FE |
| 2004 | Lexus | SC430 | 3UZ-FE |
| 2004 | Toyota | 4Runner | 1GR-FE |
| 2004 | Toyota | 4Runner | 2UZ-FE |
| 2004 | Toyota | Camry | 1MZ-FE |
| 2004 | Toyota | Camry | 2AZ-FE |
| 2004 | Toyota | Camry | 3MZ-FE |
| 2004 | Toyota | Celica | 2ZZ-GE |
| 2004 | Toyota | Highlander | 2AZ-FE |
| 2004 | Toyota | Highlander | 3MZ-FE |
| 2004 | Toyota | Land Cruiser | 2UZ-FE |
| 2004 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2004 | Toyota | Prius | 1NZ-FXE |
| 2004 | Toyota | RAV4 | 2AZ-FE |
| 2004 | Toyota | Sequoia | 2UZ-FE |
| 2004 | Toyota | Sienna | 3MZ-FE |
| 2004 | Toyota | Solara | 2AZ-FE |
| 2004 | Toyota | Solara | 3MZ-FE |
| 2004 | Toyota | Tacoma | 5VZ-FE |
| 2004 | Toyota | Tundra | 2UZ-FE |
| 2004 | Toyota | Tundra | 5VZ-FE |
| 2004 | Toyota | Yaris | 1SZ-FE |
| 2005 | Lexus | ES330 | 3MZ-FE |
| 2005 | Lexus | GS300 | 2JZ-GE |
| 2005 | Lexus | GS430 | 3UZ-FE |
| 2005 | Lexus | GX470 | 2UZ-FE |
| 2005 | Lexus | IS300 | 2JZ-GE |
| 2005 | Lexus | LS430 | 3UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2005 | Lexus | RX330 | 3MZ-FE |
| 2005 | Lexus | SC430 | 3UZ-FE |
| 2005 | Toyota | 4Runner | 1GR-FE |
| 2005 | Toyota | 4Runner | 2UZ-FE |
| 2005 | Toyota | Avalon | 2GR-FE |
| 2005 | Toyota | Camry | 1MZ-FE |
| 2005 | Toyota | Camry | 2AZ-FE |
| 2005 | Toyota | Camry | 3MZ-FE |
| 2005 | Toyota | Celica | 2ZZ-GE |
| 2005 | Toyota | Corolla | 1ZZ-FE |
| 2005 | Toyota | Highlander | 2AZ-FE |
| 2005 | Toyota | Highlander | 3MZ-FE |
| 2005 | Toyota | Land Cruiser | 2UZ-FE |
| 2005 | Toyota | Matrix | 1ZZ-FE |
| 2005 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2005 | Toyota | Prius | 1NZ-FXE |
| 2005 | Toyota | RAV4 | 2AZ-FE |
| 2005 | Toyota | Sequoia | 2UZ-FE |
| 2005 | Toyota | Sienna | 3MZ-FE |
| 2005 | Toyota | Solara | 2AZ-FE |
| 2005 | Toyota | Solara | 3MZ-FE |
| 2005 | Toyota | Tacoma | 1GR-FE |
| 2005 | Toyota | Tacoma | 2TR-FE |
| 2005 | Toyota | Tundra | 1GR-FE |
| 2005 | Toyota | Tundra | 2UZ-FE |
| 2005 | Toyota | Yaris | 1SZ-FE |
| 2006 | Lexus | ES330 | 3MZ-FE |
| 2006 | Lexus | GS300 | 3GR-FSE |
| 2006 | Lexus | GS430 | 3UZ-FE |
| 2006 | Lexus | GX470 | 2UZ-FE |
| 2006 | Lexus | IS250 | 4GR-FSE |
| 2006 | Lexus | IS350 | 2GR-FSE |
| 2006 | Lexus | LS430 | 3UZ-FE |
| 2006 | Lexus | LX470 | 2UZ-FE |
| 2006 | Lexus | RX330 | 3MZ-FE |
| 2006 | Lexus | RX400h | 3MZ-FE |
| 2006 | Lexus | SC430 | 3UZ-FE |
| 2006 | Toyota | 4Runner | 1GR-FE |
| 2006 | Toyota | 4Runner | 2UZ-FE |
| 2006 | Toyota | Avalon | 2GR-FE |
| 2006 | Toyota | Camry | 1MZ-FE |
| 2006 | Toyota | Camry | 2AZ-FE |
| 2006 | Toyota | Camry | 3MZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Highlander | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2006 | Toyota | Highlander | 3MZ-FE |
| 2006 | Toyota | Land Cruiser | 2UZ-FE |
| 2006 | Toyota | Matrix | 1ZZ-FE |
| 2006 | Toyota | Prius | 1NZ-FXE |
| 2006 | Toyota | RAV4 | 2AZ-FE |
| 2006 | Toyota | RAV4 | 2GR-FE |
| 2006 | Toyota | Sequoia | 2UZ-FE |
| 2006 | Toyota | Sienna | 3MZ-FE |
| 2006 | Toyota | Solara | 2AZ-FE |
| 2006 | Toyota | Solara | 3MZ-FE |
| 2006 | Toyota | Tacoma | 1GR-FE |
| 2006 | Toyota | Tacoma | 2TR-FE |
| 2006 | Toyota | Tundra | 1GR-FE |
| 2006 | Toyota | Tundra | 2UZ-FE |
| 2006 | Toyota | Yaris | 1NZ-FE |
| 2007 | Lexus | ES350 | 2GR-FE |
| 2007 | Lexus | GS350 | 2GR-FSE |
| 2007 | Lexus | GS430 | 3UZ-FE |
| 2007 | Lexus | GS450h | 2GR-FSE |
| 2007 | Lexus | GX470 | 2UZ-FE |
| 2007 | Lexus | IS250 | 4GR-FSE |
| 2007 | Lexus | IS350 | 2GR-FSE |
| 2007 | Lexus | LS460 | 1UR-FSE |
| 2007 | Lexus | LX470 | 2UZ-FE |
| 2007 | Lexus | RX350 | 2GR-FE |
| 2007 | Lexus | RX400h | 3MZ-FE |
| 2007 | Lexus | SC430 | 3UZ-FE |
| 2007 | Toyota | 4Runner | 1GR-FE |
| 2007 | Toyota | 4Runner | 2UZ-FE |
| 2007 | Toyota | Avalon | 2GR-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Corolla | 1ZZ-FE |
| 2007 | Toyota | FJ Cruiser | 1GR-FE |
| 2007 | Toyota | Highlander | 2AZ-FE |
| 2007 | Toyota | Highlander | 3MZ-FE |
| 2007 | Toyota | Land Cruiser | 2UZ-FE |
| 2007 | Toyota | Matrix | 1ZZ-FE |
| 2007 | Toyota | Prius | 1NZ-FXE |
| 2007 | Toyota | RAV4 | 2AZ-FE |
| 2007 | Toyota | RAV4 | 2GR-FE |
| 2007 | Toyota | Sequoia | 2UZ-FE |
| 2007 | Toyota | Sienna | 2GR-FE |
| 2007 | Toyota | Solara | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2007 | Toyota | Solara | 3MZ-FE |
| 2007 | Toyota | Tacoma | 1GR-FE |
| 2007 | Toyota | Tacoma | 2TR-FE |
| 2007 | Toyota | Tundra | 1GR-FE |
| 2007 | Toyota | Tundra | 2UZ-FE |
| 2007 | Toyota | Tundra | 3UR-FE |
| 2007 | Toyota | Yaris | 1NZ-FE |
| 2008 | Lexus | ES350 | 2GR-FE |
| 2008 | Lexus | GS350 | 2GR-FSE |
| 2008 | Lexus | GS450h | 2GR-FSE |
| 2008 | Lexus | GS460 | 1UR-FSE |
| 2008 | Lexus | GX470 | 2UZ-FE |
| 2008 | Lexus | IS F | 2UR-GSE |
| 2008 | Lexus | IS250 | 4GR-FSE |
| 2008 | Lexus | IS350 | 2GR-FSE |
| 2008 | Lexus | LS460 | 1UR-FSE |
| 2008 | Lexus | LS600h | 2UR-FSE |
| 2008 | Lexus | LX570 | 3UR-FE |
| 2008 | Lexus | RX350 | 2GR-FE |
| 2008 | Lexus | RX400h | 3MZ-FE |
| 2008 | Lexus | SC430 | 3UZ-FE |
| 2008 | Toyota | 4Runner | 1GR-FE |
| 2008 | Toyota | 4Runner | 2UZ-FE |
| 2008 | Toyota | Avalon | 2GR-FE |
| 2008 | Toyota | Camry | 2AZ-FE |
| 2008 | Toyota | Camry | 2GR-FE |
| 2008 | Toyota | Corolla | 1ZZ-FE |
| 2008 | Toyota | FJ Cruiser | 1GR-FE |
| 2008 | Toyota | Highlander | 2GR-FE |
| 2008 | Toyota | Highlander | 3MZ-FE |
| 2008 | Toyota | Land Cruiser | 3UR-FE |
| 2008 | Toyota | Matrix | 1ZZ-FE |
| 2008 | Toyota | Prius | 1NZ-FXE |
| 2008 | Toyota | RAV4 | 2AZ-FE |
| 2008 | Toyota | RAV4 | 2GR-FE |
| 2008 | Toyota | Sequoia | 2UZ-FE |
| 2008 | Toyota | Sequoia | 3UR-FE |
| 2008 | Toyota | Sienna | 2GR-FE |
| 2008 | Toyota | Solara | 2AZ-FE |
| 2008 | Toyota | Solara | 3MZ-FE |
| 2008 | Toyota | Tacoma | 1GR-FE |
| 2008 | Toyota | Tacoma | 2TR-FE |
| 2008 | Toyota | Tundra | 1GR-FE |
| 2008 | Toyota | Tundra | 2UZ-FE |
| 2008 | Toyota | Tundra | 3UR-FE |
| 2008 | Toyota | Yaris | 1NZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2009 | Lexus | ES350 | 2GR-FE |
| 2009 | Lexus | GS350 | 2GR-FSE |
| 2009 | Lexus | GS450h | 2GR-FSE |
| 2009 | Lexus | GS460 | 1UR-FSE |
| 2009 | Lexus | GX470 | 2UZ-FE |
| 2009 | Lexus | IS F | 2UR-GSE |
| 2009 | Lexus | IS250 | 4GR-FSE |
| 2009 | Lexus | IS350 | 2GR-FSE |
| 2009 | Lexus | LS460 | 1UR-FSE |
| 2009 | Lexus | LS600h | 2UR-FSE |
| 2009 | Lexus | LX570 | 3UR-FE |
| 2009 | Lexus | RX350 | 2GR-FE |
| 2009 | Lexus | SC430 | 3UZ-FE |
| 2009 | Toyota | 4Runner | 1GR-FE |
| 2009 | Toyota | 4Runner | 2UZ-FE |
| 2009 | Toyota | Avalon | 2GR-FE |
| 2009 | Toyota | Camry | 2AZ-FE |
| 2009 | Toyota | Camry | 2GR-FE |
| 2009 | Toyota | Corolla | 2AZ-FE |
| 2009 | Toyota | Corolla | 2ZR-FE |
| 2009 | Toyota | FJ Cruiser | 1GR-FE |
| 2009 | Toyota | Highlander | 1AR-FE |
| 2009 | Toyota | Highlander | 2GR-FE |
| 2009 | Toyota | Highlander | 3MZ-FE |
| 2009 | Toyota | Land Cruiser | 3UR-FE |
| 2009 | Toyota | Matrix | 2AZ-FE |
| 2009 | Toyota | Matrix | 2ZR-FE |
| 2009 | Toyota | Prius | 1NZ-FXE |
| 2009 | Toyota | RAV4 | 2AR-FE |
| 2009 | Toyota | RAV4 | 2GR-FE |
| 2009 | Toyota | Sequoia | 2UZ-FE |
| 2009 | Toyota | Sequoia | 3UR-FBE |
| 2009 | Toyota | Sequoia | 3UR-FE |
| 2009 | Toyota | Sienna | 2GR-FE |
| 2009 | Toyota | Tacoma | 1GR-FE |
| 2009 | Toyota | Tacoma | 2TR-FE |
| 2009 | Toyota | Tundra | 2UZ-FE |
| 2009 | Toyota | Tundra | 3UR-FBE |
| 2009 | Toyota | Tundra | 3UR-FE |
| 2009 | Toyota | Venza | 1AR-FE |
| 2009 | Toyota | Venza | 2GR-FE |
| 2009 | Toyota | Yaris | 1NZ-FE |

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation, TOYOTA MOTOR
CORPORATION, a Japanese Corporation.**

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

Hereinafter all Defendants are referred to collectively as “Toyota” or the “Toyota Defendants.”

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as “throttle-by-wire” or “drive-by-wire” because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with “throttle-by-wire” electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota’s competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration (“NHTSA”) investigators. Specifically, Defendant Toyota Motor North America (“TMNA”) was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

15. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

¹ Defect Petition DP04-003; Investigation PE04-021

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

² "long duration" is defined as lasting longer than one (1) second

reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

³ ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled “Analysis of the Effects of Unintended Acceleration on Vehicle Control,” also supports this action under the Consumers Credit and Protection Act. The agency’s analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: “Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*” (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a “Safety Advisory,” saying that the company had “taken a closer look” at the potential for the accelerator to get “stuck in the full open position” *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

- Toyota FJ Cruisers from MY 2007 through MY 2008;
- Toyota Highlanders from MY2004 through 2009;
- Toyota Tacoma pickup trucks from MY 2003 through 2008;
- Toyota Camrys from Model Year (MY) 2002 though 2009;
- Lexus models from MY 1998 through 2009;
- Toyota Tundra pickup trucks MY 2000 through 2009;
- Toyota 4Runner SUVs from MY 2001 through 2009;
- Toyota Avalons from MY 2005 through 2009;
- Toyota Land Cruisers from MY 2001 through 2009;
- Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?
- d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?
- e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?
- f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?
- g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?
- h. Did Plaintiff and others similarly situated suffer ascertainable loss?
- i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?
- j. Was Toyota unjustly enriched?
- k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

- l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?
- m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF
(Unjust Enrichment)**

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)**

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

65. Plaintiffs and each member of the Class are “consumers” within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia’s Consumer Credit and Protection Act (“CCPA”) codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota, via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of \$200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

76. The Toyota is a “manufacturer” within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia’s Consumer Protection – New Motor Vehicle Warranties Act (“Lemon Law”) codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because the stated legislative intent of this law is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs’ vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota as a duty to replace the Sub-Class Plaintiffs’ vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

- (1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;
- (2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
- (3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and
- (4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;
- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding each Plaintiff its actual damages or \$200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);
- g. Awarding attorneys' fees, expenses and costs;
- h. Punitive Damages
- i. Awarding pre- and post-judgment interest; and
- j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

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CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

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Toyota Motor North America, Inc.;
Toyota Motor Engineering & Manufacturing North America, Inc.; and
Toyota Motor Sales U.S.A., Inc.

/s/ Eric B. Snyder

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 1998 | Lexus | GS300 | 2JZ-GE |
| 1998 | Lexus | LX470 | 2UZ-FE |
| 1998 | Toyota | Land Cruiser | 2UZ-FE |
| 1999 | Lexus | GS300 | 2JZ-GE |
| 1999 | Lexus | LX470 | 2UZ-FE |
| 1999 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Lexus | GS300 | 2JZ-GE |
| 2000 | Lexus | LX470 | 2UZ-FE |
| 2000 | Toyota | Land Cruiser | 2UZ-FE |
| 2000 | Toyota | Tundra | 2UZ-FE |
| 2001 | Lexus | GS300 | 2JZ-GE |
| 2001 | Lexus | GS430 | 3UZ-FE |
| 2001 | Lexus | IS300 | 2JZ-GE |
| 2001 | Lexus | LS430 | 3UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Lexus | LX470 | 2UZ-FE |
| 2001 | Toyota | 4Runner | 5VZ-FE |
| 2001 | Toyota | Land Cruiser | 2UZ-FE |
| 2001 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2001 | Toyota | Sequoia | 2UZ-FE |
| 2001 | Toyota | Tundra | 2UZ-FE |
| 2002 | Lexus | ES300 | 1MZ-FE |
| 2002 | Lexus | GS300 | 2JZ-GE |
| 2002 | Lexus | GS430 | 3UZ-FE |
| 2002 | Lexus | IS300 | 2JZ-GE |
| 2002 | Lexus | LS430 | 3UZ-FE |
| 2002 | Lexus | LX470 | 2UZ-FE |
| 2002 | Lexus | SC430 | 3UZ-FE |
| 2002 | Toyota | 4Runner | 5VZ-FE |
| 2002 | Toyota | Camry | 1MZ-FE |
| 2002 | Toyota | Camry | 2AZ-FE |
| 2002 | Toyota | Land Cruiser | 2UZ-FE |
| 2002 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2002 | Toyota | Sequoia | 2UZ-FE |
| 2002 | Toyota | Solara | 2AZ-FE |
| 2002 | Toyota | Tundra | 2UZ-FE |
| 2003 | Lexus | ES300 | 1MZ-FE |
| 2003 | Lexus | GS300 | 2JZ-GE |
| 2003 | Lexus | GS430 | 3UZ-FE |
| 2003 | Lexus | GX470 | 2UZ-FE |
| 2003 | Lexus | IS300 | 2JZ-GE |
| 2003 | Lexus | LS430 | 3UZ-FE |
| 2003 | Lexus | LX470 | 2UZ-FE |
| 2003 | Lexus | SC430 | 3UZ-FE |
| 2003 | Toyota | 4Runner | 1GR-FE |
| 2003 | Toyota | 4Runner | 2UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2003 | Toyota | Camry | 1MZ-FE |
| 2003 | Toyota | Camry | 2AZ-FE |
| 2003 | Toyota | Celica | 2ZZ-GE |
| 2003 | Toyota | Land Cruiser | 2UZ-FE |
| 2003 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2003 | Toyota | Sequoia | 2UZ-FE |
| 2003 | Toyota | Solara | 2AZ-FE |
| 2003 | Toyota | Tacoma | 5VZ-FE |
| 2003 | Toyota | Tundra | 2UZ-FE |
| 2003 | Toyota | Tundra | 5VZ-FE |
| 2004 | Lexus | ES330 | 3MZ-FE |
| 2004 | Lexus | GS300 | 2JZ-GE |
| 2004 | Lexus | GS430 | 3UZ-FE |
| 2004 | Lexus | GX470 | 2UZ-FE |
| 2004 | Lexus | GZ470 | 2UZ-FE |
| 2004 | Lexus | IS300 | 2JZ-GE |
| 2004 | Lexus | LS430 | 3UZ-FE |
| 2004 | Lexus | LX470 | 2UZ-FE |
| 2004 | Lexus | RX330 | 3MZ-FE |
| 2004 | Lexus | SC430 | 3UZ-FE |
| 2004 | Toyota | 4Runner | 1GR-FE |
| 2004 | Toyota | 4Runner | 2UZ-FE |
| 2004 | Toyota | Camry | 1MZ-FE |
| 2004 | Toyota | Camry | 2AZ-FE |
| 2004 | Toyota | Camry | 3MZ-FE |
| 2004 | Toyota | Celica | 2ZZ-GE |
| 2004 | Toyota | Highlander | 2AZ-FE |
| 2004 | Toyota | Highlander | 3MZ-FE |
| 2004 | Toyota | Land Cruiser | 2UZ-FE |
| 2004 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2004 | Toyota | Prius | 1NZ-FXE |
| 2004 | Toyota | RAV4 | 2AZ-FE |
| 2004 | Toyota | Sequoia | 2UZ-FE |
| 2004 | Toyota | Sienna | 3MZ-FE |
| 2004 | Toyota | Solara | 2AZ-FE |
| 2004 | Toyota | Solara | 3MZ-FE |
| 2004 | Toyota | Tacoma | 5VZ-FE |
| 2004 | Toyota | Tundra | 2UZ-FE |
| 2004 | Toyota | Tundra | 5VZ-FE |
| 2004 | Toyota | Yaris | 1SZ-FE |
| 2005 | Lexus | ES330 | 3MZ-FE |
| 2005 | Lexus | GS300 | 2JZ-GE |
| 2005 | Lexus | GS430 | 3UZ-FE |
| 2005 | Lexus | GX470 | 2UZ-FE |
| 2005 | Lexus | IS300 | 2JZ-GE |
| 2005 | Lexus | LS430 | 3UZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2005 | Lexus | RX330 | 3MZ-FE |
| 2005 | Lexus | SC430 | 3UZ-FE |
| 2005 | Toyota | 4Runner | 1GR-FE |
| 2005 | Toyota | 4Runner | 2UZ-FE |
| 2005 | Toyota | Avalon | 2GR-FE |
| 2005 | Toyota | Camry | 1MZ-FE |
| 2005 | Toyota | Camry | 2AZ-FE |
| 2005 | Toyota | Camry | 3MZ-FE |
| 2005 | Toyota | Celica | 2ZZ-GE |
| 2005 | Toyota | Corolla | 1ZZ-FE |
| 2005 | Toyota | Highlander | 2AZ-FE |
| 2005 | Toyota | Highlander | 3MZ-FE |
| 2005 | Toyota | Land Cruiser | 2UZ-FE |
| 2005 | Toyota | Matrix | 1ZZ-FE |
| 2005 | Toyota | MR2 Spyder | 1ZZ-FE |
| 2005 | Toyota | Prius | 1NZ-FXE |
| 2005 | Toyota | RAV4 | 2AZ-FE |
| 2005 | Toyota | Sequoia | 2UZ-FE |
| 2005 | Toyota | Sienna | 3MZ-FE |
| 2005 | Toyota | Solara | 2AZ-FE |
| 2005 | Toyota | Solara | 3MZ-FE |
| 2005 | Toyota | Tacoma | 1GR-FE |
| 2005 | Toyota | Tacoma | 2TR-FE |
| 2005 | Toyota | Tundra | 1GR-FE |
| 2005 | Toyota | Tundra | 2UZ-FE |
| 2005 | Toyota | Yaris | 1SZ-FE |
| 2006 | Lexus | ES330 | 3MZ-FE |
| 2006 | Lexus | GS300 | 3GR-FSE |
| 2006 | Lexus | GS430 | 3UZ-FE |
| 2006 | Lexus | GX470 | 2UZ-FE |
| 2006 | Lexus | IS250 | 4GR-FSE |
| 2006 | Lexus | IS350 | 2GR-FSE |
| 2006 | Lexus | LS430 | 3UZ-FE |
| 2006 | Lexus | LX470 | 2UZ-FE |
| 2006 | Lexus | RX330 | 3MZ-FE |
| 2006 | Lexus | RX400h | 3MZ-FE |
| 2006 | Lexus | SC430 | 3UZ-FE |
| 2006 | Toyota | 4Runner | 1GR-FE |
| 2006 | Toyota | 4Runner | 2UZ-FE |
| 2006 | Toyota | Avalon | 2GR-FE |
| 2006 | Toyota | Camry | 1MZ-FE |
| 2006 | Toyota | Camry | 2AZ-FE |
| 2006 | Toyota | Camry | 3MZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Corolla | 1ZZ-FE |
| 2006 | Toyota | Highlander | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2006 | Toyota | Highlander | 3MZ-FE |
| 2006 | Toyota | Land Cruiser | 2UZ-FE |
| 2006 | Toyota | Matrix | 1ZZ-FE |
| 2006 | Toyota | Prius | 1NZ-FXE |
| 2006 | Toyota | RAV4 | 2AZ-FE |
| 2006 | Toyota | RAV4 | 2GR-FE |
| 2006 | Toyota | Sequoia | 2UZ-FE |
| 2006 | Toyota | Sienna | 3MZ-FE |
| 2006 | Toyota | Solara | 2AZ-FE |
| 2006 | Toyota | Solara | 3MZ-FE |
| 2006 | Toyota | Tacoma | 1GR-FE |
| 2006 | Toyota | Tacoma | 2TR-FE |
| 2006 | Toyota | Tundra | 1GR-FE |
| 2006 | Toyota | Tundra | 2UZ-FE |
| 2006 | Toyota | Yaris | 1NZ-FE |
| 2007 | Lexus | ES350 | 2GR-FE |
| 2007 | Lexus | GS350 | 2GR-FSE |
| 2007 | Lexus | GS430 | 3UZ-FE |
| 2007 | Lexus | GS450h | 2GR-FSE |
| 2007 | Lexus | GX470 | 2UZ-FE |
| 2007 | Lexus | IS250 | 4GR-FSE |
| 2007 | Lexus | IS350 | 2GR-FSE |
| 2007 | Lexus | LS460 | 1UR-FSE |
| 2007 | Lexus | LX470 | 2UZ-FE |
| 2007 | Lexus | RX350 | 2GR-FE |
| 2007 | Lexus | RX400h | 3MZ-FE |
| 2007 | Lexus | SC430 | 3UZ-FE |
| 2007 | Toyota | 4Runner | 1GR-FE |
| 2007 | Toyota | 4Runner | 2UZ-FE |
| 2007 | Toyota | Avalon | 2GR-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2AZ-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Camry | 2GR-FE |
| 2007 | Toyota | Corolla | 1ZZ-FE |
| 2007 | Toyota | FJ Cruiser | 1GR-FE |
| 2007 | Toyota | Highlander | 2AZ-FE |
| 2007 | Toyota | Highlander | 3MZ-FE |
| 2007 | Toyota | Land Cruiser | 2UZ-FE |
| 2007 | Toyota | Matrix | 1ZZ-FE |
| 2007 | Toyota | Prius | 1NZ-FXE |
| 2007 | Toyota | RAV4 | 2AZ-FE |
| 2007 | Toyota | RAV4 | 2GR-FE |
| 2007 | Toyota | Sequoia | 2UZ-FE |
| 2007 | Toyota | Sienna | 2GR-FE |
| 2007 | Toyota | Solara | 2AZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2007 | Toyota | Solara | 3MZ-FE |
| 2007 | Toyota | Tacoma | 1GR-FE |
| 2007 | Toyota | Tacoma | 2TR-FE |
| 2007 | Toyota | Tundra | 1GR-FE |
| 2007 | Toyota | Tundra | 2UZ-FE |
| 2007 | Toyota | Tundra | 3UR-FE |
| 2007 | Toyota | Yaris | 1NZ-FE |
| 2008 | Lexus | ES350 | 2GR-FE |
| 2008 | Lexus | GS350 | 2GR-FSE |
| 2008 | Lexus | GS450h | 2GR-FSE |
| 2008 | Lexus | GS460 | 1UR-FSE |
| 2008 | Lexus | GX470 | 2UZ-FE |
| 2008 | Lexus | IS F | 2UR-GSE |
| 2008 | Lexus | IS250 | 4GR-FSE |
| 2008 | Lexus | IS350 | 2GR-FSE |
| 2008 | Lexus | LS460 | 1UR-FSE |
| 2008 | Lexus | LS600h | 2UR-FSE |
| 2008 | Lexus | LX570 | 3UR-FE |
| 2008 | Lexus | RX350 | 2GR-FE |
| 2008 | Lexus | RX400h | 3MZ-FE |
| 2008 | Lexus | SC430 | 3UZ-FE |
| 2008 | Toyota | 4Runner | 1GR-FE |
| 2008 | Toyota | 4Runner | 2UZ-FE |
| 2008 | Toyota | Avalon | 2GR-FE |
| 2008 | Toyota | Camry | 2AZ-FE |
| 2008 | Toyota | Camry | 2GR-FE |
| 2008 | Toyota | Corolla | 1ZZ-FE |
| 2008 | Toyota | FJ Cruiser | 1GR-FE |
| 2008 | Toyota | Highlander | 2GR-FE |
| 2008 | Toyota | Highlander | 3MZ-FE |
| 2008 | Toyota | Land Cruiser | 3UR-FE |
| 2008 | Toyota | Matrix | 1ZZ-FE |
| 2008 | Toyota | Prius | 1NZ-FXE |
| 2008 | Toyota | RAV4 | 2AZ-FE |
| 2008 | Toyota | RAV4 | 2GR-FE |
| 2008 | Toyota | Sequoia | 2UZ-FE |
| 2008 | Toyota | Sequoia | 3UR-FE |
| 2008 | Toyota | Sienna | 2GR-FE |
| 2008 | Toyota | Solara | 2AZ-FE |
| 2008 | Toyota | Solara | 3MZ-FE |
| 2008 | Toyota | Tacoma | 1GR-FE |
| 2008 | Toyota | Tacoma | 2TR-FE |
| 2008 | Toyota | Tundra | 1GR-FE |
| 2008 | Toyota | Tundra | 2UZ-FE |
| 2008 | Toyota | Tundra | 3UR-FE |
| 2008 | Toyota | Yaris | 1NZ-FE |

| CLASS VEHICLES WITH ETCS-i | | | |
|-----------------------------------|-------------|--------------|---------------|
| <u>Year</u> | <u>Make</u> | <u>Model</u> | <u>Engine</u> |
| 2009 | Lexus | ES350 | 2GR-FE |
| 2009 | Lexus | GS350 | 2GR-FSE |
| 2009 | Lexus | GS450h | 2GR-FSE |
| 2009 | Lexus | GS460 | 1UR-FSE |
| 2009 | Lexus | GX470 | 2UZ-FE |
| 2009 | Lexus | IS F | 2UR-GSE |
| 2009 | Lexus | IS250 | 4GR-FSE |
| 2009 | Lexus | IS350 | 2GR-FSE |
| 2009 | Lexus | LS460 | 1UR-FSE |
| 2009 | Lexus | LS600h | 2UR-FSE |
| 2009 | Lexus | LX570 | 3UR-FE |
| 2009 | Lexus | RX350 | 2GR-FE |
| 2009 | Lexus | SC430 | 3UZ-FE |
| 2009 | Toyota | 4Runner | 1GR-FE |
| 2009 | Toyota | 4Runner | 2UZ-FE |
| 2009 | Toyota | Avalon | 2GR-FE |
| 2009 | Toyota | Camry | 2AZ-FE |
| 2009 | Toyota | Camry | 2GR-FE |
| 2009 | Toyota | Corolla | 2AZ-FE |
| 2009 | Toyota | Corolla | 2ZR-FE |
| 2009 | Toyota | FJ Cruiser | 1GR-FE |
| 2009 | Toyota | Highlander | 1AR-FE |
| 2009 | Toyota | Highlander | 2GR-FE |
| 2009 | Toyota | Highlander | 3MZ-FE |
| 2009 | Toyota | Land Cruiser | 3UR-FE |
| 2009 | Toyota | Matrix | 2AZ-FE |
| 2009 | Toyota | Matrix | 2ZR-FE |
| 2009 | Toyota | Prius | 1NZ-FXE |
| 2009 | Toyota | RAV4 | 2AR-FE |
| 2009 | Toyota | RAV4 | 2GR-FE |
| 2009 | Toyota | Sequoia | 2UZ-FE |
| 2009 | Toyota | Sequoia | 3UR-FBE |
| 2009 | Toyota | Sequoia | 3UR-FE |
| 2009 | Toyota | Sienna | 2GR-FE |
| 2009 | Toyota | Tacoma | 1GR-FE |
| 2009 | Toyota | Tacoma | 2TR-FE |
| 2009 | Toyota | Tundra | 2UZ-FE |
| 2009 | Toyota | Tundra | 3UR-FBE |
| 2009 | Toyota | Tundra | 3UR-FE |
| 2009 | Toyota | Venza | 1AR-FE |
| 2009 | Toyota | Venza | 2GR-FE |
| 2009 | Toyota | Yaris | 1NZ-FE |

/s/ Robert P. Lorea

BENJAMIN L. BAILEY (WV Bar No. 6597)

ERIC B. SNYDER (WV Bar No. 9143)

ROBERT P. LOREA (WV Bar No. 7476)

BAILEY & GLASSER LLP

209 Capitol Street

Charleston, WV 25301

bbailey@baileyglasser.com

esnyder@baileyglasser.com

rlorea@baileyglasser.com

T: (304) 345-6555

F: (304) 342-1110

EDGAR F. HEISKELL, III (WV Bar No. 1668)

Attorney at Law

P.O. Box 3232

Charleston, WV 25332-3232

T: (434) 951-7234

F: (434) 951-7254

hheiskell@att.net

Counsel for Plaintiffs

/s/ Nicholas S. Johnson

REBECCA A. BETTS (WV Bar No. 329)

rabetts@agmtlaw.com

NICHOLAS S. JOHNSON (WV Bar No. 10272)

nsjohnson@agmtlaw.com

ALLEN GUTHRIE & THOMAS PLLC

Post Office Box 3394

500 Lee Street East, Suite 800

Charleston, West Virginia 25333-3394

(304) 345-7250

(304) 345-9941 (*Facsimile*)

CARI K. DAWSON (*appearing as a Visiting Attorney*)

cari.dawson@alston.com

DERIN DICKERSON (*appearing as a Visiting Attorney*)

derin.dickerson@alston.com

KYLE G. A. WALLACE (*appearing as a Visiting Attorney*)

kyle.wallace@alston.com

ALSTON & BIRD LLP

1201 West Peachtree Street

Atlanta, Georgia 30309-3424

(404) 881-7000

(404) 881-7777 (*Facsimile*)

LISA GILFORD (*appearing as a Visiting Attorney*)

ALSTON & BIRD LLP

333 South Hope Street

16th Floor

Los Angeles, California 90071

(213) 576-1114

(213) 576-1100 (*Facsimile*)

lisa.gilford@alston.com

Counsel for Defendants

3. On January 11, 2010, two days prior to the deadline for Toyota to file its responsive pleading or otherwise respond to the Complaint, Plaintiffs filed an Amended Complaint adding claims for violation of the Consumer Credit and Protection Act and Breach of the New Motor Vehicle Warranties law. Plaintiffs' Amended Complaint includes a total of five causes of action.

4. Toyota submits that an additional 5 pages (for a total of 25 pages) are needed to adequately address the two additional causes of action in the Amended Complaint.

5. Counsel for Plaintiffs have advised that they do not oppose this Motion, with the understanding that Plaintiffs will also be allowed 25 pages for their response.

For the reasons stated above, Toyota requests that the Court enter an Order granting this Motion For Leave to Exceed Page Limitation and permit Toyota to submit a memorandum in support of its motion to dismiss of not more than 25 pages in length, with a like accommodation also granted Plaintiffs for their memorandum in response.

Respectfully submitted this 22nd day of January, 2010.

/s/ Rebecca Betts

REBECCA A. BETTS (WV Bar No. 329)

rabetts@agmtlaw.com

NICHOLAS S. JOHNSON (WV Bar No. 10272)

nsjohnson@agmtlaw.com

ALLEN GUTHRIE & THOMAS PLLC

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500 Lee Street East, Suite 800

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CARI K. DAWSON (*appearing as a Visiting Attorney*)
cari.dawson@alston.com
DERIN DICKERSON (*appearing as a Visiting Attorney*)
derin.dickerson@alston.com
KYLE G.A. WALLACE (*appearing as a Visiting Attorney*)
kyle.wallace@alston.com
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Atlanta, Georgia 30309-3424
Tel: (404) 881-7000
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ALSTON & BIRD LLP
333 South Hope Street
16th Floor
Los Angeles, California 90071
Tel: (213) 576-1114
Fax: (213) 576-1100
lisa.gilford@alston.com

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,

Plaintiffs,

v.

Case No. 2:09-cv-1247
Judge Joseph R. Goodwin

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation,

Defendants.

CERTIFICATE OF SERVICE

I, Rebecca A. Betts, counsel for defendants hereby certify that on the 22nd day of January, 2010, I electronically filed the "Unopposed Motion for Leave to Exceed Page Limitation" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Eric B. Snyder (WVSB #9143)
Benjamin L. Bailey (WVSB #6597)
Robert P. Lorea (WVSB #7476)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301
esnyder@baileyglasser.com
bbailey@baileyglasser.com
rlorea@baileyglasser.com
Counsel for Plaintiffs

/s/Rebecca A. Betts
Rebecca A. Betts (WVSB #329)

CIVIL COVER SHEET

This 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE FOLLOWING PAGE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL GRAVES, et. al.

(b) County of Residence of First Listed Plaintiff Fayette County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Benjamin L. Bailey, Esq/Eric B. Snyder, Esq/Robert P. Lorea Esq.; Bailey & Glasser, LLP; 209 Capitol Street, Charleston, WV 25301; 304-345-6555

DEFENDANTS

TOYOTA MOTOR MANUFACTURING WEST VIRGINIA INC., et. al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item.III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. 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 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332(d)

Brief description of cause: Class Action seeking relief for consumers who have purchased a Toyota or Lexus vehicle containing ETCS-Intelligent System

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

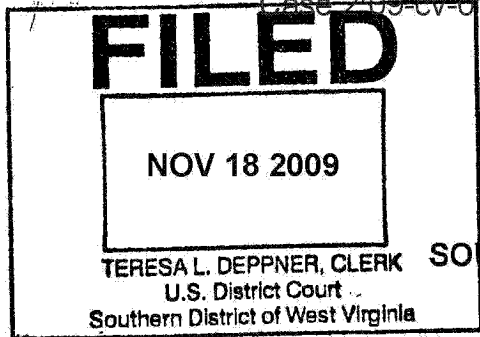
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/13/2009 /s/ Eric B. Snyder

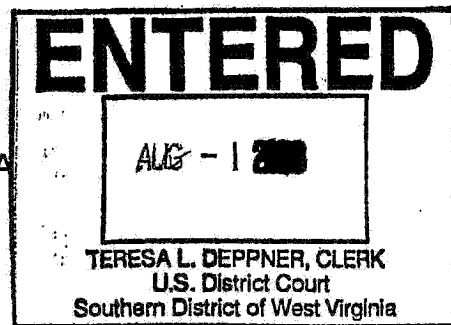
FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Michael Graves et al
v. Toyota Motor Manufacturing, West
Virginia, Inc. et al
Civil Action No. 2:09-1247

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA



**STANDING ORDER IN RE:
ASSIGNMENT AND REFERRAL OF CIVIL ACTIONS
AND MATTERS TO MAGISTRATE JUDGES**

Pursuant to Title 28, United States Code, Section 636, it is hereby **ORDERED** that certain types of civil actions and matters shall be assigned and referred as follows:

- * For the Beckley and Bluefield Divisions, to the Honorable R. Clarke VanDervort, United States Magistrate Judge;
- * For the Charleston and Parkersburg Divisions, to the Honorable Mary E. Stanley, United States Magistrate Judge; and
- * For the Huntington Division, to the Honorable Maurice G. Taylor, United States Magistrate Judge.

The matters referred in all civil cases are:

1. Applications to proceed in forma pauperis;
2. Discovery disputes; and
3. Discovery disputes which arise post-judgment (e.g., interrogatories in aid of execution, judgment debtor examinations, motions to compel answers to suggestions).

The types of civil cases which are referred for total pretrial management and submission of proposed findings of fact and recommendations for disposition are: Actions for judicial review of an administrative determination under the Social Security Act.

The types of jury or nonjury civil matters assigned for all proceedings, including entry of judgment, are:

1. Actions in which all parties have consented to proceed before a magistrate judge; and
2. Applications for award of attorneys' fees and expenses under the Social Security Act or the Equal Access to Justice Act.

Actions filed by persons who are proceeding pro se, whether or not they are in custody (until such person is represented by retained counsel) and actions filed by persons pursuant to 28 U.S.C. §§ 2241, 2254, or 2255, whether or not they are represented by counsel, are referred for total pretrial management and submission of proposed findings of fact and recommendations for disposition as follows:

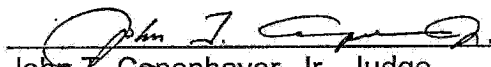
- * Charleston, and Parkersburg Divisions cases shall be referred to Magistrate Judge Stanley.
- * Bluefield Division cases shall be referred to Magistrate Judge VanDervort.
- * Beckley Division cases shall be referred to both Magistrate Judge Stanley and Magistrate Judge VanDervort.
- * Huntington Division cases shall be referred to Magistrate Judge Taylor.

The Clerk is directed to enter this Order in each action filed on and after August 1, 2006, and to transmit copies to counsel of record and to any unrepresented parties.

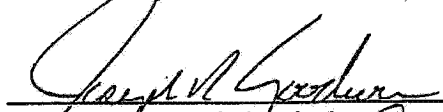
ENTER:



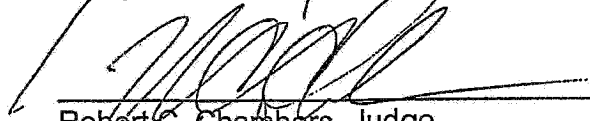
David A. Faber, Chief Judge



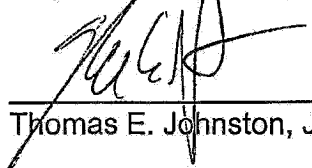
John T. Copenhaver, Jr., Judge



Joseph R. Goodwin, Judge

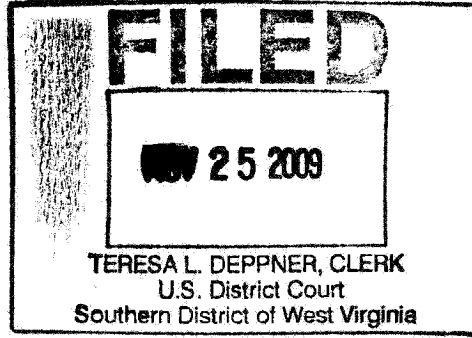


Robert C. Chambers, Judge



Thomas E. Johnston, Judge

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305



Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 286590
Defendant: Toyota Motor
Engineering & Manufact

Teresa L. Deppner, Clerk
300 Virginia Street East #2400
Charleston WV 25301-2523

11/23/2009
Civil Action: 2:09-01247
Certified: 9171923790001000172108

I am enclosing:

- | | | |
|---|---|---|
| <input type="checkbox"/> summons | <input type="checkbox"/> affidavit | <input checked="" type="checkbox"/> 1 summons and complaint |
| <input type="checkbox"/> notice | <input type="checkbox"/> answer | <input type="checkbox"/> summons returned from post office |
| <input type="checkbox"/> order | <input type="checkbox"/> cross-claim | <input type="checkbox"/> summons and amended complaint |
| <input type="checkbox"/> petition | <input type="checkbox"/> counterclaim | <input type="checkbox"/> 3rd party summons and complaint |
| <input type="checkbox"/> motion | <input type="checkbox"/> request | <input type="checkbox"/> no return from post office |
| <input type="checkbox"/> suggestions | <input type="checkbox"/> certified return receipt | <input type="checkbox"/> notice of mechanic's lien |
| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request for production | <input type="checkbox"/> suggestee execution |
| <input type="checkbox"/> original | <input type="checkbox"/> request for admissions | <input type="checkbox"/> Other |
| <input type="checkbox"/> subpoena duces tecum | | |

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant
Secretary of State

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES and JEFF MULLINS,
Individually and on Behalf of Others
similarly situated

Plaintiffs,

V.

**SUMMONS IN A CIVIL ACTION
CIVIL ACTION NO. 2:09-cv-1247**

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et. al.

Defendants.

TO [Name and address of defendant]:

TOYOTA MOTOR ENG. & MFG. N.A.,
INC. c/o CT CORPORATION SYSTEM
4169 WESTPORT ROAD
LOUISVILLE, KY 40207

ACCEPTED FOR
SERVICE OF PROCESS
2009 NOV 23 PM 4: 10
SECRETARY OF STATE
STATE OF WEST VIRGINIA

YOU ARE HEREBY SUMMONED and required to serve on [Name and address of Attorney(s) for Plaintiff(s)]:

Eric B. Snyder, Esq.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

an answer to the complaint which is served on you with this summons, within 20 days of service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

TERESA L. DEPPNER, CLERK OF COURTS

DATE: 11-19-09

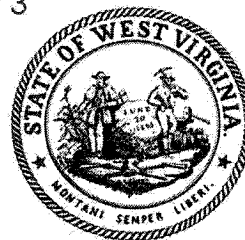
BY: [Signature]
DEPUTY CLERK

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

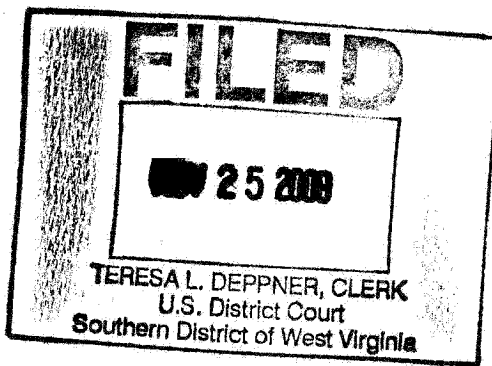
| RETURN OF SERVICE | | |
|--|----------|--------------|
| Service of the Summons and complaint was made by me ⁽¹⁾ | DATE | |
| NAME OF SERVER (<i>PRINT</i>) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify): | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL \$0.00 |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date Signature of Server</p> <p style="text-align: center;">_____ Address of Server</p> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305



Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com



ControlNumber: 286589
Defendant: Toyota Motor Sales
U.S.A., Inc.

Teresa L. Deppner, Clerk
300 Virginia Street East #2400
Charleston WV 25301-2523

11/23/2009
Civil Action: 2:09-cv-1247
Certified: 9171923790001000172085

I am enclosing:

- | | | |
|---|---|---|
| <input type="checkbox"/> summons | <input type="checkbox"/> affidavit | <input checked="" type="checkbox"/> 1 summons and complaint |
| <input type="checkbox"/> notice | <input type="checkbox"/> answer | <input type="checkbox"/> summons returned from post office |
| <input type="checkbox"/> order | <input type="checkbox"/> cross-claim | <input type="checkbox"/> summons and amended complaint |
| <input type="checkbox"/> petition | <input type="checkbox"/> counterclaim | <input type="checkbox"/> 3rd party summons and complaint |
| <input type="checkbox"/> motion | <input type="checkbox"/> request | <input type="checkbox"/> no return from post office |
| <input type="checkbox"/> suggestions | <input type="checkbox"/> certified return receipt | <input type="checkbox"/> notice of mechanic's lien |
| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request for production | <input type="checkbox"/> suggestee execution |
| <input type="checkbox"/> original | <input type="checkbox"/> request for admissions | <input type="checkbox"/> Other |
| <input type="checkbox"/> subpoena duces tecum | | |

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant
Secretary of State

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES and JEFF MULLINS,
Individually and on Behalf of Others
similarly situated

Plaintiffs,

V.

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et. al.

Defendants.

**SUMMONS IN A CIVIL ACTION
CIVIL ACTION No. 2:09-cv-1247**

ACCEPTED FOR
SERVICE OF PROCESS
2009 NOV 23 PM 4:10
SECRETARY OF STATE
STATE OF WEST VIRGINIA

TO [Name and address of defendant]:

TOYOTA MOTOR MANUFACTURING
WEST VIRGINIA, INC., CT Corporation
707 Virginia Street East
Charleston, WV 25301

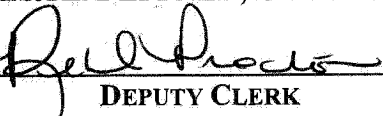
YOU ARE HEREBY SUMMONED and required to serve on [Name and address of Attorney(s) for Plaintiff(s)]:

Eric B. Snyder, Esq.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

an answer to the complaint which is served on you with this summons, within 20 days of service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

TERESA L. DEPPNER, CLERK OF COURTS

DATE: 11-19-09

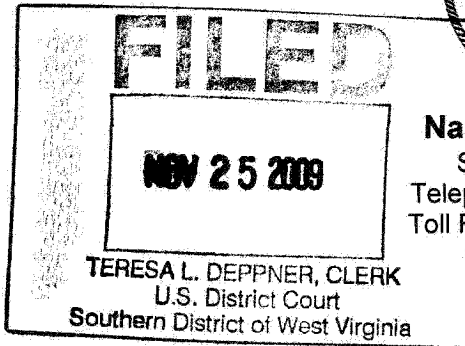
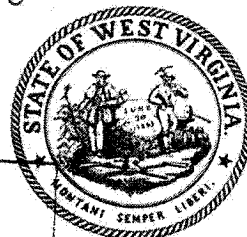
BY: 
DEPUTY CLERK

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

| RETURN OF SERVICE | | |
|---|----------|--------------|
| Service of the Summons and complaint was made by me ⁽¹⁾ | DATE | |
| NAME OF SERVER (<i>PRINT</i>) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify): | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL \$0.00 |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ <i>Signature of Server</i> _____</p> <p style="text-align: center;">_____ <i>Address of Server</i></p> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305



Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 286587
Defendant: Toyota Motor North America

Teresa L. Deppner, Clerk
300 Virginia Street East #2400
Charleston WV 25301-2523

11/23/2009
Civil Action: 2:09-cv-1247
Certified: 9171923790001000172078

I am enclosing:

- | | | |
|---|---|---|
| <input type="checkbox"/> summons | <input type="checkbox"/> affidavit | <input checked="" type="checkbox"/> 1 summons and complaint |
| <input type="checkbox"/> notice | <input type="checkbox"/> answer | <input type="checkbox"/> summons returned from post office |
| <input type="checkbox"/> order | <input type="checkbox"/> cross-claim | <input type="checkbox"/> summons and amended complaint |
| <input type="checkbox"/> petition | <input type="checkbox"/> counterclaim | <input type="checkbox"/> 3rd party summons and complaint |
| <input type="checkbox"/> motion | <input type="checkbox"/> request | <input type="checkbox"/> no return from post office |
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| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request for production | <input type="checkbox"/> suggestee execution |
| <input type="checkbox"/> original | <input type="checkbox"/> request for admissions | <input type="checkbox"/> Other |
| <input type="checkbox"/> subpoena duces tecum | | |

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your unauthorized foreign corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant
Secretary of State

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES and JEFF MULLINS,
Individually and on Behalf of Others
similarly situated

Plaintiffs,

V.

**SUMMONS IN A CIVIL ACTION
CIVIL ACTION NO. 2:09-cv-1247**

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et. al.

Defendants.

TO [Name and address of defendant]:

TOYOTA MOTOR NORTH AMERICA
INC., c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

ACCEPTED FOR
SERVICE OF PROCESS
2009 NOV 23 PM 4: 09
SECRETARY OF STATE
STATE OF WEST VIRGINIA

YOU ARE HEREBY SUMMONED and required to serve on [Name and address of Attorney(s) for Plaintiff(s)]:

Eric B. Snyder, Esq.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

an answer to the complaint which is served on you with this summons, within 20 days of service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

TERESA L. DEPPNER, CLERK OF COURTS

DATE: 11-19-09

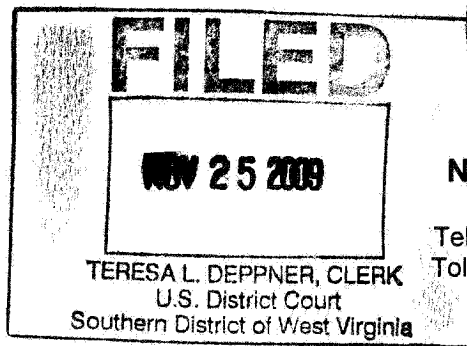
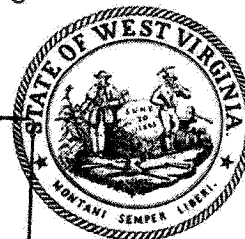
BY: 
DEPUTY CLERK

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

| RETURN OF SERVICE | | |
|--|----------|--------------|
| Service of the Summons and complaint was made by me ⁽¹⁾ | DATE | |
| NAME OF SERVER (<i>PRINT</i>) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify): | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL \$0.00 |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date <i>Signature of Server</i></p> <p style="text-align: center; margin-top: 20px;">_____ <i>Address of Server</i></p> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305



Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 286588

Defendant: Toyota Motor Manufacturing West Vi

Teresa L. Deppner, Clerk
300 Virginia Street East #2400
Charleston WV 25301-2523

11/23/2009

Civil Action: 2:09-cv-1247

Certified: 9171923790001000172092

I am enclosing:

- | | | |
|---|---|---|
| <input type="checkbox"/> summons | <input type="checkbox"/> affidavit | <input checked="" type="checkbox"/> 1 summons and complaint |
| <input type="checkbox"/> notice | <input type="checkbox"/> answer | <input type="checkbox"/> summons returned from post office |
| <input type="checkbox"/> order | <input type="checkbox"/> cross-claim | <input type="checkbox"/> summons and amended complaint |
| <input type="checkbox"/> petition | <input type="checkbox"/> counterclaim | <input type="checkbox"/> 3rd party summons and complaint |
| <input type="checkbox"/> motion | <input type="checkbox"/> request | <input type="checkbox"/> no return from post office |
| <input type="checkbox"/> suggestions | <input type="checkbox"/> certified return receipt | <input type="checkbox"/> notice of mechanic's lien |
| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request for production | <input type="checkbox"/> suggestee execution |
| <input type="checkbox"/> original | <input type="checkbox"/> request for admissions | <input type="checkbox"/> Other |
| <input type="checkbox"/> subpoena duces tecum | | |

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant
Secretary of State

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES and JEFF MULLINS,
Individually and on Behalf of Others
similarly situated

Plaintiffs,

V.

**SUMMONS IN A CIVIL ACTION
CIVIL ACTION NO. 2:09-cv-1247**

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et. al.

Defendants.

TO [Name and address of defendant]:

TOYOTA MOTOR SALES U.S.A., INC.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

ACCEPTED FOR
SERVICE OF PROCESS
2009 NOV 23 PM 4: 09
SECRETARY OF STATE
STATE OF WEST VIRGINIA

YOU ARE HEREBY SUMMONED and required to serve on [Name and address of Attorney(s) for Plaintiff(s)]:

Eric B. Snyder, Esq.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

an answer to the complaint which is served on you with this summons, within 20 days of service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

TERESA L. DEPPNER, CLERK OF COURTS

DATE: 11-19-09

BY: 
DEPUTY CLERK

AO 440 (Rev. 8/01) | SDWV/CIV-004 (4/05) Summons in a Civil Action

| RETURN OF SERVICE | | |
|--|----------|--------------|
| Service of the Summons and complaint was made by me ⁽¹⁾ | DATE | |
| NAME OF SERVER (<i>PRINT</i>) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify): | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL \$0.00 |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date <i>Signature of Server</i></p> <p style="text-align: center; margin-top: 20px;">_____ <i>Address of Server</i></p> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

MICHAEL GRAVES, and
MICHAEL C. GRAVES, and
JEFF MULLINS, Individually, and on
Behalf of all others similarly situated,

Plaintiffs,

v.

Civil Action No. 2:09-cv-1247
Hon. Joseph R. Goodwin, Judge

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.,
a Kentucky corporation; TOYOTA MOTOR SALES
U.S.A., INC., a California corporation,

Defendants.

**STIPULATION EXTENDING TIME
TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel for Plaintiffs and undersigned counsel for Defendants Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales U.S.A., Inc., that pursuant to Federal Rule of Civil

Procedure 6, the time for Defendants to answer, or otherwise respond to, Plaintiffs' Complaint shall be extended to and including January 13, 2010.

/s/ Eric B. Snyder
BENJAMIN L. BAILEY (WVSB # 6597)
ERIC B. SNYDER (WVSB # 9143)
ROBERT P. LOREA (WVSB # 7476)
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
bbailey@baileyglasser.com
esnyder@baileyglasser.com
rlore@baileyglasser.com
T: (304) 345-6555
F: (304) 342-1110

EDGAR F. HEISKELL, III (WVSB # 1668)
Attorney at Law
P.O. Box 3232
Charleston, WV 25332-3232
T: (434) 951-7234
F: (434) 951-7254
hheiskell@att.net
Counsel for Plaintiffs

/s/ Rebecca A. Betts
REBECCA A. BETTS (WVSB # 329)
NICHOLAS S. JOHNSON (WVSB #10272)
ALLEN GUTHRIE & THOMAS, PLLC
P. O. Box 3394
Charleston, WV 25333-3394
T: (304) 345-7250
F: (304) 345-9941
rabetts@agmtlaw.com
nsjohnson@agmtlaw.com
Counsel for Defendants
Toyota Motor Manufacturing, West Virginia, Inc.;
Toyota Motor North America, Inc.;
Toyota Motor Engineering &

*Manufacturing North America, Inc.; and
Toyota Motor Sales U.S.A., Inc*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

MICHAEL GRAVES and MICHAEL C.
GRAVES and JEFF MULLINS, individually
and on behalf of Others similarly situated,

**STATEMENT OF VISITING ATTORNEY
AND DESIGNATION OF LOCAL COUNSEL**

v.

TOYOTA MOTOR MANUFACTURING, West
Virginia, Inc., et al.

CIVIL ACTION NO. 2:09-cv-01247

CARI K. DAWSON, Alston & Bird LLP

GA 213490

Name of Visiting Attorney and firm name

Bar ID number

Defendants

Name of party represented

Georgia State Bar
104 Marietta Street, NW - Suite 100
Atlanta, GA 30303

Name and address of the Bar(s) of which the Visiting Attorney is a member in good standing

1201 W. Peachtree Street, NW
Atlanta, GA 30309

Visiting Attorney's office address

(404) 881-7000

(404) 881-7777

cari.dawson@alston.com

Visiting Attorney's office telephone number

Office fax number

Email address

David B. Thomas
Allen Guthrie & Thomas, PLLC

3731

Name of Sponsoring Attorney and firm name

WV Bar ID number

500 Lee Street East – Suite 800
Charleston, WV 25301

Sponsoring Attorney's office address

(304) 345-7250

(304) 345-9941

dbthomas@agmtlaw.com

Sponsoring Attorney's office telephone number

Office fax number

Email address

VISITING ATTORNEY'S CERTIFICATION

I hereby certify that I am a member in good standing of the Bar(s) listed in the Statement of Visiting Attorney. I further certify that I have paid the West Virginia State Bar its prescribed pro hac vice fee for this case, and complied with the West Virginia State Bar's requirements for attorneys admitted pro hac vice.

Date

Carri K. Dawson

Signature of Visiting Attorney



SPONSORING ATTORNEY'S CERTIFICATION

I hereby certify that I am admitted to practice before the Supreme Court of Appeals of West Virginia, I am a member in good standing of the West Virginia State Bar, and I am a member of the bar of this Court. I further certify that I have an office for the practice of law in West Virginia, and I practice law primarily in West Virginia. I agree that pleadings, notices, and other papers may be served on me in this case. I consent to being the Sponsoring Attorney for the above-named Visiting Attorney and I shall hereafter sign all papers that require the signature of an attorney.

12/24/09

Date

David B. Thomas

Signature of Sponsoring Attorney



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

MICHAEL GRAVES and MICHAEL C.
GRAVES and JEFF MULLINS, individually
and on behalf of Others similarly situated,

**STATEMENT OF VISITING ATTORNEY
AND DESIGNATION OF LOCAL COUNSEL**

v.

TOYOTA MOTOR MANUFACTURING, West
Virginia, Inc., et al.

CIVIL ACTION NO. 2:09-cv-01247

DERIN B. DICKERSON, Alston & Bird LLP

GA 220620

Name of Visiting Attorney and firm name

Bar ID number

Defendants

Name of party represented

Georgia State Bar
104 Marietta Street, NW - Suite 100
Atlanta, GA 30303

Name and address of the Bar(s) of which the Visiting Attorney is a member in good standing

1201 W. Peachtree Street, NW
Atlanta, GA 30309

Visiting Attorney's office address

(404) 881-7000

(404) 881-7777

derin.dickerson@alston.com

Visiting Attorney's office telephone number

Office fax number

Email address

David B. Thomas
Allen Guthrie & Thomas, PLLC

3731

Name of Sponsoring Attorney and firm name

WV Bar ID number

500 Lee Street East - Suite 800
Charleston, WV 25301

Sponsoring Attorney's office address

(304) 345-7250

(304) 345-9941

dbthomas@agmtlaw.com

Sponsoring Attorney's office telephone number


Office fax number

Email address

VISITING ATTORNEY'S CERTIFICATION

I hereby certify that I am a member in good standing of the Bar(s) listed in the Statement of Visiting Attorney. I further certify that I have paid the West Virginia State Bar its prescribed pro hac vice fee for this case, and complied with the West Virginia State Bar's requirements for attorneys admitted pro hac vice.

12/16/09
Date


Signature of Visiting Attorney

SIGN HERE

SPONSORING ATTORNEY'S CERTIFICATION

I hereby certify that I am admitted to practice before the Supreme Court of Appeals of West Virginia, I am a member in good standing of the West Virginia State Bar, and I am a member of the bar of this Court. I further certify that I have an office for the practice of law in West Virginia, and I practice law primarily in West Virginia. I agree that pleadings, notices, and other papers may be served on me in this case. I consent to being the Sponsoring Attorney for the above-named Visiting Attorney and I shall hereafter sign all papers that require the signature of an attorney.

12/21/09
Date


Signature of Sponsoring Attorney

SIGN HERE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

MICHAEL GRAVES and MICHAEL C.
GRAVES and JEFF MULLINS, individually
and on behalf of Others similarly situated,

**STATEMENT OF VISITING ATTORNEY
AND DESIGNATION OF LOCAL COUNSEL**

v.

TOYOTA MOTOR MANUFACTURING, West
Virginia, Inc., et al.

CIVIL ACTION NO. 2:09-cv-01247

KYLE G.A. WALLACE, Alston & Bird LLP

GA 734167

Name of Visiting Attorney and firm name

Bar ID number

Defendants

Name of party represented

Georgia State Bar
104 Marietta Street, NW - Suite 100
Atlanta, GA 30303

Name and address of the Bar(s) of which the Visiting Attorney is a member in good standing

1201 W. Peachtree Street, NW
Atlanta, GA 30309

Visiting Attorney's office address

(404) 881-7000

(404) 881-7777

kyle.wallace@alston.com

Visiting Attorney's office telephone number

Office fax number

Email address

David B. Thomas
Allen Guthrie & Thomas, PLLC

3731

Name of Sponsoring Attorney and firm name

WV Bar ID number

500 Lee Street East – Suite 800
Charleston, WV 25301

Sponsoring Attorney's office address

(304) 345-7250

(304) 345-9941

dbthomas@agmtlaw.com

Sponsoring Attorney's office telephone number

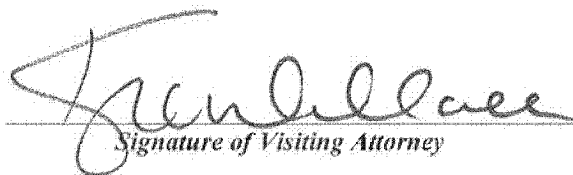
Office fax number

Email address

VISITING ATTORNEY'S CERTIFICATION

I hereby certify that I am a member in good standing of the Bar(s) listed in the Statement of Visiting Attorney. I further certify that I have paid the West Virginia State Bar its prescribed pro hac vice fee for this case, and complied with the West Virginia State Bar's requirements for attorneys admitted pro hac vice.

12/16/2009
Date


Signature of Visiting Attorney

SIGN HERE

SPONSORING ATTORNEY'S CERTIFICATION

I hereby certify that I am admitted to practice before the Supreme Court of Appeals of West Virginia, I am a member in good standing of the West Virginia State Bar, and I am a member of the bar of this Court. I further certify that I have an office for the practice of law in West Virginia, and I practice law primarily in West Virginia. I agree that pleadings, notices, and other papers may be served on me in this case. I consent to being the Sponsoring Attorney for the above-named Visiting Attorney and I shall hereafter sign all papers that require the signature of an attorney.

12/22/09
Date


Signature of Sponsoring Attorney

SIGN HERE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

MICHAEL GRAVES and MICHAEL C.
GRAVES and JEFF MULLINS, individually
and on behalf of Others similarly situated,

**STATEMENT OF VISITING ATTORNEY
AND DESIGNATION OF LOCAL COUNSEL**

v.

TOYOTA MOTOR MANUFACTURING, West
Virginia, Inc., et al.

CIVIL ACTION NO. 2:09-cv-01247

LISA M. GILFORD, Alston & Bird LLP

CA 171641

Name of Visiting Attorney and firm name

Bar ID number

Defendants

Name of party represented

California State Bar
1149 South Hill Street
Los Angeles, CA 90015

Name and address of the Bar(s) of which the Visiting Attorney is a member in good standing

333 South Hope Street – 16th Floor
Los Angeles, CA 90071

Visiting Attorney's office address

(213) 576-1000

(213) 576-1100

lisa.gilford@alston.com

Visiting Attorney's office telephone number

Office fax number

Email address

David B. Thomas
Allen Guthrie & Thomas, PLLC

3731

Name of Sponsoring Attorney and firm name

WV Bar ID number

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Charleston, WV 25301

Sponsoring Attorney's office address

(304) 345-7250

(304) 345-9941

dbthomas@agmtlaw.com

Sponsoring Attorney's office telephone number

Office fax number

Email address

VISITING ATTORNEY'S CERTIFICATION

I hereby certify that I am a member in good standing of the Bar(s) listed in the Statement of Visiting Attorney. I further certify that I have paid the West Virginia State Bar its prescribed pro hac vice fee for this case, and complied with the West Virginia State Bar's requirements for attorneys admitted pro hac vice.

12/16/09

Date



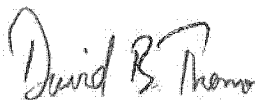
Signature of Visiting Attorney

SPONSORING ATTORNEY'S CERTIFICATION

I hereby certify that I am admitted to practice before the Supreme Court of Appeals of West Virginia, I am a member in good standing of the West Virginia State Bar, and I am a member of the bar of this Court. I further certify that I have an office for the practice of law in West Virginia, and I practice law primarily in West Virginia. I agree that pleadings, notices, and other papers may be served on me in this case. I consent to being the Sponsoring Attorney for the above-named Visiting Attorney and I shall hereafter sign all papers that require the signature of an attorney.

12/22/09

Date



Signature of Sponsoring Attorney

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

MICHAEL GRAVES, MICHAEL C.)
GRAVES, and JEFF MULLINS,)
Individually, and on Behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

CASE NO. 2:09-cv-01247
(Judge Goodwin)

TOYOTA MOTOR MANUFACTURING,)
WEST VIRGINIA, INC., a West Virginia)
corporation; TOYOTA MOTOR NORTH)
AMERICA, INC., a California)
corporation, TOYOTA MOTOR)
ENGINEERING & MANUFACTURING)
NORTH AMERICA, INC., a Kentucky)
corporation; TOYOTA MOTOR SALES,)
U.S.A., INC., a California corporation, and)
TOYOTA MOTOR CORPORATION, a)
Japanese Corporation)

Defendants.)

**STIPULATION REGARDING TIME TO
RESPOND TO FIRST AMENDED COMPLAINT**

IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel for Plaintiffs and undersigned counsel for Defendants Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales U.S.A., Inc. (collectively "Defendants"); that pursuant to Federal Rule of Civil Procedure 6, Defendants have through and including January 28, 2010 to answer, or otherwise respond to Plaintiffs' First Amended Complaint, filed January 11, 2010. Defendants are not required to answer or otherwise respond to Plaintiffs' Original Complaint, filed November 13, 2009.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,

Plaintiffs,

v.

Case No. 2:09-cv-1247
Judge Joseph R. Goodwin

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation,

Defendants.

UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMITATION

Pursuant to LR Civ P 7.1(2), Defendants Toyota Motor Manufacturing West Virginia, Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively "Toyota" or "Defendants") file this Unopposed Motion for Leave to Exceed Page Limitation and show the Court as follows:

1. Plaintiffs filed their original Complaint on November 13, 2009, asserting 3 causes of action: (1) negligence, (2) breach of express, and (3) implied warranties, and unjust enrichment.
2. In response to the original Complaint, Toyota prepared a memorandum in support of a motion to dismiss within the 20-page limit set forth in LR Civ P 7.1(2).

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

MICHAEL GRAVES, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-cv-01247

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et al.,

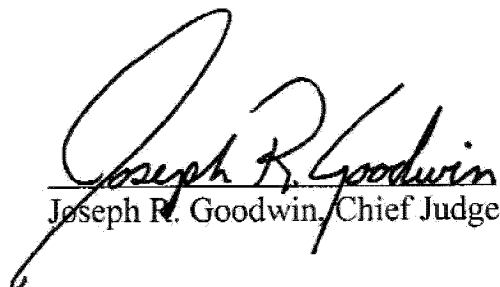
Defendants.

ORDER

Pending before the court is the defendants' Motion for Leave to Exceed Page Limitation [Docket 22]. Finding good cause, the court **GRANTS** this motion. The defendants may submit a memorandum of not more than 25 pages in support of their motion to dismiss, and the plaintiffs may submit a response of not more than 25 pages.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 25, 2010


Joseph R. Goodwin, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

MICHAEL GRAVES, MICHAEL C.)
GRAVES, and JEFF MULLINS,)
Individually, and on Behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

CASE NO. 2:09-cv-01247)
(Judge Goodwin)

TOYOTA MOTOR MANUFACTURING,)
WEST VIRGINIA, INC., a West Virginia)
corporation; TOYOTA MOTOR NORTH)
AMERICA, INC., a California)
corporation, TOYOTA MOTOR)
ENGINEERING & MANUFACTURING)
NORTH AMERICA, INC., a Kentucky)
corporation; TOYOTA MOTOR SALES,)
U.S.A., INC., a California corporation, and)
TOYOTA MOTOR CORPORATION, a)
Japanese Corporation.)

Defendants.)

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively "Toyota" or "Defendants") submit this Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' First Amended Complaint ("Complaint"). Because Plaintiffs' Complaint fails to state a claim upon which relief may be granted, it should be dismissed.

I. INTRODUCTION

Plaintiffs Michael Graves, Michael C. Graves, and Jeff Mullins contend that they are owners of Toyota vehicles that contain an electronic throttle control system ("ETCS-i"), which they allege is defective "due to the dangerous propensity for vehicles so equipped to suddenly

accelerate without driver input and against the intentions of the driver.” (Compl. ¶ 6). Plaintiffs purchased their cars from dealerships located in West Virginia and seek to represent a class of West Virginia citizens who purchased one or more Toyota and Lexus vehicles equipped with the ETCS-i system. (Compl. ¶ 40). Plaintiffs also seek to represent a Sub-class of consumers who purchased a Toyota or Lexus vehicle equipped with ETCS-i that continues to be covered by an express warranty by Toyota or that expired within one year prior to filing this action. (Compl. ¶ 35).

Though Plaintiffs’ Complaint is replete with conclusory allegations regarding NHTSA investigations, third-party complaints, and incident reports from the media, conspicuously absent from the Complaint is any allegation that the alleged product defect has manifested in the vehicles owned by the named Plaintiffs. Plaintiffs do not allege that they have experienced sudden unintended acceleration or any manifestation of a defect in their vehicles. Neither the threat that a defect may manifest in the future nor the potential for an occurrence that may never happen constitutes an actual, concrete injury-in-fact attributable to Defendants’ alleged conduct. Moreover, Plaintiffs do not allege that they can no longer drive their vehicles or use them in their ordinary course. Put simply, Plaintiffs’ purported “injuries” are both speculative and remote, and therefore, Plaintiffs do not have the requisite standing under Article III, which is an absolute prerequisite to asserting any viable claim.

Even if Plaintiffs had standing to assert their claims, which they do not, their claims fail for several other reasons. Plaintiffs’ negligence claim fails as a matter of law because a plaintiff cannot assert a negligence claim for purely economic loss associated with owning a product containing an alleged flaw or defect. Under the economic loss rule, in actions for negligence, a manufacturer’s liability is limited to damages for physical injuries to person or property. There is no recovery for economic loss alone.

Plaintiffs’ claims for breach of express warranty and breach of the implied warranty of merchantability and the implied warranty of fitness for a particular purpose do not fare any better. First, Plaintiffs’ factual allegations do not satisfy the pleading requirements of

Rule 8(a)(2). Second, Plaintiffs failed to provide the requisite pre-suit notice required by W. Va. Code § 46-2-607(3). Third, Plaintiffs' design defect claim is not covered by the express warranty, which only covers defects in materials and workmanship. Fourth, Plaintiffs have failed to satisfy a condition precedent to Toyota's obligations under the express warranty—tender of their vehicles to a Toyota authorized dealership. Fifth, Plaintiffs do not state a viable claim for breach of the implied warranty of merchantability because they have not experienced the manifestation of any defect in their vehicles. Sixth, any claim for breach of the implied warranty of fitness for a particular purpose fails as a matter of law because Plaintiffs do not allege a particular purpose for the vehicles.

Plaintiffs' unjust enrichment claim fails because the parties' conduct is governed by an express contract. Plaintiffs' Consumer Credit and Protection Act ("CCPA") claim fails because Plaintiffs have not pled this fraud-based claim with the requisite level of particularity required by Federal Rule of Civil Procedure 9(b). Plaintiffs' Breach of New Vehicle Warranties claim fails to satisfy the pleading requirements of Rule 8(a)(2) because it is premised on "naked assertions" and "conclusory statements" devoid of any "factual enhancement." The claim is also subject to dismissal for the same reasons Plaintiffs' breach of express warranties claim fails.

Finally, Plaintiffs' request for a court-ordered recall preventing Toyota from selling any vehicles with Toyota's current ETCS-i system is preempted by the National Traffic and Motor Vehicle Safety Act ("Safety Act"), 49 U.S.C. § 30101 *et seq.* The Safety Act and its implementing regulations set forth a comprehensive regulatory framework for the federal government to address the recall of automobiles for safety concerns and vest this authority in the National Highway Traffic Safety Administration ("NHTSA"). Plaintiffs' requested injunctive relief is preempted because it would frustrate these governmental objectives and usurp the role of NHTSA. NHTSA has been, and continues to be, actively involved in investigating and addressing complaints of the nature asserted in this action. For these same reasons, this Court should dismiss the claims and defer to NHTSA under the doctrine of primary jurisdiction.

For these reasons, Plaintiffs' Complaint should be dismissed in its entirety.

II. PLAINTIFFS' FACTUAL ALLEGATIONS AND CLAIMS

Plaintiffs bring this putative class action against Toyota asserting various claims for alleged “economic damage” relating to the electronic throttle control system, known as ETCS-i, that is a component of many models of Toyota and Lexus brand vehicles. Plaintiffs claim that the vehicles equipped with ETCS-i are defective. (Compl., ¶¶ 7-28, 36-39). Specifically, Plaintiffs contend that the ETCS-i equipped vehicles are unreasonably dangerous and have the propensity to accelerate without driver input and against the intentions of the driver. (*Id.*, ¶ 7). Plaintiffs assert that the alleged propensity stems in part to a vulnerability to transient signals allegedly causing electronic confusion in sensors and electronics processors. (*Id.*). Plaintiffs allege that Toyota has failed to install necessary electronic and/or mechanical fail-safes and otherwise design the vehicles to prevent and safeguard against sudden, unintended acceleration and enable drivers to bring the vehicles under control during such an event. (*Id.*, ¶¶ 7 & 9, 39). Plaintiffs assert that Toyota was aware that its vehicles were susceptible to incidents of sudden, unintended acceleration, but has failed to properly inform and warn owners of Toyota and Lexus vehicles concerning the risks and has failed to remedy the condition in the vehicles. (*Id.*, ¶¶ 37, 39).¹

Plaintiffs Michael C. Graves and Michael Graves both allege that they each purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, a car dealership located in Charleston, West Virginia. (*Id.*, ¶¶ 29-30). Plaintiff Jeff Mullins alleges he purchased a 2007 Toyota Highlander from Dan Cava Toyota, a dealership in Fairmont, West Virginia. (*Id.*, ¶ 31). Although Plaintiffs claim that their vehicles are equipped with ETCS-i, they do not allege that they have experienced any type of unintended acceleration with their vehicles. Thus, Plaintiffs do not claim to have been

¹ Plaintiffs' Complaint also contains lengthy assertions regarding customer complaints, investigations of the complaints by Toyota and the National Highway and Traffic Safety Administration (NHTSA), and the reports and findings arising from these investigations. (Compl., ¶¶ 14-24). As Plaintiffs concede, the investigations have not identified any problems with the ETCS-i system, but rather have only noted issues relating to improperly placed or unsecured floor mats. (*Id.*). Plaintiffs, however, allege various shortcomings in NHTSA's analysis and assert that Toyota concealed or otherwise provided misleading information to NHTSA regarding certain consumer complaints. (*Id.*). Plaintiffs assert that Toyota's recent advisory regarding the floor mats is “misleading.” (*Id.*, ¶ 26).

injured or suffered any damages to their vehicles or other property in any way. Rather, Plaintiffs are seeking purported economic damages arising out of their ownership of vehicles that they believe contain a defect and are claiming they “have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.” (*Id.*, ¶ 33).

Plaintiffs allege the following five claims for relief under West Virginia law: (1) Negligence (Compl., ¶¶ 49-55); (2) “Breach of Express and Implied Warranty” (Compl., ¶¶ 56-58); (3) Unjust Enrichment (Compl., ¶¶ 59-62), (4) violation of the Consumer Credit and Protection Act (“CCPA”) (Compl., ¶ 63-72), and (5) Breach of New Motor Vehicle Warranties (“Lemon Law”) (Compl., ¶ 73-82). Plaintiffs seek compensatory damages, restitution, disgorgement, punitive damages² and attorneys’ fees and costs. (*Id.* at Prayer for Relief). Significantly, Plaintiffs also seek an order from this Court enjoining Toyota from marketing, advertising, distributing and selling vehicles containing ETCS-i. (*Id.*)

Plaintiffs seek to represent a statewide class consisting of “[a]ll persons who purchased one or more of the ETCS-i vehicles listed on Exhibit A” of Plaintiffs’ Complaint (Dkt. No. 19-2), which sets forth numerous models of Toyota and Lexus vehicles from model years 1998 to 2009. (Compl., ¶ 40). Plaintiffs specifically exclude from the proposed class “any individuals

² While Plaintiffs request punitive damages, their five substantive claims – negligence, breach of warranties, unjust enrichment, CCPA, and Lemon Law – do not give rise to an award of punitive damages. *See Bennett v. 3 C Coal Co.*, 379 S.E.2d 388, 394 (W. Va. 1989) (“Our law has long required more than a showing of simple negligence to recover punitive damages. . . . [I]n order to secure punitive damages, the defendant must be shown to have engaged in ‘a wilful, wanton, reckless or malicious act.’”); *Burdette v. Reliastar Life Ins. Co.*, 2:06-CV-0210, 2006 WL 1644234, at * 2 (S.D. W. Va. Jun. 12, 2006) (“The substantive law of West Virginia does not permit the award of punitive damages under a breach of contract theory, absent proof of malice, wantonness, or oppression.”); *Viriden v. Altria Group, Inc.*, 304 F.Supp.2d 832 (N.D. W. Va. 2004) (“[P]unitive damages are not available under the WVCCPA.”). This Court has previously dismissed unsupported requests for punitive damages. *See, e.g., Casto v. Nw. Mut. Life Ins. Co.*, No. 2:09-CV-00377, 2009 WL 2915157, at *2 (S.D. W. Va. Sept. 2, 2009) (Goodwin, J.) (“[T]he only claim against Northwestern remaining in this suit is a breach of contract claim, and punitive damages are an improper remedy for such a claim.”); *Surber v. Greyhound Lines, Inc.*, No. 2:06-CV-00273, 2006 WL 3761372, at *4 (S.D. W. Va. Dec. 21, 2006) (Goodwin, J.) (explaining that punitive damages are allowed only where “defendant acted with wanton, willful, or reckless conduct, or criminal indifference to civil obligations affecting rights of others to appear, or where the legislature so authorizes.”). Because they are not recoverable under the claims asserted in their Complaint, Plaintiffs’ request for punitive damages should be dismissed and/or stricken.

who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.” (*Id.*, ¶ 42). Notably, Plaintiffs do not exclude from the putative class those individuals, like Plaintiffs themselves, who have not experienced unintended acceleration. Plaintiffs have also defined a “Sub-Class” of consumers who purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of the suit. (Compl., ¶ 35. Similarly, there is no exclusion for consumers who have not experienced unintended acceleration.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review.

“A complaint must be dismissed [under Fed. R. Civ. P. 12(b)(6)] if it does not allege ‘enough facts to state a claim to relief that is *plausible* on its face.’” *Giarrantano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 (2007)). While a court examining the legal sufficiency of a complaint must “take the facts in the light most favorable to the plaintiff,” it “need not accept the legal conclusions drawn from the facts,” and “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Giarrantano*, 521 F.3d at 302; *see also Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002) (explaining that courts need not “accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”). “[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). *Iqbal* explains that “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

Moreover, Rule 8(a)(2) “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at 1950. The Supreme Court explained:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of entitlement to relief.”

Id. at 1949 (citations omitted). “Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 1950. “But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

As shown below, Plaintiffs’ Complaint should be dismissed because it fails to sufficiently allege facts supporting any claim for relief.

B. Plaintiffs Lack Standing to Assert Their Claims As They Have Not Suffered A Legally Cognizable Injury-in-Fact.

Standing is a threshold issue under Article III of the Constitution. Under Article III, (i) the plaintiff must have suffered an injury-in-fact which is actual, not hypothetical; (ii) there must be a causal connection between the injury and the conduct complained of; and (iii) it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). At the pleading stage, the plaintiff “must include the necessary factual allegations in the pleading, or else the case must be dismissed. . . .” *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009). Here, Plaintiffs have not included the necessary factual allegations to satisfy the standing requirement because they have not suffered a cognizable injury. Specifically, Plaintiffs lack standing because their vehicles have not

experienced the alleged defect. Accordingly, their Complaint should be dismissed.

It is well-settled that in a product defect case, a plaintiff cannot recover if he or she has not experienced the alleged defect. *See, e.g., Carlson v. General Motors Corp.*, 883 F.2d 287, 297-98 (4th Cir. 1989) (affirming dismissal of plaintiffs' implied warranty claims where plaintiffs' vehicles did not suffer from the alleged defect); *In re Bextra & Celebrex Mktg., Sales Practices & Prod. Liab. Litig.*, No. MDL05-01699, 2007 WL 2028408, at *8 (N.D. Cal. Jul. 10, 2007) (dismissing breach of warranty claims where plaintiff did not experience the manifestation of the defect); *Jarman v. United Indus. Corp.*, 98 F. Supp. 2d 757, 768 (S.D. Miss. 2000) (“[U]nless there is actually a failure in product performance, there is no basis at all for claiming that the plaintiff has been damaged in any way.”); *Briehl v. General Motors Corp.*, 172 F.3d 623, 627 (8th Cir. 1999) (affirming dismissal of all claims in case alleging defective brake system holding that “[s]ince the Plaintiffs have failed to allege that any defect had actually manifested itself in their vehicles, the Plaintiffs’ allegations of damages failed to meet the pleading requirements for defective products.”); *Weaver v. Chrysler Corp.*, 172 F.R.D. 96, 99 (S.D.N.Y. 1997) (“It is well established that ‘purchasers of an allegedly defective product have no legally recognizable claim where the alleged defect has not manifested itself in the product they own.’”).

Indeed, courts around the country preclude a plaintiff from recovering under a product defect theory or representing a class where the alleged defect had not manifested itself in the plaintiff's product, and it makes no difference that Plaintiffs contend that the potential defect renders the product “unreasonably dangerous” or unsafe. *See, e.g., O'Neil v. Simplicity, Inc.*, 553 F. Supp. 2d 1110, 1115 (D. Minn. 2008) (“It is simply not enough for a plaintiff to allege that a product defect suffered by others renders his or her use of that same product unsafe; the plaintiff must instead allege an *actual manifestation* of the defect *that results in some injury* in order to state a cognizable claim for breach of warranty, unfair trade practices, or unjust enrichment.”), *aff'd*, 574 F. 3d 501 (8th Cir. 2009); *Harrison v. Leviton Mfg. Co.*, No. 05-CV-0491, 2006 WL 2990524, at *5 (N.D. Okla. Oct. 19, 2006) (“Courts do not allow consumers to bring claims against manufacturers for products that are perceived to be harmful, but that have

not actually cause[d] an identifiable injury.”); *In re Air Bag Prods. Liab. Litig.*, 7 F.Supp.2d 792, 805 (E.D. La. 1998) (dismissing all claims for lack of injury, where plaintiffs claimed that air bags were “dangerously defective” because they deployed with excessive force); *In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig.*, 966 F.Supp. 1525, 1530 (E.D. Mo. 1997) (dismissing claims based upon allegations that anti-lock brakes were “defective” and increased chance of accidents for failure to plead that defect had ever manifested itself in the plaintiffs’ vehicles), *aff’d*, 172 F.3d 623 (8th Cir. 1999).

Here, the Complaint reveals that Plaintiffs did not experience the manifestation of the alleged ETCS-i defect. Plaintiffs allege that they are seeking relief “due to the dangerous propensity for vehicles [equipped with ETCS-i] to suddenly accelerate,” (*see* Compl., ¶ 7), but do not allege that their own vehicles have ever manifested this alleged malfunction. The only factual allegation in the Complaint specific to Plaintiffs is that they own vehicles equipped with ETCS-i. Ownership of a vehicle with no manifestation of defect does not constitute injury-in-fact. At best, Plaintiffs’ claim is based on a fear that at some point in the future their cars may experience sudden, unintended acceleration. Such a might-happen-in-the-future-claim does not confer the required Article III standing. Because injury/damages caused by Defendants is an essential element of each of the claims asserted, and Plaintiffs have suffered no such injury, they are without standing, and each of their claims should be dismissed.³

³ For the same reasons, this Court should strike Plaintiffs’ class claims since Plaintiffs seek to represent a class of all purchasers, the vast majority of whom, like Plaintiffs, do not have any viable claims because there has been no manifestation of any defect or malfunction with respect to their vehicles. *See Chin v. Chrysler Corp.*, 182 F.R.D. 448, 455 (D.N.J. 1998) (class certification was not appropriate under Rule 23(b)(3) because “[p]roving a class-wide defect where the majority of class members have not experienced any problems with the alleged defective product, if possible at all, would be extremely difficult.”); *Bishop v. Saab Auto A.B.*, No. 95-0721, 1996 WL 33150020, at *5 (C.D. Cal. Feb. 16, 1996) (“The courts have refused to certify class actions based on similar ‘tendency to fail’ theories because the purported class includes members who have suffered no injury and therefore lack standing to sue.”); *Am. Suzuki Motor Corp. v. Super. Ct.*, 44 Cal. Rptr. 2d 526, 532 (Cal. App. 1995) (“Because the evidence here indicates that a cause of action for breach of the implied warranty of merchantability can be maintained by only a few members of the putative class, we conclude that the superior court erred in certifying the class, and in refusing, thereafter, to decertify it.”); *Feinstein v. Firestone Tire & Rubber Co.*, 535 F.Supp. 595, 603 (S.D.N.Y. 1982) (“Since it appears that the majority of the putative class members have no legally recognizable claim, the action necessarily metastasizes into millions of individual claims. That

C. Plaintiffs' Negligence Claim Is Barred by the Economic Loss Doctrine.

Plaintiffs' negligence claim fails as a matter of law because the torts of strict liability and negligence only lie in cases alleging personal injury or damage to property other than the product itself. They simply do not redress purely economic losses. This is a well-established rule of law that is commonly referred to as the "economic loss doctrine." This rule has been recognized and followed in West Virginia since the West Virginia Supreme Court's decision in *Star Furniture Co. v. Pulaski Furniture Co.*, 297 S.E.2d 854, 857-59 (W. Va. 1982), and has been reaffirmed in several subsequent decisions. See *Taylor v. Ford Motor Co.*, 408 S.E.2d 270, 272-73 (W. Va. 1991); *Capitol Fuels, Inc. v. Clark Equip. Co.*, 382 S.E.2d 311, 312-13 (W. Va. 1989); *Basham v. General Shale*, 377 S.E.2d 830, 833-34 (W. Va. 1988). The purpose of the rule is explained as follows:

The delineation between damage resulting from physical injury and that resulting from the purchase of unsatisfactory products is in line with the general boundaries of tort and contract theory. Tort law traditionally has been concerned with compensating for physical injury to person or property. Contract law has been concerned with the promises parties place upon themselves by mutual obligation. *Physical harm to the defective product belongs with tort principles; reduction in value merely because of the product flaw falls into contract law.*

Star Furniture, 297 S.E.2d at 859 (emphasis added). See also *Taylor*, 408 S.E.2d at 272 ("Threaded throughout our damage law is the conceptual difference between tortious injuries and those arising from economic losses to property occasioned by it being defective."); *Basham*, 377 S.E.2d at 833-34 (explaining that West Virginia "has consistently recognized the fundamental differences between tort and contract or warranty causes of action" and "refused to extend strict liability [or negligence] in tort to cases involving economic loss such as a decline in the intrinsic value of a product or lost profits").

West Virginia only permits tort claims to redress injuries to person and other property

metastasis is fatal to a showing of predominance of common questions." Because "it is facially apparent from the pleadings that there is no ascertainable class," this Court should "dismiss the class allegation on the pleadings." *John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007); see also Fed. R. Civ. P. 23(d)(1)(D) (courts may issue orders that "eliminate allegations about representation of absent persons" where appropriate).

caused by a defective product, with one narrow and strictly construed exception for recovery of damage to the product itself where the damage occurs as a result of a “sudden calamitous event.” *See id.* at 834; *see also Capitol Fuels*, 382 S.E.2d at 313. West Virginia has expressly “reject[ed] the line of cases . . . which have permitted use of strict liability to recover the difference between the value of the product received and its purchase price in the absence of a sudden calamitous event.” *Star Furniture*, 297 S.E.2d at 859.

[T]he fact that the product may be flawed or defective, such that it does not meet the purchaser’s expectations or is even unusable because of the defect, does not mean that he may recover the value of the product under a strict liability in tort theory. The purchaser’s remedy is through the Uniform Commercial Code. In order to recover, the damage to the product must result from a sudden calamitous event attributable to the dangerous defect or design of the product itself.

Taylor, 408 S.E.2d at 273. *See also Basham*, 377 S.E.2d at 834 (“[W]hile a strict liability tort claim may arise when a defective product causes injury, a party who suffers mere economic loss as a result of a defective product must turn to the Uniform Commercial Code to seek relief.”).⁴

This Court’s ruling on the economic loss doctrine is consistent with controlling West Virginia state precedent. In *Roxalana Hills, Ltd. v. Masonite Corp.*, 627 F. Supp. 1194 (S.D. W. Va. 1986), *aff’d*, 813 F.2d 1228 (4th Cir. 1987), a developer brought an action in tort for negligence and strict liability against the manufacturer of allegedly defective siding that had caused “rotting and decay, degeneration of appearance and ‘inconvenience to the tenants’” at an apartment complex. *Id.* at 1195. After considering *Star Furniture* and discussing at length the economic loss rule and decisions from other jurisdictions, the court dismissed the tort claims holding that strict liability and negligence do not redress such alleged purely economic losses. *Id.* at 1196-99. *See also Kaiser Aluminum & Chem. Corp. v. Westinghouse Elec. Corp.*, 981 F.2d 136, 144-46 (4th Cir. 1992) (applying West Virginia’s law and affirming dismissal of negligence and strict liability claims seeking economic damages against manufacturer for allegedly defective generator and explaining that it “is the general rule adopted in practically all

⁴ As the delineation between tort and contract law, the economic loss rule and its rationale is equally applicable to tort claims of strict liability and negligence, and it cannot be seriously argued otherwise.

jurisdictions”).

Plaintiffs’ negligence claim fails as a matter of law. Plaintiffs do not allege an injury to person or other property or damage to the product as the result of a “sudden calamitous event.”⁵ Rather, Plaintiffs seek redress for the alleged “economic damage” that they claim has resulted from owning vehicles that they believe to be defective and inherently dangerous. Plaintiffs’ negligence claim is barred by the economic loss rule under West Virginia law and should be dismissed with prejudice.

D. Plaintiffs’ Claim for “Breach of Express and Implied Warranties” Fails As a Matter of Law.

1. Plaintiffs’ Claim Is Deficiently Pled and Does Not Satisfy Rule 8(a)(2)’s Pleading Requirement Under *Iqbal* and *Twombly*.

Plaintiffs’ purported claim for “Breach of Express and Implied Warranty” is precisely the type of legal conclusion and threadbare “defendant harmed me” accusation that the United States Supreme Court has rejected in both *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) and *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955 (2007). Plaintiffs’ express and implied warranty claim consists of three conclusory sentences, devoid of any factual allegations. Because Plaintiffs fail to identify any particular express warranty or implicit obligation that they contend was breached, the claim does not set forth a “short and plain statement” providing “fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 127 S.Ct. at 1964. Neither Toyota nor this Court can ascertain what warranty provision Plaintiffs believe was breached, much less how Plaintiffs contend it was breached, and therefore, Plaintiffs’ claim for a breach of an express and implied warranty should be dismissed.

2. Plaintiffs Failed to Comply with the Requisite Pre-Suit Notice.

Under West Virginia law, a plaintiff must notify the seller of a breach of express or implied warranty claim as a precondition to imposing liability on the seller. W. Va. Code § 46-2-607(3)(a); see *Aqualon Co. v. Mac Equip., Inc.*, 149 F.3d 262, 266 (4th Cir. 1998) (interpreting

⁵ In fact, while it would not be enough to support a negligence claim even if they had, Plaintiffs do not even allege that their vehicles have actually manifested any defect at all.

an identical provision in Virginia's version of the U.C.C.). Section 46-2-607(3)(a) provides that "[t]he buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy." This notice requirement is essential because it "serves the important functions of promoting the voluntary resolution of disputes and minimizing prejudice to the seller from the passage of time." *See Hebron v. American Isuzu Motors, Inc.*, 60 F.3d 1095, 1098-99 (4th Cir. 1995) (applying identical provision from Virginia's U.C.C.).

Courts around the country consistently dismiss breach of warranty claims where plaintiffs fail to allege that they provided notice under U.C.C. § 607(3)(a). *See, e.g., Miller v. Hypoguard USA, Inc.*, No. 05-CV-0186, 2005 WL 3481542, at *3 (S.D. Ill. Dec. 20, 2005); *see also Hart v. Yamaha-Parts Distribs., Inc.*, 787 F.2d 1468, 1474 (11th Cir. 1986) ("The Alabama courts have held that notice of breach is a condition precedent to bringing a breach of warranty action . . . ***which must be affirmatively pleaded in the complaint.***") (emphasis added). Plaintiffs' failure to allege that they provided any notice, let alone the requisite notice within a reasonable amount of time, is fatal to their breach of warranty claims.

3. Plaintiffs' Express Warranty Claim Fails as a Matter of Law Because Toyota's Limited Warranty Only Applies to Defects In Material and Workmanship And Expressly Disclaims the Existence of Any Other Warranty.

Plaintiffs' breach of express warranty claim also fails as a matter of law because the warranty that Plaintiffs contend Toyota breached is wholly dissimilar to the *actual* express warranty that accompanied Plaintiffs' vehicles. Toyota's express warranties for the 2007 Toyota FJ Cruiser and 2007 Toyota Highlander cover repairs and adjustments for "defects in materials and workmanship." *See* 2007 Toyota Owner's Warranty Information at 9 (attached to Defendants' Motion to Dismiss as Exhibit A).⁶ The warranties unambiguously disclaim the

⁶ "When a plaintiff fails to introduce a pertinent document as part of his complaint, the defendant may attach the document to a motion to dismiss the complaint and the Court may consider the same without converting the motion to one for summary judgment." *Chandan, LLC v. Certain Interested Underwriters at Lloyds, London*, No. 5:05-CV-00130, 2006 WL 39349, at *2 (S.D. W. Va. Jan. 06, 2006) (Goodwin, J.); *see also Collins v. Red Roof Inns, Inc.*, 248 F.Supp.2d 512, 516 (S.D. W. Va. 2003).

existence of any other remedies. *See id.* at 8.

In their Complaint, Plaintiffs do not allege that their vehicles contained a defect in materials or workmanship. Although Plaintiffs make the conclusory allegation that Defendants failed to properly and adequately “manufacture” the class vehicles, it is clear from the Complaint that Plaintiffs are alleging that their vehicles suffer from a design defect. (*See, e.g.*, Compl., ¶¶ 7, 13.) Specifically, Plaintiffs allege that Toyota vehicles equipped with ETCS-i are defective. (*See* Compl., ¶ 7). Plaintiffs also allege that the defect results from “the ETCS-i’s vulnerability to electronic ‘confusion’ in the ETCS-i sensors and electronics processors.” (*See* Compl., Introductory Paragraph). Plaintiffs allege that Toyota can remedy this alleged design flaw by implementing electronic and mechanical fail-safes. (*See id.*, ¶¶ 9, 27).

Plaintiffs’ breach of express warranty claim must fail because a warranty of “materials and workmanship” does not constitute a warranty of design. To the contrary, claims relating to defective materials or workmanship relate only to manufacturing defects, and are wholly distinct from claims related to a design defect. *See Nasco, Inc. v. Dahltron Corp.*, 392 N.E.2d 1110 (Ill. App. 1979) (alleged defective design and specification of a machine did not give rise to a claim of defective workmanship); *see also Lombard Corp. v. Quality Aluminum Prods. Co.*, 261 F.2d 336, 338 (6th Cir. 1958) (“A defect in material is a defect in quality. . . . A defect in workmanship is a defect in the way some part of the machine is constructed. . . . Design, on the contrary, involves the overall plan of construction and operation.”).

Consequently, courts around the country have held that warranties concerning “material and workmanship” do not cover claims of design defect. *See Grupo Sistemas Integrales de Telecomunicacion S.A. de C.V. v. AT&T Commc’ns, Inc.*, No. 92 CIV. 7862 (KMW), 1996 WL 312535, at *7 (S.D.N.Y. Jun. 10, 1996) (“[I]n limiting its warranty to claims based on defective materials or workmanship, Article 5 excludes claims of *design* defect”); *see also Consol. Data Terminals v. Applied Digital Data Sys., Inc.*, 512 F. Supp. 581, 586 (N.D. Cal. 1981), *aff’d in part, rev’d in part*, 708 F.2d 385 (9th Cir. 1983) (recognizing difference between material and workmanship defects and design defects); *Falcon Tankers, Inc. v. Litton Sys., Inc.*, 300 A.2d

231, 238 (Del. Super. 1972) (“[C]ourts have repeatedly refused to extend so-called workmanship and material guarantees to cover defects in design.”). Accordingly, by warranting to make any repairs or adjustments necessary to remedy any defects in materials and workmanship and disclaiming all other warranties, Toyota’s express warranty excludes any warranty for its vehicles’ design.

4. *Plaintiffs Have Failed to Comply With the Terms of Toyota’s Limited Warranty.*

If a consumer experiences a problem with a Toyota or Lexus vehicle, the warranty requires the customer to return the vehicle to an authorized Toyota dealership. (*See* Warranty at 29) (“To obtain warranty service . . . take your vehicle to an authorized Toyota dealership.”). If, and only if, a customer returns his vehicle to a Toyota dealership, is Toyota then required to repair or adjust the defective component if such repair or adjustment is needed “to correct defects in materials or workmanship of any part supplied by Toyota.” (*See* Warranty at 9).

The customer’s obligation to tender a defective vehicle to Toyota is a condition precedent to Toyota’s obligation to repair or adjust the defective component. Plaintiffs’ failure to tender their vehicles to Toyota bars their breach of express warranty claim. It is a well-settled principle of West Virginia law that a contract containing a condition precedent should be enforced as written. *See Wellington Power Corp. v. CNA Sur. Corp.*, 614 S.E.2d 680, 684 (W. Va. 2005). Moreover, a plaintiff must allege in his complaint compliance with all conditions precedent. *See Guthrie v. Nw. Mut. Life Ins. Co.*, 208 S.E.2d 60, 64 (W. Va. 1974).

Here, Plaintiffs do not allege that they satisfied the condition precedent to warranty coverage—tender of their allegedly defective vehicles to Toyota—as required by the express and unambiguous terms of the Warranty. Absent Plaintiffs’ satisfaction of this condition precedent, Toyota has no obligation to repair or adjust the allegedly defective components. Because Plaintiffs do not allege that they fulfilled their own obligations under the warranty, their claim for breach of express warranty fails as a matter of law.

5. ***Plaintiffs Do Not State a Claim for Breach of Implied Warranty As Plaintiffs Do Not Claim That They Have Experienced Any Defect With Their Vehicles.***

Plaintiffs' breach of any implied warranty claim fails as a matter of law because Plaintiffs do not allege that any defect has actually manifested itself with respect to their vehicles. As explained, *supra*, at Section III.B., it is well-settled that a plaintiff may not recover for breach of implied warranty if he or she has not experienced any alleged defect. *See, e.g., Carlson v. General Motors Corp.*, 883 F.2d 287, 297-98 (4th Cir. 1989) (affirming dismissal of plaintiffs' implied warranty claims where plaintiffs' vehicles did not suffer from the alleged defect); *Chin v. Chrysler Corp.*, 182 F.R.D. 448, 460 (D.N.J. 1998) ("In most jurisdictions, the courts recognize that unless a product actually manifests the alleged defect, no cause of action for breach of express or implied warranty or fraud is actionable."); *In re Air Bag Prods. Liab. Litig.*, 7 F. Supp. 2d 792, 805-06 (E.D. La. 1998) (holding that "allegation of manifest injury or defect" is a "central tenet[]" of an implied warranty claim). Plaintiffs' implied warranty claims fail as a matter of law and should be dismissed with prejudice.

6. ***Plaintiffs Do Not State a Claim For Breach of Implied Warranty of Fitness for a Particular Purpose Because of the Absence of a "Particular Purpose."***

Plaintiffs fail to state a claim for breach of implied warranty of fitness for a particular purpose against Toyota. Plaintiffs merely allege that Toyota breached its implied warranty that the vehicles were "safe for use as public transportation." (Compl., ¶ 57). Plaintiffs cannot base a claim for breach of implied warranty of fitness on use as transportation – the ordinary purpose of the vehicles. West Virginia's implied warranty of fitness provides:

Where the seller at the time of contracting has reason to know any *particular purpose* for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose.

W. Va. Code § 46-2-315 (emphasis added). Note 2 of the official commentary to the statute, as adopted from the U.C.C., explains as follows:

A "particular purpose" differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature

of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to the uses which are customarily made of the goods in question.

W. Va. Code § 46-2-315, cmt. 2. Here, as in *Wilson v. Brown & Williamson Tobacco Corp.*, 968 F. Supp. 296, 302 (S.D. W. Va. 1997), the claim for breach of the implied warranty of fitness for a particular purpose is subject to dismissal. In *Wilson*, the plaintiff did not allege that he used the product, a loose tobacco product known as Bugler, for a particular purpose. The court explained its dismissal of the claim as follows:

Wilson has not stated the particular purpose for which he used Bugler Wilson himself admits only one purpose for Bugler exists, and presumably he refers to smoking the product. This is the ordinary purpose, and this is the purpose for which Wilson purchased the product. Because Wilson can allege no set of facts to support Count Nine, the Court must dismiss the claim.

Id.; see also *Lowe v. Sporicidin Int'l*, 47 F.3d 124, 132 (4th Cir. 1995) (dismissing claim for breach of implied warranty of fitness for particular use under Maryland law because of plaintiff's failure to allege her use of a product differed from the "ordinary purpose" for which the product was designed and intended to be used).

Courts have routinely rejected similar claims against automobile manufacturers for breach of the implied warranty of fitness for a particular purpose. See, e.g., *Strauss v. Ford Motor Co.*, 439 F. Supp. 2d 680, 686 (N.D. Tex. 2006) (holding that the "implied warranty of fitness for a particular purpose does not apply" and dismissing claim because "plaintiff must allege that the product was to be used for some purpose different than the product's ordinary purpose" and "[h]e alleges only that he used the car for transportation, which is the ordinary purpose of an automobile"). The same reasoning applies here. Any claim for implied warranty of fitness *for a particular purpose* fails as a matter of law and should be dismissed with prejudice.

E. Plaintiffs' Unjust Enrichment Claim Fails Because the Parties' Conduct is Governed by an Express Contract.

"It is a well-rooted principle of contract law that 'an express contract and an implied contract, relating to the same subject matter, cannot co-exist.'" *Holland v. Cline Brothers*

Mining Co., 877 F.Supp. 308, 316 (S.D. W. Va. 1995). “Because ‘an action for unjust enrichment is quasi-contractual in nature, [it] may not be brought in the face of an express contract.’” *Id.* Here, Plaintiffs’ allegations do not state a claim for unjust enrichment because a valid and enforceable contract existed between Plaintiffs and Toyota. Plaintiffs admit in the Complaint that a contract—the express warranty—exists between Plaintiffs and Toyota. (*See, e.g.,* Compl., ¶¶ 29, 54). Accordingly, Plaintiffs’ unjust enrichment claim should be dismissed. *see also David v. Am. Suzuki Motor Corp.*, 629 F.Supp.2d 1309, 1324 (S.D. Fla. 2009) (dismissing unjust enrichment where an express warranty existed and governed the plaintiff’s claims).

F. Plaintiffs Have Not Pled Their Consumer Credit and Protection Act (“CCPA”) Claim With The Requisite Degree of Specificity Required By Rule 9(b).

CCPA claims predicated on alleged fraud must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *See Jones v. Sears Roebuck & Co.*, No. 07-1584, 2008 WL 4844717, at *8 (4th Cir. Nov. 10, 2008). Under Rule 9(b), Plaintiffs must plead with specificity the facts constituting the alleged fraud. *Garvin v. Southern States Ins. Exchange Co.*, 329 F.Supp.2d 756, 760 (N.D. W. Va. 2004). At a minimum, the Rule requires that Plaintiffs plead facts such as “time, place, and contents of the false representations, as well as the identity of the person making the representations and what he obtained thereby.” *Jones v. Home Loan Inv. Bank*, 2009 WL 2357107, at *2 (S.D. W. Va. 2009). In other words, the “who, what, when, where, and how” of the fraud must be alleged. *Id.*

Here, Plaintiffs have failed to plead their fraud-based CCPA claim with the requisite level of specificity, and accordingly, their claim should be dismissed. *See Jones*, 2008 WL 4844717, at *8 (affirming dismissal of CCPA claim for failure to satisfy Rule 9(b)’s pleading requirement). Plaintiffs allege that Toyota violated the CCPA by engaging in the unfair and deceptive practices defined in W. Va. Code § 46A-6-102(7)(E), (G), and (M). (*See* Compl.,

¶¶ 67-69). Specifically, Plaintiffs have copied verbatim the language from W. Va. Code § 46A-6-102(7)(E), (G), and (M) and asserted in three threadbare paragraphs of the Complaint that Toyota's "selling, marketing, advertising and distributing vehicles containing ETCS-i" violates the CCPA. (*See* Compl., ¶¶ 67-69). Notwithstanding the fact that these allegations sound in fraud, specifically fraudulent misrepresentations and/or omissions, there is not a single factual allegation specific to any named Plaintiff, including what was allegedly said to any Plaintiff, by whom, when, where, or how. Plaintiffs fail to provide any details about the alleged fraud. Rather, Plaintiffs' claim consists solely of vague and unspecified allegations that mirror the language of the Act. (*See id.*) Such " cursory references" to the language of the CCPA are "simply not sufficiently particular to proceed." *See Jones*, 2008 WL 4844717, at *8.

Notably, Plaintiffs fail to identify a single representation of any kind made by Toyota, much less a material representation made with knowledge of its falsity. The sole allegations in the Complaint that Toyota violated the CCPA include nothing more than boilerplate language taken directly from the statute. (*See Compl.*, ¶¶ 67-69). Plaintiffs' Complaint falls far short of pleading the "who, what, when, where, and how" required to state a fraud-based claim under the CCPA. Because Plaintiffs' CCPA claim is premised solely upon the indefinite allegations that Toyota made false representations to some unspecified persons at some unspecified time, at some unspecified place, through some unspecified medium, it should be dismissed under Rule 9(b).

G. Plaintiffs' Claim for Breach of New Motor Vehicle Warranties ("Lemon Law") Fails As A Matter of Law.

The New Motor Vehicle Warranties law ("Lemon Law") does not create additional substantive rights; it merely places upon manufacturers a duty "to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers." *See*

McCloughlin v. Chrysler Corp., 262 F.Supp.2d 671, 676 (N.D. W. Va. 2002) (quoting W. Va. Code § 46A-6A-1(1)). Accordingly, Plaintiffs' Lemon Law claim fails for several reasons.

First, Plaintiffs' Lemon Law claim fails because it does not satisfy the pleading requirements of Federal Rule of Civil Procedure 8(a)(2). Plaintiffs' Lemon Law claim consists of the very "formulaic recitation of the elements of a cause of action" which *Twombly* and *Iqbal* hold are insufficient as a matter of law. Plaintiffs have not bothered to plead any factual content in their Fifth Claim for Relief, but merely state the conclusory allegation that they have met the statutory requirements for maintaining a Lemon Law claim. *Iqbal* requires that Plaintiffs meet a "plausibility standard," and the allegations here do not warrant the court inferring that Toyota is liable for the misconduct alleged, particularly when no Plaintiff has experienced sudden unintended acceleration.

Plaintiffs' Lemon Law claim consists of a conclusory allegation that Toyota breached its express warranties by selling vehicles containing ETCS-i without incorporating electronic or mechanical failsafes. Plaintiffs, however, fail to identify the specific warranty provisions or obligations that Toyota allegedly breached. Plaintiffs allege that they "have suffered a substantial impairment in the use and market value of their vehicles," but assert no facts to support that conclusion. Such legal conclusions, unsupported by any factual content, need not be accepted by the Court as true and should be dismissed here. Finally, Plaintiffs make the conclusory allegation that they fall within the meaning of the term "consumer" as that term is defined in the Lemon Law. Plaintiffs, however, fail to set forth facts sufficient to show that they do, in fact, fall within the statutory definition. For instance, there are no allegations that Plaintiffs purchased their vehicles for personal, family, or household use as required to assert a claim under the Lemon Law. *See* W. Va. Code § 46A-6A-2(1). These are precisely the type of

unsupported legal conclusions, unwarranted inferences, and arguments couched as factual allegations which *Iqbal* and *Twombly* reject. See *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) and *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955 (2007).

Second, Plaintiffs' Lemon Law claim fails for many of the same reasons Plaintiffs' breach of express warranty claim fails. Toyota's Limited Warranty applies only to manufacturing defects, not design defects. As discussed more fully in Section D(3), *supra*, courts have consistently held that a warranty of "materials and workmanship" covers only manufacturing defects. Plaintiffs do not allege that their vehicles contained a manufacturing defect. Plaintiffs only allege that their vehicles contained a design defect—use of ETCS-i without incorporating electronic or mechanical failsafes.⁷ (See Compl., ¶ 78). Because Toyota's express warranty does not cover design defects, Plaintiffs' Lemon Law claim should be dismissed.

Third, Plaintiffs' Lemon Law claim fails because Plaintiffs' failed to comply with the terms of the Toyota's Limited Warranty. Under the terms of the Limited Warranty, Plaintiffs are required to return their vehicles to an authorized Toyota dealership to obtain warranty service. (See Warranty at 29). Moreover, the Lemon Law imposes upon Plaintiffs a duty to report the breach of warranty to the manufacturer, its agent, or an authorized dealer during the term of the express warranty or within one year following the date of purchase. See W. Va. Code § 46A-6A-3(a). Plaintiffs failed to allege that they satisfied these contractual and statutory conditions precedent, and thus, their Lemon Law claim should be dismissed.⁸

⁷ It is also apparent that Plaintiffs' Lemon Law claim is premature and not yet ripe. Some of the relief sought by Plaintiffs on behalf of the class is being provided to Toyota owners pursuant to the recall and NHTSA-approved remedies, including, but not limited to, installing a brake override system in certain Toyota vehicles as an additional failsafe.

⁸ Plaintiffs' counsel's letter to Toyota's counsel sent after this lawsuit was filed does not satisfy

H. Plaintiffs' Request for Equitable Relief Including a Court-Ordered Injunction Is Preempted By the National Traffic and Motor Vehicle Safety Act.

Plaintiffs seek an “order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i.” (See Compl. at Prayer for Relief). The injunctive relief sought by Plaintiffs is preempted by the National Traffic and Motor Vehicle Safety Act of 1966 (the “Safety Act”), 49 U.S.C. § 30101 *et seq.*

The Safety Act vests authority over matters regarding motor vehicle safety in the Secretary of Transportation or his delegate, and the Secretary has delegated this authority to the National Highway Traffic Safety Administration (“NHTSA”). See 49 U.S.C. §§ 30119 & 105(d). NHTSA is charged with the authority of establishing motor vehicle safety standards, investigating alleged defects or noncompliance, and issuing and administrating motor vehicle recalls based on a determination of a defect impacting safety. See 49 U.S.C. §§ 30111, 30118-30120. 49 U.S.C. § 30112 prohibits the manufacturing and selling of vehicles that do not comply with the safety standards determined by NHTSA, and 49 U.S.C. § 30116 requires manufacturers and distributors to repurchase or remedy vehicles that have been determined by NHTSA to be defective or in noncompliance with NHSTA standards but have not yet been sold to purchasers. In sum, NHTSA has the authority to do precisely what Plaintiffs seek here – issue a vehicle safety standard and prevent the sale of (or recall) vehicles determined to be defective or not compliant with that standard.

As Plaintiffs recognize, NHTSA has been and continues to be intimately involved in these issues. In fact, Plaintiffs spend several paragraphs of their Complaint making various allegations about NHTSA’s investigations. (*Id.*, ¶¶ 14-25). See, e.g., NHTSA, Office of Defects Investigation Reports (attached to Defendants’ Motion to Dismiss as Exhibit B). There is a real and substantial possibility that court action on Plaintiffs’ request for a court order enjoining the sale of any ETCS-i-equipped Toyota or Lexus vehicles may frustrate, interfere and conflict with

their obligations under the warranty because Plaintiffs did not return their vehicles to an authorized dealer for repair or adjustment. Moreover, Plaintiffs’ letter was sent in the context of litigation and was not sent in a good faith attempt to procure warranty service.

NHTSA's efforts to investigate and address these issues, including whether to issue an automotive recall.

Given the comprehensive federal administrative scheme established by Congress to address the relief sought by Plaintiffs, a "nationwide court-ordered recall would conflict directly with and frustrate the Safety Act." *Lilly v. Ford Motor Co.*, No. 00C7372, 2002 WL 84603, at *5 (N.D. Ill. Jan. 22, 2002). Several courts addressing such requests have held that the claims are preempted by the Safety Act. *See id.* (holding that the claim was preempted and explaining that "[i]t is clear that Congress did not intend for the federal courts to have authority to order recalls of motor vehicles on a nationwide basis for several model years."); *In re Bridgestone/Firestone Inc., Tires Prods. Liab. Litig.*, 153 F. Supp. 2d 935, 944-45 (S.D. Ind. 2001) (holding that request for nationwide recall was conflict preempted on the basis of frustration of Congress' purpose under the Safety Act of providing exclusive administration of recalls through the NHSTA); *see also Namovicz v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 584 (D. Md. 2001); *Coker v. Daimler Chrysler Corp.*, No. 01CVS1264, 2004 WL 32676 (N.C. Super. Jan. 5, 2004) *aff'd*, 617 S.E.2d 306 (N.C. Ct. App. 2005).

Toyota acknowledges that some courts have determined that requests for injunctive relief made in other cases were not preempted under the Safety Act. But, those cases are distinguishable because plaintiffs were seeking something short of a court-ordered nationwide recall. *See, e.g., Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 953, 958 & 965 (N.D. Cal. 2004) (suggesting that the remedy requested by plaintiffs may fall short of a recall and also distinguishing *Bridgestone* as a case seeking an injunctive remedy amounting to nationwide recall); *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1217 n.3 (N.D. Cal. 2002) (explaining that plaintiffs "do not seek a court-ordered recall, in contrast to the plaintiffs in *Bridgestone*").⁹ Here, Plaintiffs unambiguously seek a court order preventing Toyota from

⁹ *See also Talalai v. Cooper Tire & Rubber Co.*, No. 00CV5694, 2001 WL 1877265, at *7 (D.N.J. Jan. 8, 2001) (expressly noting that "Complaint does not appear to be seeking a recall"); *In re Ford Motor Co. Speed Control Deactivation Switch Prods. Liab. Litig.*, MDL No. 1718, 2007 WL 2421480, at *5 (E.D. Mich. Aug. 24, 2007) (claim seeking exclusively money damages held not preempted by Safety Act).

selling Toyota and Lexus vehicles with ETCS-i anywhere in the United States. Given NHTSA's ongoing involvement in investigating these issues, the prospect of a conflict between judicial proceedings and action by NHTSA is substantial, and therefore, Plaintiffs' claim for injunctive relief should be dismissed on preemption grounds.

I. This Court Should Defer to the NHTSA Under the Doctrine of Primary Jurisdiction And Dismiss Plaintiffs' Claim for Injunctive Relief.

The doctrine of primary jurisdiction is a court-created doctrine that "is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties." *Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 303 (1976). The doctrine is "a principle, now firmly established, that in cases raising issues of fact not within the conventional expertise of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over." *Wahi v. Charleston Area Med. Ctr.*, No. 2:04-CV-19, 2004 WL 2418316, at *2 (S.D. W. Va. Oct. 27, 2004) (Goodwin, J.) (quoting *Far East Conference v. United States*, 342 U.S. 570, 574-75 (1952)).¹⁰ In determining whether to invoke the doctrine, courts will consider whether (1) the case involves a matter within the special expertise of the agency; and (2) there is a need to promote uniformity in administrative policy or a possibility of inconsistent results between the courts and the agency. *Far East Conference v. United States*, 342 U.S. 570 (1952).

This Court should invoke the doctrine of primary jurisdiction in connection with Plaintiffs' requested injunctive relief because this issue is within the special competence of NHTSA. NHTSA has investigated and continues to investigate allegations of sudden unintended acceleration with respect to the Lexus and Toyota vehicles. (Compl., ¶¶ 13-24). See also Exhibit A to Defendant's Request for Judicial Notice. Moreover, NHTSA, through the Secretary of Transportation, is tasked by federal law with the responsibility of initiating and conducting

¹⁰ See also *Env'tl. Tech. Council v. Sierra Club*, 98 F.3d 774, 789 (4th Cir. 1996) ("[T]he doctrine is designed to coordinate administrative and judicial decision-making by taking advantage of agency expertise and referring issues of fact not within the conventional experience of judges or cases which require the exercise of administrative discretion.").

recalls of automobiles. *See* 49 U.S.C. §§ 30118, 30119, 30120. Plaintiffs' request for a court-order preventing Toyota from selling any Toyota and Lexus vehicles equipped with ETCS-i disrupts the integrity of this regulatory scheme and may cause the type of inconsistent results the doctrine of primary jurisdiction is intended to avoid. *See Bussian v. DaimlerChrysler Corp.*, 411 F. Supp. 2d 614, 628-29 (M.D.N.C. 2006) (deferring under primary jurisdiction doctrine as to claims relating to an ongoing NHTSA investigation and safety recall).

IV. CONCLUSION

For the foregoing reasons, Toyota respectfully requests that the Court grant its Motion to Dismiss and dismiss Plaintiffs' Complaint in its entirety with prejudice.

Respectfully submitted, this 28th day of January, 2010.

/s/ Rebecca Betts

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

| | | |
|---|---|------------------------|
| MICHAEL GRAVES, MICHAEL C. |) | |
| GRAVES, and JEFF MULLINS, |) | |
| Individually, and on Behalf of all others |) | |
| similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | CASE NO. 2:09-cv-01247 |
| |) | (Judge Goodwin) |
| TOYOTA MOTOR MANUFACTURING, |) | |
| WEST VIRGINIA, INC., et al., |) | |
| |) | |
| Defendants. |) | |

CERTIFICATE OF SERVICE

I, Rebecca A. Betts, counsel for defendants hereby certify that on the 28th day of January, 2010, I electronically filed “**DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS’ CLASS ACTION COMPLAINT**” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

MICHAEL GRAVES, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-cv-01247

TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., et al.,

Defendants.

ORDER AND NOTICE

Pursuant to the *Local District Court Rules*, the court **ORDERS** that the following dates be fixed as the times by or on which certain events must occur:

- 03-01-10 Motions under *Fed. R. Civ. P.* 12(b), together with supporting briefs, memoranda, affidavits or other such matter in support thereof. (All motions unsupported by memoranda will be denied without prejudice pursuant to *L.R.* 7.1(a).)
- 03-29-10 Last day for Rule 26(f) meeting.
- 04-05-10 Last day to file report of Rule 26(f) meeting — See *L.R.* 16.1(b) and *Fed. R. Civ. P.* Form 35.
- 04-19-10 Scheduling conference at **10:30 a.m.** before the United States District Judge Joseph R. Goodwin at the Robert C. Byrd United States Courthouse, 300 Virginia Street East, **Room 7009** (Library/Conference Room), Charleston, West Virginia. All lead and/or local counsel are directed to appear in person, and all out-of-town counsel may appear by telephone. At the scheduling/status conference, the parties shall be prepared to discuss the following:
 - (a) the discovery to be completed and the amount of time necessary for its completion;
 - (b) the further formulation and simplification of issues, including possible elimination of claims or defenses;

- (c) the possibility of entering into stipulations regarding issues for trial;
- (d) the possibility of obtaining admissions regarding facts and documents; and
- (e) other matters that will assist the parties in reaching a final resolution of this matter.

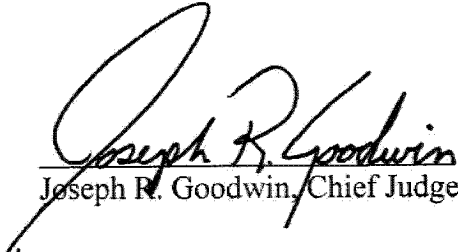
05-03-10 Entry of scheduling order.

05-07-10 Last day to make Rule 26(a)(1) disclosures.

The provisions of FR Civ P 14 and 15 with respect to the time in which to file third-party claims and to amend pleadings without leave of court are not affected by this Order and Notice. Pursuant to LR Civ 16.1 and 73.1, the parties are informed of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, including entry of judgment, as authorized by 28 U.S.C. § 636. The parties may consent by filing a Consent to Jurisdiction by a United States Magistrate Judge (FRCiv P Form 34), or by so indicating on the Report of Parties' Planning Meeting and Scheduling Order Worksheet, all of which are available on the court's website.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: January 29, 2010


Joseph R. Goodwin, Chief Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

MICHAEL GRAVES, MICHAEL C.)
GRAVES, and JEFF MULLINS,)
Individually, and on Behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

CASE NO. 2:09-cv-01247
(Judge Goodwin)

TOYOTA MOTOR MANUFACTURING,)
WEST VIRGINIA, INC., a West Virginia)
corporation; TOYOTA MOTOR NORTH)
AMERICA, INC., a California)
corporation, TOYOTA MOTOR)
ENGINEERING & MANUFACTURING)
NORTH AMERICA, INC., a Kentucky)
corporation; TOYOTA MOTOR SALES,)
U.S.A., INC., a California corporation, and)
TOYOTA MOTOR CORPORATION, a)
Japanese Corporation)

Defendants.)

**STIPULATION REGARDING TIME TO
FILE RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel for Plaintiffs and undersigned counsel for Defendants Toyota Motor Manufacturing, West Virginia Inc.; Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales U.S.A., Inc. (collectively "Defendants"); that pursuant to Federal Rule of Civil Procedure 6(b), Plaintiffs shall have through and including March 4, 2010 to file a response to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, served and filed on January 28, 2010. Defendants shall have through and including March 15, 2010 to file a reply.

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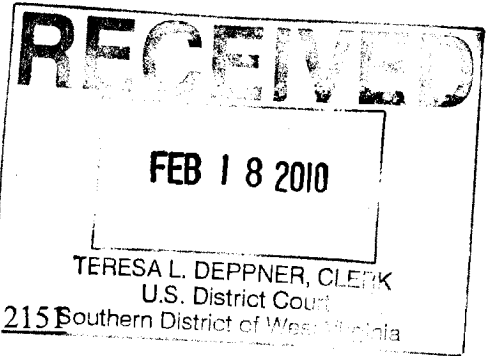
Counsel for Defendants

BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

In re:

TOYOTA UNINTENDED
ACCELERATION LITIGATION

MDL Docket No. 215



CA 2:09-1247
GRAVES V. TOYOTA MOTOR MANUFACTURING,
ET AL

PLAINTIFF'S MOTION FOR TRANSFER AND COORDINATION AND/OR
CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

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[Additional Counsel on Signature Page]

Attorneys for Plaintiff Troy Menssen

Troy Menssen, Plaintiff in the filed action *Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. 1:10-cv-00260 (N.D. Ohio E.D.), respectfully move this Panel pursuant to 28 U.S.C. § 1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multi-District Litigation, to transfer and consolidate all pending and yet-to-be-filed federal class action cases against Toyota Motor Sales, U.S.A, Toyota Motor Engineering & Manufacturing North America, Inc., and/or Toyota Motor Corporation (collectively “Toyota”) alleging similar or related claims, including but not limited to those listed on the Schedule of Actions, Exhibit 1 to this Motion, to a single district for coordinated and/or consolidated pre-trial proceedings.

In support of this Motion, the Plaintiff submits the accompanying Memorandum. As explained in more detail therein, the pending and to-be-filed actions for which transfer is proposed assert common questions of fact and law. Consolidation or coordination of the related cases will promote efficiency and convenience for the parties, the witnesses and the courts. The requirements for transfer and consolidation are thereby satisfied.

In support of this Motion, Plaintiff states as follows:

1. The Movant is a Plaintiff in the class action Complaint, filed in the United States District Court of Ohio, Eastern Division. Plaintiff asserts on behalf of himself and all others similarly situated, that they were injured as a result of Toyota’s actions as alleged in Plaintiff’s complaint.

2. There are currently pending at least twenty-six separate or consolidated class action cases against Toyota concerning the unintended acceleration of Toyota’s vehicles. *See*, Exhibit 1, Schedule of Actions.

3. All of the cases listed on the Schedule of Actions, Exhibit 1, allege similar facts, based on facts and legal claims concerning the unintended acceleration of Toyota automobiles. All of the actions raise similar legal and factual issues.

4. All of the complaints in the actions listed on the Schedule of Actions, Exhibit 1, contain common allegations arising out of the following issues of material fact:

- a. Whether Toyota designed defective automobiles likely to experience unintended acceleration;
- b. Whether Toyota improperly manufactured automobiles in such a manner as to make the automobiles prone to unintended acceleration;
- c. Whether Toyota made false and misleading statements concerning the reasons for the unintended acceleration of Toyota automobiles; and
- d. Whether Toyota has failed to properly repair the defective condition of Toyota automobiles.

5. Consolidation and centralized pretrial proceedings are proper at this time. All of the cases are in the early stages, and will not be unduly prejudiced by the transfer to a single district for coordinated pretrial proceedings.

6. Discovery in the actions listed in the Schedule of Actions and the similar actions that are subsequently filed will be substantially similar. The Actions set forth identical or similar factual allegations and legal claims, requiring the same or similar proof. Coordination and consolidation will:

- a. Save substantial time and resources for the parties and the judicial system;
- b. Prevent potentially inconsistent pretrial rulings;

- c. Reduce the potential for confusion among class members;
- d. Prevent duplication of discovery;
- e. Promote convenience for the parties, witnesses, and counsel;
- f. Avoid unnecessary delay and expense; and
- g. Promote the just and efficient resolution of all the causes of action.

7. As explained in the accompanying Memorandum in Support of this Motion, it is clear that consolidation of the actions listed in the Schedule of Actions, Exhibit 1, is appropriate even if it is not yet clear which court is most appropriate for the transfer of the actions.

For the reasons stated herein and in the accompanying Memorandum in Support of this Motion, the Plaintiff respectfully requests that the Panel on Multi-District Litigation order the transfer and coordination and/or consolidation of all of the Toyota Unintended Acceleration cases listed on the Schedule of Actions, Exhibit 1, and subsequently filed actions asserting related or similar claims.

Dated: February 15, 2010

Respectfully submitted,

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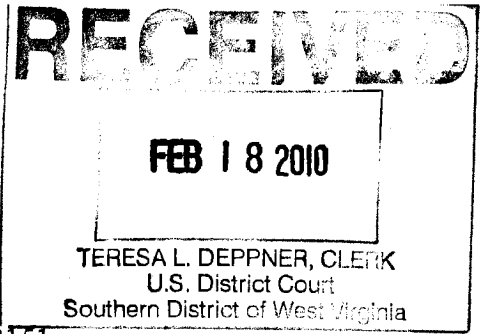
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BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

In re:

TOYOTA UNINTENDED
ACCELERATION LITIGATION

MDL Docket No. 2151

CA 2: 09-1247

GRAVES v. TOYOTA MOTOR MANUFACTURING

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR TRANSFER AND COORDINATION AND/OR
CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

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I. INTRODUCTION

Plaintiff Troy Menssen filed the action *Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. 1:10-cv-00260 in the Northern District of Ohio, Eastern Division and now requests that this Panel consolidate all similar and related cases into a single district for pretrial proceedings pursuant to 28 U.S.C. § 1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multi-District Litigation. Plaintiff now submits this Memorandum in support of Plaintiff's Motion for Transfer and Coordination and/or Consolidation Pursuant to 28 U.S.C. § 1407 in which Plaintiff requests that all pending and yet-to-be-filed federal class action cases against Toyota Motor Sales, U.S.A, Toyota Motor Engineering & Manufacturing North America, Inc., and/or Toyota Motor Corporation (collectively "Toyota") alleging claims similar or related to the Plaintiff's claims concerning the unintended acceleration of Toyota automobiles, including but not limited to those listed on the Schedule of Actions, Exhibit 1 to Plaintiff's Motion, be transferred to a single district for coordinated and/or consolidated pre-trial proceedings.

Plaintiff is aware of at least twenty-six class action complaints that are currently pending in federal courts and raise overlapping and related issues concerning the unintended acceleration of Toyota automobiles. These actions are listed in the Schedule of Actions attached to Plaintiff's Motion as Exhibit 1 ("Related Cases"). The Related Cases all assert common questions of fact and law, and present the prototypical scenario in which consolidation or coordination will promote the just and efficient resolution of this litigation.

Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties,

their counsel and the judiciary. Transfer under Section 1407 will offer the benefit of placing all similar actions on a docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common parties and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions. Discovery with respect to any case-specific issues can also proceed concurrently with discovery on common issues.¹

II. LITIGATION BACKGROUND

On February 4, 2010, the Plaintiff filed a class action complaint against the Defendants Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation in the United States District Court for the Northern District of Ohio. Plaintiff's Complaint seeks relief on behalf of a Class of owners of automobiles designed, manufactured, distributed and/or sold by the Defendants, that are prone to unintended acceleration due to a defectively designed throttle control system and Defendants' failure to properly and timely remedy the throttle control defect. Shortly before and after the filing of the Plaintiff's Complaint twenty-six other class actions were filed in federal courts seeking relief for the same defective design and failure to remedy that design on behalf of similar or identical classes of automobile owners.

This case and the Related Cases all concern Defendants' defectively designed Electronic Throttle Control Systems also known as "drive-by-wire" throttle control ("ETCS") that are used in automobiles designed, manufactured, distributed and sold by the Defendants. It also concerns Defendants' failure to honestly acknowledge the true

¹ *In re Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (Jud.Pan.Mult.Lit.1976).

nature of the defects in the ETCS and properly remedy those dangerous defects in a timely manner.

There are currently pending at least twenty-six potential class actions in federal court and at least three in state court that allege similar conduct and raise nearly identical issues.² Centralization of pretrial proceedings is particularly appropriate at this time because all of the cases are in the early stages. Discovery and pretrial proceedings in the Related Cases will be substantially the same because many of the allegations and claims are the same or identical, and many of the parties and witnesses are identical. Accordingly, the transfer to a single district court for coordinated pretrial proceedings will promote the just and efficient resolution of the Related Cases.

Although it is clear at this time that transfer to a single district for coordinated pretrial proceedings is necessary, it is not clear at this time which jurisdiction is best suited to handle the coordinated pretrial proceedings. Given the widespread nature of the defect and Defendants' concealment of the true cause of the problems with its throttle control systems, more cases will, undoubtedly, be filed in the federal district courts. As a result, a more appropriate forum may emerge. Plaintiff, therefore, reserves the right to supplement this Motion to suggest an appropriate forum based on the applicable factors including, but not limited to, the ultimate number and location of pending cases, the preference of the parties, geographically convenient locations, judicial experience of the potential transferee courts, the efficiency of the various dockets, and whether a "center of gravity" exists for this litigation. Plaintiff will supplement this Motion when it is clear

² There are also individual cases that involve personal injuries that are pending in state and federal courts. Plaintiff is not requesting that these personal injury cases be consolidated into a single district.

which of the available transferee forums best satisfies these requirements.

III. ARGUMENT

A. The Cases Share Common Defendants

There are common defendants among all of the Related Cases. Most if not all of the Defendants in the Plaintiff's case, Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation, are also named in the Related Cases, and are the primary actors in each case.

B. The Cases Share Common Questions of Fact

The purpose of 28 U.S.C. § 1407 is to ensure centralized management under a single court's supervision of pretrial proceedings in litigation arising in various districts to ensure the just, efficient and consistent conduct and adjudication of such actions.³ Transfer and consolidation of cases pursuant to 28 U.S.C. § 1407 is appropriate where cases share "common questions of fact" such that centralization in a single district will "promote the just and efficient conduct of such actions." The litmus test of transferability and coordination under Section 1407 is the presence of common questions of fact.⁴

The transfer of multiple actions sharing similar allegations to a single forum under Section 1407 is commonplace and proper where, as here, it will prevent duplicative discovery and eliminate the possibility of inconsistent rulings, including class action

³ *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 238 F. Supp. 2d 270 (D.D.C. 2002); *In re Air Crash Off Long Island, N.Y. on July 17, 1996*, 965 F. Supp. 5 (S.D.N.Y. 1997); *In re New York City Mun. Sec. Litig.*, 572 F.2d 49, 51 (2d Cir. 1978).

⁴ *In re Managed Care Lit.*, 246 F. Supp. 2d 1363 (J.P.M.L. 2003); *In re South African Apartheid Lit.*, 238 F. Supp. 2d 1379 (J.P.M.L. 2002). Common questions exist where "two or more complaints assert comparable allegations . . . based on similar transactions and events." *In re West, Inc. Sec. Lit.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974); *see also In re Cuisinart Food Processor Antitrust Lit.*, 506 F. Supp. 651, 654-55 (J.P.M.L. 1981).

determinations by the multiple courts from which the actions are transferred.⁵

The requirements of transfer under Section 1407 are satisfied in the matters *sub judice*. Each of the Related Cases is pending in federal court, concerns identical or nearly identical legal and factual issues, and transfer, consolidation and/or coordination would further the convenience of the parties and witnesses and would promote the just and efficient resolution of the Related Cases. All of the Related Cases contain common allegations arising out of the Defendants' defectively designed ETCS and failure to properly and timely remedy those defects.

Given the common Defendants and similarities of claims, factual allegations and legal theories among the Related Cases, centralization under 28 U.S.C. § 1407 is in the best interests of the litigants and the courts.

C. There is a Need for Transfer and Coordination

The common questions of fact and law in the Related Cases present similar discovery and pretrial issues that can efficiently be addressed in a single district court. If the Related Cases are not coordinated, the result will be extensive duplication of discovery and other pretrial tasks and potentially inconsistent rulings, all at the expense

⁵ See, e.g., *In re Ocwen Fed. Bank FSB Mortgage Serv. Litig.*, 314 F. Supp. 2d 1376 (J.P.M.L. 2004) (centralizing nine consumer debt cases “shar[ing] factual questions arising out of allegations that Ocwen and/or other defendants engaged in unfair loan servicing and/or debt collection practices...” in violation of the Racketeer Influenced and Corrupt Organizations Act and consumer protection statutes); *In re Ford Motor Co. Crown Victoria Police Interceptor Prod. Liab. Litig.*, 229 F. Supp. 2d 1377 (J.P.M.L. 2002) (finding centralization of six consumer cases “necessary in order to ... prevent inconsistent or repetitive pretrial rulings (such as those regarding class certification)...”); *In re Novastar Home Mortgage Inc. Mortgage Lending Practices Litig.*, 368 F. Supp. 2d 1353 (J.P.M.L. 2005) (centralizing two consumer cases “shar[ing] factual questions arising out of allegations that payment and/or non-disclosure of mortgage settlement/referral fees by NovaStar to its unlicensed limited liability corporations violated the Real Estate Settlement Procedures Act.”).

of the parties, witnesses and the courts. The similarity of allegations and legal issues presented by the Related Cases allow the avoidance of all of these potential pitfalls by the simple consolidation of these actions for pretrial proceedings.

Discovery in the Related Cases will inevitably overlap, even if not consolidated. The sheer similarity of factual allegations and legal claims makes it inevitable that the parties in the Related Cases will seek similar documents, set forth similar interrogatories, seek to depose similar deponents and file similar pretrial motions, all of which supports the transfer of the Related Cases to a single district.⁶ Moreover, coordination of pretrial proceedings is particularly appropriate at this time because the Related Cases are still in their infancy and the parties to those Cases will not be prejudiced by the coordination of pretrial proceedings. Indeed, the parties will benefit by the expediency of coordinated pretrial proceedings.

Coordination will avoid the potential for disruption, inconsistency, confusion and prejudice created by the parallel prosecution of hundreds or even thousands of class actions in various district courts throughout the United States. When the risk of overlapping or inconsistent class determinations exist, the transfer of those cases to a single district for centralized pretrial proceedings is necessary to eliminate the possibility of inconsistent pretrial rulings, including class decisions.⁷ Coordination also helps avoid the potential for varying class definitions and certification of varying, sometimes

⁶ See, *In re Boise Cascade Secs. Lit.*, 364 F. Supp. 459, 461 (J.P.M.L. 1973)(transfer will avoid “duplication of discovery and unnecessary expenditure of judicial time and energy....”).

⁷ *in re Wireless Tel. 911 Calls Lit.*, 259 F.Supp.2d 1372 (J.P.M.S. 2003)(“Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.”); *In re Ford Motor Co. Crown Victoria Police Interceptor Prod. Liab. Lit.*, 229 F.Supp.2d at 1378 (same).

overlapping classes of owners, while permitting an expedited, comprehensive and consistent course of pretrial proceedings at a fair and economical cost to all.

The consistency of issues in the Related Cases and risks of non-consolidation make it clear that the Related Cases are appropriate for transfer to a single district for coordinated pretrial proceedings.

D. It is Proper to Determine the Appropriate Jurisdiction at a Later Time

Numerous factors must be weighed in order to determine which court is the appropriate transferee forum to handle the coordinated pretrial proceedings. Factors often cited include the convenience of the parties, location of records and witnesses, experience of the jurists, where the most pending cases are filed, and case load of the proposed transferee forum.⁸ Given the number of cases being filed daily in this matter, it is not practicable to designate the best forum at this time. However, when the time for designating a potential transferee forum is at hand the choices will be clearer and Plaintiff will designate an appropriate transferee forum.

⁸ See, e.g., *In re Computervision Corp. Sec. Lit.*, 814 F.Supp. 85, 86 (J.P.M.L. 1984)(citing “convenience of the parties and witnesses: and location of the relevant “offices and records....”); *In re Baldwin-United Corp. Lit.*, 581 F.Supp. 739, 740 (J.P.M.L. 1984)(same).

IV. CONCLUSION

Based on the foregoing Memorandum and the facts cited in Plaintiff's Motion for Transfer, Plaintiff respectfully requests that this Panel transfer the Related Cases and subsequently filed similar cases to a single district for coordination and/or consolidation of all cases.

Dated: February 15, 2010

Respectfully submitted,

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Before the Judicial Panel on Multidistrict Litigation
MDL-2151- IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation

SCHEDULE OF ACTIONS

| | Case Captions | Court | Civil Action No. | Judge |
|---|--|--------------------------------|-------------------------|---------------------|
| 1 | Plaintiff: Robyn Horn Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Corporation, and Does. | Eastern District of Arkansas | 4:10-cv-00090 | J. Leon Holmes |
| 2 | Plaintiffs: Seong Bae Choi, Chris Chan Park, Sandra Reece, Donald Pritchett, Un Jin Choi, Mary Ann Parker Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Corporation | Central District of California | 2:09-cv-08143 | A. Howard Matz |
| 3 | Plaintiffs: Eric Kmetz and Joe Morris Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Corporation | Central District of California | 2:09-cv-8478 | Christina A. Snyder |
| 4 | Plaintiff: Heather A. Lane Defendants: Toyota Motor Sales, USA, Inc. | Central District of California | 2:09-cv-9158 | Gary A. Feess |

| | | | | |
|----|---|--------------------------------|----------------|---------------------|
| 5 | <p>Plaintiffs: Dale Baldiseeri</p> <p>Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.</p> | Central District of California | 2:09-cv-09386 | Gary A. Feess |
| 6 | <p>Plaintiffs: Matthew Marr, Luis Fernandez and Sylvia Fernandez</p> <p>Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Corporation</p> | Central District of California | 2:10-cv-00799 | Christina A. Snyder |
| 7 | <p>Plaintiffs: Roz Schwartz</p> <p>Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Corporation</p> | Central District of California | 2:10-cv-00710 | Ronald S. W. Lew |
| 8 | <p>Plaintiffs: Joseph Haunter</p> <p>Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Corporation</p> | Central District of California | SA CV 10-00105 | Cormac J. Carney |
| 9 | <p>Plaintiffs: Ryan Scharrel</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.</p> | D. Colorado | 1:10-cv-0227 | Philip A. Brimmer |
| 10 | <p>Plaintiffs: Jonathan Gellman</p> <p>Defendants: Toyota Motor Sales, USA, Inc.</p> | Southern District of Florida | 1:10-cv-20006 | Marcia G. Cooke |

| | | | | |
|----|--|------------------------------|---------------|-----------------------|
| 11 | <p>Plaintiffs: Arlene S. Heilbrunn</p> <p>Defendants: Toyota Motor Corp.</p> | Southern District of Florida | 9:10-cv-80208 | William J. Zloch |
| 12 | <p>Plaintiffs: Jim Heidenreich</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc.</p> | Northern District of Florida | 4:10-cv-00035 | Robert L. Hinkle |
| 13 | <p>Plaintiffs: Michelle Lynch</p> <p>Defendants: Toyota Motor Corp., and Toyota Motor Sales, USA, Inc.</p> | Middle District of Florida | 8:10-cv-00326 | Steven D. Merryday |
| 14 | <p>Plaintiffs: Judith M. Enderle</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.</p> | Southern District of Indiana | 1:10-cv-00142 | Sarah E. Barker |
| 15 | <p>Plaintiffs: Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson and Mark Davidson</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing Kentucky, Inc.</p> | Eastern District of Kentucky | 2:10-cv-00021 | William O. Bertelsman |

| | | | | |
|----|---|-------------------------------|---------------|--------------------|
| 16 | <p>Plaintiffs: Amanda R. Maillho</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.</p> | Eastern District of Louisiana | 2:10-cv-00279 | Mary A. V. Lemmon |
| 17 | <p>Plaintiffs: Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.</p> | Eastern District of Louisiana | 2:10-cv-00219 | Ivan L. R. Lemelle |
| 18 | <p>Plaintiffs: Gary T. Brock</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.</p> | Eastern District of Louisiana | 2:10-cv-00281 | Ivan L. R. Lemelle |
| 19 | <p>Plaintiffs: David Hulsen</p> <p>Defendants: Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.</p> | Western District of Missouri | 4:10-cv-00103 | Howard F. Sachs |

| | | | | |
|----|--|----------------------------------|---------------|---------------------|
| 20 | <p>Plaintiffs: Margaret Gonzales</p> <p>Defendants: Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.</p> | District of New Jersey | 3:10-cv-00595 | Mary L. Cooper |
| 21 | <p>Plaintiffs: Troy Menssen</p> <p>Defendants: Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corp.</p> | Northern District of Ohio | 1:10-cv-00260 | Solomon Oliver, Jr. |
| 22 | <p>Plaintiff: Diane Gumble</p> <p>Defendants: Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.</p> | Eastern District of Pennsylvania | 5:10-cv-00521 | Thomas M. Golden |
| 23 | <p>Plaintiffs: Zahira Crespo Bithorn and Milagros Rodriguez Cruz</p> <p>Defendants: Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc., and Toyota de Puerto Rico Corp.</p> | District of Puerto Rico | 3:10-cv-01083 | Francisco A. Besosa |

| | | | | |
|----|---|------------------------------------|---------------|-------------------|
| 24 | <p>Plaintiffs: Linda Alford Wooten</p> <p>Defendants: Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales, USA, Inc. and Toyota Motor Corp.</p> | District of South Carolina | 3:10-cv-00229 | Matthew J. Perry |
| 25 | <p>Plaintiffs: Sylvia Pena and Albert A. Pena, III</p> <p>Defendants: Toyota Motor Corp., and Toyota Motor Sales, USA, Inc.</p> | Southern District of Texas | 2:10-cv-00037 | John D. Rainey |
| 26 | <p>Plaintiffs: Michael Graves and Jeff Mullins</p> <p>Defendants: Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, USA, Inc.</p> | Southern District of West Virginia | 2:09-cv-1247 | Joseph R. Goodwin |

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP.) MDL NO. 2151
DEFECTIVE GAS PEDAL)
PRODUCTS LIABILITY)
LITIGATION)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this Certificate of Service was served by First Class Mail on February 15, 2010 upon the following:

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**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: TOYOTA SUDDEN UNINTENDED
ACCELERATION

)
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)

MDL Docket No. _____

CA 2:09-1247

Graves v. Toyota Motor Manufacturing, et al.

**PETITION FOR TRANSFER, COORDINATION AND
CONSOLIDATION PURSUANT TO 28 U.S.C. §1407**

Petitioners Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, plaintiffs in an action entitled *Choi et al v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, Case No. 2:09-08143 AHM (FMOx), pending in the United States District Court for the Central District of California (the “Choi Action”), by their undersigned attorneys, respectfully petition this Panel pursuant to 28 U.S.C §1407 for an Order (a) transferring to the United States District Court for the Central District of California the ten actions listed in the accompanying Schedule of Actions not already pending in district,¹ and any and all additional similar against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota

¹ Petitioners have compiled this information based on best information available to them. Because Toyota, the manufacturer of the defective vehicles, would presumably be named as a defendant in every Toyota product liability case, Petitioner believes that Toyota can identify every such case currently pending in federal courts around the country.

Motor Manufacturing, Kentucky, Inc., and other related entities (collectively, “Toyota”) arising from defects in motor vehicles manufactured and/or sold by Toyota relating to a phenomenon known as “sudden unintended acceleration” (“SUA”) that may be brought to the attention of the Panel; (b) consolidating with the *Choi* Action for pretrial proceedings the transferred actions and the other five actions already pending in the Central District of California; and (c) designating Judge A. Howard Matz as the transferee judge. In support of transfer and consolidation, Petitioner states as follows:

1. Class actions and personal injury cases have been filed around the country against Toyota arising from certain defects in motor vehicles manufactured and sold by Toyota that cause the vehicles suddenly, without warning, and without intention on the part of the driver, to accelerate. This sudden, unintended acceleration (“SUA”) has given rise to two recalls by Toyota and to all the actions listed in the Schedule of Actions. These cases are of two types: (1) class actions on behalf of Toyota owners seeking damages and/or injunctive relief for breaches of warranty and/or fraudulent, deceptive or unfair practices relating to SUA; and (2) personal injury actions arising from accidents caused by SUA that resulted in injuries or death. The *Choi* action, in which Petitioners are the plaintiffs, is a class action seeking injunctive relief and damages on behalf of a California-wide and a nation-wide class of Toyota owners. Although only one of the cases on the Schedule of Actions is a personal injury case, Petitioners are aware of numerous personal injury actions filed in state courts around the country and expect that many of these will be removed to federal court by Toyota on the basis of diversity jurisdiction.

2. Petitioners are aware of at least 16 cases, including their own, pending in United States District Courts in 9 different districts, all seeking relief because of SUA of cars and trucks

manufactured and/or sold by Toyota. Six of these cases are pending in the United States District Court for the Central District of California, the district to which Petitioner seeks transfer. So far as Petitioners are aware, no other Federal District has a greater number of Toyota cases than the Central District of California.

3. The *Choi* Action was commenced on November 5, 2009 and was, to the best of Petitioners' knowledge, the first class action filed arising from the SUA incidents. The case has been assigned to Judge Matz. On February 3, 2010, the *Choi* Plaintiffs filed a motion for a preliminary injunction in the *Choi* Action, seeking to expand the scope of the existing recalls. Petitioners believe that the remaining 15 cases are in a more preliminary stage than those of Petitioners.

4. These cases present numerous common issues of fact in that they all arise from the same defect in Toyota motor vehicles – the tendency to experience incidents of SUA.

5. Because the Toyota cases are scattered throughout the country, however, Petitioners anticipate numerous pretrial issues – including the appropriate scope of virtually identical interrogatories and document requests, and the proper scope of any protective orders to be used to protect the confidentiality of identical documents – will be litigated over and over, often with papers virtually identical to those filed in other courts. Such duplicative litigation is wasteful of both the court's and the parties' resources. The various class actions, moreover, overlap in that each seeks class-wide relief on behalf of the owners of such motor vehicles.

6. For the convenience of parties and witnesses, and to promote the just and efficient conduct of the actions, these cases should be consolidated in the Central District of California. Consolidation of these actions before a single judge will eliminate duplicative discovery, prevent conflicting pretrial rulings, conserve judicial resources, reduce the costs of litigation, and allow

the cases to proceed more efficiently. Rulings on what documents defendants are required to produce, what information they are entitled to seek from plaintiffs, what documents are entitled to protection as confidential or propriety information should be uniform; conflicting rulings on these topics are both inefficient and ineffective.

7. Petitioner respectfully suggests that the cases be consolidated in the Central District of California and that Judge A. Howard Matz be designated the transferee judge. As noted above, the Central District of California has the highest concentration of Toyota cases among the federal courts. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), is and at all relevant times was, a California corporation with its principal place of business located at 19001 South Western Ave., Torrance, CA 90501, which is approximately 18 miles from the Western Division - Spring Street Courthouse of the Central District of California. Of the six cases pending in the Central District of California, two are assigned to Judge Matz; no other judge has more than one. In addition, Judge Matz has before him the motion filed by the plaintiffs for preliminary injunctive relief in the *Choi* case. His familiarity with the case and the parties will ensure that the efficiencies of consolidation are realized.

For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, Petitioner respectfully requests that (a) the ten actions listed in the accompanying Schedule of Actions not already pending in the United States District Court for the Central District of California be transferred to that district, and any and all additional similar against Toyota arising from defects in motor vehicles manufactured and/or sold by Toyota relating to a phenomenon known as "sudden unintended acceleration" ("SUA") that may be brought to the attention of the Panel; (b) the *Choi* Action be consolidated with the transferred actions and the other five actions already pending in the Central District of California; and (c) Judge A. Howard

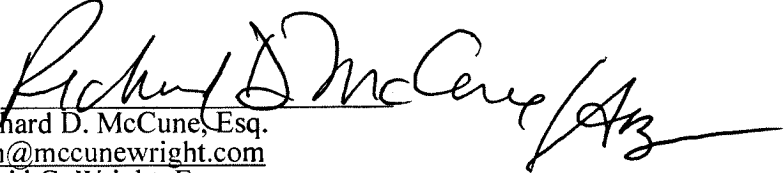
Matz be designated as the transferee judge.

Dated: February 5, 2010

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Civil Action 2:09-1247
Graves, et al
v. Toyota Motor Manufacturing, et al.

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE: **MDL DOCKET No.** _____

TOYOTA VEHICLES UNINTENDED
ACCELERATION PRODUCTS
LIABILITY LITIGATION

**MOTION FOR TRANSFER OF ACTIONS TO
THE CENTRAL DISTRICT OF CALIFORNIA FOR
COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO
28 U.S.C. § 1407 AND INCORPORATED MEMORANDUM OF LAW**

NOW COMES plaintiff Heather A. Lane (“Movant”), individually and on behalf all others similarly situated, in the action entitled *Lane v. Toyota Motor Sales, USA, Inc.*, Case No. 2:09-cv-09158-GAF-FMO, currently pending in the United States District Court for the Central District of California, by and through the undersigned counsel, and respectfully requests that the Judicial Panel on Multidistrict Litigation (the “Panel”) enter an Order pursuant to 28 U.S.C. § 1407, transferring for coordination the cases listed in the Schedule of Actions attached hereto as Exhibit A, as such actions concern consumer claims arising from the design, manufacture, marketing and sales of motor vehicles by Defendant Toyota Motor Sales, USA, Inc., (“Toyota”). Each of the cases deals with the

cause of unintended acceleration in the concerned motor vehicles and Toyota's conduct regarding same.

To Movant's knowledge, six (6) other related actions have been filed regarding Toyota's defective vehicles, and each with the similar element as stated above, for a total of seven (7) known pending actions. While relief and theories do vary, the discovery process encompasses significant commonality. A copy of Movant's Complaint and docket sheet, and the complaints and docket sheets of the known related actions, are included in the accompanying Appendix of Complaints and Docket Sheets.

Movant requests that the Panel transfer for coordination the cases referenced herein to a single district court for coordinated pre-trial proceedings, and that such proceedings be assigned to the United States District Court for the Central District of California, where five (5) of the related actions are currently pending before three (3) different judges. Transfer and coordination of these actions is appropriate because they involve common factual questions, will further the convenience of the parties and witnesses, and will promote the just and efficient conduct of these actions.

Factual Background

Movant and other members of the putative classes are consumers who purchased defendant Toyota Motor Sales, USA's ("Toyota") vehicles and sustained economic damages as a direct and proximate result of Toyota's conduct and, as alleged, the design, manufacture, marketing and sales of the concerned vehicles. Movant has alleged that Toyota's actions regarding the design, manufacture, marketing and sales of its vehicles violate the Magnuson-Moss Warranty Act and applicable state consumer protection and

common laws, and that compensatory damages, as well as other damages, are the appropriate remedies for Toyota's wrongful actions.

In about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles. According to Toyota, the following models (hereinafter known as "Vehicles") were affected:

| | Years | Make | Model |
|----|--------------|-------------|--------------|
| A. | 2007 – 2010 | Toyota | Camry |
| B. | 2005 – 2010 | Toyota | Avalon |
| C. | 2004 – 2009 | Toyota | Prius |
| D. | 2005 – 2010 | Toyota | Tacoma |
| E. | 2007 – 2010 | Toyota | Tundra |
| F. | 2007 – 2010 | Toyota | ES350 |
| G. | 2006 – 2010 | Lexus | IS250 |
| H. | 2006 – 2010 | Lexus | IS350 |

In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the above-referenced Vehicles. This "remedy", however, did not resolve the defect. On November 25, 2009, Toyota announced details of a remedy, including reconfiguring the shape of the accelerator pedal, providing newly-designed replacement driver and front passenger side all-weather floor mats, and installing a brake override system in certain models. However, this second purported resolution did not resolve the defects.

In January 2010, Toyota instituted a third recall revealing that pedal mechanisms may become worn, and when combined with condensation moisture or humidity, the friction in the mechanisms may increase, causing the accelerator pedal to stick or become hard to depress. The excuses provided by Toyota keep changing and evolving as the months progress. In the meantime, consumers have been exposed to uncertainty, an

extremely hazardous situation, have been deprived of items they have purchased, and require relief as soon as possible.

The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration (“ODI”) found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota’s automobiles. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries. ODI further found that the “only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations.”

It is within the range of reasonableness that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor plan design are uniform. Toyota admits that unintended acceleration may result in very high vehicle speeds, thereby making it difficult to stop the vehicle, which could cause a crash, serious injury or even death. Indeed, many deaths have already been reported as a result of such unintended acceleration. The Toyota Vehicles at issue have defects that may result in the above malfunction.

Argument

Movant submits that the related actions should be transferred and coordinated for MDL treatment. These actions presents textbook cases for MDL treatment, given the substantial commonality of factual and legal questions presented in the individual cases at issue, and the strong potential for the preservation of judicial resources that MDL treatment will afford. *See In re Southern Pacific Trans. Co. Employment Practices Litig.*,

429 F. Supp. 529, 531 (J.P.M.L. 1977). Generally, common questions are presumed “when two or more complaints assert comparable allegations against identical defendants base[d] on similar transactions and events.” *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974); *see also In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 654-55 (J.P.M.L. 1981). The complaints in the concerned actions all are based on similar underlying facts. Transfer is necessary in order to prevent both duplication of discovery and inconsistent pre-trial rulings. *In re Ryder Truck Lines, Inc.*, 405 F. Supp. 308 (J.P.M.L. 1975).

Because common issues of fact and law are shared by all of the related cases, discovery and pretrial motion practice in each action will almost certainly be duplicated if the actions are not coordinated. Coordination will therefore avoid redundant and costly discovery proceedings, including repetitive motion practice and potentially conflicting discovery and other pre-trial rulings. *See In re First Nat’l Bank, Heavener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (transfer “necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings”); *see also In re Multi Piece Rim Prod. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (same).

Movant further submits that the Central District of California should be designated as the MDL Court for these actions. Toyota is headquartered in California, which makes this jurisdiction particularly appropriate for these proceedings, and it is believed that a significant portion of relevant documents and potential deponents are located there. And, as demonstrated by the attached caseload statistics, the Central

District of California has a well-managed docket capable of ensuring timely and expeditious resolution of these consolidated actions. *See* Exhibit 2, attached hereto. As discussed in *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F. Supp. 2d 1377, 1380 (J.P.M.L. 2001): “[C]entralization to this district permits the Panel to effect the Section 1407 assignment to a major metropolitan court that (i) is not currently overtaxed with other multidistrict dockets, and (ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require.” Further, as noted above, five (5) of the seven (7) related actions are already currently pending in the Central District of California.

WHEREFORE Movant respectfully requests that the Panel grant her motion to transfer and coordinate the referenced actions pursuant to 28 U.S.C. § 1407, and that the United States District Court for the Central District of California be designated as the MDL Court for these actions.

Dated: February 1, 2010

Respectfully submitted,



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**BEFORE THE JUDICIAL PANEL
OF MULTIDISTRICT LITIGATION**

IN RE:

MDL DOCKET No. _____

TOYOTA VEHICLES UNINTENDED
ACCELERATION PRODUCTS
LIABILITY LITIGATION

Proof of Service

I hereby certify that a copy of the foregoing Motion and Incorporated Memorandum of Law, Appendix of Complaints and Docket Sheets, and this Certificate of Service was served by First Class U.S. Mail on February 1, 2010, to the following:

Clerks:

Seong Bae Choi et al v. Toyota Motor Corporation et al (2:09-cv-08143)

United States District Court, Central District of California (Western Division - Los Angeles)

Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Kmetz et al v. Toyota Motor Sales, U.S.A., Inc. et al (2:09-cv-08478)

United States District Court, Central District of California (Western Division - Los Angeles)

Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Lane v. Toyota Motor Sales, U.S.A., Inc. 2:09-cv-09158

United States District Court, Central District of California (Western Division - Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Baldisseri v. Toyota Motor Sales, U.S.A., Inc. et al (2:09-cv-09386)

United States District Court, Central District of California (Western Division - Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Hauter et al v. Toyota Motor Sales USA Inc. et al (10-cv-00105)

United States District Court, Central District of California (Southern Division - Santa Ana)
Clerk of the Court
411 West Fourth Street, Room 1053
Santa Ana, CA 92701

Gellman v. Toyota Motor Sales, USA, Inc. (10-cv-20006)

United States District Court, Southern District of Florida (Miami Division)
Steven M. Larimore, Clerk of Court
400 North Miami Avenue, 8th floor
Miami, FL 33128

Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc. et al (2:09-cv-01247)

United States District Court, Southern District of West Virginia (Charleston)
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Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation

Lane v. Toyota Motor Sales, U.S.A., Inc. 2:09-cv-09158

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Counsel for Defendant: Toyota Motor Sales, U.S.A., Inc.

Baldisseri v. Toyota Motor Sales, U.S.A., Inc. et al (2:09-cv-09386)

H Scott Leviant
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11377 West Olympic Boulevard 5th Floor
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Counsel for Plaintiff: Dale Baldiseeri

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Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.

Hauter et al v. Toyota Motor Sales USA Inc. et al (10-cv-00105)

Behram V. Parekh
Kirtland and Packard
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El Segundo, CA 90245
Counsel for Plaintiffs: Joseph Hauter; Frank Palomares,

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Counsel for Defendants: Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation

Vincent Galvin, Jr.
Bowman & Brooke
1741 Technology Drive
San Jose, CA 95110
Counsel for Defendants: Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation

Gellman v. Toyota Motor Sales, USA, Inc. (10-cv-20006)

Lance A. Harke, P.A.
Harke & Clasby LLP
155 S. Miami Avenue, Suite 600
Miami, Florida 33130
Counsel for Plaintiff: Jonathan Gellman

Michael Ross Tein
Lewis Tein
3059 Grand Avenue, Suite 340
Coconut Grove, FL 33133
Counsel for Defendant: Toyota Motor Sales U.S.A., Inc.

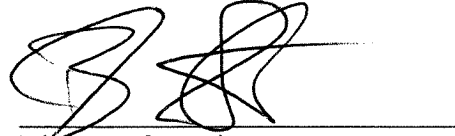
Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc. et al (2:09-cv-01247)

Benjamin L. Bailey
Bailey & Glasser
209 Capitol Street
Charleston, WV 25301
Counsel for Plaintiffs: Michael Graves; Michael C. Graves; Jeff Mullins

Nicholas S. Johnson
Allen Guthrie & Thomas
P. O. Box 3394
Charleston, WV 25333
Counsel for Defendants: 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.; Toyota Motor Corporation

Cari K. Dawson
Alston & Bird LLP
1201 West Peachtree Street
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Counsel for Defendants: 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.; Toyota Motor Corporation

A handwritten signature in black ink, appearing to be 'BS', is written over a horizontal line.

Blake A. Strautins

Exhibit A

**BEFORE THE JUDICIAL PANEL
OF MULTIDISTRICT LITIGATION**

IN RE:

MDL DOCKET No. _____

TOYOTA VEHICLES UNINTENDED
ACCELERATION PRODUCTS
LIABILITY LITIGATION

SCHEDULE OF ACTIONS

| Case Caption | Court | Civil Action No. | Judge |
|---|-----------------|------------------|-------------------------|
| <p>Plaintiffs Seong Bae Choi and Chris Chan Park, as individuals, and on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10</p> | C.D. California | 09-cv-08143 | Judge A. Howard Matz |
| <p>Plaintiffs Eric Kmetz and Joe Morris, on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p> | C.D. California | 09-cv-08478 | Judge A. Howard Matz |
| <p>Plaintiff Heather A. Lane, individually and on behalf of all others similarly situated</p> <p>Defendant Toyota Motor Sales, U.S.A., Inc., a California corporation</p> | C.D. California | 09-cv-9158 | Judge Gary A. Feess |
| | | | |

| | | | |
|--|--------------------|-------------|-------------------------|
| <p>Plaintiff Dale Baldisseri, on behalf of himself and all others similarly situated and the general public</p> <p>Defendants Toyota Motor Sales U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc; Toyota Motor Engineering & Manufacturing North America, Inc.</p> | C.D. California | 09-cv-09386 | Judge Gary A. Feess |
| <p>Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p> | C.D. California | 10-cv-00105 | Judge Cormac J. Carney |
| <p>Plaintiffs Jonathan Gellman, an individual, on behalf of himself and all others similarly situated</p> <p>Defendants Toyota Motor Sales, USA, Inc., a California corporation</p> | S.D. Florida | 10-cv-20006 | Judge Marcia G. Cooke |
| <p>Plaintiffs Michael Graves, and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated</p> <p>Defendants Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia corporation; Toyota Motor North America Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California Corporation; and Toyota Motor Corporation, a Japanese corporation</p> | S.D. West Virginia | 09-cv-1247 | Judge Joseph R. Goodwin |

Exhibit B

DISTRIBUTION OF PENDING MDL DOCKETS
(AS OF JANUARY 11, 2010)

| District | JUDGE | LITIGATION | Actions | Total |
|----------|--|--|-------------|----------------------|
| | | | Now Pending | Actions (Historical) |
| ALN | D.J. Inge P. Johnson | MDL-2092 IN RE: Chantix (Varenicline) Products Liability Litigation | 70 | 70 |
| | D.J. R. David Proctor | MDL-1985 IN RE: Total Body Formula Products Liability Litigation | 33 | 35 |
| ARE | Sr.J. William R. Wilson, Jr. | MDL-1507 IN RE: Prempro Products Liability Litigation | 6,638 | 8,315 |
| ARW | Sr.J. Harry F. Barnes | MDL-1832 IN RE: Pilgrim's Pride Fair Labor Standards Act Litigation | 16 | 16 |
| AZ | D.J. Frederick J. Martone | MDL-2096 IN RE: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation | 45 | 45 |
| | D.J. Mary H. Murguia D.J. James A. Teilborg | MDL-1977 IN RE: Lifelock, Inc., Marketing and Sales Practices Litigation MDL-2119 IN RE: Mortgage Electronic Registration Systems (MERS) Litigation | 12 6 | 14 6 |
| CAC | D.J. Cormac J. Carney | MDL-1926 IN RE: Halfone Color Separations ('809) Patent Litigation | 5 | 6 |
| | D.J. Dale S. Fischer | MDL-1897 IN RE: Mattel, Inc., Toy Lead Paint Products Liability Litigation | 20 | 20 |
| | D.J. Andrew J. Guilford | MDL-2008 IN RE: Land Rover LR3 Tire Wear Products Liability Litigation | 7 | 9 |
| | D.J. Andrew J. Guilford | MDL-2093 IN RE: DIRECTV, Inc., Early Cancellation Fee Marketing and Sales Practices Litigation | 11 | 11 |
| | D.J. Philip S. Gutierrez | MDL-2074 IN RE: WellPoint, Inc., Out-of-Network "UCR" Rates Litigation | 10 | 10 |
| CAE | D.J. R. Gary Klausner | MDL-1816 IN RE: Katz Interactive Call Processing Patent Litigation | 11 | 54 |
| | D.J. Margaret M. Morrow | MDL-1980 IN RE: Toys "R" Us - Delaware, Inc., Fair and Accurate Credit Transactions Act (FACTA) Litigation | 1 | 2 |
| | D.J. S. James Otero | MDL-1891 IN RE: Korean Air Lines Co., Ltd., Antitrust Litigation | 1 | 74 |
| | D.J. Christina A. Snyder | MDL-1825 IN RE: Midland National Life Insurance Co. Annuity Sales Practices Litigation | 2 | 2 |
| | D.J. Stephen V. Wilson | MDL-1745 IN RE: Live Concert Antitrust Litigation | 22 | 22 |
| | D.J. George H. Wu | MDL-2007 IN RE: Aftermarket Automotive Lighting Products Antitrust Litigation | 8 | 9 |
| CAE | Sr.J. Frank C. Dammell, Jr. | MDL-2022 IN RE: Payless ShoeSource, Inc., California Song-Beverly Credit Card Act Litigation | 2 | 2 |

| District | JUDGE | LITIGATION | Actions | |
|--|--|---|-------------|----------------------------|
| | | | Now Pending | Total Actions (Historical) |
| CAN | D.J. Sandra Brown Armstrong D.J. Charles R. Breyer | MDL-1781 IN RE: Cinias Corp. Overtime Pay Arbitration Litigation | 71 | 71 |
| | | MDL-1699 IN RE: Bextra and Celebex Marketing, Sales Practices and Products Liability Litigation | 1,870 | 2,172 |
| | D.J. Charles R. Breyer Sr.J. Maxine M. Chesney Sr.J. Maxine M. Chesney Sr.J. Samuel Conti D.J. Jeremy D. Fogel | MDL-1913 IN RE: Transpacific Passenger Air Transportation Antitrust Litigation | 19 | 19 |
| | | MDL-1930 IN RE: Wells Fargo Mortgage Lending Practices Litigation | 4 | 5 |
| | MDL-2032 IN RE: Chase Bank USA, N.A., "Check Loan" Contract Litigation | 32 | 32 | |
| | MDL-1917 IN RE: Cathode Ray Tube (CRT) Antitrust Litigation | 40 | 42 | |
| | MDL-2015 IN RE: Wachovia Corp. "Pick-A-Payment" Mortgage Marketing and Sales Practices Litigation | 8 | 8 | |
| | D.J. Phyllis J. Hamilton D.J. Phyllis J. Hamilton D.J. Susan Yvonne Iliston Sr.J. Marilyn Hall Patel Sr.J. Marilyn Hall Patel C.J. Vaughn R. Walker D.J. James Ware D.J. James Ware | MDL-1486 IN RE: Dynamic Random Access Memory (DRAM) Antitrust Litigation | 30 | 51 |
| | | MDL-2029 IN RE: Online DVD Rental Antitrust Litigation | 12 | 61 |
| | MDL-1827 IN RE: TFT-LCD (Flat Panel) Antitrust Litigation | 129 | 138 | |
| | MDL-1770 IN RE: Wells Fargo Home Mortgage Overtime Pay Litigation | 5 | 5 | |
| | MDL-1841 IN RE: Wells Fargo Loan Processor Overtime Pay Litigation | 2 | 2 | |
| | MDL-1791 IN RE: National Security Agency Telecommunications Records Litigation | 43 | 50 | |
| | MDL-1665 IN RE: Acacia Media Technologies Corp. Patent Litigation | 22 | 23 | |
| | MDL-2028 IN RE: Edward H. Okun Internal Revenue Service § 1031 Tax Deferred Exchange Litigation | 2 | 3 | |
| D.J. James Ware D.J. Claudia Wilken D.J. Jeffrey S. White D.J. Jeffrey S. White Sr.J. Ronald M. Whyte Sr.J. Ronald M. Whyte | MDL-2045 IN RE: Apple iPhone 3G Products Liability Litigation | 11 | 13 | |
| | MDL-1819 IN RE: Static Random Access Memory (SRAM) Antitrust Litigation | 73 | 84 | |
| MDL-1987 IN RE: Webkinz Antitrust Litigation | 4 | 4 | | |
| MDL-2014 IN RE: Bank of America Corp. Auction Rate Securities (ARS) Marketing Litigation | 4 | 4 | | |
| MDL-1754 IN RE: Apple iPod nano Products Liability Litigation | 5 | 8 | | |
| MDL-2040 IN RE: ConocoPhillips Co. Service Station Rent Contract Litigation | 54 | 54 | | |
| CAS | D.J. Roger T. Benitez D.J. Larry A. Burns D.J. Jeffrey T. Miller D.J. Barry Ted Moskowitz D.J. Dana M. Sabraw | MDL-1889 IN RE: Peregrine Systems, Inc., Securities Litigation | 34 | 35 |
| | | MDL-2121 IN RE: Musical Instruments and Equipment Antitrust Litigation | 34 | 34 |
| | | MDL-1751 IN RE: Jamster Marketing Litigation | 5 | 6 |
| | | MDL-2087 IN RE: Hydroxycut Marketing and Sales Practices Litigation | 28 | 28 |
| | | MDL-1988 IN RE: Countrywide Financial Corp. Mortgage Marketing and Sales Practices Litigation | 4 | 12 |
| CO | C.J. Willey Y. Daniel Sr.J. John L. Kane, Jr. | MDL-1743 IN RE: American Family Mutual Insurance Co. Overtime Pay Litigation | 2 | 2 |
| | | MDL-2063 IN RE: Oppenheimer Rochester Funds Group Securities Litigation | 29 | 29 |
| CT | D.J. Christopher F. Dromey D.J. Stefan R. Underhill D.J. Stefan R. Underhill D.J. Stefan R. Underhill | MDL-1894 IN RE: U.S. Foodservice, Inc., Pricing Litigation | 3 | 3 |
| | | MDL-1542 IN RE: Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation | 15 | 15 |
| | | MDL-1631 IN RE: Publication Paper Antitrust Litigation | 28 | 31 |
| MDL-1642 IN RE: Polychloroprene Rubber (CR) Antitrust Litigation | 9 | 9 | | |

| District | JUDGE | LITIGATION | Actions | Total | | |
|---|--|--|---|--|----|----|
| | | | Now Pending | Actions (Historical) | | |
| DC | D.J. Rosemary M. Collyer Sr.J. Paul L. Friedman Sr.J. Thomas F. Hogan D.J. Ellen Segal Huvelle D.J. Richard J. Leon D.J. Richard J. Leon | MDL-1880 IN RE: Paps Licensing Digital Camera Patent Litigation | 12 | 13 | | |
| | | MDL-1869 IN RE: Rail Freight Fuel Surcharge Antitrust Litigation | 7 | 18 | | |
| | | MDL-1285 IN RE: Vitamin Antitrust Litigation | 2 | 84 | | |
| | | MDL-1792 IN RE: InPhonic, Inc., Wireless Phone Rebate Litigation | 15 | 15 | | |
| | | MDL-1515 IN RE: Nifeidine Antitrust Litigation | 6 | 10 | | |
| | | MDL-1668 IN RE: Federal National Mortgage Association Securities, Derivative & "ERISA" Litigation | 5 | 18 | | |
| | | MDL-1993 IN RE: Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation | 11 | 11 | | |
| | | MDL-1717 IN RE: Intel Corp. Microprocessor Antitrust Litigation | 57 | 81 | | |
| | | MDL-1949 IN RE: Rosuvastatin Calcium Patent Litigation | 9 | 10 | | |
| | | MDL-2118 IN RE: Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litigation | 7 | 7 | | |
| DE | D.J. Joseph J. Farnan, Jr. D.J. Joseph J. Farnan, Jr. D.J. Sue L. Robinson | MDL-1660 IN RE: PharmaStem Therapeutics, Inc., Patent Litigation | 6 | 6 | | |
| | | MDL-1848 IN RE: Rembrandt Technologies, LP, Patent Litigation | 15 | 15 | | |
| | | MDL-1941 IN RE: Alifuzosin Hydrochloride Patent Litigation | 5 | 5 | | |
| | | MDL-1769 IN RE: Serouquel Products Liability Litigation | 6,045 | 7,838 | | |
| FLM | C.J. Anne C. Conway D.J. Timothy J. Corrigan Sr.J. Paul A. Magnuson (MN) Sr.J. James S. Moody, Jr. | MDL-1828 IN RE: Imagitas, Inc., Drivers' Privacy Protection Act Litigation | 9 | 13 | | |
| | | MDL-1824 IN RE: Tri-State Water Rights Litigation | 7 | 7 | | |
| FLS | D.J. Cecilia M. Altonaga D.J. Alan S. Gold D.J. Alan S. Gold D.J. Donald I. Graham D.J. Paul C. Huck Sr.J. James Lawrence King D.J. Kenneth A. Marra | MDL-1626 IN RE: Accutane Products Liability Litigation | 8 | 35 | | |
| | | MDL-2051 IN RE: Denture Cream Products Liability Litigation | 65 | 65 | | |
| | | MDL-2005 IN RE: Air Crash at Tegucigalpa, Honduras, on May 30, 2008 | 1 | 2 | | |
| | | MDL-2106 IN RE: Fontainebleau Las Vegas Contract Litigation | 2 | 2 | | |
| | | MDL-1888 IN RE: Marine Hose Antitrust Litigation (No. II) | 3 | 8 | | |
| | | MDL-2073 IN RE: Optimal Strategic U.S. Equity Fund Securities Litigation | 3 | 3 | | |
| | | MDL-2036 IN RE: Checking Account Overdraft Litigation | 18 | 42 | | |
| | | MDL-1916 IN RE: Chiquita Brands International, Inc., Alien Tort Statute and Shareholders Derivative Litigation | 11 | 11 | | |
| | | MDL-1928 IN RE: Trasylol Products Liability Litigation | 561 | 644 | | |
| | | MDL-1334 IN RE: Managed Care Litigation | 3 | 126 | | |
| | | MDL-2057 IN RE: Kaplan Higher Education Corp. Qui Tam Litigation | 3 | 3 | | |
| | | GAM | D.J. Clay D. Land D.J. Clay D. Land | MDL-1854 IN RE: Tyson Foods, Inc., Fair Labor Standards Act Litigation | 26 | 26 |
| | | | | MDL-2004 IN RE: Mentor Corp. ObTape Transoburrator Sling Products Liability Litigation | 52 | 52 |
| | | GAN | D.J. Timothy C. Batten, Sr. D.J. Charles A. Pannell, Jr. D.J. Thomas W. Thrash, Jr. D.J. Thomas W. Thrash, Jr. D.J. Thomas W. Thrash, Jr. | MDL-2089 IN RE: Airline Baggage Fee Antitrust Litigation | 12 | 12 |
| | | | | MDL-2035 IN RE: RBS WorldPay, Inc., Customer Data Security Breach Litigation | 2 | 2 |
| MDL-1804 IN RE: Stand 'n Seal Products Liability Litigation | 39 | | | 41 | | |
| MDL-1845 IN RE: ConAgra Peanut Butter Products Liability Litigation | 339 | | | 344 | | |
| MDL-2084 IN RE: AndroGel Antitrust Litigation (No. II) | 9 | | | 9 | | |

| District | JUDGE | LITIGATION | Actions | Total | | |
|---|-------------------------------|--|----------------------------|--|-----|-----|
| | | | Now Pending | Actions (Historical) | | |
| ILN | D.J. Wayne R. Andersen | MDL-1876 IN RE: Long Beach Mortgage Company Truth in Lending Act 1-4 Family Rider Litigation | 3 | 3 | | |
| | | MDL-1715 IN RE: Ameriquest Mortgage Co. Mortgage Lending Practices Litigation | 481 | 521 | | |
| | | MDL-2037 IN RE: Air Crash Over Makassar Strait, Sulawesi, Indonesia, on January 1, 2007 | 3 | 3 | | |
| | | MDL-1784 IN RE: McDonald's French Fries Litigation | 13 | 16 | | |
| | | MDL-1996 IN RE: Potash Antitrust Litigation (No. II) | 1 | 8 | | |
| | | MDL-1536 IN RE: Sulfuric Acid Antitrust Litigation | 7 | 7 | | |
| | | MDL-1783 IN RE: JP Morgan Chase & Co. Securities Litigation | 3 | 3 | | |
| | | MDL-1940 IN RE: Aqua Dots Products Liability Litigation | 13 | 13 | | |
| | | MDL-1957 IN RE: Aftermarket Filters Antitrust Litigation | 53 | 53 | | |
| | | MDL-2109 IN RE: Plasma-Derivative Protein Therapies Antitrust Litigation | 10 | 10 | | |
| | | MDL-986 IN RE: "Factor VIII or IX Concentrate Blood Products" Products Liability Litigation | 118 | 376 | | |
| | | MDL-1703 IN RE: Sears, Roebuck & Co. Tools Marketing and Sales Practices Litigation | 4 | 7 | | |
| | | MDL-2031 IN RE: Dairy Farmers of America, Inc., Cheese Antitrust Litigation | 7 | 7 | | |
| | | MDL-2103 IN RE: Kentucky Grilled Chicken Coupon Marketing and Sales Practices Litigation | 4 | 4 | | |
| | | MDL-1997 IN RE: Text Messaging Antitrust Litigation | 38 | 38 | | |
| ILC | C.J. Michael Patrick McCuskey | MDL-1981 IN RE: AON Corp. Wage & Hour Employment Practices Litigation | 2 | 2 | | |
| | | MDL-1491 IN RE: African-American Slave Descendants Litigation | 1 | 10 | | |
| | | MDL-1604 IN RE: Ocwen Federal Bank FSB Mortgage Servicing Litigation | 72 | 93 | | |
| | | MDL-1392 IN RE: General Motors Corporation Vehicle Paint Litigation (No. III) | 2 | 3 | | |
| | | MDL-1946 IN RE: BP Products North America, Inc., Antitrust Litigation (No. II) | 19 | 20 | | |
| | | MDL-2104 IN RE: IKO Roofing Shingle Products Liability Litigation | 6 | 6 | | |
| | | ILS | C.J. David R. Hemdon | MDL-2100 IN RE: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation | 433 | 434 |
| | | | | MDL-1748 IN RE: Profler Products Liability Litigation | 4 | 4 |
| | | | | MDL-1700 IN RE: FedEx Ground Package System, Inc., Employment Practices Litigation (No. II) | 64 | 72 |
| | | INN | C.J. Robert L. Miller, Jr. | MDL-1373 IN RE: Bridgestone/Firestone, Inc., Tires Products Liability Litigation | 12 | 837 |
| | | | | MDL-2055 IN RE: Zimmer Holdings, Inc., Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation | 1 | 3 |
| | | INS | D.J. Sarah E. Barker | MDL-1313 IN RE: AT&T Corp. Fiber Optic Cable Installation Litigation | 42 | 43 |
| | | | | MDL-1727 IN RE: COBRA Tax Shelters Litigation | 1 | 4 |
| | | KSE | D.J. John W. Lungstrum | MDL-1616 IN RE: Urethane Antitrust Litigation | 6 | 32 |
| | | | | MDL-1721 IN RE: Cessna 208 Series Aircraft Products Liability Litigation | 19 | 22 |
| MDL-1840 IN RE: Motor Fuel Temperature Sales Practices Litigation | 46 | | | 51 | | |
| KYE | Sr.J. Joseph M. Hood | MDL-1877 IN RE: ClassicStar Mare Lease Litigation | 25 | 30 | | |

| District | JUDGE | LITIGATION | Actions | Total |
|----------|--|--|-----------------------------------|--|
| | | | Now Pending | Actions (Historical) |
| KYW | C.J. (KYE) Jennifer B. Coffman D.J. John G. Heyburn II C.J. Thomas B. Russell | MDL-2016 IN RE: Yamaha Motor Corp. Rhino ATV Products Liability Litigation | 250 | 257 |
| | | MDL-1974 IN RE: Countrywide Financial Corp. Mortgage Lending Practices Litigation MDL-1998 IN RE: Countrywide Financial Corp. Customer Data Security Breach Litigation | 4 36 | 4 37 |
| LAE | D.J. Carl J. Barbier D.J. Kurt D. Engelhardt D.J. Eldon E. Fallon D.J. Eldon E. Fallon D.J. Eldon E. Fallon D.J. Martin L.C. Feldman | MDL-2116 IN RE: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation | 15 | 15 |
| | | MDL-1873 IN RE: FEMA Trailer Formaldehyde Products Liability Litigation MDL-1355 IN RE: Propulsid Products Liability Litigation MDL-1657 IN RE: Vioxx Marketing, Sales Practices and Products Liability Litigation MDL-2047 IN RE: Chinese-Manufactured Drywall Products Liability Litigation MDL-1984 IN RE: Directech Southwest, Inc., Fair Labor Standards Act (FLSA) Litigation | 1,958 277 7,986 246 3 | 1,976 474 10,292 251 3 |
| MA | D.J. Nancy Gettner D.J. Nathaniel M. Gorton D.J. Patti B. Saris D.J. Patti B. Saris D.J. Richard G. Stearns D.J. Joseph L. Taurro D.J. Douglas P. Woodlock | MDL-1354 IN RE: Citigroup, Inc., Capital Accumulation Plan Litigation MDL-2067 IN RE: Celexa and Lexapro Marketing and Sales Practices Litigation MDL-1456 IN RE: Pharmaceutical Industry Average Wholesale Price Litigation MDL-1629 IN RE: Neuronin Marketing, Sales Practices and Products Liability Litigation MDL-1861 IN RE: Wellnx Marketing and Sales Practices Litigation MDL-1790 IN RE: Volkswagen and Audi Warranty Extension Litigation MDL-1704 IN RE: M3Power Razor System Marketing & Sales Practices Litigation | 1 7 10 3 1 1 1 | 18 7 132 248 17 8 26 |
| | | MDL-1982 IN RE: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation MDL-1961 IN RE: Municipal Mortgage & Equity, LLC, Securities and Derivative Litigation MDL-1332 IN RE: Microsoft Corp. Windows Operating Systems Antitrust Litigation MDL-1586 IN RE: Mutual Funds Investment Litigation | 8 12 2 421 | 12 14 117 437 |
| ME | D.J. Richard D. Bennett Sr.J. Marvin J. Garbis D.J. J. Frederick Moltz D.J. J. Frederick Moltz, Cir.J. Andre M. Davis and D.J. Catherine C. Blake D.J. Roger W. Titus D.J. Roger W. Titus | MDL-1911 IN RE: Michelin North America, Inc., PAX System Marketing and Sales Practices Litigation MDL-2083 IN RE: KBR, Inc., Burn Pit Litigation | 1 40 | 7 40 |
| | | MDL-1532 IN RE: New Motor Vehicles Canadian Export Antitrust Litigation MDL-1954 IN RE: Hannaford Bros. Co. Customer Data Security Breach Litigation MDL-2068 IN RE: Light Cigarettes Marketing and Sales Practices Litigation | 27 23 22 | 31 24 22 |
| MIW | D.J. Paul D. Bortman D.J. Sean F. Cox D.J. Sean F. Cox Sr.J. Bernard A. Friedman D.J. Robert Holmes Bell | MDL-1952 IN RE: Packaged Ice Antitrust Litigation MDL-1867 IN RE: OnStar Contract Litigation MDL-2042 IN RE: Refrigerant Compressors Antitrust Litigation MDL-1718 IN RE: Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation | 82 29 47 58 | 85 30 47 136 |
| | | MDL-1846 IN RE: Trade Partners, Inc., Investors Litigation | 5 | 5 |

| District | JUDGE | LITIGATION | Actions | Total |
|--|--|--|-------------|----------------------|
| | | | Now Pending | Actions (Historical) |
| MN | C.J. Michael J Davis D.J. Donovan W. Frank D.J. Donovan W. Frank Sr.J. Richard H. Kyle Sr.J. Richard H. Kyle Sr.J. Paul A. Magnuson D.J. Ann D. Montgomery D.J. Ann D. Montgomery Sr.J. James M. Rosenbaum D.J. John R. Tunheim D.J. John R. Tunheim | MDL-1431 IN RE: Baycol Products Liability Litigation | 13 | 9,106 |
| | | MDL-1708 IN RE: Guidant Corp. Implantable Defibrillators Products Liability Litigation | 182 | 2,137 |
| | | MDL-1990 IN RE: NorthStar Education Finance, Inc., Contract Litigation | 4 | 4 |
| | | MDL-1905 IN RE: Medtronic, Inc., Sprint Fidelis Leads Products Liability Litigation | 799 | 1,023 |
| | | MDL-2059 IN RE: Activated Carbon-Based Hunting Clothing Marketing and Sales Practices Litigation | 10 | 10 |
| | | MDL-1724 IN RE: Viagra Products Liability Litigation | 159 | 176 |
| | | MDL-1958 IN RE: Zurn Pex Plumbing Products Liability Litigation | 13 | 13 |
| | | MDL-2090 IN RE: Wholesale Grocery Products Anthrux Litigation | 4 | 4 |
| | | MDL-1836 IN RE: Mirapex Products Liability Litigation | 14 | 394 |
| | | MDL-1396 IN RE: St. Jude Medical, Inc., Silzone Heart Valves Products Liability Litigation | 4 | 58 |
| MDL-1943 IN RE: Levaquin Products Liability Litigation | 248 | 251 | | |
| MOE | D.J. Henry E. Autrey C.J. Catherine D. Perry D.J. Rodney W. Sippel D.J. Rodney W. Sippel | MDL-1672 IN RE: Express Scripts, Inc., Pharmacy Benefits Management Litigation | 22 | 22 |
| | | MDL-1811 IN RE: Genetically Modified Rice Litigation | 290 | 362 |
| | | MDL-1736 IN RE: Celexa and Lexapro Products Liability Litigation | 41 | 50 |
| | | MDL-1964 IN RE: NuvARING Products Liability Litigation | 226 | 228 |
| MOW | D.J. Richard E. Dorr D.J. Gary A. Fenner D.J. Orrie D. Smith | MDL-1786 IN RE: H&R Block, Inc., Express IRA Marketing Litigation | 17 | 21 |
| | | MDL-2086 IN RE: Pre-Filled Propane Tank Marketing and Sales Practices Litigation | 18 | 18 |
| | | MDL-1967 IN RE: Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation | 38 | 38 |
| MSS | D.J. Keith Starrett | MDL-1872 IN RE: Wayne Farms LLC Fair Labor Standards Act Litigation | 12 | 13 |
| NCE | D.J. Terrence William Boyle | MDL-1959 IN RE: Panacryl Sutures Products Liability Litigation | 10 | 10 |
| NCW | Sr.J. Graham C. Mullen D.J. Frank D. Whitney | MDL-1932 IN RE: Family Dollar Stores, Inc., Wage and Hour Employment Practices Litigation | 20 | 21 |
| | | MDL-1976 IN RE: Lending Tree, LLC, Customer Data Security Breach Litigation | 6 | 6 |
| NH | D.J. Paul J. Barbadoro | MDL-1335 IN RE: Tyco International, Ltd., Securities, Derivative and "ERISA" Litigation | 8 | 110 |

| District | JUDGE | LITIGATION | Actions | | | |
|---|--|---|---|---|----|----|
| | | | Now Pending | Total Actions (Historical) | | |
| NJ | C.J. Garrett E. Brown, Jr. | MDL-1471 IN RE: Compensation of Managerial, Professional and Technical Employees Antitrust Litigation | 4 | 4 | | |
| | | MDL-1663 IN RE: Insurance Brokerage Antitrust Litigation | 17 | 52 | | |
| | | MDL-1687 IN RE: Ford Motor Co. E-350 Van Products Liability Litigation (No. II) | 5 | 5 | | |
| | | MDL-1938 IN RE: Vyorin/Zetia Marketing, Sales Practices and Products Liability Litigation | 135 | 137 | | |
| | | MDL-1658 IN RE: Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation | 1 | 35 | | |
| | | MDL-1857 IN RE: Schering Marketing and Sales Practices Litigation (No. II) | 1 | 6 | | |
| | | MDL-1914 IN RE: Mercedes-Benz Tele Aid Contract Litigation | 10 | 12 | | |
| | | MDL-1956 IN RE: Toshiba America HD DVD Marketing and Sales Practices Litigation | 6 | 6 | | |
| | | MDL-1419 IN RE: K-Dur Antitrust Litigation | 1 | 44 | | |
| | | MDL-2025 IN RE: Staples, Inc., Wage & Hour Employment Practices Litigation | 11 | 11 | | |
| | | MDL-1384 IN RE: Gapabentin Patent Litigation | 8 | 16 | | |
| | | MDL-1479 IN RE: Neuronin Antitrust Litigation | 3 | 22 | | |
| | | MDL-2006 IN RE: Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Products Liability Litigation | 8 | 8 | | |
| | | MDL-2020 IN RE: Aetna, Inc., Out-of-Network "UCR" Rates Litigation | 8 | 12 | | |
| | | MDL-1730 IN RE: Hypodermic Products Antitrust Litigation | 1 | 10 | | |
| | | MDL-1763 IN RE: Human Tissue Products Liability Litigation | 18 | 249 | | |
| | | NV | D.J. Faith S. Hochberg | MDL-2094 IN RE: Cheeros Marketing and Sales Practices Litigation | 5 | 5 |
| MDL-1292 IN RE: Candant Corporation Securities Litigation | 1 | | | 18 | | |
| MDL-1931 IN RE: Virgin Mobile Initial Public Offering (IPO) Securities Litigation | 4 | | | 4 | | |
| MDL-1799 IN RE: Vonage Initial Public Offering (IPO) Securities Litigation | 1 | | | 4 | | |
| MDL-1862 IN RE: Vonage Marketing and Sales Practices Litigation | 4 | | | 5 | | |
| D.J. Jose L. Linares | MDL-1357 IN RE: NOS Communications, Inc., Billing Practices Litigation | | | 3 | 9 | |
| | MDL-1878 IN RE: Southwest Exchange, Inc., Internal Revenue Service § 1031 Tax Deferred Exchange Litigation | | | 4 | 5 | |
| | D.J. William J. Martini | | | MDL-1566 IN RE: Western States Wholesale Natural Gas Antitrust Litigation | 14 | 35 |
| D.J. Peter G. Sheridan | | | | MDL-2023 IN RE: Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation | 12 | 12 |
| | | | | MDL-1575 IN RE: Visa/MasterCard Antitrust Litigation | 3 | 8 |
| D.J. Susan D. Wigenton | | MDL-1720 IN RE: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation | 52 | 53 | | |
| | D.J. Freda L. Wolfson | MDL-1775 IN RE: Air Cargo Shipping Services Antitrust Litigation | 94 | 96 | | |
| D.J. Faith S. Hochberg | | MDL-2120 IN RE: Pamidronate Products Liability Litigation | 10 | 10 | | |
| | MDL-799 IN RE: Air Disaster at Lockerbie, Scotland, on December 21, 1988 | 28 | 297 | | | |
| | MDL-1898 IN RE: American Home Mortgage Securities Litigation | 22 | 22 | | | |
| | MDL-1738 IN RE: Vitamin C Antitrust Litigation | 10 | 10 | | | |
| | MDL-381 IN RE: "Agent Orange" Products Liability Litigation | 7 | 630 | | | |
| | MDL-1596 IN RE: Zyprexa Products Liability Litigation | 186 | 1,913 | | | |
| | NYE | D.J. John Gleeson | MDL-1575 IN RE: Visa/MasterCard Antitrust Litigation | 3 | 8 | |
| | | | MDL-1720 IN RE: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation | 52 | 53 | |
| | | | MDL-1775 IN RE: Air Cargo Shipping Services Antitrust Litigation | 94 | 96 | |
| | D.J. John Gleeson | D.J. John Gleeson | MDL-2120 IN RE: Pamidronate Products Liability Litigation | 10 | 10 | |
| MDL-799 IN RE: Air Disaster at Lockerbie, Scotland, on December 21, 1988 | | | 28 | 297 | | |
| MDL-1898 IN RE: American Home Mortgage Securities Litigation | | | 22 | 22 | | |
| MDL-1738 IN RE: Vitamin C Antitrust Litigation | | | 10 | 10 | | |
| MDL-381 IN RE: "Agent Orange" Products Liability Litigation | | | 7 | 630 | | |
| MDL-1596 IN RE: Zyprexa Products Liability Litigation | | | 186 | 1,913 | | |
| D.J. John Gleeson | | | D.J. John Gleeson | MDL-1575 IN RE: Visa/MasterCard Antitrust Litigation | 3 | 8 |
| | | | | MDL-1720 IN RE: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation | 52 | 53 |
| | | | | MDL-1775 IN RE: Air Cargo Shipping Services Antitrust Litigation | 94 | 96 |
| D.J. John Gleeson | | | D.J. John Gleeson | MDL-2120 IN RE: Pamidronate Products Liability Litigation | 10 | 10 |
| | MDL-799 IN RE: Air Disaster at Lockerbie, Scotland, on December 21, 1988 | 28 | | 297 | | |
| | MDL-1898 IN RE: American Home Mortgage Securities Litigation | 22 | | 22 | | |
| D.J. John Gleeson | D.J. John Gleeson | MDL-1738 IN RE: Vitamin C Antitrust Litigation | 10 | 10 | | |
| | | MDL-381 IN RE: "Agent Orange" Products Liability Litigation | 7 | 630 | | |
| D.J. John Gleeson | D.J. John Gleeson | MDL-1596 IN RE: Zyprexa Products Liability Litigation | 186 | 1,913 | | |
| | | MDL-1596 IN RE: Zyprexa Products Liability Litigation | 186 | 1,913 | | |

| District | JUDGE | LITIGATION | Actions | |
|--------------------------------|---|---|-------------|------------------------------|
| | | | Now Pending | Partial Actions (Historical) |
| NYS | D.J. P. Kevin Castel | MDL-1995 IN RE: Time-Warner Inc. Set-Top Cable Television Box Antitrust Litigation | 7 | 7 |
| | Sr.J. Miriam Goldman Cedarbaum | MDL-2072 IN RE: Federal Home Loan Mortgage Corp. (Freddie Mac) Securities Litigation | 3 | 3 |
| | D.J. Denny Chin | MDL-2058 IN RE: Bank of America Corp. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation | 31 | 31 |
| | D.J. Paul A. Croty | MDL-2013 IN RE: Fannie Mae Securities and Employee Retirement Income Security Act (ERISA) Litigation | 22 | 22 |
| | D.J. George B. Daniels | MDL-1379 IN RE: Literary Works in Electronic Databases Copyright Litigation | 3 | 5 |
| | D.J. George B. Daniels | MDL-1570 IN RE: Terrorist Attacks on September 11, 2001 | 23 | 27 |
| | Sr.J. Kevin Thomas Duffy | MDL-1443 IN RE: America Online, Inc., Community Leaders Litigation | 3 | 3 |
| | Sr.J. Kevin Thomas Duffy | MDL-1584 IN RE: Federal Home Loan Mortgage Corp. Securities & Derivative Litigation (No. II) | 1 | 8 |
| | D.J. Paul G. Gardephe | MDL-2011 IN RE: The Reserve Fund Securities and Derivative Litigation | 37 | 40 |
| | Sr.J. Thomas P. Griesa | MDL-2052 IN RE: Tremont Group Holdings, Inc., Securities Litigation | 9 | 18 |
| | Sr.J. Thomas P. Griesa | MDL-2075 IN RE: Austin Capital Management, Ltd., Securities & Employee Retirement Income Security Act (ERISA) Litigation | 6 | 6 |
| | Sr.J. Thomas P. Griesa | MDL-2082 IN RE: Meridian Funds Group Securities & Employee Retirement Income Security Act (ERISA) Litigation | 4 | 4 |
| | D.J. Richard J. Holwell | MDL-1945 IN RE: State Street Bank and Trust Co. Fixed Income Funds Investment Litigation | 10 | 10 |
| | D.J. Barbara S. Jones | MDL-1291 IN RE: Omeprazole Patent Litigation | 5 | 22 |
| | D.J. Barbara S. Jones | MDL-1936 IN RE: Train Derailment Near Tyrone, Oklahoma, on April 21, 2005 | 9 | 9 |
| | D.J. Barbara S. Jones | MDL-2027 IN RE: Satyam Computer Services, Ltd., Securities Litigation | 11 | 11 |
| | D.J. Lewis A. Kaplan | MDL-1653 IN RE: Parmalat Securities Litigation | 16 | 17 |
| | D.J. Lewis A. Kaplan | MDL-2017 IN RE: Lehman Brothers Holdings, Inc., Securities & Employee Retirement Income Security Act (ERISA) Litigation | 36 | 36 |
| | Sr.J. John F. Keenan | MDL-1789 IN RE: Fosamax Products Liability Litigation | 792 | 863 |
| D.J. Victor Marrero | MDL-1950 IN RE: Municipal Derivatives Antitrust Litigation | 3 | 20 | |
| D.J. Victor Marrero | MDL-2088 IN RE: Fairfield Greenwich Group Securities Litigation | 4 | 4 | |
| Sr.J. Lawrence M. McKenna | MDL-1529 IN RE: Adelpia Communications Corp. Securities & Derivative Litigation (No. II) | 64 | 72 | |
| D.J. Colleen McMahon | MDL-1500 IN RE: AOL Time Warner Inc. Securities & "ERISA" Litigation | 1 | 72 | |
| Sr.J. Robert P. Patterson, Jr. | MDL-2102 IN RE: Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices and Products Liability Litigation | 7 | 7 | |
| D.J. William H. Pauley III | MDL-1409 IN RE: Currency Conversion Fee Antitrust Litigation | 6 | 35 | |
| C.J. Loretta A. Preska | MDL-1659 IN RE: Nortel Networks Corp. Securities Litigation | 1 | 30 | |
| C.J. Loretta A. Preska | MDL-2030 IN RE: Merrill Lynch & Co., Inc., Auction Rate Securities (ARS) Marketing Litigation | 7 | 7 | |
| D.J. Jed S. Rakoff | MDL-1902 IN RE: Refco Inc. Securities Litigation | 109 | 116 | |
| D.J. Jed S. Rakoff | MDL-1933 IN RE: Merrill Lynch & Co., Inc., Securities, Derivative & "ERISA" Litigation | 5 | 21 | |

| District | JUDGE | LITIGATION | Actions | |
|----------------|--|---|-------------|----------------------------|
| | | | Pending Now | Total Actions (Historical) |
| NYS (cont.) | D.J. Shira Ann Scheindlin D.J. Shira Ann Scheindlin D.J. Cathy Seibel D.J. Sidney H. Stein D.J. Sidney H. Stein D.J. Richard J. Sullivan Sr.J. Robert W. Sweet and Sr.J. John F. Keenan* Sr.J. Robert W. Sweet | MDL-1358 IN RE: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation | 138 | 172 |
| | | MDL-1499 IN RE: South African Apartheid Litigation | 5 | 14 |
| | | MDL-1508 IN RE: Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation | 5 | 18 |
| | | MDL-1603 IN RE: OxyContin Antitrust Litigation | 66 | 76 |
| | | MDL-2070 IN RE: Citigroup Inc. Securities Litigation | 12 | 12 |
| | | MDL-1739 IN RE: Grand Theft Auto Video Game Consumer Litigation (No. II) | 8 | 8 |
| | | MDL-1448 IN RE: Air Crash at Belle Harbor, New York, on November 12, 2001 | 1 | 376 |
| | | MDL-1963 IN RE: The Bear Stearns Companies Inc. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation | 27 | 27 |
| | | MDL-1688 IN RE: Pfizer Inc. Securities, Derivative & "ERISA" Litigation | 22 | 30 |
| | | MDL-2043 IN RE: Citigroup, Inc., Auction Rate Securities (ARS) Marketing Litigation (No. II) | 5 | 5 |
| NYW | D.J. William M. Skretzky | MDL-2085 IN RE: Air Crash Near Clarence Center, New York, on February 12, 2009 | 29 | 29 |
| | | | | |
| OHN | Sr.J. Ann Aldrich C.J. James G. Carr Sr.J. Peter C. Economus D.J. Patricia A. Gaughan D.J. James S. Gwin Sr.J. David A. Katz D.J. Solomon Oliver, Jr. | MDL-2066 IN RE: Oral Sodium Phosphate Solution-Based Products Liability Litigation | 85 | 85 |
| | | MDL-1953 IN RE: Heparin Products Liability Litigation | 224 | 244 |
| | | MDL-1561 IN RE: Travel Agent Commission Antitrust Litigation | 1 | 3 |
| | | MDL-2044 IN RE: Vertrue Inc. Marketing and Sales Practices Litigation | 13 | 13 |
| | | MDL-2001 IN RE: Whirlpool Corp. Front-Loading Washer Products Liability Litigation | 9 | 9 |
| | | MDL-1742 IN RE: Ortho Evra Products Liability Litigation | 263 | 1,435 |
| | | MDL-2003 IN RE: National City Corp. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation | 17 | 21 |
| | | MDL-1490 IN RE: Commercial Money Center, Inc., Equipment Lease Litigation | 25 | 38 |
| | | MDL-1535 IN RE: Welding Fume Products Liability Litigation | 4,138 | 12,649 |
| | | MDL-1909 IN RE: Gadolinium Contrast Dyes Products Liability Litigation | 504 | 569 |
| OHS | Sr.J. Sandra S. Beckwith Sr.J. James L. Graham Sr.J. James L. Graham | MDL-2050 IN RE: Bill of Lading Transmission and Processing System Patent Litigation | 13 | 13 |
| | | MDL-1565 IN RE: National Century Financial Enterprises, Inc., Investment Litigation | 16 | 22 |
| | | MDL-1829 IN RE: Vision Service Plan Tax Litigation | 11 | 11 |
| OKN | D.J. Gregory K. Frizzell | MDL-1989 IN RE: SemGroup Energy Partners, L.P., Securities Litigation | 5 | 5 |
| OKW | D.J. Robin J. Cauthron D.J. Stephen P. Friot | MDL-2048 IN RE: Cox Enterprises, Inc., Set-Top Cable Television Box Antitrust Litigation | 20 | 20 |
| | | MDL-1564 IN RE: Farmers Insurance Co., Inc., FCRA Litigation | 6 | 12 |
| OR | Sr.J. Robert E. Jones D.J. Michael W. Mosman | MDL-1439 IN RE: Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation | 3 | 13 |
| | | MDL-2053 IN RE: Helicopter Crash Near Weaverville, California, on August 5, 2008 | 12 | 12 |

| District | JUDGE | LITIGATION | Actions | |
|----------|---|--|-------------|--------------------|
| | | | Now Pending | Total (Historical) |
| PAE | C.J. Harvey Bartle III | MDL-1203 IN RE: Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation | 681 | 20,174 |
| | | MDL-1948 IN RE: VTran Media Technologies, LLC, Patent Litigation | 9 | 16 |
| | | MDL-2034 IN RE: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation | 20 | 20 |
| | | MDL-1682 IN RE: Hydrogen Peroxide Antitrust Litigation | 1 | 38 |
| | | MDL-1684 IN RE: Plastics Additives Antitrust Litigation (No. II) | 13 | 14 |
| | | MDL-1992 IN RE: Comcast Corp. Peer-to-Peer (P2P) Transmission Contract Litigation | 7 | 7 |
| | | MDL-2081 IN RE: Blood Reagents Antitrust Litigation | 32 | 32 |
| | | MDL-1782 IN RE: Pharmacy Benefit Managers Antitrust Litigation | 6 | 6 |
| | | MDL-1712 IN RE: American Investors Life Insurance Co. Annuity Marketing and Sales Practices Litigation | 10 | 15 |
| | | MDL-969 IN RE: Unisys Corp. Retiree Medical Benefit "ERISA" Litigation | 9 | 15 |
| | | MDL-1817 IN RE: Certain Teed Corp. Roofing Shingle Products Liability Litigation | 24 | 24 |
| | | MDL-2002 IN RE: Processed Egg Products Antitrust Litigation | 15 | 21 |
| | | MDL-875 IN RE: Asbestos Products Liability Litigation (No. VI) | 47,526 | 159,200 |
| PAM | D.J. Christopher C. Conner | MDL-1871 IN RE: Avandia Marketing, Sales Practices and Products Liability Litigation | 760 | 853 |
| | | MDL-2107 IN RE: Budeprion XL Marketing and Sales Practices Litigation | 9 | 9 |
| | | MDL-1912 IN RE: Fasteners Antitrust Litigation | 34 | 34 |
| | | MDL-1935 IN RE: Chocolate Confectionary Antitrust Litigation | 89 | 91 |
| PAW | D.J. Donetta W. Ambrose D.J. Donetta W. Ambrose D.J. Joy F. Conti C.J. Gary L. Lancaster | MDL-1942 IN RE: Flat Glass Antitrust Litigation (No. II) | 5 | 26 |
| | | MDL-2021 IN RE: Le-Nature's, Inc., Commercial Litigation | 7 | 7 |
| | | MDL-2056 IN RE: Enterprise Rent-A-Car Wage & Hour Employment Practices Litigation | 8 | 8 |
| PR | D.J. Daniel R. Dominguez | MDL-1674 IN RE: Community Bank of Northern Virginia Mortgage Lending Practices Litigation | 7 | 8 |
| | | MDL-1960 IN RE: Puerto Rican Cabotage Antitrust Litigation | 41 | 41 |
| RI | C.J. Mary M. Lisi | MDL-1842 IN RE: Kugel Mesh Hernia Patch Products Liability Litigation | 1,332 | 1,381 |
| SC | D.J. Joseph F. Anderson, Jr. | MDL-2054 IN RE: LandAmerica 1031 Exchange Services, Inc., Internal Revenue Service § 1031 Tax Deferred Exchange Litigation | 2 | 2 |
| | | MDL-1865 IN RE: Household Goods Movers Antitrust Litigation | 3 | 3 |
| | | MDL-1785 IN RE: Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation | 294 | 480 |
| TNE | C.J. Curtis L. Collier D.J. J. Ronnie Greer | MDL-1552 IN RE: UnumProvident Corp. Securities, Derivative & "ERISA" Litigation | 9 | 28 |
| | | MDL-1899 IN RE: Southeastern Milk Antitrust Litigation | 2 | 7 |
| TNM | C.J. Todd J. Campbell Sr.J. John T. Nixon D.J. Aleia A. Trauger | MDL-1760 IN RE: Aredia and Zometra Products Liability Litigation | 532 | 601 |
| | | MDL-1537 IN RE: Nortel Networks Corp. "ERISA" Litigation | 6 | 6 |
| | | MDL-1921 IN RE: Nissan North America, Inc., Odometer Litigation (No. II) | 6 | 6 |

| District | JUDGE | LITIGATION | Actions | |
|----------|--|---|-------------------------|----------------------------|
| | | | Now Pending | Total Actions (Historical) |
| TNW | D.J. J. Daniel Breen D.J. Samuel H. Mays, Jr. | MDL-1551 IN RE: Reciprocal of America (ROA) Sales Practices Litigation MDL-2009 IN RE: Regions Morgan Keegan Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation | 18 34 | 18 35 |
| TXN | Sr. J. A. Joe Fish Sr. J. W. Royal Furgeson, Jr. D.J. David C. Godbey D.J. Terry R. Means D.J. Jane J. Boyle | MDL-1578 IN RE: UICI "Association-Group" Insurance Litigation MDL-2098 IN RE: Kitec Plumbing System Products Liability Litigation MDL-2099 IN RE: Stanford Entities Securities Litigation MDL-1875 IN RE: RadioShack Corp, "ERISA" Litigation MDL-1983 IN RE: Indianapolis Life Insurance Company I.R.S. § 412(G) Plans Life Insurance Marketing Litigation | 2 12 12 1 7 | 29 12 12 5 7 |
| TXS | D.J. Melinda Harmon D.J. Lynn N. Hughes D.J. Lee H. Rosenthal | MDL-1446 IN RE: Enron Corp. Securities, Derivative & "ERISA" Litigation MDL-1609 IN RE: Service Corporation International Securities Litigation MDL-2046 IN RE: Heartland Payment Systems, Inc., Customer Data Security Breach Litigation | 37 1 26 | 199 4 27 |
| WAW | C.J. Robert S. Lasnik D.J. Marsha J. Pechman Sr. J. Thomas S. Zilly | MDL-2076 IN RE: Park West Galleries, Inc., Marketing and Sales Practices Litigation MDL-1919 IN RE: Washington Mutual, Inc., Securities, Derivative & "ERISA" Litigation MDL-1972 IN RE: Hawaiian and Guamanian Cabotage Antitrust Litigation | 6 6 26 | 6 26 27 |
| WIE | D.J. Lynn S. Adelman | MDL-1999 IN RE: Lawnmower Engine Horsepower Marketing and Sales Practices Litigation (No. 11) | 65 | 65 |
| WVS | C.J. Joseph R. Goodwin | MDL-1968 IN RE: Digtiek Products Liability Litigation | 449 | 457 |

FEB 22 2010

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West VirginiaIN RE TOYOTA MOTOR CORP.
DEFECTIVE GAS PEDAL PRODUCTS
LIABILITY LITIGATION

No. MDL DOCKET NO. 2151

2:09-1247

*Graves v. Toyota Motor Manufacturing et al.***PLAINTIFF'S MOTION FOR TRANSFER OF RELATED ACTIONS TO THE
DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Dale Roberts, Plaintiff and proposed class representative in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts Action*"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully moves the Judicial Panel on Multidistrict Litigation (the "Panel") for entry of an Order pursuant to 28 U.S.C. § 1407 transferring the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina (the "South Carolina District Court") for coordinated or consolidated pretrial proceedings with the *Roberts Action* before Judge Harwell.

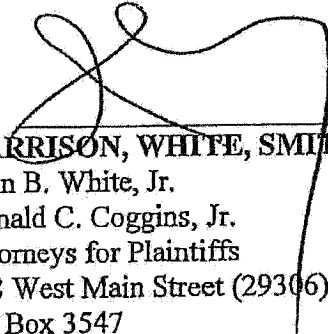
As set forth more fully in the accompanying Brief in Support, each of the actions listed in the Schedule of Actions is based on sudden, unintended acceleration in motor vehicles designed, manufactured, marketed, and sold by Defendants Toyota Motor Corporation and/or Toyota Motor Sales, U.S.A., Inc. (collectively, "Toyota") and Toyota's conduct regarding that acceleration defect. Transfer of the actions to one forum for coordinated or consolidated pretrial proceedings will be for the convenience of parties and witnesses because the actions share many factual questions and involve parties, witnesses, and evidence spread across the country.

Coordinated or consolidated pretrial proceedings will promote the just and efficient conduct of the actions by preventing duplicative discovery and conflicting pretrial rulings on common factual questions. The South Carolina District Court, where one of the Related Actions is currently pending, is well-suited for coordinated or consolidated pretrial proceedings in this litigation due to its geographic location and its experience with multidistrict litigation, and Judge Harwell's ability and experience with class actions and complex litigation qualify him to handle those proceedings.

For the reasons set forth above and in the accompanying Brief in Support, the Panel should transfer the Related Actions to the South Carolina District Court for coordinated or consolidated pretrial proceedings with the *Roberts* Action before Judge Harwell pursuant to § 1407.

DATED: February 18, 2010

Respectfully submitted,

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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE TOYOTA MOTOR CORP.
DEFECTIVE GAS PEDAL PRODUCTS
LIABILITY LITIGATION

No. MDL DOCKET NO. 20510

*CA 2:09-1247
Graves v. Toyota Motor Manufacturing, et al.*

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF RELATED
ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR
CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Plaintiff Dale Roberts, individually and on behalf of all others similarly situated, in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts Action*"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully submits this Brief in Support of Plaintiff's Motion for Transfer and Consolidation of Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.

**I.
INTRODUCTION**

The Judicial Panel on Multidistrict Panel (the "Panel") should transfer the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina ("South Carolina District Court"), for coordinated or consolidated pretrial proceedings with the *Roberts Action* before the Honorable R. Bryan Harwell. These actions satisfy § 1407's criteria for coordination or consolidation because they involve common questions of fact and centralization will be for the convenience of the parties and witness, and will promote the just and efficient conduct of these actions. Absent coordination or consolidation, duplicative discovery and pretrial hearings and

conflicting pretrial rulings regarding common questions of fact will result.

The South Carolina District Court, Spartanburg Division, is an appropriate venue for coordinated or consolidated pretrial proceedings due to its geographic proximity to Kentucky and Washington, D.C., which may likely be the two largest repositories of witnesses and evidence in this litigation, and its ability to handle multidistrict litigation. Moreover, Judge Harwell is well-qualified to preside over coordinated or consolidated pretrial proceedings.

II. BACKGROUND OF LITIGATION

Plaintiff Roberts filed a Class Action Complaint against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and parties whose true names and capacities are currently unknown to Plaintiff Roberts (collectively, “Defendants”) on February 5, 2010 on behalf of himself and a Plaintiff Class consisting of all persons or entities domiciled or residing in the United States who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants’ Electronic Throttle Control System with Intelligence (“ETCS-i”), but not equipped with Brake Override System technology (“BOS”). (Compl. ¶ 32 (Exhibit B).) Plaintiff alleges that subject vehicles are defective because they are subject to uncontrolled, unintended, and/or sudden acceleration as a result of Defendants’ admittedly faulty ETCS-i coupled with the lack of BOS. (*Id.* ¶ 9.) Plaintiff contends that Defendants knew or should have about the acceleration defect in the subject vehicles, but concealed or failed to warn the Plaintiff Class about the defect. (*See, e.g., id.* ¶¶ 76-77.)

Plaintiff seeks compensatory damages for the Plaintiff Class for the diminution in the fair market value of the subject vehicles that resulted from Defendants’ breach of express and implied warranties. (*Id.* ¶¶ 52-53, 61-62, 72.) Plaintiff also seeks compensatory damages for a Plaintiff Subclass consisting of persons or entities domiciled or residing in the United States who

purchased at least one of the subject vehicles and normally used it for personal, family, or household purposes for the diminution in the fair market value of those vehicles sustained as a result of Defendants' violation of the Magnuson-Moss Warranty Act. (*Id.* ¶¶ 32, 63-72.) In addition, Plaintiff seeks compensatory and any other authorized damages for a Subclass consisting of persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, and Washington for economic loss that resulted from Defendants' violation of those states' consumer protection statutes. (*Id.* ¶¶ 32, 73-97.)

As a result of the acceleration defect, Defendants began recalling vehicles in September 2009. To date, Defendants have issued approximately 10 million recall notices for problems related to unintended acceleration in their vehicles, about 2 million of which are involved in more than one recall. Defendants' recalls of and conduct regarding the subject vehicles have given rise to class actions filed across the country seeking economic damages caused by the acceleration defect in Defendants' vehicles. (*See* Schedule of Actions (Ex. A).) Plaintiff Roberts expects additional related class and individual actions to be filed in the near future.

III. ARGUMENT & AUTHORITIES

A. The Roberts Action and the Related Actions Are Appropriate for Transfer and Pretrial Coordination or Consolidation Under 28 U.S.C. § 1407.

Title 28, § 1407(a) of the United States Code provides: "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a). The Panel "shall" make such transfers when they will further "the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions." *Id.* As

explained below, the *Roberts* Action and the Related Actions meet these criteria.

1. *These Actions Involve Common Questions of Fact.*

The *Roberts* Action and the Related Actions satisfy the first criterion of § 1407(a) because they involve many common questions of fact. Each action arises from the diminished value of Toyota vehicles as a result of product defects related to unintended acceleration, and also relates to Defendants' conduct regarding those defects, as can be seen from a comparison of the Complaints filed in those actions. *See In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) ("Indeed, when two or more complaints assert comparable allegations against identical defendants based on similar transactions or events, common factual questions are presumed."¹) The common questions derive from, but are not limited to, the unknown cause of uncontrolled, unintended, and/or sudden acceleration in the subject vehicles, Defendants' knowledge about the acceleration defect, and when Defendants' acquired or should have acquired that knowledge, and Defendants' conduct after learning of the unintended acceleration defects.

2. *Coordination or Consolidation of These Actions Will Be for the Convenience of the Parties and Witnesses.*

Coordination or consolidation of these actions will satisfy the second criterion under § 1407(a) by eliminating party and witness inconvenience and unnecessary expenses that would result from the production of the same documents and evidence and the depositions of the same

¹ Although the defendants in the *Roberts* Action and the Related Actions are not identical, transfer and consolidation is appropriate because all of the named defendants are Toyota entities that participated in the design, manufacture, marketing, distribution, or sale of vehicles with the acceleration defect. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Sup. 2d 1377, 379 (J.P.M.L. 2001) ("Notwithstanding differences among the actions in terms of named defendants, specific products involved, legal theories of recovery, status as class actions, and/or types of injury alleged, all actions remain rooted in complex core questions concerning the safety of [the defective product]."); *see also In re Silicone Breast Implant Litig.*, 793 F. Supp. 1098, 1100 (J.P.M.L. 1992) (finding that common questions of fact existed where different manufacturers designed similar defective products).

witnesses in each of the Related Actions and future consumer actions based on the acceleration defect in Defendants' vehicles. *See In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (stating that transfer under § 1407 would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities"). Coordination or consolidation will eliminate the possibility of duplicative discovery by enabling a single judge to formulate a pretrial program to coordinate discovery in these actions. *See In re A.H. Robins Co., Inc., "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975) (stating that transfer under § 1407 was "necessary in order to prevent duplication of discovery"); *In re Nat'l Airlines, Inc. Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 399 F. Supp. 1405, 1406-07 (J.P.M.L. 1975) (stating that "transfer under § 1407 is clearly necessary in order to prevent duplicative discovery" that would result from common factual issues).

3. *Coordination or Consolidation of These Actions Will Promote the Just and Efficient Conduct of These Actions.*

The various pretrial disputes likely to arise in these overlapping and parallel actions will be virtually identical, including issues concerning the sufficiency of the pleadings, the nature and scope of discovery, and questions regarding privilege. The Panel has long recognized that overlapping and parallel actions asserting similar claims and based upon similar complex factual questions are particularly well-suited for consolidation or coordination pursuant to § 1407 due to the potential for conflicting pretrial rulings on common questions of fact and duplicative pretrial proceedings in the absence of consolidation or coordination. *See, e.g., In re First Nat'l Bank, Havener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (holding that transfer under § 1407 was "necessary, even though only two actions [were] involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of

inconsistent pretrial rulings” where actions arose from same factual situation and shared complex questions of fact). Accordingly, the Panel has repeatedly consolidated or coordinated actions arising from defective motor vehicle parts. *See, e.g., In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (holding that centralization under § 1407 was warranted with respect to actions alleging that a design defect in certain of manufacturer’s vehicles resulted in uneven and premature tire wear); *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (holding that centralization under § 1407 was “necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings” in litigation arising from defective truck wheel).

Coordination or consolidation is especially warranted where, as here, more than one class action is based on the same underlying factual questions because of the danger of conflicting class certification decisions if the class actions are not coordinated or consolidated. The panel has “consistently held that transfer of actions under §1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exist.” *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001) (“Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of privilege issues, confidentiality issues and class certification), and conserve the resources of the parties, their counsel and the judiciary.”); *In re S. Pac. Transp. Co. Employment Practices Litig.*, 429 F. Supp. 529, 531 (J.P.M.L. 1977) (concluding that transfer under § 1407 was necessary due in part to the “possibility of conflicting class determinations”). In addition, following coordination or consolidation under § 1407, pretrial proceedings regarding the relatively small number of non-common questions of fact can

be conducted along with pretrial proceedings involving common questions of fact. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d at 1386 (stating that “pretrial proceedings with respect to non-common issues [can] proceed concurrently with pretrial proceedings on common issues”) (citing *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. at 974).

In sum, the pending nationwide class actions present complex factual issues such that transfer and consolidation are particularly desirable. *See C. Wright & A. Miller, Federal Practice & Procedure* § 3863 (3d ed. 1998) (“In particular large complex multidistrict class actions, it has been argued that it is especially important to order pretrial consolidation; this will enable a single judge to restrict ‘disjoined actions into what can be termed a “super class action” [, which] may be the only form in which the litigation can be handled by the judicial system.”) (alteration in original). Therefore, for the sake of the parties and witnesses’ convenience and judicial efficiency and consistency, the Panel should coordinate or consolidate the Related Actions and the *Roberts* Action for pretrial proceedings in one forum.

B. The Panel Should Transfer the Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings with the *Roberts* Action.

I. The South Carolina District Court’s Spartanburg Division Is An Appropriate Venue for Coordination or Consolidation.

In terms of scale and logistics, these actions are similar to those involved in the Phenylpropanolamine Products Liability Litigation. In granting a motion for transfer and centralization in that litigation, the Panel explained:

Given the range of locations of parties and witnesses in this docket, the geographic dispersal of current and anticipated constituent actions, and the wide array already of suggested transferee districts, it is clear that any one of a large number of districts would qualify as an appropriate transferee forum for this litigation nationwide in scope.

In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 173 F. Supp. 2d 1377, 1379-80 (J.P.M.L. 2001). Notwithstanding that a number of districts qualify as an appropriate transferee forum for the nationwide litigation at issue here, the District of South Carolina is particularly well-suited for coordinated or consolidated pretrial proceedings given the convenience and efficiency that would result from centralization there.

Although Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in Torrance, California, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), a subsidiary of Defendant Toyota Motor Corporation, is located in Erlanger, Kentucky. TEMA is responsible for the engineering design, development, research and development, and manufacture of Toyota vehicles in the United States, Canada, and Mexico. TEMA operates 14 parts and vehicles manufacturing plants across North America. Upon information and belief, a considerable amount of evidence and number of witness with on-the-ground knowledge about the acceleration defect in the subject vehicles are likely to be located in Kentucky.

Additionally, Toyota Motor North America, Inc. ("TMA"), Defendant Toyota Motor Corporation's holding company for its sales and manufacturing companies in the United States, has offices in Washington, D.C., New York, and Miami. TMA's functions include government and regulatory affairs, corporate advertising, and corporate communications. TMA's Washington, D.C. office has the most responsibility over government and regulatory affairs and is thus, upon information and belief, the likely location of much evidence and many witnesses with knowledge of Defendant's conduct regarding the acceleration defect in the subject vehicles.

Therefore, Kentucky and Washington, D.C. may likely be the two largest repositories of witnesses and evidence in these actions, making the nearby District of South Carolina a more convenient forum for parties and witnesses and discovery activities than the Central District of

California or the Eastern District of Louisiana, the two other proposed forums for coordinated or consolidated pretrial proceedings. Moreover, while the average number of pending cases per district judge in the District of South Carolina and the Central District of California was approximately 425 cases as of September 30, 2008, the average number of pending cases per district judge in the Eastern District of Louisiana was 1,305 cases as of that date. (*See* Judicial Caseload Profiles (Exhibit C).)

Furthermore, the Panel has previously found the District of South Carolina to be an appropriate venue for multidistrict litigation. *See, e.g., In re Household Goods Movers Antitrust Litig.*, MDL Docket No. 1865, 502 F. Supp. 2d 1356 (J.P.M.L. 2007); *In re Bausch & Lomb Contact Lens Solution Prods. Liab. Litig.*, MDL Docket No. 1785, 444 F. Supp. 2d 1336 (J.P.M.L. 2006); *In re Thaxton Group, Inc. Sec. Litig.*, MDL Docket No. 1612, 323 F. Supp. 2d 1374 (J.P.M.L. 2004); *In re Elec. Receptacle Prods. Liab. Litig.*, MDL Docket No. 1595, 313 F. Supp. 2d 1378 (J.P.M.L. 2004); *In re Am. Gen. Life & Accident Ins. Co. Indus. Life Ins. Litig.*, MDL Docket No. 1429, 175 F. Supp. 2d 1380 (J.P.M.L. 2001); *In re Air Crash at Charlotte, N.C., on July 2, 1994*, MDL Docket No. 1041.

The Spartanburg Division of the South Carolina District Court is located in Spartanburg, South Carolina. Spartanburg is part of the Greenville-Spartanburg-Anderson Combined Statistical area, which had an estimated population of 1,203,795 in 2006. The nearby Greenville-Spartanburg International Airport serves more than 1.5 million passengers per year and offers direct flights to and from Atlanta, Charlotte, Chicago, Cleveland, Cincinnati, Dallas/Ft. Worth, Detroit, Ft. Lauderdale, Houston, New York, Newark, Orlando, Philadelphia, Tampa/St. Petersburg, and Washington, D.C. The Spartanburg-Greenville International Airport is served by 16 airlines, including Continental Airlines, Delta Air Lines, Northwest Airlines, Northwest

Air Link, United Express Airlines, U.S. Airways, and U.S. Airways Express. Furthermore, the Federal Courthouse in Spartanburg is approximately 55 minutes by car from Charlotte/Douglas International Airport, the ninth busiest airport in the world and a major airline hub and international gateway, with direct flights to all major American cities. Charlotte/Douglas International Airport serves the Greenville-Spartanburg metropolitan area and upstate South Carolina, in addition to the 1.7 million residents of the Charlotte, North Carolina metropolitan area. In addition, Hartsfield-Jackson Atlanta International Airport, the world's busiest, is one hour away from Greenville-Spartanburg International Airport by air and offers direct flights to and from all major American and international cities.

Spartanburg has ample hotel and office accommodations and offers established legal service support systems. Additional hotel, office, and legal support systems are also available in nearby Greenville, which is 25 minutes away by car. Therefore, the Related Actions and any future tag-along actions would benefit from coordination or consolidation in the Spartanburg Division of the South Carolina District Court. *See In re Worldcom, Inc. Sec. & "ERISA" Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002) (observing that a nationwide litigation would benefit from centralization in city that is "well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services").

2. *The Honorable R. Bryan Harwell Is Well-Qualified to Conduct Coordinated or Consolidated Pretrial Proceedings.*

The Honorable R. Bryan Harwell, the judge before whom the Roberts Action is pending in the District of South Carolina, is a very capable jurist with considerable experience in presiding over complex litigation. In particular, Judge Harwell has conducted pretrial proceedings in three class actions and one mass tort litigation. *See Latham v. Matthews*, 662 F. Supp. 2d 441 (D.S.C. 2009) (granting in part and denying in part motions to dismiss in class

action against medical device manufacturer and others involving alleged violations of federal securities laws and regulations); *George v. Duke Energy Retirement Cash Balance Plan*, 560 F. Supp. 2d 444 (D.S.C. 2008) (granting in part and denying in part summary judgment in class action brought under Employee Retirement Income Security Act and Age Discrimination Act as a result of employer's conversion of traditional defined benefit plan to cash balance plan); *In re DNA Ex Post Facto Issues*, No. 299-cv-5555-RBH, 2007 WL 4443207 (D.S.C. Dec. 14, 2007) (denying motion for reconsideration of grant of summary judgment in lead case of mass tort litigation involving the South Carolina DNA Act); *Smith v. G. Joannou Cycle Co.*, No. 4:06-cv-01577-RBH, 2007 WL 3254771 (D.S.C. Nov. 1, 2007) (dismissing for lack of subject matter jurisdiction class action against bicycle manufacturer related to failure to provide warranty service).

While detailed statistics about the caseloads of the particular judges in the proposed forums are not available, the statistics that are available show that, as of March 31, 2009, Judge Harwell had only one civil case pending for more than three years and one motion pending for more than six months. (Civil Justice Reform Act District Summary Report at 26 (Exhibit D).) In contrast, according to those statistics, Judge Ivan L.R. Lemelle and Chief Judge Sarah S. Vance of the Eastern District of Louisiana had three and four cases, respectively, pending for more than three years, and many of the district judges in the Central District of California had more than ten cases pending for more than three years. (*Id.* at 31, 72.)

IV. CONCLUSION

For the reasons set forth above, the Panel should transfer the Related Actions to the District of South Carolina, Spartanburg Division, for coordination or consolidation with the *Roberts* Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

Roberts Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

DATED: February 18, 2010

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Motion for Transfer and Coordination or Consolidation of Related Actions Under 28 U.S.C. § 1407, Plaintiff's Brief in Support of to be served this 18th day of February, 2010 via Electronic filing and/or U.S. mail, postage prepaid upon the following listed clerks and counsel of record:

Clerks:

Seong Bae Choi et al. v. Toyota Motor Corporation, et al. (2:09-cv-08143)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Kmetz, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-08478)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Lane v. Toyota Motor Sales, U.S.A., Inc. (2:09-cv-09158)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Baldisseri v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-09386)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (1:10-cv-00105)

United States District Court for the Central District of California (Southern Division – Santa Ana)
Clerk of the Court
411 West Fourth Street, Room 1053
Santa Ana, C A 92701

Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

United States District Court for the Southern District of Florida (Miami Division)
Steven M. Larimore, Clerk of Court
400 North Miami Avenue, 8th floor
Miami, FL 33128

Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

United States District Court for the Southern District of West Virginia (Charleston Division)
Teresa L. Deppner, Clerk of the Court
P. O. Box 2546
Charleston, WV 25329

Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

United States District Court for the Middle District of Florida (Tampa Division)
Clerk of Court
801 North Florida Avenue
Tampa Florida, 33602

Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)

Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)

Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

United States District Court for the Eastern District of Louisiana
Clerk of Court
500 Poydras Street, Room C-151
New Orleans, LA 70130

Roberts v. Toyota Motor Corporation, et al. (7:10-cv-00281)

United States District Court for the District of South Carolina (Spartanburg)
Larry Propes, Clerk of the Court
201 Magnolia Street
Spartanburg, SC 29306

Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

United States District Court for the District of South Carolina (Columbia)
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Lane v. Toyota Motor Sales, U.S.A., Inc. (2:09-cv-09158)

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Baldisseri v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-09386)

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Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (1:10-cv-00105)

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Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

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Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

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Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)
Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)
Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

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Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)

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Weimer, et al v. Toyota Motor North America, Inc. (2:10-cv-00219)

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and on behalf of all other similarly situated Plaintiffs

Camilo K. Salas, III
Salas, LC
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Counsel for Plaintiffs: Daniel Weimer, Jr. Colby Wenck and Ann Cavalier, all individually
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Defendants: No Answer on File

Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

J. Andrew Meyer
Tamra Givens
Morgan & Morgan, P.A.
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Tampa, Florida 33602

Counsel for Plaintiff: Michelle Lynch, on behalf of herself and all others similarly situated

Scott Wm Weinstein

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Fort Myers, Florida 33907

Counsel for Plaintiff: Michelle Lynch, on behalf of herself and all others similarly situated

Defendants: No Answer on File

Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

Keith Moss Babcock

Lewis and Babcock

PO Box 11208

Columbia, SC 29211

Counsel for Plaintiff: Linda Alford Wooten

Arthur Camden Lewis

Lewis and Babcock

PO Box 11208

Columbia, SC 29211

Counsel for Plaintiff: Linda Alford Wooten

Defendants: No Answer on File

Defendants in actions where no answer is currently on file:

Toyota Motor Corporation

Through its agent for service of process:

CT Corporation System

5615 Corporate Blvd., Suite 400B

Baton Rouge, LA 70808

Toyota Motor North America, Inc.

Through its agent for service of process:

CT Corporation System

818 West Seventh Street

Los Angeles, CA 90017

Toyota Motor Engineering & Manufacturing North America, Inc.

Through its agent for service of process:

CT Corporation System

4169 Westport Road

Louisville, KY 40207

Toyota Motor Sales, U.S.A., Inc.

Through its agent for service of process:

CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

By: s/John B. White, Jr.
John B. White, Jr.

EXHIBIT A

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE TOYOTA MOTOR CORP.
DEFECTIVE GAS PEDAL PRODUCTS
LIABILITY LITIGATION

No. MDL DOCKET NO. 2151

SCHEDULE OF ACTIONS

| Case Caption | Court | Civil Action No. | Judge |
|--|-----------------|------------------|-----------------------------|
| <p>Plaintiffs: Dale Roberts, on behalf of himself and all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10</p> | South Carolina | 7:10-cv-00281 | Judge R. Bryan Harwell |
| <p>Plaintiffs: Linda Alford Wooten</p> <p>Defendants: Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese Corporation; and Denso Manufacturing Tennessee, Inc., a Tennessee corporation</p> | South Carolina | 3:10-cv-00229 | Judge Matthew J. Perry, Jr. |
| <p>Plaintiffs: Seong Bae Choi and Chris Chan Park, as individuals, and on behalf of themselves and all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10</p> | C.D. California | 2:09-cv-08143- | Judge A. Howard Matz |

| | | | |
|--|-----------------|---------------|-----------------------|
| <p>Plaintiffs: Eric Kmets and Joe Morris, on behalf of themselves and all others similarly situated</p> <p>Defendants: Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p> | C.D. California | 2:09-cv-08478 | Judge A. Howard Matz |
| <p>Plaintiffs: Heather A. Lane, individually and on behalf of all others similarly situated</p> <p>Defendant: Toyota Motor Sales, U.S.A., Inc., a California corporation</p> | C.D. California | 2:09-cv-09158 | Judge Gary A. Feess |
| <p>Plaintiffs: Dale Baldisseri, on behalf of himself and all others similarly situated and the general public</p> <p>Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.</p> | C.D. California | 2:09-cv-09386 | Judge Gary A. Feess |
| <p>Plaintiffs: Joseph Hauter and Fran Palomares, on behalf of themselves and all others similarly situated</p> <p>Defendants: Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p> | C.D. California | 8:10-cv-00105 | Judge A. Howard Matz |
| <p>Plaintiffs: Jonathan Gellman, an individual, on behalf of himself and all others similarly situated</p> <p>Defendants: Toyota Motor Sales, U.S.A., Inc., a California corporation</p> | S.D. Florida | 1:10-cv-20006 | Judge Marcia G. Cooke |

| | | | |
|--|--------------------|---------------|----------------------------|
| <p>Plaintiffs: Michael Graves, and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Manufacturing West Virginia, Inc., a West Virginia corporation; Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California Corporation; and Toyota Motor Corporation, a Japanese corporation</p> | S.D. West Virginia | 2:09-cv-01247 | Judge Joseph R. Goodwin |
| <p>Plaintiffs: Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.</p> | E.D. Louisiana | 2:10-cv-00219 | Judge Ivan L.R. Lemelle |
| <p>Plaintiffs: Michelle Lynch, on behalf of herself and all others similarly situated</p> <p>Defendants: Toyota Motor Corporation and Toyota Motor Sales, U.S.A.</p> | M.D. Florida | 8:10-cv-00326 | Judge Steven D. Merryday |
| <p>Plaintiffs: Amanda Maillho</p> <p>Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.</p> | E.D. Louisiana | 2:10-cv-00279 | Judge Mary Ann Vial Lemmon |
| <p>Plaintiffs: Gary T. Brock</p> | E.D. Louisiana | 2:10-cv-00281 | Judge Ivan L.R. Lemelle |

| | | | |
|---|--|--|--|
| Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A. | | | |
|---|--|--|--|

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.,
AND DOES 1 through 10

Defendants.

CIVIL ACTION No. 7:10-281-RBH

CLASS ACTION COMPLAINT

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I

JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II. PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III. FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

installed, but without an attendant BOS installed, including but not limited to the following models:

- Toyota Avalon
- Toyota Camry & Camry HV
- Toyota Corolla & Corolla Matrix
- Toyota FJ Cruiser
- Toyota Highlander & Highlander Hybrid
- Toyota Land Cruiser
- Toyota Prius
- Toyota Sequoia
- Toyota Sienna
- Toyota Tacoma
- Toyota Tundra
- Toyota RAV4
- Toyota Venza

- Lexus ES series vehicles
- Lexus IS series vehicles
- Lexus GS series vehicles
- Lexus LS series vehicles
- Lexus RX series vehicles
- Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer “thinks” the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of “defective” floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars’ heaters on cold days.

14. But Defendants’ vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports’* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration (“NHTSA”) in 2008—as compared to *all other vehicle manufacturers’ models*.

And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another federal inquiry on Toyota models built from 2002 to 2005, investigators found that 20 percent of the 432 complaints studied involved "sudden or unintended acceleration"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer said in an interview that “for undetermined reasons, the vehicle left the main roadway, and went through a metal pipe fence, striking a tree and causing the vehicle to flip and land upside down in a pond.” All four people in the car died. There was no evidence that the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator’s awareness of Defendants’ November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman’s Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. “The car wanted to go 80, or higher,” the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and *does not occur suddenly*." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It can occur when the *pedal mechanism becomes worn* and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the *Los Angeles Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

step away from “capitulation to irrelevance or death,” having already gone through a phase of “undisciplined pursuit of more.” Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants’ reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants’ “reputation for long-term quality is finished. . . . People aren’t going to buy Toyotas, period. It doesn’t matter which model. What’s happened is sufficient to keep people out of the stores.” Another analyst explained, “This [issue] is going to have severe ramifications for Toyota.”

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants’ problems with their ETCS-i acceleration systems—be it floor mat-related, “sticky” pedal-related, or a more insidious computer “glitch” causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants’ vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe “cutout” for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV. CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;
- (b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;
- (c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;
- (d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;
- (e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;
- (f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;
- (g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;
- (h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;
- (i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;
- (j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;
- (k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

- (l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;
- (m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and
- (n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-i, but not equipped with BOS.

45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States.” 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney’s fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants’ knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer’s warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are “service contracts” as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI. DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

- (a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Representatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

Counsel;

- (b) Judgment in favor of Plaintiffs and the Class on Counts I and II;
- (c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;
- (d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;
- (e) Pre-judgment and post judgment interest on such monetary relief;
- (f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and
- (g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

By: s/John B. White, Jr.
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(*pro hac* admission will be requested)

February 5, 2010

Spartanburg, South Carolina

EXHIBIT C

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

| | | 12-MONTH PERIOD ENDING SEPTEMBER 30 | | | | | | | | |
|-----------------------------|--|--|-------|-------|--------|--------|-------|--------------------|---------|---|
| SOUTH CAROLINA | | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | Numerical Standing | | |
| OVERALL CASELOAD STATISTICS | Filings* | 5,460 | 5,508 | 4,670 | 4,875 | 24,510 | 5,210 | U.S. | Circuit | |
| | Terminations | 5,147 | 5,370 | 4,984 | 25,042 | 5,377 | 4,981 | | | |
| | Pending | 4,202 | 3,877 | 3,705 | 3,964 | 24,228 | 5,167 | | | |
| | % Change in Total Filings | Over Last Year | -9 | | | | | | 53 | 6 |
| | | Over Earlier Years | | | 16.9 | 12.0 | -77.7 | 4.8 | 26 | 3 |
| Number of Judgeships | | 10 | 10 | 10 | 10 | 10 | 10 | | | |
| Vacant Judgeship Months** | | .0 | .0 | .0 | .0 | 8.8 | 9.4 | | | |
| ACTIONS PER JUDGESHIP | FILINGS | Total | 545 | 551 | 468 | 488 | 2,452 | 521 | 18 | 1 |
| | | Civil | 445 | 440 | 363 | 397 | 2,360 | 428 | 9 | 1 |
| | | Criminal Felony | 80 | 86 | 80 | 76 | 78 | 83 | 35 | 6 |
| | | Supervised Release Hearings** | 20 | 25 | 25 | 15 | 14 | 10 | 56 | 8 |
| | Pending Cases | | 420 | 388 | 371 | 396 | 2,423 | 517 | 27 | 2 |
| | Weighted Filings** | | 503 | 519 | 462 | 514 | 2,454 | 505 | 26 | 2 |
| | Terminations | | 515 | 537 | 498 | 2,504 | 538 | 498 | 21 | 1 |
| | Trials Completed | | 36 | 39 | 39 | 22 | 20 | 20 | 7 | 2 |
| MEDIAN TIMES (months) | From Filing to Disposition | Criminal Felony | 9.4 | 8.5 | 8.9 | 8.6 | 8.7 | 8.5 | 56 | 7 |
| | | Civil** | 8.2 | 8.0 | 9.5 | 9.0 | 9.4 | 8.2 | 30 | 4 |
| | From Filing to Trial** (Civil Only) | | 21.5 | 18.5 | 21.8 | 21.0 | 20.0 | 22.5 | 23 | 4 |
| OTHER | Civil Cases Over 3 Years Old** | Number | 53 | 35 | 91 | 74 | 918 | 68 | | |
| | | Percentage | 1.6 | 1.2 | 3.1 | 2.3 | 3.9 | 1.6 | 5 | 1 |
| | Average Number of Felony Defendants Filed Per Case | | 1.6 | 1.7 | 1.7 | 1.8 | 1.6 | 1.7 | | |
| | Jurors | Avg. Present for Jury Selection | 39.06 | 47.08 | 39.24 | 47.92 | 30.59 | 37.98 | | |
| | | Percent Not Selected or Challenged | 15.0 | 20.3 | 17.0 | 13.4 | 13.2 | 25.7 | | |

| 2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE | | | | | | | | | | | | | |
|--|-------|-----|-----|------|-----|-----|-----|-----|-----|----|-----|----|-----|
| Type of | TOTAL | A | B | C | D | E | F | G | H | I | J | K | L |
| Civil | 4454 | 191 | 516 | 1937 | 36 | 100 | 256 | 445 | 388 | 50 | 401 | 5 | 129 |
| Criminal* | 795 | 12 | 162 | 27 | 272 | 138 | 32 | 25 | 32 | 40 | 17 | 17 | 21 |

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
 ** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

| | | | 12-MONTH PERIOD ENDING SEPTEMBER 30 | | | | | | | | |
|-----------------------------|--|------------------------------------|--|--------|--------|--------|--------|--------|--------------------|---------|---|
| CALIFORNIA CENTRAL | | | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | Numerical Standing | | |
| OVERALL CASELOAD STATISTICS | Filings* | | 15,144 | 14,154 | 12,909 | 14,630 | 16,938 | 14,720 | U.S. | Circuit | |
| | Terminations | | 14,742 | 13,642 | 13,680 | 16,173 | 15,269 | 15,800 | | | |
| | Pending | | 12,221 | 11,817 | 12,401 | 13,180 | 14,720 | 13,129 | | | |
| | % Change in Total Filings | Over Last Year | | 7.0 | | | | | | 23 | 3 |
| | | Over Earlier Years | | 17.3 | | 3.5 | -10.6 | 2.9 | 28 | 4 | |
| Number of Judgeships | | | 28 | 28 | 28 | 28 | 28 | 28 | | | |
| Vacant Judgeship Months** | | | 12.0 | 31.2 | 53.9 | 24.8 | 2.3 | 23.6 | | | |
| ACTIONS PER JUDGESHIP | FILINGS | Total | 540 | 505 | 461 | 523 | 605 | 526 | 19 | 5 | |
| | | Civil | 433 | 425 | 397 | 450 | 515 | 451 | 12 | 3 | |
| | | Criminal Felony | 63 | 47 | 36 | 45 | 60 | 49 | 49 | 9 | |
| | | Supervised Release Hearings** | 44 | 33 | 28 | 28 | 30 | 26 | 15 | 6 | |
| | Pending Cases | | 436 | 422 | 443 | 471 | 526 | 469 | 24 | 5 | |
| | Weighted Filings** | | 578 | 551 | 518 | 565 | 651 | 590 | 12 | 4 | |
| | Terminations | | 527 | 487 | 489 | 578 | 545 | 564 | 20 | 7 | |
| | Trials Completed | | 11 | 12 | 12 | 13 | 12 | 14 | 84 | 12 | |
| MEDIAN TIMES (months) | From Filing to Disposition | Criminal Felony | 7.5 | 12.1 | 12.4 | 10.3 | 8.2 | 9.4 | 32 | 4 | |
| | | Civil** | 7.0 | 6.8 | 7.2 | 7.4 | 7.3 | 7.5 | 12 | 2 | |
| | From Filing to Trial** (Civil Only) | | 22.0 | 21.3 | 21.3 | 20.5 | 17.8 | 21.2 | 24 | 2 | |
| OTHER | Civil Cases Over 3 Years Old** | Number | 821 | 712 | 1,240 | 809 | 624 | 609 | | | |
| | | Percentage | 8.1 | 7.2 | 11.6 | 7.2 | 5.0 | 5.4 | 68 | 10 | |
| | Average Number of Felony Defendants Filed Per Case | | 1.5 | 1.3 | 1.6 | 1.5 | 1.4 | 1.4 | | | |
| | Jurors | Avg. Present for Jury Selection | 60.94 | 60.57 | 64.08 | 47.33 | 49.01 | 49.49 | | | |
| | | Percent Not Selected or Challenged | 53.7 | 56.5 | 55.7 | 48.3 | 49.4 | 51.6 | | | |

| 2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE | | | | | | | | | | | | | |
|--|-------|------|-----|------|-----|-----|-----|------|-----|------|------|-----|------|
| Type of | TOTAL | A | B | C | D | E | F | G | H | I | J | K | L |
| Civil | 12130 | 1023 | 200 | 2976 | 287 | 205 | 839 | 1508 | 562 | 1395 | 1292 | 113 | 1730 |
| Criminal* | 1761 | 12 | 242 | 671 | 115 | 360 | 48 | 124 | 49 | 48 | 15 | 37 | 40 |

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
 ** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

| | | | 12-MONTH PERIOD ENDING SEPTEMBER 30 | | | | | | | | |
|-----------------------------|--|------------------------------------|--|--------|--------|-------|-------|-------|--------------------|---------|---|
| LOUISIANA EASTERN | | | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | Numerical Standing | | |
| OVERALL CASELOAD STATISTICS | Filings* | | 8,690 | 10,949 | 10,173 | 5,152 | 3,783 | 3,990 | U.S. | Circuit | |
| | Terminations | | 9,680 | 6,596 | 3,611 | 3,339 | 3,584 | 3,883 | | | |
| | Pending | | 15,654 | 16,431 | 12,238 | 5,326 | 3,526 | 3,324 | | | |
| | % Change in Total Filings | Over Last Year | | -20.6 | | | | | | 90 | 9 |
| | | Over Earlier Years | | | | -14.6 | 68.7 | 129.7 | 117.8 | 2 | 1 |
| Number of Judgeships | | | 12 | 12 | 12 | 12 | 12 | 12 | | | |
| Vacant Judgeship Months** | | | .0 | .0 | .0 | .0 | .0 | .0 | | | |
| ACTIONS PER JUDGESHIP | FILINGS | Total | 724 | 913 | 848 | 429 | 316 | 332 | 7 | 3 | |
| | | Civil | 694 | 874 | 817 | 398 | 283 | 297 | 5 | 1 | |
| | | Criminal Felony | 23 | 31 | 23 | 24 | 25 | 27 | 93 | 9 | |
| | | Supervised Release Hearings** | 7 | 8 | 8 | 7 | 8 | 8 | 87 | 7 | |
| | Pending Cases | | 1,305 | 1,369 | 1,020 | 444 | 294 | 277 | 3 | 1 | |
| | Weighted Filings** | | 852 | 914 | 568 | 317 | 314 | 320 | 2 | 1 | |
| | Terminations | | 807 | 550 | 301 | 278 | 299 | 324 | 4 | 2 | |
| | Trials Completed | | 14 | 12 | 13 | 12 | 12 | 13 | 70 | 9 | |
| MEDIAN TIMES (months) | From Filing to Disposition | Criminal Felony | 8.8 | 9.3 | 10.3 | 9.1 | 6.8 | 7.2 | 48 | 5 | |
| | | Civil** | 8.8 | 7.9 | 11.6 | 9.6 | 9.3 | 9.8 | 44 | 4 | |
| | From Filing to Trial** (Civil Only) | | 17.6 | 19.7 | 20.0 | 17.0 | 16.2 | 17.4 | 11 | 1 | |
| OTHER | Civil Cases Over 3 Years Old** | Number | 2,065 | 374 | 569 | 314 | 225 | 40 | | | |
| | | Percentage | 13.4 | 2.3 | 4.8 | 6.2 | 6.9 | 1.3 | 84 | 9 | |
| | Average Number of Felony Defendants Filed Per Case | | 1.6 | 1.4 | 1.3 | 1.6 | 1.7 | 1.5 | | | |
| | Jurors | Avg. Present for Jury Selection | 49.50 | 34.60 | 37.85 | 36.84 | 27.30 | 28.51 | | | |
| | | Percent Not Selected or Challenged | 52.3 | 39.5 | 44.3 | 30.1 | 28.8 | 30.6 | | | |

| 2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE | | | | | | | | | | | | | |
|--|-------|----|------|-----|----|----|----|------|-----|----|-----|---|-----|
| Type of | TOTAL | A | B | C | D | E | F | G | H | I | J | K | L |
| Civil | 8325 | 52 | 1051 | 435 | 11 | 33 | 86 | 5085 | 861 | 34 | 285 | 3 | 389 |
| Criminal* | 271 | 2 | 62 | 46 | 40 | 62 | 9 | 6 | 4 | 17 | 3 | 9 | 11 |

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

EXHIBIT D

U.S. Party/Case Index

Statistical Reports

District Summary Report

Description: The Civil Justice Reform Act Report provides summary and detailed information on pending motions, bench trials, three-year-old cases, bankruptcy appeals, and Social Security appeal cases. The summary reports display totals of these pending civil matters, by individual district judges and magistrate judges, district, circuit, and nationwide. The detailed reports also display these totals; however, they also include information on the type of proceeding, divisional office, docket number, nature of case, case title, CJRA filing/reopened and deadline dates, and case status. Please note that there are separate data files for courts which have used the CJRA Integrated Case Management (ICMS) and Case Management/Electronic Case Files (CM/ECF) automated systems since March 1998, and for those courts (specifically designated as "Non-ICMS") which reported their CJRA pending matters manually. In addition, it should be noted that all reports may not exactly match numbers previously published in the CJRA national summary reports, as CJRA automated system modifications, new reporting policy, and court requests for data corrections have occurred since the inception of electronic reports in March 1998. These changes have resulted in minimal differences in the numbers of CJRA pending matters compared to the previously published national summaries.

Report Dates: Six-month periods ending March 31 and September 30

More Information: For questions concerning the content of these reports, contact Maurice Galloway, in the Statistics Division at (202) 502-1493. For all other questions concerning the U.S. Party/Case Index, contact the PACER Service Center.

| Report Contents | Report Size | Report Cost | Options |
|---|-------------------------|-------------|-----------------------------|
| DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2009 | 407 KBytes 101 Pages | \$ 8.08 | View Report |
| DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2008 | 405 KBytes 99 Pages | \$ 7.92 | View Report |
| DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2008 | 402 KBytes 99 Pages | \$ 7.92 | View Report |
| DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2007 | 406 KBytes 100 Pages | \$ 8.00 | View Report |
| DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2007 | 401 KBytes 99 Pages | \$ 7.92 | View Report |
| DISTRICT SUMMARY REPORT | 402 KBytes | \$ 8.00 | View Report |

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009

RUN: 06/23/2009

PAGE 1

U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|------------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ROBINSON, DEBORAH ANN | 2 | 0 | 0 | 0 | 0 |
| KAY, ALAN | 0 | 5 | 0 | 0 | 0 |
| FACCIOLA, JOHN M. | 5 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 7 | 5 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| SHANSTROM, JACK D. (VJ) | 1 | 4 | 0 | 0 | 0 |
| OBERDORFER, LOUIS F. | 0 | 1 | 0 | 0 | 0 |
| HOGAN, THOMAS F. | 23 | 25 | 0 | 0 | 0 |
| LAMBERTH, ROYCE C. (CJ) | 11 | 1 | 0 | 0 | 0 |
| KESSLER, GLADYS | 20 | 27 | 0 | 0 | 0 |
| FRIEDMAN, PAUL L. | 16 | 10 | 0 | 0 | 0 |
| URBINA, RICARDO M. | 23 | 0 | 0 | 0 | 0 |
| SULLIVAN, EMMET G. | 25 | 6 | 0 | 0 | 0 |
| ROBERTSON, JAMES | 1 | 0 | 0 | 0 | 0 |
| KOLLAR-KOTELLY, COLLEEN | 18 | 0 | 0 | 0 | 0 |
| KENNEDY, HENRY H., JR. | 27 | 7 | 0 | 0 | 0 |
| ROBERTS, RICHARD W. | 39 | 96 | 0 | 1 | 0 |
| HUVELLE, ELLEN SEGAL | 1 | 0 | 0 | 0 | 0 |
| WALTON, REGGIE B. | 9 | 8 | 0 | 0 | 0 |
| BATES, JOHN D. | 2 | 2 | 0 | 0 | 0 |
| LEON, RICHARD J. | 24 | 4 | 0 | 0 | 0 |
| COLLYER, ROSEMARY M. | 8 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 248 | 191 | 0 | 1 | 0 |
| DISTRICT TOTAL: | 255 | 196 | 0 | 1 | 0 |
| CIRCUIT TOTAL: | 255 | 196 | 0 | 1 | 0 |

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009

RUN: 06/23/2009

PAGE 2

U.S. DISTRICT COURT FOR MAINE

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MARTIN, DAVID L. | 0 | 0 | 0 | 0 | 0 |
| KRAVCHUK, MARGARET J. | 0 | 0 | 0 | 0 | 0 |
| RICH, JOHN, III | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| CARTER, GENE | 0 | 0 | 0 | 0 | 0 |
| HORNBY, D. BROCK | 2 | 0 | 0 | 0 | 0 |
| SINGAL, GEORGE Z. | 0 | 0 | 0 | 0 | 0 |
| WOODCOCK, JOHN A., JR. (CJ) | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 3 | 0 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 3 | 0 | 0 | 0 | 0 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MASSACHUSETTS

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| COLLINGS, ROBERT B. | 6 | 0 | 1 | 0 | 0 |
| BOWLER, MARIANNE B. | 1 | 8 | 0 | 0 | 0 |
| NEIMAN, KENNETH P. | 0 | 0 | 0 | 0 | 0 |
| DEIN, JUDITH G. | 0 | 0 | 0 | 0 | 0 |
| SORDKIN, LEO T. | 2 | 0 | 0 | 0 | 0 |
| HILLMAN, TIMOTHY S. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 10 | 8 | 1 | 0 | 0 |
| DISTRICT JUDGES | | | | | |

| | | | | | |
|-------------------------|----|----|---|---|---|
| TAURO, JOSEPH L. | 0 | 0 | 0 | 0 | 0 |
| ZOBEL, RYA W. | 6 | 1 | 0 | 0 | 0 |
| YOUNG, WILLIAM G. | 0 | 0 | 0 | 0 | 0 |
| WOLF, MARK L. (CJ) | 12 | 17 | 2 | 1 | 0 |
| WOODLOCK, DOUGLAS P. | 9 | 0 | 1 | 0 | 0 |
| HARRINGTON, EDWARD F. | 4 | 0 | 0 | 0 | 0 |
| GORTON, NATHANIEL H. | 6 | 0 | 0 | 0 | 0 |
| STEARNS, RICHARD G. | 5 | 0 | 0 | 0 | 0 |
| SARIS, PATTI B. | 2 | 0 | 0 | 0 | 0 |
| PONSOR, MICHAEL A. | 2 | 0 | 0 | 0 | 0 |
| GERTNER, NANCY | 19 | 12 | 0 | 0 | 1 |
| O'TOOLE, GEORGE A., JR. | 11 | 16 | 0 | 0 | 0 |
| SAYLOR, F. DENNIS | 6 | 0 | 0 | 0 | 0 |
| LASKER, MORRIS E. | 2 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 6 | 3 | 2 | 0 | 0 |

SUBTOTAL 90 49 5 1 1

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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PAGE 4

U.S. DISTRICT COURT FOR NEW HAMPSHIRE

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MUIRHEAD, JAMES R. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| DICLERICO, JOSEPH A. | 3 | 0 | 0 | 0 | 0 |
| BARBADORO, PAUL J. | 8 | 0 | 0 | 0 | 0 |
| MCAULIFFE, STEVEN J. (CJ) | 1 | 0 | 0 | 0 | 0 |
| LAPLANTE, JOSEPH N. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 13 | 0 | 0 | 0 | 0 |

13 0 0 0 0

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009

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U.S. DISTRICT COURT FOR RHODE ISLAND

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| HAGOPIAN, JACOB | 0 | 7 | 0 | 0 | 0 |
| LOVEGREEN, ROBERT W. | 0 | 0 | 0 | 0 | 0 |
| MARTIN, DAVID L. | 0 | 1 | 0 | 0 | 4 |
| ALMOND, LINCOLN D. | 0 | 0 | 0 | 0 | 1 |
| SUBTOTAL | 0 | 8 | 0 | 0 | 5 |

DISTRICT JUDGES

| | | | | | |
|--------------------|-----|----|---|---|---|
| LAGUEUX, RONALD R. | 260 | 58 | 0 | 0 | 0 |
| TORRES, ERNEST C. | 0 | 0 | 0 | 0 | 0 |
| LISI, MARY M. (CJ) | 1 | 7 | 0 | 0 | 3 |
| SMITH, WILLIAM E. | 11 | 21 | 0 | 0 | 1 |
| SUBTOTAL | 272 | 86 | 0 | 0 | 4 |

272 94 0 0 9

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PUERTO RICO

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ARENAS, JUSTO | 0 | 0 | 0 | 0 | 0 |
| VELEZ-RIVE, CAMILLE L. | 0 | 0 | 0 | 0 | 0 |
| MCGIVERIN, BRUCE J. | 0 | 1 | 0 | 0 | 0 |
| LOPEZ, MARCOS E. | 0 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 1 | 0 | 0 | 0 |

| | | | | | |
|--------------------------|----|-----|---|---|---|
| SUBTOTAL | 0 | 2 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| PEREZ-GIMENEZ, JUAN M. | 25 | 24 | 0 | 0 | 0 |
| CEREZO, CARMEN CONSUELO | 2 | 1 | 0 | 0 | 0 |
| PIERAS, JAIHE, JR. | 3 | 9 | 0 | 0 | 1 |
| ACOSTA, RAYMOND L. | 4 | 13 | 0 | 0 | 0 |
| FUSTE, JOSE ANTONIO (CJ) | 0 | 0 | 0 | 0 | 0 |
| CASELLAS, SALVADOR E. | 2 | 0 | 0 | 0 | 1 |
| DOMINGUEZ, DANIEL R. | 1 | 0 | 0 | 1 | 0 |
| GARCIA-GREGORY, JAY A. | 3 | 7 | 0 | 0 | 1 |
| DELGADO-COLON, AIDA M. | 3 | 2 | 1 | 0 | 0 |
| GELPEI, GUSTAVO A., JR. | 14 | 0 | 0 | 0 | 0 |
| BESOSA, FRANCISCO A. | 16 | 71 | 0 | 5 | 2 |
| SUBTOTAL | 73 | 127 | 1 | 6 | 5 |

| | | | | | |
|-----------------|-----|-----|---|---|----|
| DISTRICT TOTAL: | 73 | 129 | 1 | 6 | 5 |
| CIRCUIT TOTAL: | 461 | 280 | 7 | 7 | 15 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR CONNECTICUT

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------|-------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| SMITH, THOMAS F. | 1 | 0 | 0 | 0 | 0 |
| MARGOLIS, JOAN G. | 1 | 0 | 0 | 0 | 0 |
| FITZSIMMONS, HOLLY B. | 2 | 0 | 0 | 0 | 0 |
| MARTINEZ, DONNA F. | 2 | 6 | 0 | 0 | 0 |
| GARFINKEL, WILLIAM I. | 3 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 9 | 6 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|-----|----|---|---|---|
| BURNS, ELLEN B. | 5 | 14 | 1 | 0 | 0 |
| ESINGTON, WARREN W. | 14 | 10 | 0 | 0 | 1 |
| DORSEY, PETER C. | 2 | 4 | 0 | 0 | 0 |
| NEVAS, ALAN R. | 0 | 0 | 0 | 0 | 0 |
| COVELLO, ALFRED V. | 11 | 0 | 0 | 0 | 0 |
| CHATIGNY, ROBERT N. (CJ) | 13 | 18 | 1 | 0 | 0 |
| SQUATRITO, DOMINIC J. | 8 | 5 | 0 | 0 | 0 |
| THOMPSON, ALVIN W. | 15 | 10 | 0 | 1 | 1 |
| ARTERTON, JANET BOND | 0 | 0 | 0 | 0 | 0 |
| DRONEY, CHRISTOPHER F. | 33 | 8 | 0 | 1 | 1 |
| HALL, JANET C. | 4 | 1 | 0 | 0 | 1 |
| UNDERHILL, STEFAN R. | 67 | 10 | 0 | 1 | 2 |
| KRAVITZ, MARK R. | 0 | 0 | 0 | 0 | 0 |
| BRYANT, VANESSA L. | 0 | 0 | 0 | 0 | 0 |
| HAIGHT, CHARLES S., JR. | 0 | 5 | 0 | 0 | 0 |
| SUBTOTAL | 172 | 85 | 2 | 3 | 6 |

| | | | | | |
|-----------------|-----|----|---|---|---|
| DISTRICT TOTAL: | 181 | 91 | 2 | 3 | 6 |
|-----------------|-----|----|---|---|---|

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW YORK NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| DIBIANCO, GUSTAVE J. | 0 | 2 | 0 | 0 | 0 |
| HOMER, DAVID R. | 2 | 0 | 0 | 0 | 0 |
| PEEBLES, DAVID E. | 2 | 7 | 0 | 0 | 0 |
| TREECE, RANDOLPH F. | 1 | 0 | 0 | 0 | 1 |
| LOWE, GEORGE H. | 0 | 5 | 0 | 0 | 0 |
| KUDRLE, LARRY A. | 0 | 0 | 0 | 0 | 0 |
| BIANCHINI, VICTOR E. | 2 | 0 | 0 | 0 | 9 |
| SUBTOTAL | 7 | 14 | 0 | 0 | 10 |

DISTRICT JUDGES

| | | | | | |
|--------------------------------|----|----|---|---|----|
| MCCURN, NEAL P. | 18 | 15 | 0 | 0 | 0 |
| MCAVOY, THOMAS J. | 21 | 3 | 0 | 0 | 16 |
| SINGLETON, JAMES K. (VJ) | 1 | 0 | 0 | 0 | 0 |
| SESSIONS, WILLIAM K., III (VJ) | 3 | 0 | 0 | 0 | 0 |
| STROM, LYLE E. (VJ) | 7 | 5 | 0 | 0 | 0 |
| SCULLIN, FREDERICK J., JR. | 38 | 34 | 0 | 0 | 24 |

| | | | | | |
|------------------------|----|----|---|---|----|
| KAHN, LAWRENCE E. | 13 | 13 | 0 | 0 | 45 |
| MAGNUSON, PHIL A. (VJ) | 1 | 0 | 0 | 0 | 0 |
| MORDUE, NORMAN A. (CJ) | 30 | 27 | 0 | 6 | 29 |
| MURD, DAVID N. | 25 | 23 | 2 | 0 | 16 |
| SHARPE, GARY L. | 24 | 12 | 1 | 0 | 22 |
| SUDDABY, GLENN T. | 48 | 85 | 0 | 0 | 0 |

SUBTOTAL 229 217 3 6 152

DISTRICT TOTAL: 236 231 3 6 162

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U.S. DISTRICT COURT FOR NEW YORK EASTERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|------------------------|---|----|---|---|---|
| AZRACK, JOAN M. | 4 | 2 | 0 | 0 | 0 |
| GOLD, STEVEN M. | 4 | 5 | 1 | 0 | 0 |
| GO, MARILYN | 4 | 10 | 0 | 0 | 0 |
| LINDSAY, ARLENE R. | 2 | 0 | 1 | 0 | 0 |
| MANN, ROANNE L. | 1 | 1 | 0 | 0 | 0 |
| POHORELSKY, VIKTOR V. | 1 | 7 | 1 | 0 | 0 |
| LEVY, ROBERT M. | 0 | 1 | 0 | 0 | 0 |
| BOYLE, E. THOMAS | 2 | 0 | 0 | 0 | 0 |
| POLLAK, CHERYL | 7 | 1 | 1 | 0 | 0 |
| WALL, WILLIAM D. | 4 | 2 | 0 | 0 | 0 |
| BLOOM, LOIS | 0 | 1 | 0 | 0 | 0 |
| ORENSTEIN, JAMES | 0 | 0 | 0 | 0 | 0 |
| REYES, RAMON E., JR. | 3 | 0 | 0 | 0 | 0 |
| TOMLINSON, A. KATHLEEN | 0 | 0 | 0 | 0 | 0 |
| ORENSTEIN, MICHAEL L. | 1 | 0 | 0 | 0 | 0 |

SUBTOTAL 33 30 4 0 0

DISTRICT JUDGES

| | | | | | |
|-------------------------|----|----|---|---|----|
| WOLLE, CHARLES R. (VJ) | 0 | 1 | 0 | 0 | 0 |
| WALTER, DONALD E. (VJ) | 0 | 2 | 0 | 0 | 0 |
| WEINSTEIN, JACK B. | 44 | 3 | 0 | 0 | 0 |
| PLATT, THOMAS C., JR. | 72 | 2 | 0 | 0 | 0 |
| SIETON, CHARLES P. | 17 | 4 | 0 | 0 | 0 |
| GLASSER, ISRAEL LEO | 93 | 6 | 0 | 0 | 0 |
| WEXLER, LEONARD D. | 0 | 1 | 0 | 0 | 0 |
| KORMAN, EDWARD R. | 7 | 7 | 0 | 0 | 0 |
| DEARIE, RAYMOND J. (CJ) | 22 | 2 | 0 | 0 | 0 |
| SPATT, ARTHUR D. | 21 | 0 | 0 | 0 | 0 |
| AMON, CAROL BAGLEY | 18 | 7 | 1 | 1 | 1 |
| JOHNSON, STERLING, JR. | 6 | 6 | 0 | 0 | 0 |
| HURLEY, DENIS R. | 55 | 6 | 0 | 0 | 0 |
| TRAGER, DAVID G. | 44 | 1 | 0 | 0 | 0 |
| SEYBERT, JOANNA | 51 | 1 | 0 | 0 | 0 |
| ROSS, ALLYNE | 14 | 10 | 0 | 0 | 0 |
| GLEESON, JOHN | 68 | 0 | 0 | 0 | 0 |
| BLOCK, FREDERIC | 27 | 0 | 0 | 0 | 0 |
| GERSHON, NINA | 33 | 13 | 0 | 0 | 12 |
| GARAUFIS, NICHOLAS G. | 23 | 4 | 0 | 0 | 8 |
| FEUERSTEIN, SANDRA J. | 18 | 9 | 0 | 0 | 0 |
| TOWNES, SANDRA L. | 49 | 24 | 0 | 0 | 9 |
| IRIZARRY, DORA L. | 24 | 8 | 0 | 2 | 7 |
| BIANCO, JOSEPH F. | 15 | 0 | 0 | 0 | 0 |
| VITALIANO, ERIC N. | 41 | 43 | 0 | 3 | 8 |
| COGAN, BRIAN M. | 6 | 1 | 0 | 0 | 0 |
| MAUSKOPF, ROSLYNN R. | 65 | 8 | 1 | 2 | 0 |

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U.S. DISTRICT COURT FOR NEW YORK EASTERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MATSUMOTO, KIYO A. 39 0 0 0 0

SUBTOTAL 872 169 2 8 45

DISTRICT TOTAL: 905 199 6 8 45

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U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|------------------------|-----------|-----------|----------|----------|----------|
| DOLINGER, MICHAEL H. | 1 | 5 | 0 | 0 | 0 |
| FRANCIS, JAMES C., IV | 1 | 0 | 0 | 0 | 0 |
| KATZ, THEODORE H. | 0 | 0 | 0 | 0 | 0 |
| ELLIS, RONALD L. | 0 | 0 | 0 | 0 | 0 |
| FECK, ANDREW J. | 0 | 0 | 0 | 0 | 0 |
| SMITH, LISA M. | 1 | 4 | 0 | 0 | 0 |
| EATON, DOUGLAS F. | 0 | 0 | 0 | 0 | 0 |
| PITMAN, HENRY B. | 4 | 1 | 0 | 0 | 0 |
| YANTHIS, GEORGE A. | 5 | 0 | 0 | 0 | 0 |
| FOX, KEVIN N. | 0 | 0 | 0 | 0 | 0 |
| MARS, FRANK S. | 0 | 0 | 0 | 0 | 0 |
| FREEMAN, DEBRA C. | 2 | 0 | 0 | 0 | 0 |
| GORENSTEIN, GABRIEL W. | 1 | 0 | 0 | 0 | 0 |
| DAVISON, PAUL E. | 1 | 0 | 0 | 0 | 0 |
| GOLDBERG, MARTIN R. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 16 | 10 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|------|-----|---|----|---|
| SULLIVAN, RICHARD J. | 78 | 19 | 0 | 1 | 1 |
| SEIBEL, CATHY | 25 | 21 | 0 | 0 | 0 |
| GARDEPHE, PAUL G. | 21 | 19 | 0 | 0 | 0 |
| STEIN, SIDNEY H. | 79 | 4 | 0 | 0 | 0 |
| EGINTON, WARREN W. (VJ) | 1 | 0 | 0 | 0 | 0 |
| JONES, BARBARA S. | 60 | 27 | 0 | 5 | 1 |
| CONTI, SAMUEL (VJ) | 1 | 0 | 0 | 0 | 0 |
| RAKOFF, JED S. | 12 | 7 | 0 | 0 | 0 |
| HELLERSTEIN, ALVIN K. | 1410 | 2 | 0 | 1 | 0 |
| BERMAN, RICHARD M. | 27 | 0 | 0 | 0 | 0 |
| MCMANON, COLLEEN | 10 | 0 | 0 | 0 | 0 |
| PAULEY, WILLIAM H., III | 14 | 0 | 0 | 2 | 0 |
| ZILLY, THOMAS S. (VJ) | 2 | 0 | 0 | 0 | 0 |
| BUCHWALD, NAOMI REICE | 3 | 0 | 0 | 0 | 0 |
| MARRERO, VICTOR | 3 | 4 | 0 | 0 | 0 |
| DANIELS, GEORGE B. | 41 | 13 | 0 | 3 | 0 |
| SWAIN, LAURA TAYLOR | 55 | 42 | 0 | 0 | 0 |
| POGUE, DONALD C. | 1 | 0 | 0 | 0 | 0 |
| YOUNG, WILLIAM G. (VJ) | 3 | 0 | 0 | 0 | 0 |
| LYNCH, GERARD E. | 27 | 7 | 0 | 0 | 0 |
| ROBINSON, STEPHEN C. | 64 | 134 | 2 | 12 | 1 |
| CASTEL, P. KEVIN | 6 | 0 | 0 | 0 | 0 |
| BARZILAY, JUDITH M. | 1 | 0 | 0 | 0 | 0 |
| HOLWELL, RICHARD J. | 28 | 8 | 0 | 1 | 1 |
| HITNER, DAVID (VJ) | 1 | 0 | 0 | 0 | 0 |
| KARAS, KENNETH M. | 31 | 7 | 0 | 0 | 4 |
| CROTTY, PAUL A. | 20 | 10 | 1 | 0 | 1 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK APPEALS | SOC-SEC APPEALS |
|-------------------------------|-------------|-----------------|--------------|--------------|-----------------|
| ASPEN, MARVIN E. (VJ) | 3 | 0 | 0 | 0 | 0 |
| BRIEANT, CHARLES L., JR. (VJ) | 0 | 1 | 0 | 0 | 0 |
| GRIESA, THOMAS P. | 82 | 0 | 0 | 0 | 0 |
| CARTER, ROBERT L. | 9 | 24 | 0 | 0 | 1 |
| DUFFY, KEVIN THOMAS | 43 | 5 | 0 | 0 | 0 |
| CONNOR, WILLIAM C. | 15 | 5 | 0 | 0 | 0 |
| OWEN, RICHARD | 1 | 0 | 0 | 0 | 0 |
| HAIGHT, CHARLES S., JR. (VJ) | 3 | 3 | 0 | 0 | 0 |
| SWEET, ROBERT W. | 49 | 11 | 0 | 0 | 0 |
| SAND, LEONARD B. | 7 | 16 | 0 | 1 | 0 |
| KRAM, SHIRLEY WOHL | 43 | 9 | 0 | 0 | 0 |
| KEENAN, JOHN F. | 15 | 1 | 0 | 0 | 0 |
| LEISURE, PETER K. | 9 | 26 | 0 | 0 | 0 |
| STANTON, LOUIS L. | 2 | 0 | 0 | 0 | 0 |
| CEDARBAUM, MIRIAM GOLDMAN | 12 | 0 | 0 | 0 | 0 |
| WOOD, KIMBA M. (CJ) | 19 | 5 | 0 | 2 | 0 |
| PATTERSON, ROBERT P., JR. | 11 | 0 | 0 | 0 | 0 |
| MCKENNA, LAWRENCE M. | 113 | 57 | 0 | 0 | 0 |
| FRESKA, LORETTA A. | 23 | 2 | 0 | 1 | 0 |
| BATTS, DEBORAH A. | 48 | 30 | 0 | 3 | 1 |
| COTE, DENISE | 10 | 0 | 0 | 0 | 0 |
| KAPLAN, LEWIS A. | 20 | 0 | 0 | 0 | 1 |
| BAER, HAROLD, JR. | 2 | 1 | 1 | 0 | 0 |
| KOELTL, JOHN G. | 11 | 3 | 0 | 0 | 1 |
| CHIN, DENNY | 24 | 0 | 0 | 0 | 0 |
| SCHEINDLIN, SHIRA ANN | 407 | 0 | 1 | 0 | 0 |
| SUBTOTAL | 3005 | 523 | 5 | 32 | 13 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR NEW YORK WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK APPEALS | SOC-SEC APPEALS |
|--|-------|-----------------|--------------|--------------|-----------------|
|--|-------|-----------------|--------------|--------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|----------------------------|----|----|---|---|---|
| SCOTT, HUGH B. | 3 | 0 | 0 | 0 | 0 |
| FELDMAN, JONATHAN | 7 | 0 | 0 | 0 | 0 |
| SCHROEDER, H. KENNETH, JR. | 40 | 44 | 0 | 0 | 0 |
| PAYSON, MARIAN W. | 3 | 3 | 1 | 0 | 0 |
| MCCARTHY, JEREMIAH J. | 3 | 1 | 0 | 0 | 0 |
| BIANCHINI, VICTOR E. | 35 | 0 | 0 | 0 | 0 |
| FOSCHIO, LESLIE G. | 9 | 17 | 0 | 0 | 0 |

SUBTOTAL 100 65 1 0 0

DISTRICT JUDGES

| | | | | | |
|-------------------------|-----|-----|---|---|----|
| CURTIN, JOHN T. | 15 | 33 | 0 | 0 | 16 |
| TELESCA, MICHAEL A. | 25 | 3 | 0 | 0 | 8 |
| LARIMER, DAVID G. | 112 | 58 | 0 | 0 | 1 |
| ARCARA, RICHARD J. (CJ) | 63 | 44 | 0 | 0 | 11 |
| SKRETHY, WILLIAM M. | 57 | 107 | 0 | 2 | 5 |
| SIRAGUSA, CHARLES J. | 101 | 51 | 0 | 2 | 0 |

SUBTOTAL 373 296 0 4 41

DISTRICT TOTAL: 473 361 1 4 41

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U.S. DISTRICT COURT FOR VERMONT

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|------------------------|---|---|---|---|---|
| CONROY, JOHN M. | 0 | 0 | 0 | 0 | 0 |
| NIEDERMEIER, JEROME J. | 1 | 1 | 0 | 0 | 0 |

SUBTOTAL 1 1 0 0 0

DISTRICT JUDGES

| | | | | | |
|--------------------------------|---|----|---|---|---|
| MURTHA, J. GARVAN | 0 | 12 | 1 | 0 | 0 |
| SESSIONS, WILLIAM K., III (CJ) | 3 | 1 | 0 | 1 | 0 |

SUBTOTAL 3 13 1 1 0

DISTRICT TOTAL: 4 14 1 1 0

CIRCUIT TOTAL: 4820 1429 18 54 267

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U.S. DISTRICT COURT FOR DELAWARE

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-------------------|---|----|---|---|---|
| THINGE, MARY PAT | 7 | 16 | 0 | 0 | 0 |
| STARK, LEONARD P. | 1 | 17 | 0 | 0 | 0 |

SUBTOTAL 8 33 0 0 0

DISTRICT JUDGES

| | | | | | |
|------------------------|----|----|---|---|---|
| FARNAN, JOSEPH J., JR. | 76 | 37 | 0 | 0 | 0 |
| ROBINSON, SUE L. | 28 | 22 | 4 | 2 | 0 |
| SLEET, GREGORY M. (CJ) | 55 | 47 | 1 | 3 | 1 |

SUBTOTAL 159 106 5 5 1

DISTRICT TOTAL: 167 139 5 5 1

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U.S. DISTRICT COURT FOR NEW JERSEY

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|---------------------|---|---|---|---|---|
| ARLEO, MADELYNE COX | 1 | 1 | 0 | 0 | 0 |
| FALK, MARK | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|--------------------------|----------|----------|----------|----------|----------|
| SHWARTZ, PATTY | 0 | 0 | 0 | 0 | 0 |
| DONIO, ANN MARIE | 0 | 0 | 0 | 0 | 0 |
| BONGIOVANNI, TONIANNE J. | 1 | 0 | 0 | 0 | 0 |
| CECCHI, CLAIRE C. | 0 | 0 | 0 | 0 | 0 |
| SCHNEIDER, JOEL | 0 | 0 | 0 | 0 | 0 |
| SALAS, ESTHER | 0 | 0 | 0 | 0 | 0 |
| SHIPP, MICHAEL A. | 0 | 0 | 0 | 0 | 0 |
| ARPERT, DOUGLAS | 0 | 0 | 0 | 0 | 0 |
| GOODMAN, LOIS H. | 0 | 0 | 0 | 0 | 0 |
| KNIGHT, EDWARD R. | 0 | 0 | 0 | 0 | 0 |
| MAUTONE, ANTHONY R. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 1 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------------|------------|-----------|----------|----------|----------|
| BROTHAN, STANLEY S. | 0 | 0 | 0 | 0 | 0 |
| DEBEVOISE, DICKINSON R. | 10 | 0 | 0 | 0 | 0 |
| THOMPSON, ANNE E. | 3 | 0 | 0 | 0 | 0 |
| ACKERMAN, HAROLD A. | 17 | 8 | 0 | 0 | 0 |
| RODRIGUEZ, JOSEPH H. | 4 | 0 | 0 | 0 | 0 |
| BROWN, GARRETT E., JR. (CJ) | 15 | 8 | 0 | 0 | 1 |
| COOPER, MARY LITTLE | 17 | 0 | 0 | 0 | 0 |
| IRENAS, JOSEPH E. | 5 | 7 | 0 | 0 | 0 |
| SIMANDLE, JERGOME B. | 9 | 1 | 0 | 0 | 0 |
| WALLS, WILLIAM H. | 21 | 18 | 0 | 0 | 0 |
| GREENAWAY, JOSEPH A., JR. | 27 | 0 | 0 | 0 | 0 |
| HAYDEN, KATHARINE S. | 20 | 3 | 1 | 0 | 0 |
| HOCHBERG, FAITH S. | 23 | 3 | 0 | 0 | 2 |
| PISANO, JOEL A. | 1 | 0 | 0 | 0 | 3 |
| CAVANAUGH, DENNIS M. | 13 | 1 | 0 | 0 | 0 |
| MARTINI, WILLIAM J. | 2 | 7 | 0 | 0 | 1 |
| LINARES, JOSE L. | 16 | 0 | 0 | 0 | 0 |
| CHESLER, STANLEY R. | 26 | 6 | 0 | 0 | 0 |
| KUGLER, ROBERT B. | 9 | 0 | 0 | 0 | 0 |
| WOLFSON, FRED A. | 10 | 0 | 0 | 0 | 0 |
| SHERIDAN, PETER G. | 10 | 3 | 1 | 1 | 0 |
| HILLMAN, NOEL L. | 13 | 11 | 2 | 0 | 0 |
| BUMB, RENEE H. | 4 | 0 | 0 | 0 | 0 |
| WIGENTON, SUSAN D. | 3 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 278 | 77 | 4 | 1 | 7 |

DISTRICT TOTAL:

280 78 4 1 7

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|---------------------------|----------|----------|----------|----------|----------|
| RUETER, THOMAS J. | 0 | 0 | 0 | 0 | 0 |
| WELLS, CAROL SANDRA MOORE | 0 | 0 | 0 | 0 | 0 |
| HART, JACOB P. | 0 | 0 | 0 | 0 | 0 |
| CARACAPPA, LINDA K. | 0 | 1 | 0 | 0 | 0 |
| RICE, TIMOTHY R. | 0 | 0 | 0 | 0 | 0 |
| STRAWBRIDGE, DAVID R. | 0 | 0 | 0 | 0 | 0 |
| RESTREPO, LUIS FELIPE | 1 | 0 | 0 | 0 | 0 |
| PERKIN, HENRY S. | 0 | 0 | 0 | 0 | 0 |
| HEY, ELIZABETH T. | 0 | 0 | 0 | 0 | 0 |
| SITARSKI, LYNNE A. | 0 | 0 | 0 | 0 | 0 |
| RAPOPORT, ARNOLD C. | 0 | 0 | 0 | 0 | 0 |
| ANGELL, M. FAITH | 0 | 3 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 4 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|-----|----|---|---|---|
| FULLAM, JOHN P. | 20 | 30 | 0 | 0 | 2 |
| DITTER, J. WILLIAM, JR. | 1 | 4 | 0 | 0 | 0 |
| POLLAK, LOUIS H. | 7 | 11 | 0 | 0 | 3 |
| SHAPIRO, NORMA L. | 2 | 3 | 0 | 0 | 0 |
| O'NEILL, THOMAS N., JR. | 8 | 1 | 0 | 0 | 0 |
| KATZ, MARVIN | 0 | 0 | 0 | 0 | 0 |
| LUDWIG, EDMUND V. | 0 | 0 | 0 | 0 | 1 |
| KELLY, ROBERT F. | 0 | 0 | 0 | 0 | 0 |
| REED, LOWELL A., JR. | 0 | 0 | 0 | 0 | 0 |
| DUBOIS, JAN E. | 4 | 4 | 0 | 0 | 0 |
| BUCKWALTER, RONALD L. | 9 | 3 | 0 | 0 | 1 |
| BARTLE, HARVEY, III (CJ) | 242 | 0 | 0 | 0 | 0 |
| YORN, WILLIAM H., JR. | 0 | 0 | 0 | 0 | 0 |
| KUGLER, ROBERT B. (VJ) | 0 | 1 | 0 | 0 | 0 |
| DALZELL, STEWART | 0 | 0 | 0 | 0 | 0 |
| PADOVA, JOHN R. | 1 | 0 | 0 | 0 | 0 |
| JOYNER, J. CURTIS | 4 | 3 | 0 | 0 | 0 |
| ROBRENO, EDUARDO C. | 4 | 3 | 0 | 1 | 0 |
| BRODY, ANITA B. | 3 | 0 | 0 | 0 | 0 |
| KAUFFMAN, BRUCE W. | 23 | 13 | 0 | 1 | 1 |

| | | | | | |
|----------------------|-----|-----|---|---|---|
| MCLAUGHLIN, MARY A. | 16 | 16 | 1 | 0 | 0 |
| TUCKER, PETRESE B. | 3 | 5 | 0 | 1 | 1 |
| SCHILLER, BERLE M. | 1 | 0 | 0 | 0 | 0 |
| SURRICK, R. BARCLAY | 109 | 158 | 1 | 0 | 1 |
| DAVIS, LEGROME D. | 1 | 0 | 0 | 0 | 0 |
| RAYLSON, MICHAEL M. | 0 | 0 | 0 | 0 | 0 |
| RUFE, CYNTHIA H. | 0 | 0 | 0 | 0 | 0 |
| SAVAGE, TIMOTHY J. | 9 | 2 | 0 | 0 | 0 |
| GARDNER, JAMES KNOLL | 0 | 0 | 0 | 0 | 0 |
| PRATTER, GENE E.K. | 2 | 4 | 0 | 0 | 1 |

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

| | CASES | MOTIONS | BENCH | BANK. | SOC-SEC |
|-----------------------|------------|------------|----------|----------|-----------|
| | | PENDING | TRIALS | APPEALS | APPEALS |
| STENGEL, LAWRENCE F. | 0 | 0 | 0 | 0 | 0 |
| DIAMOND, PAUL S. | 0 | 0 | 0 | 0 | 0 |
| SANCHEZ, JUAN R. | 0 | 1 | 0 | 0 | 0 |
| GOLDEN, THOMAS H. | 2 | 0 | 0 | 0 | 1 |
| SILOMSKY, JOEL H. | 4 | 0 | 0 | 0 | 0 |
| GOLDBERG, MITCHELL S. | 4 | 0 | 0 | 1 | 0 |
| JONES, C. DARNELL, II | 3 | 0 | 0 | 1 | 0 |
| SUBTOTAL | 482 | 262 | 2 | 6 | 12 |

DISTRICT TOTAL:

483 266 2 6 12

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U.S. DISTRICT COURT FOR PENNSYLVANIA MIDDLE

| | CASES | MOTIONS | BENCH | BANK. | SOC-SEC |
|--------------------------|----------|----------|----------|----------|----------|
| | | PENDING | TRIALS | APPEALS | APPEALS |
| MAGISTRATE JUDGES | | | | | |
| SHYSER, J. ANDREW | 0 | 2 | 0 | 0 | 0 |
| BLEWITT, THOMAS M. | 0 | 0 | 0 | 0 | 0 |
| MANNION, MALACHY E. | 1 | 2 | 0 | 0 | 0 |
| ARBUCKLE, WILLIAM | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 4 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|-----------|----------|----------|----------|
| NEALON, WILLIAM J., JR. | 1 | 2 | 0 | 0 | 0 |
| MUIR, MALCOLM | 0 | 0 | 0 | 0 | 0 |
| CONABOY, RICHARD P. | 1 | 0 | 0 | 0 | 0 |
| RAMBO, SYLVIA H. | 5 | 11 | 1 | 0 | 0 |
| CALDWELL, WILLIAM W. | 1 | 1 | 0 | 0 | 0 |
| KOSIK, EDWIN M. | 0 | 2 | 0 | 0 | 0 |
| MCCLURE, JAMES FOCHE, JR. | 2 | 17 | 0 | 0 | 0 |
| VANASKIE, THOMAS I. | 13 | 18 | 0 | 0 | 0 |
| CAPUTO, A. RICHARD | 7 | 12 | 0 | 0 | 0 |
| HUNLEY, JAMES M. | 3 | 6 | 0 | 0 | 0 |
| KANE, YVETTE (CJ) | 3 | 11 | 0 | 0 | 0 |
| CONNOR, CHRISTOPHER C. | 2 | 5 | 0 | 0 | 1 |
| JONES, JOHN E., III | 6 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 44 | 85 | 1 | 0 | 1 |

DISTRICT TOTAL:

45 89 1 0 1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PENNSYLVANIA WESTERN

| | CASES | MOTIONS | BENCH | BANK. | SOC-SEC |
|--------------------------|----------|----------|----------|----------|----------|
| | | PENDING | TRIALS | APPEALS | APPEALS |
| MAGISTRATE JUDGES | | | | | |
| BAXTER, SUSAN PARADISE | 0 | 0 | 0 | 0 | 0 |
| HAY, AMY R. | 1 | 0 | 0 | 0 | 0 |
| LENIHAN, LISA PUPO | 1 | 0 | 0 | 0 | 1 |
| BISSON, CATHY | 1 | 0 | 0 | 0 | 0 |
| PESTO, KEITH A. | 1 | 2 | 0 | 0 | 0 |
| MITCHELL, ROBERT C. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 2 | 0 | 0 | 1 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|---|----|---|---|---|
| VANASKIE, THOMAS I. (VJ) | 0 | 1 | 0 | 0 | 0 |
| CORILL, MAURICE B., JR. | 8 | 12 | 0 | 0 | 0 |
| DIAMOND, GUSTAVE | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|--------------------------|-----------|-----------|----------|----------|----------|
| BLOCH, ALAN N. | 0 | 0 | 0 | 0 | 0 |
| STANDISH, WILLIAM L. | 0 | 0 | 0 | 0 | 0 |
| AMBROSE, DONETTA W. (CJ) | 0 | 0 | 0 | 0 | 0 |
| LANCASTER, GARY L. | 3 | 0 | 0 | 0 | 0 |
| MCLAUGHLIN, SEAN J. | 2 | 1 | 0 | 1 | 0 |
| CONTI, JOY FLOWERS | 9 | 1 | 0 | 0 | 0 |
| CERCONE, DAVID STEWART | 2 | 1 | 0 | 0 | 0 |
| MCVERRY, TERRENCE F. | 7 | 0 | 0 | 0 | 0 |
| SCHWAB, ARTHUR J. | 1 | 0 | 0 | 0 | 0 |
| GIBSON, KIM R. | 15 | 11 | 0 | 1 | 0 |
| FISCHER, NORA B. | 4 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 52 | 27 | 0 | 2 | 0 |

DISTRICT TOTAL: 56 29 0 2 1

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U.S. DISTRICT COURT FOR VIRGIN ISLANDS

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| BARNARD, G. W. | 0 | 7 | 0 | 0 | 0 |
| CANNON, GEORGE W., JR. | 0 | 8 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 15 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|----------------------------|------------|-----------|----------|----------|----------|
| FINCH, RAYMOND L. | 85 | 31 | 1 | 0 | 0 |
| GOMEZ, CURTIS V. (CJ) | 38 | 1 | 0 | 4 | 0 |
| BROTHAN, STANLEY S. (VJ) | 0 | 2 | 0 | 0 | 0 |
| THOMPSON, ANNE E. (VJ) | 1 | 0 | 0 | 0 | 0 |
| DUBOIS, JAN E. (VJ) | 1 | 0 | 0 | 0 | 0 |
| BUCKWALTER, RONALD L. (VJ) | 9 | 1 | 0 | 0 | 0 |
| BARTLE, HARVEY, III (VJ) | 5 | 6 | 0 | 0 | 0 |
| KAUFFMAN, BRUCE W. (VJ) | 3 | 0 | 0 | 0 | 0 |
| SAVAGE, TIMOTHY J. (VJ) | 7 | 1 | 0 | 0 | 0 |
| STENGEL, LAWRENCE F. (VJ) | 6 | 0 | 0 | 0 | 0 |
| SANCHEZ, JUAN R. (VJ) | 26 | 2 | 0 | 0 | 0 |
| UNASSIGNED | 48 | 7 | 0 | 0 | 0 |
| SUBTOTAL | 229 | 51 | 1 | 4 | 0 |

DISTRICT TOTAL: 229 66 1 4 0

CIRCUIT TOTAL: 1260 667 13 18 22

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U.S. DISTRICT COURT FOR MARYLAND

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| SCHULZE, JILLYN K. | 0 | 0 | 0 | 0 | 19 |
| CONNELLY, WILLIAM G. | 0 | 0 | 0 | 0 | 0 |
| GAUVEY, SUSAN K. | 0 | 0 | 0 | 0 | 0 |
| GRIMM, PAUL W. | 2 | 0 | 0 | 0 | 25 |
| DAY, CHARLES BERNARD | 0 | 0 | 0 | 0 | 0 |
| BREDAR, JAMES K. | 0 | 0 | 0 | 0 | 0 |
| GESNER, BETH P. | 0 | 0 | 0 | 0 | 0 |
| DIGIROLAMO, THOMAS M. | 0 | 0 | 0 | 0 | 4 |
| LAWS, VICTOR H., III | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 0 | 0 | 0 | 48 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|------------|-----------|----------|----------|----------|
| MOTZ, J. FREDERICK | 226 | 0 | 0 | 0 | 0 |
| GARBIS, MARVIN J. | 5 | 0 | 2 | 0 | 0 |
| NICKERSON, WILLIAM M. | 3 | 2 | 0 | 0 | 0 |
| LEGG, BENSON EVERETT (CJ) | 7 | 3 | 0 | 0 | 0 |
| CHASNOW, DEBORAH K. | 13 | 0 | 0 | 0 | 0 |
| MESSITTE, PETER J. | 7 | 44 | 0 | 0 | 0 |
| WILLIAMS, ALEXANDER, JR. | 6 | 0 | 0 | 0 | 0 |
| DAVIS, ANDRE M. | 8 | 1 | 0 | 0 | 0 |
| BLAKE, CATHERINE C. | 48 | 0 | 0 | 0 | 0 |
| QUARLES, WILLIAM D., JR. | 1 | 0 | 0 | 0 | 0 |
| BENNETT, RICHARD D. | 0 | 0 | 0 | 0 | 0 |
| TITUS, ROGER W. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 324 | 50 | 2 | 0 | 0 |

DISTRICT TOTAL: 326 50 2 0 48
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U.S. DISTRICT COURT FOR NO CAROLINA EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| WEBB, WILLIAM A. | 0 | 0 | 0 | 0 | 0 |
| DANIEL, DAVID W. | 0 | 0 | 0 | 0 | 0 |
| GATES, JAMES E. | 0 | 0 | 0 | 0 | 0 |
| JONES, ROBERT B., JR. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| BRITT, W. EARL | 12 | 1 | 0 | 0 | 0 |
| FOX, JAMES C. | 6 | 47 | 0 | 3 | 0 |
| BOYLE, TERRENCE WILLIAM | 2 | 0 | 0 | 0 | 0 |
| HOWARD, MALCOLM J. | 3 | 10 | 0 | 0 | 0 |
| ELANAGAN, LOUISE W. (CJ) | 1 | 3 | 0 | 0 | 0 |
| DEVER, JAMES C., III | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 24 | 62 | 0 | 3 | 0 |
| DISTRICT TOTAL: | 24 | 62 | 0 | 3 | 0 |

DISTRICT TOTAL: 24 62 0 3 0
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U.S. DISTRICT COURT FOR NO CAROLINA MIDDLE

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| SHARP, PAUL TREVOR | 0 | 12 | 0 | 0 | 0 |
| DIXON, WALLACE W. | 0 | 0 | 0 | 0 | 0 |
| DIETRICH, DONALD P. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 12 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| TILLEY, N. CARLTON, JR. | 9 | 48 | 0 | 0 | 0 |
| BEATY, JAMES A., JR. (CJ) | 2 | 9 | 0 | 0 | 0 |
| OSTEEN, WILLIAM L., JR. | 6 | 24 | 0 | 0 | 0 |
| SCHROEDER, THOMAS D. | 0 | 12 | 0 | 0 | 0 |
| UNASSIGNED | 1 | 26 | 0 | 0 | 0 |
| SUBTOTAL | 18 | 119 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 18 | 131 | 0 | 0 | 0 |

DISTRICT TOTAL: 18 131 0 0 0
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U.S. DISTRICT COURT FOR NO CAROLINA WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| KEESLER, DAVID C. | 0 | 5 | 0 | 0 | 0 |
| HOWELL, DENNIS LEE | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 5 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| VOORHEES, RICHARD L. | 1 | 10 | 0 | 1 | 4 |
| MULLEN, GRAHAM CALDER | 7 | 60 | 1 | 1 | 2 |
| THORNBURG, LACY R. | 4 | 6 | 0 | 0 | 0 |
| CONRAD, ROBERT JAMES, JR. (CJ) | 1 | 17 | 0 | 0 | 1 |
| WHITNEY, FRANK D. | 0 | 1 | 0 | 0 | 0 |
| REIDINGER, MARTIN K. | 1 | 9 | 0 | 0 | 0 |
| SUBTOTAL | 14 | 103 | 1 | 2 | 7 |
| DISTRICT TOTAL: | 14 | 108 | 1 | 2 | 7 |

DISTRICT TOTAL: 14 108 1 2 7
 DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR SOUTH CAROLINA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| CARR, ROBERT S. | 0 | 0 | 0 | 0 | 0 |
| CATOE, WILLIAM M., JR. | 0 | 0 | 0 | 0 | 0 |
| MCCRORY, JOSEPH R. | 0 | 0 | 1 | 0 | 0 |
| MARCHANT, BRISTOR | 0 | 0 | 0 | 0 | 0 |
| ROGERS, THOMAS EDWARD, III | 0 | 0 | 0 | 0 | 0 |
| HENDRICKS, BRUCE HOWE | 0 | 0 | 0 | 0 | 0 |
| GOSSETT, PAIGE J. | 0 | 0 | 0 | 0 | 0 |
| BUCHANAN, ROBERT L., JR. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 1 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| BERTELSMAN, WILLIAM O. (VJ) | 0 | 1 | 0 | 0 | 0 |
| BLATT, SOLOMON, JR. | 0 | 0 | 0 | 0 | 0 |
| PERRY, MATTHEW J., JR. | 4 | 7 | 2 | 0 | 0 |
| HOUCK, C. WESTON | 1 | 9 | 0 | 0 | 0 |
| ANDERSON, GEORGE ROSS, JR. | 0 | 0 | 0 | 0 | 0 |
| ANDERSON, JOSEPH F., JR. | 0 | 0 | 1 | 0 | 0 |
| NORTON, DAVID C. (CJ) | 1 | 2 | 0 | 1 | 0 |
| HERLONG, HENRY M., JR. | 0 | 0 | 0 | 0 | 0 |
| CURRIE, CAMERON MCGOWAN | 0 | 0 | 1 | 0 | 0 |
| DUFFY, PATRICK MICHAEL | 0 | 0 | 1 | 0 | 0 |
| SEYMOUR, MARGARET B. | 4 | 0 | 0 | 0 | 0 |
| WOOTEN, TERRY L. | 1 | 0 | 0 | 0 | 0 |
| FLOYD, HENRY F. | 0 | 0 | 0 | 0 | 0 |
| HARWELL, ROBERT BRYAN | 1 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 12 | 20 | 5 | 1 | 0 |

DISTRICT TOTAL:

12 20 6 1 0

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U.S. DISTRICT COURT FOR VIRGINIA EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MILLER, TOMMY E. | 0 | 0 | 0 | 0 | 0 |
| BRADBERRY, JAMES E. | 0 | 0 | 0 | 0 | 0 |
| JONES, THOMAS R., JR. | 0 | 0 | 0 | 0 | 0 |
| BUCHANAN, THERESA C. | 0 | 0 | 0 | 0 | 0 |
| DOENAL, DENNIS | 1 | 0 | 0 | 0 | 0 |
| STILLMAN, F. BRADFORD | 0 | 0 | 0 | 0 | 0 |
| LAUCK, M. HANNAH | 0 | 0 | 0 | 0 | 0 |
| ANDERSON, JOHN F. | 0 | 0 | 0 | 0 | 0 |
| DAVIS, IVAN D. | 0 | 0 | 0 | 0 | 0 |
| PRINCE, WILLIAM T. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| WILLIAMS, RICHARD L. | 0 | 5 | 0 | 0 | 0 |
| CACHERIS, JAMES C. | 0 | 1 | 0 | 0 | 0 |
| DOUMAR, ROBERT G. | 0 | 0 | 0 | 0 | 0 |
| HILTON, CLAUDE M. | 0 | 0 | 0 | 0 | 0 |
| SPENCER, JAMES R. (CJ) | 2 | 0 | 0 | 0 | 0 |
| ELLIS, THOMAS SELBY, III | 0 | 0 | 0 | 0 | 0 |
| SMITH, REBECCA BEACH | 0 | 0 | 0 | 0 | 0 |
| MORGAN, HENRY COKE, JR. | 0 | 0 | 0 | 0 | 0 |
| PAYNE, ROBERT E. | 0 | 0 | 0 | 0 | 0 |
| BRINKEMA, LEONIE M. | 0 | 0 | 0 | 0 | 0 |
| JACKSON, RAYMOND ALVIN | 0 | 0 | 0 | 0 | 0 |
| FRIEDMAN, JEROME B. | 0 | 0 | 0 | 0 | 0 |
| LEE, GERALD BRUCE | 0 | 0 | 0 | 0 | 0 |
| HUDSON, HENRY E. | 1 | 0 | 0 | 0 | 0 |
| O'GRADY, LIAM | 0 | 0 | 0 | 0 | 0 |
| DAVIS, MARK S. | 1 | 0 | 0 | 0 | 0 |
| TRENGA, ANTHONY J. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 5 | 6 | 0 | 0 | 0 |

DISTRICT TOTAL:

6 6 0 0 0

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U.S. DISTRICT COURT FOR VIRGINIA WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| CRIGLER, B. WAUGH | 0 | 0 | 0 | 0 | 0 |
| SARGENT, PAMELA H. | 0 | 1 | 0 | 0 | 0 |
| URBANSKI, MICHAEL F. | 0 | 0 | 0 | 0 | 0 |
| WELSH, JAMES G. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 1 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| TURK, JAMES C. | 3 | 3 | 0 | 0 | 0 |
| WILLIAMS, GLEN M. | 0 | 1 | 0 | 0 | 0 |
| KISER, JACKSON L. | 0 | 0 | 0 | 0 | 0 |
| WILSON, SAMUEL GRAYSON | 0 | 0 | 0 | 0 | 0 |
| JONES, JAMES PARKER (CJ) | 0 | 0 | 0 | 0 | 0 |
| MOON, NORMAN K. | 0 | 0 | 0 | 0 | 0 |
| CONRAD, GLEN E. | 0 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 3 | 6 | 0 | 0 | 0 |

DISTRICT TOTAL: 3 7 0 0 0
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U.S. DISTRICT COURT FOR W VIRGINIA NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| SEIBERT, JAMES E. | 0 | 0 | 0 | 0 | 0 |
| KAULL, JOHN S. | 0 | 0 | 0 | 0 | 0 |
| JOEL, DAVID J. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| MAXWELL, ROBERT EARL | 0 | 0 | 0 | 0 | 0 |
| STAMP, FREDERICK P., JR. | 1 | 0 | 0 | 0 | 0 |
| KEELEY, IRENE S. | 2 | 0 | 0 | 0 | 0 |
| BAILEY, JOHN P. (CJ) | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 0 | 0 | 0 | 0 |

DISTRICT TOTAL: 4 0 0 0 0
 DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR W VIRGINIA SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------------|-------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| TAYLOR, MAURICE G., JR. | 0 | 27 | 0 | 0 | 47 |
| STANLEY, MARY E. | 0 | 0 | 0 | 0 | 0 |
| VANDERVORT, R. CLARKE | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 27 | 0 | 0 | 47 |
| DISTRICT JUDGES | | | | | |
| COPEHAYER, JOHN T., JR. | 5 | 10 | 1 | 1 | 0 |
| FABER, DAVID A. | 0 | 0 | 0 | 0 | 0 |
| GOODWIN, JOSEPH R. (CJ) | 0 | 1 | 0 | 0 | 0 |
| CHAMBERS, ROBERT C. | 22 | 30 | 0 | 0 | 0 |
| JOHNSTON, THOMAS E. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 27 | 41 | 1 | 1 | 0 |

DISTRICT TOTAL: 27 68 1 1 47
 DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR LOUISIANA EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| CHASEZ, AIMA | 0 | 0 | 0 | 0 | 0 |
| MOORE, LOUIS, JR. | 0 | 0 | 0 | 0 | 0 |
| WILKINSON, JOSEPH C., JR. | 1 | 0 | 0 | 0 | 0 |
| SHUSHAN, SALLY | 0 | 0 | 0 | 0 | 0 |
| ROBY, KAREN WELLS | 0 | 0 | 0 | 0 | 0 |
| KNOWLES, DANIEL E., III | 4 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 5 | 0 | 0 | 0 | 0 |

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-------------|-----------------|--------------|---------------|-----------------|
| DISTRICT JUDGES | | | | | |
| HEEBE, FREDERICK J. | 0 | 0 | 0 | 0 | 0 |
| WALTER, DONALD E. (VJ) | 1 | 0 | 0 | 0 | 0 |
| SCHWARTZ, CHARLES, JR. | 0 | 0 | 0 | 0 | 0 |
| BEER, PETER | 0 | 0 | 0 | 0 | 0 |
| MCNAMARA, A. J. | 1 | 0 | 0 | 0 | 0 |
| FELDMAN, MARTIN L. C. | 15 | 0 | 0 | 0 | 0 |
| BERRIGAN, HELEN G. | 0 | 2 | 0 | 4 | 0 |
| DUVAL, STANWOOD R., JR. | 9 | 6 | 0 | 0 | 1 |
| VANCE, SARAH S. (CJ) | 4 | 0 | 0 | 0 | 0 |
| PORTEOUS, G. THOMAS, JR. | 0 | 0 | 0 | 0 | 0 |
| FALLON, ELDON E. | 4263 | 10 | 0 | 0 | 0 |
| LEMMON, MARY ANN VIAL | 4 | 4 | 0 | 0 | 0 |
| LEMELLE, IVAN L. | 3 | 0 | 0 | 0 | 0 |
| BARBIER, CARL J. | 1 | 0 | 0 | 0 | 0 |
| ENGELHARDT, KURT D. | 4 | 0 | 0 | 0 | 0 |
| ZAINEX, JAY C. | 2 | 0 | 0 | 0 | 1 |
| AFRICK, LANCE M. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 4308 | 22 | 0 | 4 | 2 |

DISTRICT TOTAL: 4313 22 0 4 2
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U.S. DISTRICT COURT FOR LOUISIANA MIDDLE

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| RIEDLINGER, STEPHEN C. | 1 | 29 | 0 | 0 | 0 |
| NOLAND, CHRISTINE | 0 | 0 | 0 | 0 | 0 |
| DRLBY, DOCIA L. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 29 | 0 | 0 | 0 |

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-----------|-----------------|--------------|---------------|-----------------|
| DISTRICT JUDGES | | | | | |
| PARKER, JOHN V. | 5 | 1 | 0 | 0 | 1 |
| POLOZOLA, FRANK J. | 0 | 0 | 0 | 0 | 0 |
| TYSON, RALPH E. (CJ) | 35 | 98 | 1 | 3 | 4 |
| BRADY, JAMES J. | 10 | 3 | 0 | 0 | 0 |
| SUBTOTAL | 50 | 102 | 1 | 3 | 5 |

DISTRICT TOTAL: 51 131 1 3 5
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U.S. DISTRICT COURT FOR LOUISIANA WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| METHVIN, MILDRED E. | 0 | 5 | 0 | 0 | 0 |
| KIRK, JAMES D. | 0 | 0 | 0 | 0 | 0 |
| HILL, CHARLES M. | 0 | 4 | 0 | 0 | 0 |
| BORNSBY, MARK L. | 0 | 2 | 0 | 0 | 0 |
| HAYES, KAREN L. | 0 | 0 | 0 | 0 | 0 |
| KAY, KATHLEEN | 1 | 3 | 1 | 0 | 0 |
| SUBTOTAL | 1 | 14 | 1 | 0 | 0 |

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-------|-----------------|--------------|---------------|-----------------|
| DISTRICT JUDGES | | | | | |
| STAGG, TOM | 1 | 1 | 0 | 0 | 1 |
| WALTER, DONALD E. | 3 | 0 | 0 | 0 | 0 |

| | | | | | |
|------------------------|----|----|---|---|---|
| BAIK, RICHARD T. (CJ) | 15 | 15 | 0 | 1 | 6 |
| TRIMBLE, JAMES T., JR. | 15 | 6 | 0 | 0 | 0 |
| DOHERTY, REBECCA F. | 3 | 9 | 0 | 0 | 4 |
| MELANCON, TUCKER L. | 5 | 1 | 0 | 0 | 3 |
| JAMES, ROBERT G. | 1 | 4 | 0 | 0 | 0 |
| DRELL, DEE D. | 9 | 8 | 0 | 0 | 0 |
| HICKS, S. MAURICE, JR. | 6 | 38 | 0 | 0 | 0 |
| HINALDI, PATRICIA H. | 1 | 6 | 0 | 0 | 1 |
| VANCE, SARAH S. (VJ) | 2 | 0 | 0 | 0 | 0 |
| LEMELLE, IVAN L. (VJ) | 1 | 0 | 0 | 0 | 0 |
| BLOCK, FREDERIC (VJ) | 1 | 0 | 0 | 0 | 0 |

SUBTOTAL 63 88 0 1 15

DISTRICT TOTAL: 64 102 1 1 15

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MISSISSIPPI NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| DAVIS, JERRY A. | 1 | 0 | 0 | 0 | 0 |
| ALEXANDER, S. ALLAN | 0 | 0 | 0 | 0 | 0 |
| SANDERS, DAVID A. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|------------------------|----|---|---|---|---|
| BIGGERS, NEAL | 0 | 0 | 0 | 0 | 0 |
| DAVIDSON, GLEN H. | 1 | 0 | 0 | 0 | 0 |
| PEPPER, W. ALLEN, JR. | 6 | 2 | 0 | 0 | 0 |
| MILLS, MICHAEL P. (CJ) | 1 | 0 | 0 | 0 | 0 |
| RYCOCK, SHARION | 3 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 11 | 2 | 0 | 0 | 0 |

DISTRICT TOTAL: 12 2 0 0 0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MISSISSIPPI SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ROPER, JOHN M. | 0 | 0 | 0 | 0 | 0 |
| SUMNER, JAMES C. | 0 | 0 | 0 | 0 | 0 |
| WALKER, ROBERT H. | 0 | 0 | 0 | 0 | 0 |
| PARKER, MICHAEL T. | 0 | 0 | 0 | 0 | 0 |
| ANDERSON, LINDA R. | 0 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 2 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------------|----|-----|---|---|---|
| RUSSELL, DAN M., JR. | 0 | 0 | 0 | 0 | 0 |
| SENER, L. T., JR. | 0 | 0 | 0 | 0 | 0 |
| BARBOUR, WILLIAM HENRY, JR. | 3 | 0 | 0 | 0 | 0 |
| BIGGERS, NEAL (VJ) | 1 | 0 | 0 | 0 | 0 |
| LEE, TOM S. | 3 | 4 | 0 | 0 | 0 |
| WINGATE, HENRY T. (CJ) | 20 | 96 | 2 | 0 | 1 |
| GEX, WALTER J., III | 1 | 0 | 0 | 0 | 0 |
| BRAMLETTE, DAVID | 1 | 0 | 0 | 0 | 0 |
| GUIROLA, LOUIS, JR. | 1 | 4 | 0 | 0 | 0 |
| STARRETT, KEITH | 1 | 0 | 0 | 0 | 0 |
| JORDAN, DANIEL P., III | 2 | 0 | 0 | 0 | 0 |
| OZERDEN, SUL | 0 | 0 | 0 | 0 | 0 |
| O'MALLEY, KATHLEEN M. (VJ) | 0 | 1 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 33 | 106 | 2 | 0 | 1 |

DISTRICT TOTAL: 33 108 2 0 1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR TEXAS NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--|-------|-----------------|--------------|---------------|-----------------|
|--|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|----------------------------|----------|----------|----------|----------|----------|
| SANDERSON, WILLIAM F., JR. | 0 | 0 | 0 | 0 | 0 |
| AVERITTE, CLINTON E. | 0 | 0 | 0 | 0 | 0 |
| KAPLAN, JEFF | 0 | 1 | 0 | 0 | 0 |
| BLEIL, CHARLES M. | 0 | 0 | 0 | 0 | 0 |
| STICKNEY, PAUL D. | 0 | 0 | 0 | 0 | 0 |
| KOENIG, NANCY M. | 0 | 0 | 0 | 0 | 0 |
| RAMIREZ, IRMA C. | 0 | 0 | 0 | 0 | 0 |
| LANE, PHILIP R. | 1 | 0 | 0 | 0 | 0 |
| ROACH, ROBERT K. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 1 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|-----------|----------|----------|----------|
| ROBINSON, MARY LOU | 1 | 1 | 1 | 1 | 0 |
| BUCHMEYER, JERRY | 0 | 0 | 0 | 0 | 0 |
| FISH, A. JOE | 3 | 3 | 0 | 0 | 0 |
| MALONEY, ROBERT B. | 0 | 0 | 0 | 0 | 0 |
| FITZWATER, SIDNEY A. (CJ) | 1 | 1 | 0 | 0 | 0 |
| CUMMINGS, SAMUEL RAY | 0 | 0 | 0 | 0 | 0 |
| MCBRYDE, JOHN H. | 0 | 0 | 0 | 0 | 0 |
| FURGESON, W. ROYAL, JR. | 10 | 27 | 0 | 0 | 0 |
| SOLIS, JORGE A. | 3 | 0 | 0 | 0 | 0 |
| MEANS, TERRY | 1 | 0 | 0 | 0 | 0 |
| LINDSAY, SAM A. | 0 | 0 | 0 | 0 | 0 |
| LYNN, BARBARA M. G. | 4 | 1 | 0 | 0 | 0 |
| GODBEY, DAVID C. | 3 | 0 | 0 | 0 | 0 |
| KINKEADE, JAMES EDGAR | 0 | 0 | 0 | 0 | 0 |
| BOYLE, JANE J. | 1 | 0 | 0 | 0 | 0 |
| O'CONNOR, REED | 1 | 11 | 0 | 0 | 0 |
| SUBTOTAL | 28 | 44 | 1 | 1 | 0 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR TEXAS EASTERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|-------------------------|----------|----------|----------|----------|----------|
| BRYANT, BARRY A. (VJ) | 1 | 0 | 0 | 0 | 0 |
| HINES, EARL S. | 0 | 0 | 0 | 0 | 0 |
| GUTHRIE, JUDITH K. | 0 | 0 | 0 | 0 | 0 |
| CRAVEN, CAROLINE M. | 0 | 0 | 0 | 0 | 0 |
| BUSH, DONALD D. | 0 | 4 | 0 | 0 | 0 |
| GIBLIN, KEITH E. | 0 | 0 | 0 | 0 | 0 |
| LOVE, JOHN D. | 0 | 0 | 0 | 0 | 0 |
| EVERINGHAM, CHARLES, IV | 0 | 0 | 0 | 0 | 0 |
| MAZZANT, AMOS | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 4 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------------|-----------|----------|----------|----------|----------|
| JUSTICE, WILLIAM WAYNE (VJ) | 1 | 0 | 0 | 0 | 0 |
| SHELL, RICHARD A. | 7 | 0 | 0 | 0 | 0 |
| FOLSOM, DAVID (CJ) | 10 | 1 | 0 | 0 | 0 |
| HEARTFIELD, THAD | 0 | 0 | 0 | 0 | 0 |
| WARD, T. JOHN | 7 | 0 | 0 | 0 | 0 |
| DAVIS, LEONARD E. | 3 | 0 | 0 | 0 | 0 |
| CLARK, RON | 0 | 0 | 0 | 0 | 0 |
| CRONE, MARCIA A. | 0 | 0 | 0 | 0 | 0 |
| SCHNEIDER, MICHAEL H. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 28 | 1 | 0 | 0 | 0 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR TEXAS SOUTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|---------------------|---|---|---|---|---|
| BOTLEY, CALVIN | 0 | 0 | 0 | 0 | 0 |
| STACY, FRANCES | 0 | 0 | 0 | 0 | 0 |
| JOHNSON, NANCY K. | 0 | 0 | 0 | 0 | 0 |
| FROESCHNER, JOHN R. | 0 | 1 | 0 | 0 | 0 |
| MILLOY, MARYROSE | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|----------------------|----------|----------|----------|----------|----------|
| RAMOS, DORINA | 0 | 0 | 0 | 0 | 0 |
| ELLINGTON, B. JANICE | 0 | 0 | 0 | 0 | 0 |
| RECIO, FELIX, JR. | 0 | 0 | 0 | 0 | 0 |
| SMITH, STEPHEN W. | 0 | 0 | 0 | 0 | 0 |
| ORMSBY, PETER E. | 0 | 0 | 0 | 0 | 0 |
| OWSLEY, BRIAN L. | 0 | 0 | 0 | 0 | 0 |
| SALDANA, DIANA | 0 | 0 | 0 | 0 | 0 |
| HACKER, J. SCOTT | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 1 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|-----------|----------|----------|----------|
| HUDSPETH, HARRY LEE (VJ) | 0 | 2 | 0 | 0 | 0 |
| KAZEN, GEORGE P. | 3 | 0 | 0 | 0 | 1 |
| HEAD, HAYDEN W., JR. (CJ) | 0 | 0 | 1 | 0 | 0 |
| HINOJOSA, RICARDO H. | 4 | 3 | 0 | 0 | 0 |
| HUGHES, LYNN N. | 9 | 20 | 0 | 0 | 0 |
| HITTNER, DAVID | 1 | 1 | 0 | 0 | 0 |
| ROYT, KENNETH M. | 3 | 0 | 0 | 0 | 0 |
| LAKE, SIMEON TIMOTHY, III | 2 | 0 | 0 | 0 | 0 |
| HARMON, MELINDA | 40 | 1 | 0 | 1 | 0 |
| RAINEY, JOHN D. | 10 | 0 | 1 | 0 | 0 |
| KENT, SAMUEL B. | 0 | 0 | 0 | 0 | 0 |
| WERLEIN, ERING, JR. | 3 | 2 | 0 | 0 | 0 |
| ROSENTHAL, LEE H. | 3 | 6 | 0 | 0 | 0 |
| JACK, JANIS GRAHAM | 0 | 0 | 0 | 0 | 0 |
| GILMORE, VANESSA D. | 3 | 1 | 0 | 0 | 0 |
| ATLAS, NANCY F. | 0 | 0 | 0 | 0 | 0 |
| LEMELLE, IVAN L. (VJ) | 1 | 0 | 0 | 0 | 0 |
| TAGLE, HILDA G. | 3 | 2 | 0 | 0 | 0 |
| ELLISON, KEITH P. | 0 | 0 | 0 | 0 | 0 |
| CRANE, RANDY | 1 | 2 | 0 | 0 | 0 |
| HANEN, ANDREW S. | 3 | 2 | 0 | 0 | 0 |
| ALVAREZ, MICHAELA | 0 | 0 | 0 | 0 | 0 |
| MILLER, GRAY H. | 2 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 91 | 42 | 2 | 1 | 1 |

91 43 2 1 1

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR TEXAS WESTERN

| | | | | | |
|--|-------|-----------------|--------------|---------------|-----------------|
| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|------------------------|----------|----------|----------|----------|----------|
| GREEN, DENNIS G. | 0 | 0 | 0 | 0 | 0 |
| PRIMOMO, JOHN W. | 0 | 0 | 0 | 0 | 0 |
| NOWAK, NANCY S. | 0 | 0 | 0 | 0 | 0 |
| MESA, RICHARD | 0 | 0 | 0 | 0 | 0 |
| MCDONALD, MICHAEL S. | 0 | 0 | 0 | 0 | 0 |
| MATHE, PAMELA ANN | 0 | 0 | 0 | 0 | 0 |
| AUSTIN, ANDREW W. | 0 | 0 | 0 | 0 | 7 |
| GARNEY, NORBERT J. | 0 | 2 | 0 | 0 | 0 |
| MANSKE, JEFFREY C. | 0 | 0 | 0 | 0 | 0 |
| GARCIA, VICTOR ROBERTO | 0 | 0 | 0 | 0 | 0 |
| PITMAN, ROBERT L. | 0 | 0 | 0 | 0 | 0 |
| GOAINS, B. DWIGHT | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 2 | 0 | 0 | 7 |

DISTRICT JUDGES

| | | | | | |
|------------------------------|-----------|----------|----------|----------|----------|
| JUSTICE, WILLIAM WAYNE | 0 | 0 | 0 | 0 | 0 |
| HUDSPETH, HARRY LEE | 2 | 1 | 0 | 0 | 0 |
| NOWLIN, JAMES R. | 0 | 0 | 0 | 0 | 0 |
| SMITH, WALTER S., JR. (CJ) | 5 | 5 | 0 | 0 | 0 |
| SPARKS, SAM | 1 | 0 | 0 | 0 | 0 |
| FURGESON, W. ROYAL, JR. (VJ) | 2 | 0 | 0 | 0 | 0 |
| GARCIA, ORLANDO L. | 1 | 0 | 0 | 0 | 0 |
| BIERY, SAMUEL F., JR. | 2 | 0 | 0 | 0 | 0 |
| BRIONES, DAVID | 3 | 0 | 0 | 0 | 0 |
| MARTINEZ, PHILIP R. | 1 | 0 | 0 | 0 | 0 |
| LUDLUM, ALIA MOSES | 0 | 0 | 0 | 0 | 0 |
| JUNELL, ROBERT A. | 0 | 1 | 0 | 0 | 0 |
| CARDONE, KATHLEEN | 0 | 0 | 0 | 0 | 0 |
| YEAKEL, LEE | 0 | 0 | 0 | 0 | 0 |
| MONTALVO, FRANK | 0 | 0 | 0 | 0 | 0 |
| RODRIGUEZ, XAVIER | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 17 | 7 | 0 | 0 | 0 |

DISTRICT TOTAL:

17 9 0 0 7

CIRCUIT TOTAL:

4639 467 7 10 31

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U.S. DISTRICT COURT FOR KENTUCKY EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| WEHRMAN, J. GREGORY | 0 | 0 | 0 | 0 | 0 |
| TODD, JAMES B. | 0 | 0 | 0 | 0 | 0 |
| ATKINS, EDWARD B. | 0 | 0 | 0 | 0 | 0 |
| WIER, ROBERT E. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| BERTELSMAN, WILLIAM O. | 2 | 2 | 0 | 0 | 0 |
| UNTHANK, G. WIX | 0 | 0 | 0 | 0 | 0 |
| WILHOIT, HENRY R., JR. | 0 | 0 | 0 | 0 | 0 |
| FORESTER, KARL S. | 0 | 0 | 0 | 0 | 0 |
| HOOD, JOSEPH M. | 0 | 0 | 0 | 0 | 0 |
| COFFMAN, JENNIFER B. (CJ) | 4 | 0 | 0 | 0 | 0 |
| CALDWELL, KAREN K. | 3 | 0 | 0 | 0 | 0 |
| REEVES, DANNY C. | 0 | 0 | 0 | 0 | 0 |
| BUMNING, DAVID L. | 15 | 8 | 0 | 0 | 0 |
| VAN TATENHOVE, GREGORY F. | 2 | 0 | 0 | 0 | 0 |
| THAPAR, AMUL R. | 4 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 30 | 10 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 30 | 10 | 0 | 0 | 0 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR KENTUCKY WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| KING, W. DAVID | 0 | 0 | 0 | 0 | 0 |
| MOYER, JAMES D. | 2 | 1 | 0 | 0 | 0 |
| GOEBEL, E. ROBERT | 0 | 0 | 0 | 0 | 0 |
| WHALIN, DAVE | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 3 | 1 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| JOHNSTONE, EDWARD H. | 0 | 0 | 0 | 0 | 0 |
| SIMPSON, CHARLES R., III | 13 | 3 | 0 | 0 | 0 |
| COFFMAN, JENNIFER B. | 6 | 1 | 0 | 0 | 0 |
| HEYBURN, JOHN G., II | 4 | 1 | 0 | 0 | 0 |
| RUSSELL, THOMAS B. (CJ) | 4 | 2 | 0 | 0 | 0 |
| MCKINLEY, JOSEPH H., JR. | 9 | 0 | 0 | 0 | 0 |
| THAPAR, AMUL R. (VJ) | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 36 | 8 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 39 | 9 | 0 | 0 | 0 |

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U.S. DISTRICT COURT FOR MICHIGAN EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| PEPE, STEVEN D. | 1 | 3 | 0 | 0 | 0 |
| BINDER, CHARLES E. | 0 | 1 | 0 | 0 | 0 |
| MORGAN, VIRGINIA | 0 | 0 | 0 | 0 | 0 |
| SCHEER, DONALD A. | 0 | 0 | 0 | 0 | 0 |
| WHALEN, R. STEVEN | 0 | 0 | 0 | 0 | 0 |
| MAJZOUB, MONA K. | 0 | 0 | 0 | 0 | 0 |
| HUCHANIUK, MICHAEL | 0 | 0 | 0 | 0 | 0 |
| KOMIVES, PAUL J. | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 5 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| SIMPSON, CHARLES R., III (VJ) | 0 | 1 | 0 | 0 | 0 |

| | | | | | |
|--------------------------|------------|-----------|----------|----------|----------|
| FEIKENS, JOHN | 2 | 17 | 0 | 0 | 0 |
| JOINER, CHARLES W. | 0 | 0 | 0 | 0 | 0 |
| COOK, JULIAN ABELE, JR. | 5 | 1 | 0 | 0 | 0 |
| COHN, AVERN | 10 | 10 | 0 | 0 | 0 |
| TAYLOR, ANNA DIGGS | 2 | 0 | 0 | 0 | 0 |
| ZATKOFF, LAWRENCE P. | 0 | 0 | 0 | 0 | 0 |
| DUGGAN, PATRICK J. | 2 | 4 | 0 | 0 | 0 |
| FRIEDMAN, BERNARD A. | 7 | 3 | 0 | 0 | 0 |
| ROSEN, GERALD E. (CJ) | 10 | 12 | 0 | 3 | 1 |
| CLELAND, ROBERT H. | 2 | 0 | 0 | 0 | 0 |
| EDMUNDS, NANCY G. | 1 | 0 | 0 | 0 | 0 |
| HOOD, DENISE PAGE | 45 | 1 | 1 | 2 | 1 |
| BORHAN, PAUL D. | 7 | 8 | 0 | 0 | 0 |
| O'MEARA, JOHN CORBETT | 1 | 0 | 0 | 0 | 0 |
| TARNOW, ARTHUR J. | 5 | 2 | 0 | 0 | 0 |
| STEEH, GEORGE CARAM, III | 2 | 0 | 0 | 0 | 0 |
| ROBERTS, VICTORIA A. | 0 | 1 | 0 | 0 | 0 |
| BATTANI, MARIANNE D. | 4 | 1 | 0 | 0 | 0 |
| LAWSON, DAVID M. | 4 | 8 | 0 | 0 | 0 |
| LUDINGTON, THOMAS L. | 1 | 2 | 0 | 0 | 0 |
| COX, SEAN F. | 1 | 6 | 0 | 0 | 0 |
| MURPHY, STEPHEN J., III | 8 | 6 | 0 | 0 | 0 |
| UNASSIGNED | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 120 | 83 | 1 | 5 | 2 |

DISTRICT TOTAL: 121 88 1 5 2
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U.S. DISTRICT COURT FOR MICHIGAN WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| BRENNEMAN, HUGH W., JR. | 0 | 0 | 0 | 0 | 0 |
| SCOVILLE, JOSEPH G. | 0 | 5 | 0 | 0 | 0 |
| GREELEY, TIMOTHY P. | 0 | 1 | 0 | 0 | 0 |
| CARMODY, ELLEN | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 6 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| EDGAR, R. ALLAN (VJ) | 0 | 1 | 0 | 0 | 1 |
| BELL, ROBERT HOLMES | 16 | 36 | 0 | 0 | 0 |
| QUIST, GORDON J. | 2 | 0 | 0 | 0 | 0 |
| MALONEY, PAUL L. (CJ) | 10 | 34 | 0 | 1 | 3 |
| JONKER, ROBERT J. | 4 | 2 | 0 | 0 | 1 |
| NEFF, JANET T. | 2 | 6 | 0 | 0 | 3 |
| SUBTOTAL | 34 | 79 | 0 | 1 | 8 |

DISTRICT TOTAL: 35 85 0 1 8
 DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR OHIO NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ARMSTRONG, VERNELIS K. | 0 | 0 | 0 | 0 | 0 |
| VECCHIARELLI, NANCY A. | 0 | 0 | 0 | 0 | 0 |
| LIMBERT, GEORGE J. | 1 | 0 | 0 | 0 | 0 |
| BAUGHMAN, WILLIAM H., JR. | 0 | 1 | 0 | 0 | 5 |
| MCHARGH, KENNETH S. | 0 | 0 | 0 | 0 | 0 |
| WHITE, GREG | 0 | 0 | 0 | 0 | 0 |
| PEARSON, BENITA Y. | 0 | 0 | 0 | 0 | 0 |
| PERELMAN, DAVID | 0 | 0 | 0 | 0 | 0 |
| GALLAS, JAMES S. | 1 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 2 | 0 | 0 | 5 |
| DISTRICT JUDGES | | | | | |
| ALDRICH, ANN | 4 | 7 | 0 | 0 | 1 |
| DORD, DAVID D., JR. | 0 | 3 | 0 | 0 | 0 |
| WELLS, LESLEY | 4 | 1 | 0 | 0 | 0 |
| CARR, JAMES G. (CJ) | 7 | 7 | 0 | 0 | 0 |
| OLIVER, SOLOMON, JR. | 11 | 22 | 0 | 6 | 1 |
| KATZ, DAVID A. | 13 | 18 | 0 | 0 | 0 |
| O'MALLEY, KATHLEEN M. | 821 | 0 | 0 | 0 | 0 |
| ECONOMUS, PETER C. | 3 | 2 | 0 | 0 | 0 |
| NUGENT, DONALD C. | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|-----------------------|------------|-----------|----------|----------|----------|
| GAUGHAN, PATRICIA A. | 1 | 0 | 0 | 0 | 0 |
| GWIN, JAMES S. | 0 | 0 | 0 | 0 | 0 |
| FOLSTER, DAN A. | 1 | 0 | 0 | 0 | 0 |
| ADAMS, JOHN R. | 2 | 9 | 0 | 0 | 1 |
| BOYKO, CHRISTOPHER A. | 2 | 0 | 0 | 0 | 0 |
| ZOUHARY, JACK | 0 | 0 | 0 | 0 | 0 |
| LIQI, SARA E. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 871 | 69 | 0 | 6 | 3 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR OHIO SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| ABEL, MARK R. | 0 | 0 | 0 | 0 | 0 |
| KING, NORAH M. | 1 | 2 | 0 | 0 | 0 |
| MERZ, MICHAEL R. | 1 | 0 | 0 | 0 | 0 |
| KEMP, TERENCE | 1 | 0 | 0 | 0 | 0 |
| HOGAN, TIMOTHY S. | 2 | 4 | 1 | 0 | 0 |
| OVINGTON, SHARON L. | 1 | 0 | 0 | 0 | 0 |
| BLACK, TIMOTHY S. | 2 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 8 | 6 | 1 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|------------------------|-----------|-----------|----------|----------|-----------|
| SPIEGEL, S. ARTHUR | 6 | 7 | 0 | 0 | 1 |
| HOLSCHUH, JOHN DAVID | 8 | 4 | 0 | 0 | 0 |
| RICE, WALTER HERBERT | 17 | 0 | 0 | 0 | 0 |
| WEBER, HERMAN J. | 1 | 24 | 0 | 0 | 7 |
| GRAHAM, JAMES L. | 1 | 1 | 0 | 0 | 0 |
| SMITH, GEORGE C. | 4 | 5 | 0 | 0 | 0 |
| BECKWITH, SANDRA S. | 3 | 2 | 0 | 0 | 3 |
| DLOTT, SUSAN J. (CJ) | 9 | 16 | 1 | 0 | 1 |
| SARGUS, EDMUND A., JR. | 7 | 0 | 0 | 0 | 0 |
| MARBLEY, ALGENON L. | 9 | 0 | 0 | 0 | 0 |
| ROSE, THOMAS M. | 4 | 0 | 0 | 0 | 0 |
| FROST, GREGORY L. | 1 | 0 | 0 | 0 | 0 |
| WATSON, MICHAEL H. | 13 | 13 | 0 | 0 | 0 |
| BARRETT, MICHAEL R. | 2 | 5 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 85 | 78 | 1 | 0 | 12 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR TENNESSEE EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| INMAN, DENNIS HISEY | 1 | 0 | 0 | 0 | 0 |
| CARTER, WILLIAM B. | 0 | 5 | 0 | 0 | 0 |
| SHIRLEY, C. CLIFFORD, JR. | 0 | 0 | 0 | 0 | 0 |
| GUYTON, H. BRUCE | 0 | 0 | 0 | 0 | 0 |
| LEE, SUSAN K. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 5 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|-----------|----------|----------|----------|
| EDGAR, R. ALLAN | 9 | 14 | 0 | 0 | 1 |
| JORDAN, ROBERT LEON | 10 | 9 | 0 | 0 | 0 |
| COLLIER, CURTIS LYNN (CJ) | 9 | 16 | 0 | 0 | 0 |
| PHILLIPS, THOMAS W. | 14 | 4 | 0 | 0 | 0 |
| VARLAN, THOMAS A. | 0 | 0 | 0 | 0 | 0 |
| GREER, J. RONNIE | 2 | 13 | 0 | 0 | 0 |
| MATTICE, SANDY | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 45 | 56 | 0 | 0 | 1 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR TENNESSEE MIDDLE

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | |
|---------------------|---|---|---|---|
| GRIFFIN, JULIET E. | 0 | 0 | 0 | 0 |
| BROWN, JOE B. | 0 | 0 | 0 | 0 |
| KNOWLES, E. CLIFTON | 0 | 0 | 0 | 0 |
| BRYANT, JOHN S. | 0 | 0 | 0 | 0 |

| | | | | |
|----------|---|---|---|---|
| SUBTOTAL | 0 | 0 | 0 | 0 |
|----------|---|---|---|---|

DISTRICT JUDGES

| | | | | | |
|-----------------------------|----|----|---|---|----|
| WISEMAN, THOMAS A., JR. | 1 | 0 | 0 | 0 | 13 |
| NIXON, JOHN T. | 22 | 77 | 0 | 0 | 30 |
| ECHOLS, ROBERT L. | 0 | 0 | 0 | 0 | 0 |
| CAMPBELL, TODD J. (CJ) | 0 | 1 | 0 | 0 | 0 |
| TRAUGER, ALETA ARTHUR | 10 | 0 | 0 | 0 | 0 |
| HAYNES, WILLIAM JOSEPH, JR. | 3 | 0 | 0 | 0 | 0 |

| | | | | | |
|----------|----|----|---|---|----|
| SUBTOTAL | 36 | 78 | 0 | 0 | 43 |
|----------|----|----|---|---|----|

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR TENNESSEE WESTERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | |
|-------------------|---|---|---|---|
| VESCOVO, DIANE K. | 1 | 0 | 0 | 0 |
| PHAM, TU M. | 1 | 0 | 0 | 0 |
| BRYANT, EDWARD G. | 0 | 0 | 0 | 0 |
| COHN, GERALD | 0 | 0 | 0 | 0 |

| | | | | |
|----------|---|---|---|---|
| SUBTOTAL | 2 | 0 | 0 | 0 |
|----------|---|---|---|---|

DISTRICT JUDGES

| | | | | | |
|-----------------------|----|----|---|---|---|
| TODD, JAMES DALE | 3 | 0 | 0 | 0 | 0 |
| MCCALLA, JON P. (CJ) | 4 | 0 | 0 | 0 | 0 |
| DONALD, BERNICE BOUIE | 5 | 0 | 0 | 0 | 0 |
| MAYS, SAMUEL H., JR. | 5 | 0 | 0 | 0 | 0 |
| BREEN, J. DANIEL | 12 | 3 | 0 | 0 | 0 |
| ANDERSON, S. THOMAS | 9 | 17 | 0 | 0 | 0 |

| | | | | | |
|----------|----|----|---|---|---|
| SUBTOTAL | 38 | 20 | 0 | 0 | 0 |
|----------|----|----|---|---|---|

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|-----------------------|---|---|---|---|---|
| MARONEY, P. MICHAEL | 1 | 0 | 0 | 0 | 0 |
| ASHMAN, MARTIN C. | 3 | 0 | 0 | 0 | 0 |
| KEYS, ARLANDER | 0 | 0 | 0 | 0 | 0 |
| DENLOW, MORTON | 3 | 0 | 0 | 0 | 0 |
| NOLAN, NAN R. | 2 | 0 | 0 | 0 | 0 |
| SCHENKIER, SIDNEY | 4 | 0 | 0 | 0 | 0 |
| BROWN, GERALDINE SOAT | 2 | 0 | 0 | 0 | 0 |
| MASON, MICHAEL T. | 1 | 0 | 0 | 0 | 0 |
| COLE, JEFFEREY N. | 1 | 0 | 1 | 0 | 0 |
| VALDEZ, MARIA G. | 2 | 0 | 1 | 0 | 0 |
| COX, SUSAN E. | 1 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|----------|----|---|---|---|---|
| SUBTOTAL | 21 | 0 | 2 | 0 | 0 |
|----------|----|---|---|---|---|

DISTRICT JUDGES

| | | | | | |
|---------------------|----|---|---|---|---|
| POSNER, RICHARD A. | 1 | 0 | 0 | 0 | 0 |
| GRADY, JOHN F. | 96 | 2 | 0 | 0 | 0 |
| ASPEN, MARVIN E. | 55 | 0 | 0 | 1 | 0 |
| SHADUR, MILTON I. | 9 | 0 | 0 | 0 | 0 |
| KOCORAS, CHARLES P. | 5 | 0 | 0 | 0 | 0 |

| | | | | | |
|-------------------------------|----|----|---|---|---|
| NORDBERG, JOHN A. | 9 | 11 | 0 | 0 | 0 |
| HART, WILLIAM T. | 4 | 9 | 0 | 0 | 0 |
| PLUNKETT, PAUL E. | 0 | 0 | 0 | 0 | 0 |
| NORGLER, CHARLES R., SR. | 56 | 0 | 0 | 1 | 0 |
| HOLDERMAN, JAMES F., JR. (CJ) | 15 | 0 | 0 | 0 | 0 |
| LEINENWEBER, HARRY D. | 2 | 5 | 0 | 0 | 0 |
| ZAGEL, JAMES B. | 38 | 12 | 0 | 1 | 0 |
| CONLON, SUZANNE B. | 0 | 0 | 0 | 0 | 0 |
| HAROVICH, GEORGE M. | 2 | 0 | 0 | 0 | 0 |
| LINDBERG, GEORGE W. | 0 | 1 | 0 | 0 | 0 |
| ANDERSEN, WAYNE R. | 22 | 9 | 0 | 0 | 0 |
| REINHARD, PHILIP G. | 4 | 0 | 0 | 0 | 0 |
| CASTILLO, RUBEN | 0 | 0 | 0 | 0 | 0 |
| MANNING, BLANCHE M. | 8 | 0 | 0 | 0 | 0 |
| COAR, DAVID H. | 9 | 32 | 0 | 1 | 0 |
| GETTLEMAN, ROBERT W. | 15 | 3 | 0 | 0 | 0 |
| BUCKLO, ELAINE E. | 7 | 0 | 0 | 0 | 0 |
| GOTTSCHALL, JOAN B. | 40 | 0 | 0 | 0 | 0 |
| PALLMEYER, REBECCA R. | 7 | 2 | 0 | 0 | 0 |
| KENNELLY, MATTHEW F. | 7 | 0 | 0 | 0 | 0 |
| HIBBLER, WILLIAM J. | 4 | 0 | 0 | 0 | 0 |
| GUZMAN, RONALD A. | 9 | 7 | 1 | 0 | 0 |
| DARRAH, JOHN W. | 3 | 0 | 0 | 0 | 0 |
| LEFKOW, JOAN HUMPHREY | 9 | 2 | 0 | 7 | 0 |
| ST. EVE, AMY J. | 4 | 0 | 0 | 0 | 0 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------|------------|-----------------|--------------|---------------|-----------------|
| DER-YEGHIAYAN, SAMUEL | 0 | 0 | 0 | 0 | 0 |
| KENDALL, VIRGINIA M. | 2 | 0 | 0 | 0 | 0 |
| KAPALA, FREDERICK J. | 22 | 3 | 0 | 0 | 0 |
| DOW, ROBERT H. | 12 | 3 | 0 | 0 | 0 |
| UNASSIGNED | 12 | 8 | 0 | 1 | 0 |
| SUBTOTAL | 488 | 109 | 1 | 12 | 0 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR ILLINOIS CENTRAL

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| BERNTHAL, DAVID G. | 1 | 0 | 0 | 0 | 0 |
| CUDMORE, BYRON G. | 0 | 0 | 0 | 0 | 0 |
| GORMAN, JOHN A. | 2 | 0 | 0 | 0 | 0 |
| EVANS, CHARLES H. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 3 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|--------------------------------|-----------|----------|----------|----------|----------|
| BAKER, HAROLD ALBERT | 6 | 3 | 0 | 0 | 0 |
| MIHM, MICHAEL M. | 2 | 0 | 0 | 0 | 0 |
| MILLS, RICHARD | 3 | 0 | 0 | 0 | 0 |
| MCDADE, JOE BILLY | 4 | 0 | 0 | 0 | 0 |
| MCCUSKEY, MICHAEL PATRICK (CJ) | 1 | 0 | 0 | 0 | 1 |
| SCOTT, JEANNE E. | 2 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 18 | 3 | 0 | 0 | 1 |

DISTRICT TOTAL:

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR ILLINOIS SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| FRAZIER, PHILLIP M | 0 | 0 | 0 | 0 | 0 |
| PROUD, CLIFFORD J. | 1 | 1 | 0 | 0 | 0 |
| WILKERSON, DONALD G. | 3 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 2 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|------------------------|----|----|---|---|---|
| STIEHL, WILLIAM D. | 4 | 5 | 0 | 0 | 0 |
| GILBERT, J. PHIL | 23 | 14 | 0 | 0 | 0 |
| MURPHY, G. PATRICK | 6 | 0 | 0 | 0 | 0 |
| HERNDON, DAVID R. (CJ) | 14 | 3 | 0 | 0 | 0 |
| REAGAN, MICHAEL J. | 4 | 8 | 1 | 2 | 0 |

SUBTOTAL 51 30 1 2 0

DISTRICT TOTAL: 55 32 1 2 0
 DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR INDIANA NORTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|---------------------------|---|---|---|---|---|
| RODOVICH, ANDREW P. | 2 | 2 | 0 | 0 | 1 |
| COSBEY, ROGER B. | 0 | 2 | 0 | 0 | 0 |
| NUECHTERLEIN, CHRISTOPHER | 0 | 0 | 0 | 0 | 0 |
| CHERRY, PAUL R. | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 2 4 0 0 1

DISTRICT JUDGES

| | | | | | |
|-----------------------------|----|----|---|---|---|
| SHARP, ALLEN | 0 | 0 | 0 | 0 | 0 |
| LEE, WILLIAM C. | 3 | 1 | 0 | 0 | 0 |
| MOODY, JAMES T. | 3 | 2 | 0 | 0 | 0 |
| MILLER, ROBERT L., JR. (CJ) | 35 | 26 | 0 | 0 | 0 |
| LOZANO, RUDY | 0 | 0 | 0 | 0 | 0 |
| SIMON, PHILIP PETER | 0 | 1 | 0 | 0 | 0 |
| SPRINGMANN, THERESA L. | 3 | 24 | 0 | 0 | 0 |
| VAN BOKKELEN, JOSEPH | 11 | 16 | 0 | 0 | 3 |

SUBTOTAL 55 70 0 0 3

DISTRICT TOTAL: 57 74 0 0 4
 DISTRICT SUMMARY REPORT
 AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 54

U.S. DISTRICT COURT FOR INDIANA SOUTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|---------------------------|---|---|---|---|---|
| FOSTER, KENNARD P. | 0 | 0 | 0 | 0 | 0 |
| HUSSMANN, WILLIAM G., JR. | 1 | 0 | 0 | 0 | 1 |
| BAKER, TIM A. | 0 | 0 | 0 | 0 | 0 |
| MAGNUS-STINSON, JANE E. | 0 | 0 | 0 | 0 | 0 |
| LYNCH, DEBRA MCVICKER | 0 | 0 | 0 | 0 | 0 |
| MCKEE, CRAIG M. | 0 | 0 | 0 | 0 | 0 |
| NAVILLE, MICHAEL G. | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 1 0 0 0 1

DISTRICT JUDGES

| | | | | | |
|-------------------------|----|---|---|---|---|
| BARKER, SARAH EVANS | 20 | 5 | 1 | 0 | 0 |
| MCKINNEY, LARRY J. | 13 | 7 | 0 | 0 | 3 |
| TINDER, JOHN DANIEL | 1 | 1 | 0 | 0 | 0 |
| HAMILTON, DAVID F. (CJ) | 46 | 7 | 0 | 0 | 0 |
| YOUNG, RICHARD L. | 9 | 2 | 1 | 0 | 0 |
| LAWRENCE, WILLIAM T. | 7 | 0 | 0 | 0 | 0 |

SUBTOTAL 96 22 2 0 3

DISTRICT TOTAL: 97 22 2 0 4
 DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR WISCONSIN EASTERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|---------------------------|---|---|---|---|---|
| GOODSTEIN, AARON E. | 1 | 0 | 0 | 0 | 0 |
| GORENCE, PATRICIA J. | 1 | 1 | 0 | 0 | 0 |
| CALLAHAN, WILLIAM E., JR. | 2 | 0 | 0 | 0 | 0 |
| SICKEL, JAMES | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|------------------------|----|----|---|---|---|
| SUBTOTAL | 4 | 1 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| STADTMUELLER, J.P. | 3 | 0 | 0 | 0 | 0 |
| RANDA, RUDOLPH T. (CJ) | 3 | 0 | 0 | 0 | 0 |
| CLEVERT, C. N. | 24 | 17 | 3 | 1 | 5 |
| ADELMAN, LYNN S. | 10 | 0 | 0 | 0 | 0 |
| GRIESBACH, WILLIAM C. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 41 | 17 | 3 | 1 | 5 |

DISTRICT TOTAL: 45 18 3 1 5
 DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR WISCONSIN WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| CROCKER, STEPHEN L. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| CRABB, BARBARA B. (CJ) | 0 | 0 | 0 | 0 | 0 |
| SHABAZ, JOHN C. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT TOTAL: 0 0 0 0 0
 CIRCUIT TOTAL: 784 258 9 15 14
 DISTRICT SUMMARY REPORT
 AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 57

U.S. DISTRICT COURT FOR ARKANSAS EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| JONES, HENRY L., JR. | 1 | 0 | 0 | 0 | 0 |
| YOUNG, H. DAVID | 1 | 0 | 0 | 0 | 0 |
| RAY, J. THOMAS | 0 | 0 | 0 | 0 | 0 |
| DEERE, BETH | 0 | 0 | 0 | 0 | 0 |
| CAVANEAU, JERRY W. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|------|---|---|---|---|
| EISELE, GARNETT THOMAS | 0 | 1 | 0 | 0 | 0 |
| WRIGHT, SUSAN WEBBER | 3 | 4 | 0 | 0 | 0 |
| WILSON, WILLIAM R., JR. | 2042 | 0 | 0 | 0 | 0 |
| MOODY, JAMES MAXWELL | 4 | 1 | 0 | 0 | 0 |
| HOLMES, J. LEON (CJ) | 2 | 0 | 0 | 0 | 0 |
| MILLER, BRIAN S. | 0 | 1 | 0 | 0 | 0 |
| WHIPPLE, DEAN (VJ) | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 2051 | 8 | 0 | 0 | 0 |

DISTRICT TOTAL: 2053 8 0 0 0
 DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR ARKANSAS WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MARSCHESKI, JAMES R. | 0 | 0 | 0 | 0 | 0 |
| BRYANT, BARRY A. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|----------|----------|----------|----------|----------|
| HENDREN, JIM LARRY (CJ) | 0 | 0 | 0 | 0 | 0 |
| BARNES, HARRY F. | 1 | 0 | 0 | 0 | 0 |
| DAWSON, ROBERT T. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 0 | 0 | 0 | 0 |

DISTRICT TOTAL:

1 0 0 0 0

AS OF DATE: 03/31/2009

DISTRICT SUMMARY REPORT
RUN: 06/23/2009

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U.S. DISTRICT COURT FOR IOWA NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| ZOSS, PAUL A. | 0 | 0 | 0 | 0 | 0 |
| SCOLES, JON S. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|----------------------|----------|-----------|----------|----------|----------|
| MCMANUS, EDWARD J. | 1 | 20 | 0 | 0 | 0 |
| O'BRIEN, DONALD E. | 3 | 0 | 0 | 0 | 0 |
| BENNETT, MARK W. | 1 | 0 | 0 | 0 | 0 |
| READE, LINDA R. (CJ) | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 5 | 20 | 0 | 0 | 0 |

DISTRICT TOTAL:

5 20 0 0 0

AS OF DATE: 03/31/2009

DISTRICT SUMMARY REPORT
RUN: 06/23/2009

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U.S. DISTRICT COURT FOR IOWA SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| BREMER, CELESTE | 0 | 0 | 0 | 0 | 0 |
| WALTERS, ROSS A. | 0 | 2 | 0 | 0 | 0 |
| SHIELDS, THOMAS J. | 2 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 3 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------|-----------|----------|----------|----------|----------|
| VIETOR, HAROLD D. | 1 | 0 | 0 | 0 | 0 |
| WOLLE, CHARLES R. | 0 | 0 | 0 | 0 | 0 |
| LONGSTAFF, RONALD E. | 12 | 1 | 0 | 0 | 0 |
| PRATT, ROBERT W. (CJ) | 6 | 5 | 0 | 0 | 0 |
| GRITZNER, JAMES E. | 3 | 2 | 0 | 0 | 2 |
| JARVEY, JOHN A. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 22 | 8 | 0 | 0 | 2 |

DISTRICT TOTAL:

24 11 0 0 2

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U.S. DISTRICT COURT FOR MINNESOTA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| NOEL, FRANKLIN L. | 0 | 0 | 0 | 0 | 0 |
| ERICKSON, RAYMOND L. | 0 | 0 | 0 | 0 | 0 |
| BOYLAN, ARTHUR J. | 0 | 0 | 0 | 0 | 0 |
| NELSON, SUSAN RICHARD | 0 | 0 | 0 | 0 | 0 |
| MAYERON, JANIE S. | 0 | 0 | 0 | 0 | 0 |
| GRAHAM, JEANNE J. | 0 | 0 | 0 | 0 | 0 |
| KEYES, JEFFREY J. | 0 | 0 | 0 | 0 | 0 |
| KLEIN, MARY KAY | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------|---|---|---|---|---|
| ALSOP, DONALD D. | 0 | 0 | 0 | 0 | 0 |
| MAGNUSON, PAUL A. | 8 | 0 | 0 | 0 | 0 |
| ROSENBAUM, JAMES M. | 3 | 2 | 0 | 0 | 0 |

| | | | | | |
|---------------------------|-----|---|---|---|---|
| DOTY, DAVID S. | 0 | 1 | 0 | 0 | 0 |
| KYLE, RICHARD H. | 3 | 1 | 0 | 0 | 0 |
| DAVIS, MICHAEL JAMES (CJ) | 15 | 2 | 0 | 0 | 0 |
| TUNHEIM, JOHN R. | 9 | 0 | 0 | 0 | 0 |
| MONTGOMERY, ANN D. | 1 | 0 | 0 | 0 | 0 |
| FRANK, DONOVAN W. | 167 | 0 | 0 | 0 | 1 |
| ERICKSEN, JOAN N. | 3 | 0 | 0 | 0 | 0 |
| SCHILTZ, PATRICK J. | 2 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 2 | 0 | 0 | 0 |

SUBTOTAL 211 8 0 0 1

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR MISSOURI EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| NOCE, DAVID D. | 0 | 0 | 0 | 0 | 0 |
| BUCKLES, FREDERICK R. | 1 | 0 | 0 | 0 | 0 |
| BLANTON, LEWIS M. | 0 | 0 | 0 | 0 | 0 |
| ADELMAN, TERRY I. | 0 | 0 | 1 | 0 | 1 |
| MEDLER, MARY A. | 0 | 0 | 0 | 0 | 0 |
| MUMMERT, THOMAS C. | 0 | 0 | 0 | 0 | 0 |
| FLEISSIG, AUDREY G. | 2 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 1 | 3 | 0 | 0 |
| SUBTOTAL | 3 | 1 | 4 | 0 | 1 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|----|----|---|---|---|
| HAMILTON, JEAN C. | 0 | 0 | 0 | 0 | 0 |
| STOHR, DONALD J. | 1 | 2 | 0 | 0 | 0 |
| JACKSON, CAROL E. (CJ) | 3 | 0 | 0 | 0 | 0 |
| SHAW, CHARLES A. | 0 | 0 | 0 | 0 | 0 |
| PERRY, CATHERINE D. | 2 | 1 | 0 | 0 | 0 |
| WEBBER, E. RICHARD | 4 | 0 | 0 | 0 | 0 |
| SIPPEL, RODNEY W. | 2 | 0 | 0 | 0 | 0 |
| AUTREY, HENRY EDWARD | 2 | 1 | 0 | 1 | 0 |
| LIMBAUGH, STEPHEN N., JR. | 2 | 3 | 0 | 0 | 1 |
| UNASSIGNED | 1 | 14 | 1 | 0 | 0 |
| SUBTOTAL | 17 | 21 | 1 | 1 | 1 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR MISSOURI WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ENGLAND, JAMES C. | 1 | 0 | 0 | 0 | 0 |
| KNOX, WILLIAM A. | 0 | 0 | 0 | 0 | 0 |
| MAUGHMER, JOHN T. | 0 | 0 | 0 | 0 | 0 |
| LARSEN, ROBERT E. | 1 | 1 | 0 | 0 | 0 |
| HAYS, SARAH W. | 0 | 0 | 0 | 0 | 1 |
| SUBTOTAL | 2 | 1 | 0 | 0 | 1 |

DISTRICT JUDGES

| | | | | | |
|-------------------------------|----|---|---|---|---|
| WRIGHT, SCOTT O. | 2 | 0 | 0 | 0 | 0 |
| SACHS, HOWARD F. | 2 | 1 | 0 | 0 | 0 |
| WHIPPLE, DEAN | 3 | 6 | 0 | 0 | 0 |
| GAITAN, FERNANDO J., JR. (CJ) | 1 | 0 | 0 | 0 | 0 |
| SMITH, ORTRIE D. | 2 | 0 | 0 | 0 | 0 |
| FENNER, GARY A. | 4 | 0 | 1 | 0 | 0 |
| LAUGHREY, NANETTE K. | 0 | 0 | 0 | 0 | 0 |
| DORR, RICHARD E. | 3 | 1 | 0 | 0 | 0 |
| KAYS, DAVID G. | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 18 | 8 | 1 | 0 | 0 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR NEBRASKA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| PIESTER, DAVID L. | 0 | 0 | 0 | 0 | 0 |
| TRALKEN, THOMAS D. | 0 | 0 | 0 | 0 | 0 |
| GOSSETT, F. A., III | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| URBOM, WARREN K. | 0 | 0 | 0 | 0 | 0 |
| STROM, LYLE E. | 4 | 1 | 0 | 0 | 0 |
| KOPF, RICHARD G. | 1 | 0 | 0 | 0 | 0 |
| BATAILLON, JOSEPH F. (CJ) | 0 | 0 | 0 | 0 | 0 |
| CAMP, LAURIE SMITH | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 5 | 1 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 5 | 1 | 0 | 0 | 0 |

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U.S. DISTRICT COURT FOR NORTH DAKOTA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| KLEIN, KAREN | 0 | 0 | 0 | 0 | 0 |
| MILLER, CHARLES S., JR. | 2 | 0 | 0 | 0 | 0 |
| SENECHAL, ALICE R. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| CONNY, PATRICK A. | 0 | 0 | 0 | 0 | 0 |
| WEBB, RODNEY S. | 2 | 3 | 0 | 0 | 0 |
| HOVLAND, DANIEL L. (CJ) | 1 | 4 | 0 | 0 | 0 |
| BRICKSON, RALPH R. | 1 | 6 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 13 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 6 | 13 | 0 | 0 | 0 |

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U.S. DISTRICT COURT FOR SOUTH DAKOTA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|-------------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| SIMKO, JOHN E. | 0 | 0 | 0 | 0 | 0 |
| MORENO, MARK A. | 0 | 0 | 0 | 0 | 0 |
| DUFFY, VERONICA L. | 0 | 0 | 0 | 0 | 0 |
| GERDES, WILLIAM D. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| BOGUE, ANDREW W. | 1 | 4 | 0 | 0 | 0 |
| JONES, JOHN B. | 0 | 0 | 0 | 0 | 0 |
| BATTEY, RICHARD B. | 0 | 0 | 0 | 0 | 0 |
| PIERSOL, LAWRENCE L. | 2 | 5 | 1 | 0 | 0 |
| KORNHANN, CHARLES BRUNO | 0 | 0 | 0 | 0 | 0 |
| SCHREIER, KAREN E. (CJ) | 1 | 3 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 12 | 1 | 0 | 0 |
| DISTRICT TOTAL: | 4 | 12 | 1 | 0 | 0 |
| CIRCUIT TOTAL: | 2349 | 104 | 7 | 1 | 6 |

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U.S. DISTRICT COURT FOR ALASKA

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|------------------------|----------|----------|----------|----------|----------|
| ROBERTS, JOHN D. | 0 | 0 | 0 | 0 | 0 |
| SMITH, DEBORAH M. | 0 | 0 | 0 | 0 | 0 |
| JAMIN, MATTHEW D. | 0 | 0 | 0 | 0 | 0 |
| LONGENBAUGH, LESLIE C. | 0 | 0 | 0 | 0 | 0 |
| THOMPSON, MICHAEL | 0 | 0 | 0 | 0 | 0 |
| ORAVEC, SCOTT | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|-----------|----------|----------|----------|----------|
| VON DER HEYDT, JAMES A. | 0 | 0 | 0 | 0 | 0 |
| FITZGERALD, JAMES M. | 0 | 0 | 0 | 0 | 0 |
| HOLLAND, H. RUSSEL | 5 | 3 | 1 | 0 | 0 |
| SINGLETON, JAMES K. | 3 | 0 | 0 | 0 | 0 |
| SEDWICK, JOHN W. (CJ) | 2 | 0 | 0 | 0 | 0 |
| BEISTLINE, RALPH R. | 3 | 0 | 0 | 0 | 0 |
| BURGESS, TIMOTHY H. | 4 | 5 | 0 | 0 | 0 |
| SUBTOTAL | 17 | 8 | 1 | 0 | 0 |

DISTRICT TOTAL:
0

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U.S. DISTRICT COURT FOR ARIZONA

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-------------------------|----------|----------|----------|----------|----------|
| EDMONDS, GLENDA E. | 0 | 2 | 0 | 0 | 0 |
| ANDERSON, LAWRENCE O. | 0 | 0 | 0 | 0 | 0 |
| VELASCO, BERNARDO P. | 0 | 0 | 0 | 0 | 0 |
| IRWIN, JAY R. | 0 | 0 | 0 | 0 | 0 |
| DUNCAN, DAVID K. | 0 | 0 | 0 | 0 | 0 |
| PYLE, CHARLES R. | 0 | 1 | 0 | 0 | 0 |
| MARSHALL, JACQUELINE J. | 0 | 0 | 0 | 0 | 0 |
| VOSS, EDWARD C. | 2 | 0 | 0 | 0 | 0 |
| ASPEY, MARK E. | 0 | 0 | 0 | 0 | 0 |
| ESTRADA, HECTOR C. | 0 | 0 | 0 | 0 | 0 |
| GUERIN, JENNIFER C. | 0 | 0 | 0 | 0 | 0 |
| BURNS, MICHELLE H. | 0 | 0 | 0 | 0 | 0 |
| FERRARO, D. THOMAS | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 3 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|------------|-----------|----------|----------|----------|
| HOLLAND, H. RUSSEL (VJ) | 2 | 0 | 0 | 0 | 0 |
| EZRA, DAVID A. (VJ) | 1 | 0 | 0 | 0 | 0 |
| CARROLL, EARL H. | 15 | 16 | 0 | 0 | 1 |
| ROSENBLATT, PAUL G. | 14 | 0 | 0 | 0 | 0 |
| BROOMFIELD, ROBERT C. | 1 | 0 | 0 | 0 | 1 |
| STRAND, ROGER G. | 0 | 0 | 0 | 0 | 0 |
| MCNAMEE, STEPHEN M. | 12 | 1 | 0 | 0 | 0 |
| ROLL, JOHN H. (CJ) | 6 | 0 | 0 | 0 | 0 |
| SILVER, ROSLYN O. | 4 | 1 | 0 | 0 | 0 |
| ZAPATA, FRANK R. | 12 | 6 | 0 | 0 | 1 |
| COLLINS, RANER | 6 | 2 | 0 | 0 | 1 |
| TEILBORG, JAMES A. | 2 | 0 | 0 | 0 | 0 |
| BOLTON, SUSAN R. | 3 | 0 | 0 | 0 | 0 |
| MURGUA, MARY H. | 13 | 0 | 0 | 0 | 0 |
| MARTONE, FREDERICK J. | 0 | 0 | 0 | 0 | 0 |
| JORGENSEN, CINDY K. | 5 | 4 | 0 | 0 | 1 |
| BURY, DAVID G. | 7 | 0 | 0 | 0 | 0 |
| CAMPBELL, DAVID G. | 3 | 1 | 0 | 0 | 0 |
| WAKE, NEIL VINCENT | 1 | 0 | 0 | 0 | 0 |
| SNOW, G. MURRAY | 1 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 108 | 33 | 0 | 0 | 5 |

DISTRICT TOTAL:
0

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U.S. DISTRICT COURT FOR CALIFORNIA NORTHERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-----------------------|-----------|-----------|----------|----------|----------|
| BRAZIL, WAYNE D. | 0 | 0 | 0 | 0 | 0 |
| TRUMBULL, PATRICIA | 1 | 4 | 0 | 0 | 4 |
| JAMES, MARIA-ELENA | 4 | 2 | 1 | 0 | 0 |
| ZIMMERMAN, BERNARD | 0 | 0 | 0 | 0 | 0 |
| LARSON, JAMES L. | 1 | 1 | 0 | 0 | 1 |
| LAPORTE, ELIZABETH D. | 1 | 0 | 0 | 0 | 0 |
| SPERO, JOSEPH | 1 | 0 | 0 | 0 | 0 |
| SEEBORG, RICHARD | 3 | 1 | 0 | 0 | 0 |
| CHEN, EDWARD M. | 0 | 0 | 0 | 0 | 0 |
| LLOYD, HOWARD R. | 1 | 0 | 0 | 0 | 1 |
| VADAS, NANDOR | 2 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 14 | 10 | 1 | 0 | 6 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|------------|-----------|----------|----------|----------|
| CONTI, SAMUEL | 2 | 0 | 0 | 0 | 0 |
| SHUBB, WILLIAM B. | 1 | 0 | 0 | 0 | 0 |
| SCHWARZER, WILLIAM W. | 2 | 0 | 0 | 0 | 0 |
| HENDERSON, THELTON E. | 15 | 2 | 0 | 0 | 0 |
| PATEL, MARILYN H. | 27 | 3 | 0 | 0 | 0 |
| JENSEN, D. LOWELL | 2 | 0 | 0 | 0 | 0 |
| WALKER, VAUGHN R. (CJ) | 9 | 4 | 0 | 0 | 0 |
| WARE, JAMES | 28 | 4 | 0 | 3 | 1 |
| ARMSTRONG, SAUNDRA BROWN | 5 | 0 | 0 | 0 | 0 |
| WHYTE, RONALD M. | 29 | 12 | 1 | 0 | 2 |
| WILKEN, CLAUDIA | 15 | 0 | 0 | 0 | 0 |
| CHESNEY, MAXINE M. | 7 | 0 | 0 | 0 | 0 |
| ILLSTON, SUSAN YVONNE | 13 | 0 | 0 | 0 | 0 |
| BREYER, CHARLES R. | 3 | 0 | 0 | 0 | 0 |
| FOGEL, JEREMY D. | 22 | 1 | 0 | 0 | 0 |
| ALSUP, WILLIAM HASKELL | 10 | 4 | 0 | 0 | 0 |
| HAMILTON, PHYLLIS J. | 30 | 2 | 0 | 0 | 0 |
| WHITE, JEFFREY STEVEN | 6 | 5 | 0 | 0 | 0 |
| UNASSIGNED | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 226 | 38 | 1 | 3 | 3 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------------|-----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MOULDS, JOHN F. | 0 | 0 | 0 | 0 | 0 |
| HOLLOWS, GREGORY G. | 0 | 1 | 0 | 0 | 0 |
| BECK, DENNIS L. | 6 | 3 | 0 | 0 | 0 |
| SNYDER, SANDRA | 3 | 1 | 0 | 0 | 2 |
| DROZD, DALE A. | 1 | 0 | 0 | 0 | 15 |
| MUELLER, KIMBERLY J. | 1 | 4 | 0 | 0 | 0 |
| WUNDERLICH, WILLIAM M. | 2 | 0 | 0 | 0 | 0 |
| KELLISON, CRAIG M. | 1 | 0 | 0 | 0 | 0 |
| BRENNAN, EDMUND F. | 2 | 8 | 0 | 0 | 2 |
| AUSTIN, GARY S. | 3 | 0 | 0 | 0 | 0 |
| DIXON, JOHN M., JR. | 0 | 0 | 0 | 0 | 0 |
| SORRENTINO, CHARLENE H. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 19 | 17 | 0 | 0 | 20 |

DISTRICT JUDGES

| | | | | | |
|----------------------------|----|----|---|---|---|
| KARLTON, LAWRENCE K. | 91 | 8 | 0 | 0 | 1 |
| WINMILL, B. LYNN (VJ) | 1 | 0 | 0 | 0 | 0 |
| SINGLETON, JAMES K. (VJ) | 5 | 0 | 0 | 0 | 0 |
| COYLE, ROBERT E. | 0 | 0 | 0 | 0 | 0 |
| GARCIA, EDWARD J. | 0 | 0 | 0 | 0 | 0 |
| SHUBB, WILLIAM B. | 8 | 6 | 0 | 0 | 0 |
| WANGER, OLIVER W. | 57 | 21 | 0 | 1 | 1 |
| BURRELL, GARLAND E., JR. | 67 | 11 | 0 | 0 | 0 |
| WHALEY, ROBERT H. (VJ) | 0 | 2 | 0 | 0 | 0 |
| BRYAN, ROBERT J. (VJ) | 1 | 0 | 0 | 0 | 0 |
| SCHWARZER, WILLIAM W. (VJ) | 0 | 1 | 0 | 0 | 0 |
| ISHII, ANTHONY W. (CJ) | 62 | 7 | 0 | 0 | 0 |
| DAMRELL, FRANK C., JR. | 56 | 9 | 0 | 1 | 0 |
| ENGLAND, MORRISON C., JR. | 76 | 13 | 0 | 0 | 0 |
| O'NEILL, LAWRENCE J. | 60 | 2 | 0 | 0 | 2 |
| ALARCON, ARTHUR L. | 0 | 1 | 0 | 0 | 0 |
| MCMAMEE, STEPHEN M. (VJ) | 1 | 0 | 0 | 0 | 0 |
| MENDEZ, JOHN A. | 60 | 13 | 0 | 1 | 0 |
| ROLL, JOHN M. (VJ) | 2 | 0 | 0 | 0 | 0 |
| SILVER, ROSLYN O. (VJ) | 2 | 0 | 0 | 0 | 0 |
| ZAPATA, FRANK R. (VJ) | 2 | 1 | 0 | 0 | 0 |
| COLLINS, RANER (VJ) | 2 | 0 | 0 | 0 | 0 |
| TEILBORG, JAMES A. (VJ) | 3 | 0 | 0 | 0 | 0 |
| HOUSTON, JOHN A. (VJ) | 1 | 0 | 0 | 0 | 0 |
| BOLTON, SUSAN R. (VJ) | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|---------------------------|---|---|---|---|---|
| MURGUIA, MARY H. (VJ) | 1 | 0 | 0 | 0 | 0 |
| SAMMARTINO, JANIS L. (VJ) | 0 | 1 | 0 | 0 | 0 |
| BURY, DAVID C. (VJ) | 2 | 0 | 0 | 0 | 0 |
| CRIBBELL, DAVID G. | 1 | 0 | 0 | 0 | 0 |
| WAKE, NEIL VINCENT (VJ) | 1 | 0 | 0 | 0 | 0 |

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U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------------|------------|--------------------|-----------------|------------------|--------------------|
| SNOW, G. MURRAY (VJ) | 4 | 0 | 0 | 0 | 0 |
| FOGEL, JEREMY D. (VJ) | 1 | 0 | 0 | 0 | 0 |
| ALSUP, WILLIAM HASKELL (VJ) | 0 | 3 | 0 | 0 | 0 |
| BEA, CARLOS | 0 | 1 | 0 | 0 | 0 |
| MATZ, A. HOWARD (VJ) | 0 | 1 | 0 | 0 | 0 |
| WRIGHT, OTIS D., II (VJ) | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 568 | 102 | 0 | 3 | 4 |

DISTRICT TOTAL:

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U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| EICK, CHARLES F. | 0 | 0 | 0 | 0 | 0 |
| TURCHIN, CAROLYN | 0 | 0 | 0 | 0 | 0 |
| HILLMAN, STEPHEN J. | 0 | 0 | 0 | 0 | 2 |
| WISTRICH, ANDREW J. | 1 | 3 | 1 | 0 | 0 |
| BLOCK, ROBERT N. | 0 | 0 | 0 | 0 | 0 |
| CHAPMAN, ROSALYN M. | 0 | 0 | 0 | 0 | 0 |
| WOEHRLE, CARLA M. | 2 | 6 | 1 | 0 | 0 |
| NAKAZATO, ARTHUR | 0 | 0 | 0 | 0 | 0 |
| ZAREFSKY, RALPH | 0 | 0 | 0 | 0 | 0 |
| NAGLE, MARGARET A. | 0 | 0 | 0 | 0 | 0 |
| JOHNSON, JEFFREY W. | 0 | 0 | 0 | 0 | 0 |
| GOLDMAN, MARC I. | 0 | 0 | 0 | 0 | 0 |
| KENTON, VICTOR B. | 0 | 1 | 0 | 0 | 0 |
| WALSH, PATRICK J. | 0 | 0 | 0 | 0 | 0 |
| LUM, JENNIFER T. | 1 | 0 | 0 | 0 | 0 |
| OLGUIN, FERNANDO M. | 0 | 0 | 0 | 0 | 0 |
| ABRAMS, PAUL L. | 0 | 0 | 0 | 0 | 0 |
| SEGAL, SUZANNE H. | 0 | 0 | 0 | 0 | 0 |
| CHOOIJIAN, JACQUELINE | 0 | 6 | 0 | 0 | 0 |
| PARADA, OSWALD | 0 | 2 | 0 | 0 | 0 |
| MUMM, FREDERICK F. | 0 | 1 | 0 | 0 | 1 |
| RAYBURN, JOHN C., JR. | 0 | 0 | 0 | 0 | 0 |
| ROSENBERG, ALICIA G. | 0 | 0 | 0 | 0 | 0 |
| FEDERMAN, RITA C. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 19 | 2 | 0 | 3 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|-----|----|---|---|---|
| WHALEY, ROBERT H. (VJ) | 1 | 0 | 0 | 0 | 0 |
| REAL, MANUEL L. | 8 | 2 | 0 | 0 | 2 |
| KELLEHER, ROBERT J. | 1 | 0 | 0 | 0 | 0 |
| TAKASUGI, ROBERT M. | 5 | 1 | 0 | 0 | 0 |
| FFAELZER, MARIANA R. | 0 | 0 | 0 | 0 | 0 |
| HATTER, TERRY J., JR. | 17 | 8 | 0 | 0 | 0 |
| MARSHALL, CONSUELO BLAND | 10 | 1 | 1 | 1 | 0 |
| STOTLER, ALICEMARIE H. | 20 | 9 | 0 | 0 | 1 |
| KELLER, WILLIAM DUFFY | 2 | 1 | 0 | 0 | 0 |
| WILSON, STEPHEN V. | 30 | 28 | 0 | 1 | 0 |
| LETTIS, J. SPENCER | 116 | 4 | 0 | 0 | 0 |
| LEW, RONALD S.W. | 14 | 7 | 0 | 2 | 0 |
| COLLINS, AUDREY B. (CJ) | 26 | 8 | 0 | 2 | 0 |
| TIMLIN, ROBERT J. | 1 | 0 | 0 | 0 | 0 |
| KING, GEORGE H. | 20 | 6 | 0 | 2 | 0 |
| PREGERSON, DEAN D. | 30 | 24 | 0 | 6 | 0 |
| SNYDER, CHRISTINA A. | 22 | 6 | 0 | 1 | 0 |
| MORROW, MARGARET M. | 15 | 20 | 0 | 2 | 1 |

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U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-------|--------------------|-----------------|------------------|--------------------|
| MATZ, A. HOWARD | 18 | 11 | 0 | 1 | 0 |
| CARTER, DAVID O. | 15 | 4 | 0 | 1 | 0 |
| FEES, GARY | 21 | 9 | 0 | 0 | 0 |
| COOPER, FLORENCE-MARIE | 18 | 6 | 0 | 0 | 0 |

| | | | | | |
|-------------------------|----|----|---|---|---|
| PHILLIPS, VIRGINIA ANNE | 12 | 13 | 0 | 0 | 0 |
| WALTER, JOHN F. | 12 | 5 | 0 | 1 | 0 |
| ANDERSON, PERCY | 14 | 4 | 0 | 5 | 0 |
| KLAUSNER, ROBERT G. | 7 | 0 | 0 | 0 | 0 |
| OTERO, S. JAMES | 8 | 2 | 0 | 0 | 0 |
| SELNA, JAMES V. | 13 | 3 | 0 | 0 | 0 |
| CARNEY, CORMAC J. | 6 | 3 | 0 | 0 | 0 |
| FISCHER, DALE S. | 12 | 8 | 0 | 2 | 0 |
| LARSON, STEPHEN G. | 16 | 2 | 0 | 0 | 0 |
| GUILFORD, ANDREW J. | 20 | 2 | 0 | 0 | 0 |
| GUTIERREZ, PHILLIP S. | 18 | 3 | 0 | 0 | 0 |
| FAIRBANK, VALERIE B. | 13 | 8 | 0 | 0 | 0 |
| WRIGHT, OTIS D., II | 18 | 6 | 0 | 2 | 0 |
| WU, GEORGE H. | 20 | 48 | 1 | 1 | 0 |

SUBTOTAL 599 262 2 30 4

DISTRICT TOTAL: 603 281 4 30 7

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR CALIFORNIA SOUTHERN

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|------------------------|---|---|---|---|---|
| PORTER, LOUISA S. | 0 | 0 | 0 | 0 | 0 |
| PAPAS, LEO S. | 0 | 0 | 0 | 0 | 0 |
| BROOKS, RUBEN B. | 0 | 0 | 0 | 0 | 0 |
| BATTAGLIA, ANTHONY J. | 0 | 0 | 0 | 0 | 0 |
| STORMES, NITA L. | 0 | 0 | 0 | 0 | 0 |
| ADLER, JAN M. | 0 | 0 | 0 | 0 | 0 |
| MAJOR, BARBARA L. | 0 | 0 | 0 | 0 | 0 |
| MCCURINE, WILLIAM, JR. | 2 | 0 | 0 | 0 | 0 |
| LEWIS, PETER C. | 0 | 0 | 0 | 0 | 0 |
| BENCIVENGO, CATHY ANN | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 2 0 0 0 0

DISTRICT JUDGES

| | | | | | |
|-------------------------|----|---|---|---|---|
| TURRENTINE, HOWARD B. | 0 | 0 | 0 | 0 | 0 |
| THOMPSON, GORDON, JR. | 0 | 1 | 0 | 0 | 0 |
| ENRIGHT, WILLIAM B. | 0 | 0 | 0 | 0 | 0 |
| BREWSTER, RUDI M. | 1 | 1 | 0 | 0 | 0 |
| HUFF, MARILYN L. | 0 | 0 | 0 | 0 | 0 |
| GONZALEZ, IRMA E. (CJ) | 1 | 0 | 0 | 0 | 0 |
| JONES, NAPOLEON A., JR. | 2 | 2 | 0 | 0 | 0 |
| MOSKOWITZ, BARRY TED | 7 | 1 | 0 | 0 | 0 |
| MILLER, JEFFREY T. | 3 | 0 | 0 | 0 | 0 |
| WHELAN, THOMAS J. | 2 | 0 | 0 | 0 | 0 |
| LORENZ, M. JAMES | 6 | 0 | 0 | 0 | 0 |
| BURNS, LARRY A. | 0 | 0 | 0 | 0 | 0 |
| SABRAW, DANA M. | 3 | 0 | 0 | 0 | 0 |
| HAYES, WILLIAM Q. | 3 | 0 | 0 | 1 | 0 |
| HOUSTON, JOHN A. | 10 | 0 | 0 | 0 | 1 |
| BENITEZ, ROGER T. | 1 | 0 | 0 | 0 | 0 |
| SAMMARTINO, JANIS L. | 18 | 1 | 0 | 0 | 1 |
| ANELLO, MICHAEL M. | 12 | 0 | 0 | 0 | 1 |

SUBTOTAL 69 6 0 1 3

DISTRICT TOTAL: 71 6 0 1 3

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR HAWAII

| CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------|-----------------|--------------|---------------|-----------------|
|-------|-----------------|--------------|---------------|-----------------|

MAGISTRATE JUDGES

| | | | | | |
|----------------------|---|---|---|---|---|
| KURREN, BARRY | 1 | 0 | 0 | 0 | 0 |
| KOHAYASHI, LESLIE E. | 1 | 0 | 0 | 0 | 0 |
| CHANG, KEVIN C. | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 2 0 0 0 0

DISTRICT JUDGES

| | | | | | |
|------------------------|---|---|---|---|---|
| KING, SAMUEL P. | 1 | 0 | 0 | 0 | 0 |
| KAY, ALAN COOKE | 0 | 0 | 0 | 0 | 0 |
| EZRA, DAVID A. | 4 | 0 | 0 | 0 | 0 |
| GILLMOR, HELEN W. (CJ) | 1 | 0 | 0 | 0 | 1 |
| MOLLWAY, SUSAN OKI | 0 | 0 | 0 | 0 | 0 |
| SEABRIGHT, MICHAEL | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|----------------------|----------|----------|----------|----------|----------|
| REAL, MANUEL L. (VJ) | 2 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 9 | 0 | 0 | 0 | 1 |

DISTRICT TOTAL: 11 0 0 0 1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR IDAHO

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| DALE, CANDY | 0 | 0 | 0 | 0 | 0 |
| BUSH, RONALD | 0 | 0 | 0 | 0 | 0 |
| WILLIAMS, MIKEL H. | 0 | 0 | 0 | 0 | 0 |
| BOYLE, LARRY M. | 2 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------|-----------|----------|----------|----------|----------|
| LODGE, EDWARD J. (CJ) | 2 | 0 | 0 | 0 | 0 |
| WINMILL, B. LYNN | 21 | 0 | 0 | 0 | 0 |
| CARTER, DAVID O. (VJ) | 1 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 24 | 0 | 0 | 0 | 0 |

DISTRICT TOTAL: 26 0 0 0 0

DISTRICT SUMMARY REPORT

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RUN: 06/23/2009

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U.S. DISTRICT COURT FOR MONTANA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| OSTBY, CAROLYN S. | 0 | 0 | 0 | 0 | 0 |
| LYNCH, JEREMIAH C. | 1 | 0 | 0 | 0 | 0 |
| STRONG, KEITH | 1 | 0 | 0 | 0 | 0 |
| SCHUSTER, GERARD M. | 0 | 0 | 0 | 0 | 0 |
| HOLTER, ROBERT M. | 0 | 0 | 0 | 0 | 0 |
| ANDERSON, RICHARD W. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|-----------|-----------|----------|----------|----------|
| LOVELL, CHARLES C. | 0 | 0 | 0 | 0 | 0 |
| SHANSTROM, JACK D. | 0 | 0 | 0 | 0 | 0 |
| MOLLOY, DONALD W. | 3 | 19 | 0 | 0 | 0 |
| CEBULL, RICHARD F. (CJ) | 6 | 6 | 0 | 0 | 0 |
| HADDON, SAM E. | 5 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 14 | 25 | 0 | 0 | 0 |

DISTRICT TOTAL: 16 25 0 0 0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEVADA

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------------|----------|--------------------|-----------------|------------------|--------------------|
| MAGISTRATE JUDGES | | | | | |
| JOHNSTON, ROBERT J. | 0 | 0 | 0 | 0 | 0 |
| LEAVITT, LAWRENCE R. | 0 | 0 | 1 | 0 | 0 |
| MCQUAID, ROBERT A., JR. | 4 | 0 | 0 | 0 | 0 |
| COOKE, VALERIE P. | 0 | 0 | 0 | 0 | 0 |
| LEEN, PEGGY A. | 0 | 0 | 0 | 0 | 0 |
| FOLEY, GEORGE W., JR. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 4 | 0 | 1 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|----------------------|----|---|---|---|---|
| REED, EDWARD C., JR. | 17 | 0 | 0 | 0 | 0 |
| GEORGE, LLOYD D. | 9 | 0 | 0 | 0 | 0 |
| MCKIBBEN, HOWARD D. | 0 | 0 | 0 | 0 | 0 |
| PRO, PHILIP H. | 9 | 1 | 0 | 0 | 0 |

| | | | | | |
|---------------------|----|---|---|---|---|
| EZRA, DAVID A. (VJ) | 8 | 0 | 0 | 0 | 0 |
| HUNT, ROGER L. (CJ) | 2 | 0 | 0 | 0 | 0 |
| DAWSON, KENT J. | 10 | 0 | 0 | 0 | 0 |
| HICKS, LARRY R. | 12 | 6 | 0 | 0 | 0 |
| MAHAN, JAMES C. | 10 | 0 | 0 | 0 | 0 |
| JONES, ROBERT CLIVE | 15 | 3 | 0 | 2 | 0 |
| SANDOVAL, BRIAN E. | 13 | 1 | 0 | 2 | 0 |

SUBTOTAL 105 11 0 4 0

DISTRICT TOTAL: 109 11 1 4 0

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U.S. DISTRICT COURT FOR OREGON

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| COFFIN, THOMAS M. | 4 | 0 | 0 | 0 | 1 |
| STEWART, JANICE M. | 6 | 1 | 0 | 0 | 2 |
| HUBEL, DENNIS J. | 2 | 0 | 0 | 0 | 0 |
| PARRK, PAUL J. | 4 | 0 | 0 | 0 | 1 |
| CLARKE, MARK D. | 0 | 0 | 0 | 0 | 1 |
| ACOSTA, JOHN V. | 6 | 5 | 0 | 0 | 1 |
| SULLIVAN, PATRICIA | 2 | 7 | 0 | 0 | 0 |
| JELDERKS, JOHN A. | 1 | 0 | 0 | 0 | 0 |
| ASHMANSKAS, DONALD C. | 0 | 0 | 0 | 0 | 0 |
| COONEY, JOHN P. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 25 | 13 | 0 | 0 | 6 |

DISTRICT JUDGES

| | | | | | |
|--------------------|----|----|---|---|---|
| PANNER, OWEN M. | 1 | 5 | 0 | 0 | 0 |
| REDDEN, JAMES A. | 3 | 2 | 0 | 0 | 0 |
| FRYE, HELEN J. | 0 | 1 | 0 | 0 | 0 |
| MARSH, MALCOLM F. | 0 | 2 | 0 | 0 | 0 |
| JONES, ROBERT E. | 4 | 0 | 0 | 0 | 0 |
| HOGAN, MICHAEL R. | 6 | 1 | 0 | 0 | 6 |
| HAGGERTY, ANGER L. | 6 | 6 | 0 | 0 | 0 |
| AIKEN, ANN (CJ) | 2 | 0 | 0 | 0 | 1 |
| KING, GARR M. | 3 | 0 | 0 | 0 | 2 |
| BROWN, ANNA J. | 4 | 2 | 0 | 0 | 0 |
| MOSMAN, MICHAEL W. | 3 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 32 | 19 | 0 | 0 | 9 |

DISTRICT TOTAL: 57 32 0 0 15

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U.S. DISTRICT COURT FOR WASHINGTON EASTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| IMBROGNO, CYNTHIA | 0 | 0 | 0 | 0 | 2 |
| HUTTON, JAMES P. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 2 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|----|---|---|---|---|
| QUACKENBUSH, JUSTIN L. | 1 | 0 | 0 | 0 | 0 |
| NIELSEN, WILLIAM FREMMING | 10 | 0 | 0 | 0 | 0 |
| VAN SICKLE, FRED | 5 | 0 | 0 | 0 | 0 |
| WHALEY, ROBERT H. (CJ) | 6 | 2 | 0 | 0 | 0 |
| SREA, EDWARD F. | 1 | 4 | 0 | 0 | 0 |
| SUKO, LONNY R. | 2 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 25 | 8 | 0 | 0 | 0 |

DISTRICT TOTAL: 25 8 0 0 2

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U.S. DISTRICT COURT FOR WASHINGTON WESTERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|-------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |

| | | | | | |
|----------------------|----------|----------|----------|----------|----------|
| STROMBOM, KAREN L. | 0 | 0 | 0 | 0 | 0 |
| THEILER, MARY ALICE | 0 | 0 | 0 | 0 | 0 |
| DONOHUE, JAMES P. | 0 | 0 | 0 | 0 | 0 |
| TSUCHIDA, BRIAN A. | 0 | 0 | 0 | 0 | 0 |
| CREATURA, J. RICHARD | 0 | 0 | 0 | 0 | 0 |
| BRETT, DEAN R. | 0 | 0 | 0 | 0 | 0 |
| CHRISTEL, DAVID W. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|----------|----------|----------|----------|
| MCGOVERN, WALTER T. | 0 | 0 | 0 | 0 | 0 |
| ROTHSTEIN, BARBARA JACOBS | 0 | 0 | 0 | 0 | 0 |
| COUGHENOUR, JOHN C. | 3 | 0 | 0 | 0 | 0 |
| DIMMICK, CAROLYN R. | 0 | 0 | 0 | 0 | 0 |
| BRYAN, ROBERT J. | 0 | 0 | 0 | 0 | 0 |
| ZILLY, THOMAS S. | 0 | 0 | 0 | 0 | 0 |
| BURGESS, FRANKLIN D. | 1 | 0 | 0 | 0 | 0 |
| LASNICK, ROBERT S. (CJ) | 3 | 0 | 0 | 0 | 0 |
| PECHMAN, MARSHA J. | 0 | 0 | 0 | 0 | 0 |
| LEIGHTON, RONALD B. | 0 | 0 | 0 | 0 | 0 |
| MARTINEZ, RICARDO S. | 6 | 2 | 0 | 0 | 0 |
| ROBART, JAMES L. | 0 | 0 | 0 | 0 | 0 |
| SETTLE, BENJAMIN H. | 0 | 0 | 0 | 0 | 0 |
| JONES, RICHARD A. | 0 | 2 | 0 | 0 | 0 |
| SUBTOTAL | 13 | 4 | 0 | 0 | 0 |

DISTRICT TOTAL: 13 4 0 0 0
 DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR GUAM

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| MANIBUSAN, JOAQUIN V., JR. | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 1 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| TYDINGCO-GATEWOOD, FRANCES (CJ) | 2 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 1 | 0 | 0 | 0 |

DISTRICT TOTAL: 2 2 0 0 0
 DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NORTHERN MARIANAS

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|-------------|-----------------|--------------|---------------|-----------------|
| DISTRICT JUDGES | | | | | |
| MUNSON, ALEX R. (CJ) | 2 | 5 | 0 | 0 | 0 |
| SUBTOTAL | 2 | 5 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 2 | 5 | 0 | 0 | 0 |
| CIRCUIT TOTAL: | 1889 | 585 | 8 | 41 | 66 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR COLORADO

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| WATANABE, MICHAEL J. | 0 | 0 | 0 | 0 | 0 |
| BOLAND, BOYD | 0 | 2 | 0 | 0 | 0 |
| SHAFFER, CRAIG B. | 0 | 0 | 0 | 0 | 0 |
| HEGARTY, MICHAEL E. | 0 | 0 | 0 | 0 | 0 |
| MIX, KRISTEN L. | 0 | 0 | 0 | 0 | 0 |
| TAFOYA, KATHLEEN M. | 0 | 0 | 0 | 0 | 0 |
| WEST, DAVID L. | 0 | 0 | 0 | 0 | 0 |
| MILBURN, LAIRD T. | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|------------------------|----|----|---|---|----|
| SUBTOTAL | 0 | 2 | 0 | 0 | 0 |
| DISTRICT JUDGES | | | | | |
| MATSCH, RICHARD P. | 19 | 30 | 0 | 0 | 12 |
| KANE, JOHN L., JR. | 4 | 19 | 0 | 0 | 0 |
| WEINSHIENK, ZITA L. | 2 | 6 | 0 | 0 | 0 |
| EBEL, DAVID M. | 0 | 1 | 0 | 0 | 0 |
| BABCOCK, LEWIS T. | 1 | 5 | 0 | 0 | 0 |
| DANIEL, WILEY Y. (CJ) | 8 | 0 | 0 | 2 | 0 |
| MILLER, WALKER D. | 11 | 0 | 1 | 0 | 0 |
| KRIEGER, MARCIA S. | 5 | 0 | 0 | 1 | 1 |
| BLACKBURN, ROBERT E. | 0 | 0 | 0 | 0 | 0 |
| BRIMMER, PHILIP A. | 8 | 0 | 0 | 1 | 2 |
| ARGUELLO, CHRISTINE M. | 2 | 0 | 0 | 3 | 2 |
| SUBTOTAL | 60 | 61 | 1 | 7 | 17 |

DISTRICT TOTAL: 60 63 1 7 17

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR KANSAS

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| HUMPHREYS, KAREN M. | 0 | 0 | 0 | 0 | 0 |
| BOSTWICK, DONALD W. | 0 | 2 | 0 | 0 | 0 |
| WAXSE, DAVID J. | 1 | 0 | 0 | 0 | 0 |
| O'HARA, JAMES P. | 0 | 1 | 0 | 0 | 0 |
| SEBELIUS, KEITH G. | 0 | 0 | 0 | 0 | 0 |
| RUSHFELT, GERALD L. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 3 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|----|----|---|---|---|
| BROWN, WESLEY E. | 6 | 8 | 0 | 2 | 0 |
| ROGERS, RICHARD DEAN | 1 | 0 | 0 | 0 | 0 |
| CROW, SAM A. | 6 | 0 | 0 | 0 | 0 |
| LUNGSTRUM, JOHN W. | 12 | 4 | 0 | 0 | 0 |
| BELOT, MONTI L. | 7 | 7 | 0 | 0 | 0 |
| VRATIL, KATHRYN H. (CJ) | 3 | 0 | 0 | 0 | 0 |
| MARTEN, JOHN THOMAS | 3 | 0 | 0 | 0 | 0 |
| MURGUIA, CARLOS | 0 | 1 | 0 | 0 | 0 |
| ROBINSON, JULIE A. | 2 | 0 | 0 | 0 | 0 |
| MELGREN, ERIC F. | 4 | 0 | 0 | 4 | 0 |
| SUBTOTAL | 44 | 20 | 0 | 6 | 0 |

DISTRICT TOTAL: 45 23 0 6 0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW MEXICO

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|----------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| GARCIA, LORENZO F. | 0 | 0 | 0 | 0 | 0 |
| PUGLISI, RICHARD L. | 0 | 0 | 0 | 0 | 0 |
| MOLZEN, KAREN B. | 0 | 0 | 0 | 0 | 0 |
| TORGERSON, ALAN C. | 0 | 0 | 0 | 0 | 0 |
| SCHNEIDER, W. DANIEL | 0 | 1 | 0 | 0 | 0 |
| SCOTT, ROBERT HAYES | 0 | 5 | 0 | 0 | 0 |
| MARTINEZ, LOURDES A. | 0 | 0 | 0 | 0 | 0 |
| LYNCH, WILLIAM P. | 0 | 0 | 0 | 0 | 0 |
| GARZA, CARMEN E. | 0 | 0 | 0 | 0 | 0 |
| IONTA, ROBERT W. | 0 | 0 | 0 | 0 | 0 |
| RIGGS, KEA W. | 0 | 0 | 0 | 0 | 0 |
| SVET, DON J. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 6 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|---|----|---|---|---|
| DOWNES, WILLIAM F. (VJ) | 1 | 0 | 0 | 0 | 0 |
| CONWAY, JOHN E. | 2 | 3 | 0 | 0 | 0 |
| PARKER, JAMES A. | 4 | 0 | 0 | 0 | 0 |
| HANSEN, C. LEROY | 1 | 12 | 0 | 0 | 0 |
| VAZQUEZ, MARTHA (CJ) | 4 | 0 | 0 | 0 | 0 |
| BLACK, BRUCE D. | 7 | 15 | 0 | 0 | 0 |

| | | | | | |
|-----------------------|---|----|---|---|---|
| ARMUJO, M. CRISTINA | 1 | 0 | 0 | 0 | 0 |
| JOHNSON, WILLIAM PAUL | 2 | 11 | 0 | 0 | 0 |
| BRACK, ROBERT | 1 | 0 | 0 | 0 | 0 |
| BROWNING, JAMES O. | 1 | 1 | 0 | 1 | 0 |
| HERRERA, JUDITH C. | 2 | 0 | 0 | 0 | 0 |

SUBTOTAL 26 42 0 1 0

DISTRICT TOTAL: 26 48 0 1 0

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U.S. DISTRICT COURT FOR OKLAHOMA NORTHERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|--------------------|---|---|---|---|---|
| MCCARTHY, FRANK H. | 0 | 0 | 0 | 0 | 0 |
| CLEARY, PAUL J. | 0 | 0 | 0 | 0 | 0 |
| WILSON, T. LANE | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 0 0 0 0 0

DISTRICT JUDGES

| | | | | | |
|-----------------------|----|----|---|---|---|
| PAYNE, JAMES E. | 3 | 0 | 0 | 0 | 0 |
| KERN, TERENCE C. | 10 | 30 | 0 | 1 | 0 |
| EAGAN, CLAIRE V. (CJ) | 5 | 2 | 0 | 0 | 0 |
| FRIZZELL, GREGORY K. | 14 | 1 | 1 | 0 | 0 |

SUBTOTAL 32 33 1 1 0

DISTRICT TOTAL: 32 33 1 1 0

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U.S. DISTRICT COURT FOR OKLAHOMA EASTERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|--------------------|---|---|---|---|---|
| WEST, KIMBERLY E. | 0 | 2 | 0 | 0 | 1 |
| SHREDER, STEVEN P. | 1 | 1 | 0 | 0 | 2 |

SUBTOTAL 1 3 0 0 3

DISTRICT JUDGES

| | | | | | |
|----------------------|---|----|---|---|---|
| SEAY, FRANK HOWELL | 0 | 2 | 0 | 0 | 0 |
| PAYNE, JAMES H. (CJ) | 3 | 13 | 0 | 0 | 6 |
| WHITE, RONALD A. | 0 | 1 | 0 | 0 | 6 |

SUBTOTAL 3 16 0 0 12

DISTRICT TOTAL: 4 19 0 0 15

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U.S. DISTRICT COURT FOR OKLAHOMA WESTERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-------------------|---|---|---|---|---|
| ARGO, DOYLE | 0 | 0 | 0 | 0 | 0 |
| ROBERTS, BANA | 0 | 3 | 0 | 0 | 0 |
| PURCELL, GARY M. | 0 | 0 | 0 | 0 | 0 |
| COUCH, VALERIE K. | 0 | 0 | 0 | 0 | 0 |
| BACHARACH, ROBERT | 0 | 2 | 0 | 0 | 0 |
| ERWIN, SHON T. | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 0 5 0 0 0

DISTRICT JUDGES

| | | | | | |
|----------------------------|---|---|---|---|---|
| WEST, LEE R. | 3 | 9 | 0 | 0 | 0 |
| CAUTHRON, ROBIN J. | 4 | 4 | 0 | 0 | 0 |
| RUSSELL, DAVID L. | 2 | 1 | 0 | 0 | 0 |
| LEONARD, TIM | 0 | 0 | 0 | 0 | 0 |
| MILES-LAGRANGE, VICKI (CJ) | 3 | 2 | 0 | 0 | 0 |
| ERLOT, STEPHEN P. | 7 | 2 | 0 | 0 | 0 |

| | | | | | |
|----------------------|-----------|------------|----------|----------|----------|
| HEATON, JOE L. | 5 | 2 | 0 | 0 | 0 |
| DEGIUSTI, TIMOTHY D. | 8 | 105 | 0 | 0 | 0 |
| SUBTOTAL | 32 | 125 | 0 | 0 | 0 |

DISTRICT TOTAL: 32 130 0 0 0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR UTAH

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| ALBA, SAMUEL | 0 | 6 | 0 | 0 | 1 |
| NUFFER, DAVID O. | 0 | 0 | 0 | 0 | 0 |
| WELLS, BROOKE C. | 0 | 0 | 0 | 0 | 0 |
| WARNER, PAUL H. | 0 | 0 | 0 | 0 | 0 |
| BRAITHWAITE, ROBERT T. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 6 | 0 | 0 | 1 |

DISTRICT JUDGES

| | | | | | |
|---------------------|-----------|-----------|----------|----------|----------|
| JENKINS, BRUCE S. | 8 | 13 | 1 | 0 | 0 |
| WINDER, DAVID K. | 0 | 0 | 0 | 0 | 0 |
| GREENE, J. THOMAS | 1 | 6 | 0 | 0 | 2 |
| SAM, DAVID | 1 | 0 | 0 | 0 | 0 |
| BENSON, DEE V. | 15 | 20 | 0 | 0 | 2 |
| CAMPBELL, TENA (CJ) | 17 | 20 | 0 | 0 | 1 |
| KIMBALL, DALE A. | 7 | 0 | 0 | 0 | 0 |
| STEWART, TED | 7 | 10 | 0 | 0 | 2 |
| WADDOUPS, CLARK | 16 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 72 | 69 | 1 | 0 | 7 |

DISTRICT TOTAL: 72 75 1 0 8

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR WYOMING

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|--------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| COLE, STEPHEN B. | 0 | 0 | 0 | 0 | 0 |
| BERMAN, WILLIAM C. | 0 | 0 | 0 | 0 | 0 |
| MARTY, KAREN L. | 0 | 0 | 0 | 0 | 0 |
| SKAVDAHL, SCOTT W. | 0 | 0 | 0 | 0 | 0 |
| SHICKICH, R. MICHAEL | 0 | 0 | 0 | 0 | 0 |
| LUBING, JAMES K. | 0 | 0 | 0 | 0 | 0 |
| MCKEE, TERESA M. | 0 | 0 | 0 | 0 | 0 |
| GIST, RICHARD D. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 0 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-------------------------|----------|-----------|----------|----------|----------|
| BRIMMER, CLARENCE A. | 0 | 6 | 0 | 0 | 0 |
| JOHNSON, ALAN B. | 1 | 28 | 1 | 0 | 1 |
| DOWNES, WILLIAM F. (CJ) | 0 | 2 | 4 | 0 | 0 |
| MILLER, WALKER D. (VJ) | 0 | 1 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 37 | 5 | 0 | 1 |

DISTRICT TOTAL: 1 37 5 0 1

CIRCUIT TOTAL: 272 428 8 15 41

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR ALABAMA NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|-------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| POTNAM, T. MICHAEL | 0 | 1 | 0 | 0 | 0 |
| GREENE, PAUL WILLIAM | 4 | 43 | 0 | 0 | 0 |
| ARMSTRONG, ROBERT R., JR. | 1 | 0 | 0 | 0 | 0 |
| DAVIS, HARWELL G., III | 3 | 10 | 0 | 0 | 0 |
| OTT, JOHN E. | 2 | 9 | 0 | 0 | 0 |

MAGISTRATE JUDGES

| | | | | | |
|---------------------------|----------|----------|----------|----------|----------|
| SHERRILL, WILLIAM C., JR. | 0 | 0 | 0 | 0 | 0 |
| DAVIS, GORDON M. | 0 | 0 | 0 | 0 | 0 |
| KORNBLUM, ALIAN N. | 0 | 5 | 0 | 0 | 0 |
| TIMOTHY, ELIZABETH | 0 | 0 | 0 | 0 | 0 |
| BODIFORD, LARRY | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 0 | 5 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|---------------------------|-----------|-----------|----------|----------|----------|
| STAFFORD, WILLIAM H., JR. | 1 | 0 | 0 | 0 | 0 |
| PAUL, MAURICE MITCHELL | 5 | 45 | 0 | 0 | 9 |
| VINSON, C. ROGER | 0 | 0 | 0 | 0 | 0 |
| COLLIER, LACEY A. | 1 | 0 | 0 | 0 | 0 |
| HINKLE, ROBERT L. (CJ) | 0 | 0 | 0 | 0 | 0 |
| MICKLE, STEPHAN P. | 4 | 1 | 0 | 0 | 0 |
| RODGERS, M. CASEY | 0 | 0 | 0 | 0 | 0 |
| SMOAK, JOHN RICHARD, JR. | 0 | 0 | 0 | 0 | 0 |
| ROBRENO, EDUARDO C. (VJ) | 1 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 13 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 25 | 46 | 0 | 0 | 9 |

DISTRICT TOTAL:

25 51 0 0 9

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR FLORIDA MIDDLE

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|------------------------|----------|----------|----------|----------|----------|
| WILSON, THOMAS G. | 0 | 0 | 0 | 0 | 0 |
| SNYDER, HOWARD T. | 0 | 0 | 0 | 0 | 0 |
| JENKINS, ELIZABETH A. | 0 | 0 | 0 | 0 | 0 |
| BAKER, DAVID A. | 0 | 0 | 0 | 0 | 0 |
| MCCOUN, THOMAS B., III | 0 | 1 | 0 | 0 | 0 |
| PIZZO, MARK A. | 0 | 0 | 0 | 0 | 0 |
| SPAULDING, KARLA R. | 0 | 0 | 0 | 0 | 0 |
| FRAZIER, DOUGLAS N. | 1 | 0 | 0 | 0 | 0 |
| JONES, GARY R. | 0 | 0 | 0 | 0 | 0 |
| MORRIS, THOMAS E. | 0 | 0 | 0 | 0 | 0 |
| CHAPPELL, SHERI P. | 0 | 0 | 0 | 0 | 0 |
| RICHARDSON, MONTE C. | 0 | 0 | 0 | 0 | 0 |
| KLINDT, JAMES R. | 0 | 0 | 0 | 0 | 0 |
| KELLY, GREGORY J. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 1 | 1 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|----------------------------------|-----------|------------|----------|----------|----------|
| HODGES, WILLIAM TERRELL | 22 | 65 | 0 | 0 | 0 |
| MELTON, HOWELL W. | 0 | 0 | 0 | 1 | 0 |
| CASTAGNA, WILLIAM J. | 0 | 0 | 0 | 0 | 0 |
| MOORE, JOHN H., II | 0 | 0 | 0 | 0 | 0 |
| KOVACHEVICH, ELIZABETH A. | 7 | 16 | 0 | 0 | 0 |
| SHARE, GEORGE KENDALL | 4 | 0 | 0 | 0 | 0 |
| FAWSETT, PATRICIA C. | 0 | 0 | 0 | 0 | 0 |
| SCHLESINGER, HARVEY E. | 0 | 2 | 0 | 0 | 0 |
| CONWAY, ANNE C. (CJ) | 0 | 0 | 0 | 0 | 0 |
| MERRYDAY, STEVEN D. | 7 | 0 | 0 | 0 | 0 |
| BUCKLEW, SUSAN C. | 0 | 0 | 0 | 0 | 0 |
| ADAMS, HENRY LEE, JR. | 1 | 3 | 0 | 0 | 0 |
| LAZZARA, RICHARD A. | 1 | 0 | 0 | 0 | 0 |
| WHITTEMORE, JAMES D. | 0 | 0 | 0 | 0 | 0 |
| ANTOON, JOHN, II | 0 | 0 | 0 | 0 | 0 |
| STEELE, JOHN E. | 1 | 3 | 0 | 3 | 0 |
| MOODY, JAMES S., JR. | 1 | 0 | 0 | 0 | 0 |
| PRESNELL, GREGORY A. | 1 | 0 | 0 | 0 | 0 |
| CORRIGAN, TIMOTHY J. | 3 | 0 | 0 | 0 | 0 |
| COVINGTON HERNANDEZ, VIRGINIA M. | 0 | 0 | 0 | 0 | 0 |
| HOWARD, MARCIA M. | 1 | 3 | 0 | 0 | 0 |
| SCRIVEN, MARY | 0 | 0 | 0 | 0 | 0 |
| UNASSIGNED | 6 | 20 | 0 | 3 | 0 |
| SUBTOTAL | 55 | 112 | 0 | 7 | 0 |

DISTRICT TOTAL:

56 113 0 7 0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-----------------------|----------|----------|----------|----------|----------|
| SNOW, LURANA | 0 | 0 | 0 | 0 | 0 |
| TURNOFF, WILLIAM | 0 | 0 | 0 | 0 | 0 |
| JOHNSON, LINNEA R. | 0 | 0 | 0 | 0 | 0 |
| VITUNAC, ANN E. | 0 | 0 | 0 | 0 | 0 |
| BANDSTRA, TED E. | 0 | 0 | 0 | 0 | 0 |
| SELTZER, BARRY S. | 0 | 0 | 0 | 0 | 0 |
| BROWN, STEPHEN T. | 1 | 0 | 0 | 0 | 0 |
| GARBER, BARRY L. | 3 | 1 | 0 | 0 | 0 |
| LYNCH, FRANK J., JR. | 0 | 0 | 0 | 0 | 0 |
| SIMONTON, ANDREA M. | 1 | 0 | 0 | 0 | 0 |
| O'SULLIVAN, JOHN J. | 0 | 0 | 0 | 0 | 0 |
| WHITE, PATRICK A. | 0 | 0 | 0 | 0 | 0 |
| HOPKINS, JAMES H. | 1 | 0 | 0 | 0 | 0 |
| TORRES, EDWIN G. | 1 | 0 | 0 | 0 | 0 |
| MCALILEY, CHRIS MARIE | 0 | 1 | 0 | 0 | 0 |
| ROSENBAUM, ROBIN S. | 0 | 0 | 0 | 0 | 0 |
| PALERMO, PETER R. | 0 | 0 | 0 | 0 | 0 |
| DUBE, ROBERT L. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 7 | 2 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|--------------------------|----|----|---|---|---|
| KING, JAMES LAWRENCE | 0 | 0 | 0 | 0 | 0 |
| HOEVELER, WILLIAM H. | 3 | 8 | 0 | 0 | 0 |
| GONZALEZ, JOSE A., JR. | 0 | 0 | 0 | 0 | 0 |
| STORY, RICHARD W. (VJ) | 0 | 3 | 0 | 0 | 0 |
| ZLOCH, WILLIAM J. | 0 | 1 | 0 | 0 | 0 |
| RYSKAMP, KENNETH L. | 2 | 0 | 0 | 0 | 0 |
| MORENO, FEDERICO A. (CJ) | 3 | 0 | 0 | 0 | 0 |
| GRAHAM, DONALD L. | 0 | 0 | 0 | 0 | 0 |
| HIGHSMITH, SHELBY | 0 | 0 | 0 | 0 | 0 |
| MOORE, K. MICHAEL | 1 | 0 | 0 | 0 | 0 |
| UNGARO, URSULA | 0 | 0 | 0 | 0 | 0 |
| HURLEY, DANIEL T.K. | 2 | 2 | 0 | 0 | 0 |
| LENARD, JOAN A. | 0 | 14 | 0 | 0 | 0 |
| MIDDLEBROOKS, DONALD M. | 0 | 0 | 0 | 0 | 0 |
| GOLD, ALAN STEPHEN | 3 | 5 | 0 | 0 | 0 |
| DIMITROULEAS, WILLIAM P. | 0 | 0 | 0 | 0 | 0 |
| SEITZ, PATRICIA A. | 0 | 0 | 0 | 0 | 0 |
| JORDAN, ADALBERTO | 5 | 2 | 0 | 0 | 0 |
| HUCK, PAUL C. | 0 | 0 | 0 | 0 | 0 |
| MARRA, KENNETH A. | 17 | 1 | 0 | 0 | 0 |
| MARTINEZ, JOSE E. | 0 | 0 | 0 | 0 | 0 |
| ALTONAGA, CECILIA M. | 0 | 0 | 0 | 0 | 0 |
| COHN, JAMES I. | 0 | 0 | 0 | 0 | 0 |
| COOKE, MARCIA G. | 1 | 0 | 0 | 0 | 0 |

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U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|------------------------|------------|-----------------|--------------|---------------|-----------------|
| UNASSIGNED | 56 | 27 | 0 | 0 | 0 |
| SUBTOTAL | 93 | 63 | 0 | 0 | 0 |
| DISTRICT TOTAL: | 100 | 65 | 0 | 0 | 0 |

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR GEORGIA NORTHERN

| | CASES | MOTIONS PENDING | BENCH TRIALS | BANK. APPEALS | SOC-SEC APPEALS |
|---------------------------|----------|-----------------|--------------|---------------|-----------------|
| MAGISTRATE JUDGES | | | | | |
| BRILL, GERRLYN G. | 0 | 0 | 0 | 0 | 0 |
| SCOFIELD, E. CLAYTON, III | 1 | 3 | 0 | 0 | 0 |
| HAGY, C. CHRISTOPHER | 1 | 0 | 0 | 0 | 0 |
| KING, JANET F. | 0 | 0 | 0 | 0 | 0 |
| WALKER, LINDA T. | 0 | 0 | 0 | 0 | 0 |
| BAVERMAN, ALAN J. | 0 | 0 | 0 | 0 | 0 |
| COLE, SUSAN S. | 1 | 0 | 0 | 0 | 0 |
| JOHNSON, WALTER E. | 0 | 0 | 0 | 0 | 0 |
| VINEYARD, RUSSELL G. | 0 | 0 | 0 | 0 | 0 |
| SUBTOTAL | 3 | 3 | 0 | 0 | 0 |

DISTRICT JUDGES

| | | | | | |
|-----------------------|---|---|---|---|---|
| O'KELLEY, WILLIAM C. | 1 | 0 | 0 | 0 | 0 |
| MOYE, CHARLES A., JR. | 0 | 1 | 0 | 0 | 0 |
| MURPHY, HAROLD L. | 4 | 0 | 0 | 0 | 0 |

| | | | | | |
|--------------------------|---|----|---|---|---|
| SHOOB, MARVIN H. | 4 | 8 | 0 | 0 | 0 |
| VINING, ROBERT L., JR. | 1 | 9 | 0 | 1 | 0 |
| TIDWELL, G. ERNEST | 1 | 29 | 0 | 0 | 0 |
| EVANS, ORINDA | 0 | 0 | 0 | 0 | 0 |
| WARD, HORACE T. | 6 | 28 | 0 | 0 | 0 |
| FORRESTER, J. OWEN | 1 | 0 | 0 | 0 | 0 |
| CAMP, JACK T. | 0 | 2 | 0 | 0 | 0 |
| CARNES, JULIE E. (CJ) | 3 | 3 | 0 | 0 | 0 |
| COOPER, CLARENCE | 7 | 4 | 0 | 0 | 0 |
| HUNT, WILLIS B., JR. | 1 | 0 | 0 | 0 | 0 |
| THRASH, THOMAS W., JR. | 0 | 0 | 0 | 0 | 0 |
| STORY, RICHARD W. | 6 | 0 | 0 | 0 | 0 |
| PANNELL, CHARLES A., JR. | 5 | 2 | 0 | 0 | 0 |
| MARTIN, BEVERLY B. | 1 | 0 | 0 | 0 | 0 |
| DUFFEY, WILLIAM S., JR. | 0 | 0 | 0 | 0 | 0 |
| BATTEN, TIMOTHY C., SR. | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 41 86 0 1 0

DISTRICT TOTAL: 44 89 0 1 0

DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 100

U.S. DISTRICT COURT FOR GEORGIA MIDDLE

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-----------------------|---|---|---|---|---|
| HICKS, CLAUDE W., JR. | 1 | 0 | 0 | 0 | 6 |
| HODGE, RICHARD L. | 2 | 0 | 0 | 0 | 0 |
| FAIRCLOTH, G. MALLON | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 3 0 0 0 6

DISTRICT JUDGES

| | | | | | |
|-----------------------|---|---|---|---|---|
| SANDS, W. LOUIS | 6 | 1 | 0 | 0 | 0 |
| LAWSON, HUGH | 4 | 3 | 0 | 0 | 2 |
| LAND, CLAY D. | 2 | 0 | 0 | 0 | 0 |
| ROYAL, C. ASHLEY (CJ) | 6 | 0 | 0 | 0 | 4 |

SUBTOTAL 18 4 0 0 6

DISTRICT TOTAL: 21 4 0 0 12

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U.S. DISTRICT COURT FOR GEORGIA SOUTHERN

| | | | | |
|-------|---------|--------|---------|---------|
| | MOTIONS | BENCH | BANK. | SOC-SEC |
| CASES | PENDING | TRIALS | APPEALS | APPEALS |

MAGISTRATE JUDGES

| | | | | | |
|-------------------|---|---|---|---|---|
| SMITH, GEORGE R. | 0 | 0 | 0 | 0 | 0 |
| GRAHAM, JAMES E. | 1 | 0 | 0 | 0 | 0 |
| BARFIELD, W. LEON | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 1 0 0 0 0

DISTRICT JUDGES

| | | | | | |
|-----------------------------|---|---|---|---|---|
| ALAIMO, ANTHONY A. | 1 | 2 | 0 | 0 | 0 |
| EDENFIELD, B. AVANT | 0 | 1 | 0 | 0 | 0 |
| BOWEN, DUDLEY H., JR. | 4 | 1 | 0 | 0 | 0 |
| MOORE, WILLIAM T., JR. (CJ) | 1 | 0 | 0 | 0 | 0 |
| WOOD, LISA G. | 0 | 0 | 0 | 0 | 0 |
| HALL, JAMES RANDAL | 0 | 0 | 0 | 0 | 0 |

SUBTOTAL 6 4 0 0 0

DISTRICT TOTAL: 7 4 0 0 0

CIRCUIT TOTAL: 324 477 0 9 44

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED
ACCELERATION PRODUCT
LIABILITY LITIGATION

) MDL Docket No. 2151

)

)

)

)

)

2:09-1247

Graves v. Toyota Motor
Manufacturing, et al.

FILED

FEB 22 2010

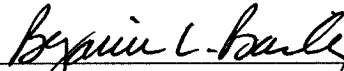
TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

**MOTION TO TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA
AND OPPOSITION TO VARIOUS OTHER TRANSFER MOTIONS**

The *Graves* Plaintiffs respectfully ask this panel to transfer multiple class actions now pending against Toyota Motor North America and its related entities to the Southern District of West Virginia for coordinated and consolidated pretrial proceedings, pursuant to 28 USC § 1407. Each of these cases involves claims that Toyota markets and has marketed vehicles with a propensity for sudden and unintended acceleration, without an adequate failsafe or brake override.

For the reasons set forth more fully in the attached Memorandum, the *Graves* Plaintiffs urge that these matters shall be consolidated, believe that the Southern District of West Virginia is the most appropriate transferee court, and – conversely – submit that the other venues suggested as transferee courts are not as appropriate or convenient for all parties. A list of the cases known to movants as of February 18th is attached to the Memorandum.

Respectfully submitted,



Benjamin L. Bailey (WV Bar No. 200)

Eric B. Snyder (WV Bar No. 9143)

Robert P. Lorea (WV Bar No. 7476)

Rodney A. Smith (WV Bar No. 9750)

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cja@laborgators.com
Counsel for Plaintiff Elaine Byrnes

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE: TOYOTA UNINTENDED) MDL Docket No. 2151
ACCELERATION PRODUCT)
LIABILITY LITIGATION)
)
)
)

**MEMORANDUM IN SUPPORT OF MOTION
TO TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA
AND OPPOSITION TO VARIOUS OTHER TRANSFER MOTIONS**

Michael Graves, Michael C. Graves, and Jeff Mullins, (the “Graves Plaintiffs”), by counsel, respectfully move the Panel for an Order transferring the actions listed on the attached Schedule of Actions to the Southern District of West Virginia where their case is pending for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407 for the following reasons:

- The Southern District of West Virginia in general, and Chief Judge Goodwin in particular, have the least docket pressure of any forum selected by any party, thus lending to an efficient and expeditious resolution of the case.
- Toyota, through its subsidiary Toyota Motor Manufacturing West Virginia, Inc., a West Virginia Corporation, maintains a corporate and physical presence within the Southern District of West Virginia.
- The *Graves* case (*Michael Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al.* No. 2:09-cv-01247 (S.D. W. Va.)), filed November 20, 2009, was one of the first filed class actions.
- Counsel for the Graves Plaintiffs are also counsel in *Alberto v. Toyota, et al*, a wrongful death case pending in state court in Flint, Michigan since August 14, 2009, have been investigating these claims since early 2009, and have already begun depositions and written discovery in that matter.

For all these reasons, and others addressed below, the Southern District of West Virginia is a most convenient and appropriate forum for transfer.

INTRODUCTION

There are currently several dozen separate class actions pending in at least ten different districts seeking redress for Toyota's deceptive marketing of defective vehicles and the number increases every day. *See Schedule of Actions*, Ex. 1. At a minimum, the Panel currently has before it motions seeking to transfer the consolidated actions to the Central District of California, Eastern District of Kentucky, Southern District of Florida, District of New Jersey, and Eastern District of Pennsylvania. Other Motions will no doubt be filed.

The *Graves* Plaintiffs and their counsel currently represent five of the actions filed, nine of the named plaintiffs, and seven of the law firms involved.¹ The *Graves* Plaintiffs agree that coordinated or consolidated pretrial proceedings are appropriate. For the reasons set forth below, however, the *Graves* Plaintiffs respectfully suggest that the Southern District of West Virginia is the most appropriate transferee district.

ARGUMENT

I. TRANSFER AND COORDINATION PURSUANT TO 28 U.S.C. § 1407 IS APPROPRIATE.

There should be little dispute that transfer and pretrial coordination of the various class actions is appropriate. Transfer and coordination are appropriate upon a finding that (1) the

¹ Linda Alford Wooten, plaintiff in the action pending in the United States District court for the District of South Carolina, *Wooten v. Toyota Motor North America, Inc., et al.*, Civil Action No. 3:10-cv-00229-MJP; Elaine Byrnes, plaintiff in the action pending in the Central District of California, *Byrnes v. Toyota Motor North America, Inc., et al.*, Civil Action No. CV10-0947-GW; Kevin P. Fogarty, Barbara Jackson and Alex Farrugia, plaintiffs in the action pending in the United States District Court for the Eastern District of New York, Civil Action No. 10-0542; and Daniel D. Lee, plaintiff in the action pending in the Northern District of Ohio, *Lee v. Toyota Motor North America, et al.*, Civil Action No. 3:10-cv-00280, also support transfer to the Southern District of West Virginia

cases “involve[] one or more common questions of fact,” (2) the transfers would further “the convenience of the parties and witnesses,” and (3) the transfers “will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). All of the subject actions satisfy these criteria.

All of the Toyota class actions known to the undersigned contain allegations that Toyota Motor Corporation and its affiliated companies wrongfully marketed vehicles which were unreasonably dangerous, because of a propensity of the vehicles to experience sudden unintended acceleration events and the absence of a failsafe or brake override mechanism.

Where such common questions exist, transfer and coordination is necessary to eliminate the risk of inconsistent rulings. *See In re First Nat’l Bank, Heavener, Okla. Sec. Litig.*, 451 F.Supp. 995, 997 (J.P.M.L. 1978) (holding that transfer and consolidation was necessary to “eliminate the possibility of inconsistent pre-trial rulings”).

Consolidation will also promote a more efficient resolution of the complex issues of law and fact presented in these cases. The various actions couple the engineering issues surrounding the potential defects in Toyota’s Electronic Control System equipped vehicles, their floor mats and their pedals, with complex legal issues surrounding Toyota’s marketing of these vehicles and the impacts of massive and ongoing recalls of Toyota Vehicles. Each case asks what Toyota knew of these issues and when it knew.

Without consolidation, discovery on these common factual and legal issues will be needlessly time consuming, inefficient and repetitive. *See Transfer Under Section 1407 of the Judicial Code – Factors Influencing The Choice of a Transferee Forum and a Transferee Judge*, Wright & Miller, 15 Fed. Prac. & Proc. Juris. 3d §3864 (West 2007) (“In particularly large complex multidistrict class actions, it has been argued that it is especially important to order

pretrial consolidation; this will enable a single judge to restructure ‘disjointed actions into what can be termed a ‘super class action’ [which] may be the only form in which the litigation can be handled by the judicial system”). While there is little doubt that the multiple class actions should be consolidated, there remains a question as to which forum should receive the consolidated class actions.² For the reasons set forth below, the *Graves* Plaintiffs suggest that the Southern District of West Virginia should be selected as the transferee district.

II. THE SOUTHERN DISTRICT OF WEST VIRGINIA IS THE MOST APPROPRIATE TRANSFEREE DISTRICT.

The *Graves* Plaintiffs represent a class of consumers who, among other things, seek to compel Toyota to fit a brake override or similar failsafe in their vehicles equipped with ETCS-i and also seek damages. The defect alleged in the class actions is currently blamed for several automotive fatalities throughout the country. In fact, in December, 2009, Toyota voluntarily suspended the sales of eight of its most popular vehicles, purportedly to allow Toyota to address safety issues surrounding these vehicles. Toyota has recalled millions of its vehicles for reasons relating to their floor mats and pedals. As recently as February 17, 2010 Toyota publicly announced its intentions to begin installing brake overrides on certain vehicles.

Toyota’s own unwillingness to continue selling such vehicles until a fail-safe is installed in them is a stark illustration of the urgency presented by this issue. Because the class actions involve such an urgent safety issue, the Panel’s primary concern in transferring the actions should center upon the transferee district’s ability to promptly and efficiently resolve the class members’ demand for installation of a failsafe or other remedy.

The Southern District of West Virginia is such a forum. The *Graves* action is further advanced than most if not all the other class cases, with briefing underway on Toyota’s motion to

² The *Graves* Plaintiffs express no opinion as to whether individual, personal injury cases should be consolidated.

dismiss. Moreover, this is not a case in which one district stands out as a geographic focal point for the litigation. To the contrary, the various class actions are dispersed in courts across the United States. Toyota, in fact, has operations in many parts of the United States, including West Virginia, Kentucky, New York, Washington, DC, and California. In past cases, when the Panel has faced such a diverse range of forums, it has selected the forum that is able to most efficiently resolve the consolidated cases. *See, e.g., In Re Digitek® Product Liability Litigation*, 2:08-md-01968 (S.D.W. Va.), MDL No. 1968; *Serzone Products Liability Litigation*, 2:02-md-01477 (S.D.W. Va.), MDL No. 1477; *Maytag Corp. Neptune Washer Products Liability Litigation*, 2:04-md-10617 (S.D.W. Va.), MDL No. 1617. (consolidating 12 actions and 25 potential tag-along actions, pending in multiple districts).

Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide docket. Thus, we have searched for a transferee judge with the time and experience to steer this litigation on a prudent course and sitting in a district with the capacity to handle this litigation.

Id. at p. 1367.

The Panel has previously recognized the Southern District of West Virginia as an appropriate forum for consolidated cases and one that “is well equipped with the resources that this docket is likely to require.” *See Maytag Corp. Neptune Washer Products Liability Litigation*, 333 F.Supp.2d 1382, 1383 (J.P.M.L. 2004). The Honorable Joseph R. Goodwin, who presided over the *Maytag* case, currently presides over *Graves*. Judge Goodwin is extremely well suited to handle this case, which presents significant complexity. Judge Goodwin has extensive experience with product liability cases, and as a MDL transferee Judge. *See, e.g. In Re Digitek® Product Liability Litigation (MDL No. 1968); Serzone Products Liability (MDL No. 1477); Maytag Corp. Neptune Washer Products Liability (MDL No. 1617)*. Moreover, upon

information and belief, Judge Goodwin is no longer presiding over any criminal cases, which will make available additional judicial resources for utilization on this case.

The Southern District of West Virginia also presents a more favorable docket for the consolidated cases. The most recent Federal Court Management Statistics show that the Southern District of West Virginia saw a total of only 1,875 filings in 2008. *See S. D. W. Va. Judicial Case Load Profile*, attached as Ex. 2. Spread among five judgeships at that time, these were distributed at a rate of 306 civil cases per judge. *Id.* The majority of these cases are listed as Personal Injury/or Product Liability. The median time from filing to disposition of civil cases was 9.2 months and only 50 civil cases, representing 3.3 percent of civil cases in the district, were over three years old. *Id.* These numbers demonstrate that the Southern District of West Virginia has sufficient docket resources to devote to the consolidated cases. Since these statistics were compiled in 2008, the Southern District of West Virginia has seen the addition of Honorable Irene C. Berger as a district judge, making it reasonable to anticipate that the docket load in the Southern District of West Virginia will be even further reduced.

The Panel has traditionally placed significant weight on docket pressure when making close decisions, and has recognized that the transferee district having the lightest docket is best suited to expeditiously handle cases. *In re Eastern Airlines, Inc. Flight Attendant Weight Program Litigation*, 391 F.Supp. 763, 764-65 (J.P.M.L. 1975) (transferring class action from District of Massachusetts to Eastern District of Virginia on grounds that the latter had a significantly lighter civil action docket). This rationale supports the Southern District of West Virginia as the most appropriate transferee district for this action.

Geography supports West Virginia, as well. The Southern District presents a direct connection to the controversy, which adds convenience to the litigation. Toyota Motor

Manufacturing West Virginia, Inc., which manufactured many of the engines at issue in this litigation, is located within the Southern District of West Virginia. Toyota Motor Manufacturing Kentucky, Inc. which also manufactured many of the engine assemblies, is located in Georgetown, Kentucky, in relatively close proximity to the Southern District of West Virginia. Some ETCS-i components are believed to have been manufactured by Denso Manufacturing Tennessee, Inc., in Maryville, Tennessee. The Southern District of West Virginia is located in Charleston, the capitol of West Virginia. Consequently, travel to and from the district is reasonably accommodated. Charleston is served by its own airport, which offers direct flights to and from several major cities, including Chicago, New York, Washington D.C., Atlanta, Houston, Detroit, Cincinnati and Orlando. Travel within Charleston and between the courthouse and the airport (which is a ten minute drive) is nothing short of easy. For these reasons, the Southern District of West Virginia presents an appropriate and convenient forum to accept transfer of the consolidated cases.

III. THE WEST VIRGINIA CLASS ACTION IS BEST SUITED TO ASSUME A LEAD ROLE IN THE LITIGATION.

In addition to a more favorable docket, the *Graves* case is well situated to assume a lead role in the consolidated actions. The *Graves* case is more advanced than those pending in other jurisdictions. The Southern District of West Virginia has already imposed a briefing schedule in *Graves*. By the time of the Panel's transfer hearing, briefing on Toyota's Motion to Dismiss will be complete and the court may have already ruled on the motion and conducted a planning meeting the part commenced.

Counsel in *Graves* is also counsel in a wrongful death action pending in Michigan State Court which has been pending since August, 2009. See *Lilia Alberto, personal representative of Guadalupe Alberto v. Toyota Motor Corporation, et al*, Civ. Action No. 09-91973 Second

Amended Complaint attached as Exhibit A. In that case, the undersigned counsel have already been taking depositions, and exchanged written discovery on many of the same technical issues presented in the class actions. As such, *Graves* is even further advanced than would otherwise appear.

Similarly, counsel for the *Graves* Plaintiffs have significant experience in automobile litigation and class action litigation. The work the undersigned have performed in *Graves* and related cases, combined with the many defendant manufacturers that are located within the Southern District of West Virginia, or in close proximity to it, and the light docket for the Southern District of West Virginia, all combine to make this forum the most appropriate venue for consolidating the actions.

IV. THE CENTRAL DISTRICT OF CALIFORNIA DOES NOT PROVIDE A MORE APPROPRIATE TRANSFEREE DISTRICT.

The Central District of California does not present a more favorable transferee district. Federal Court Management Statistics show that the Central District of California reported a case load nearly three times greater than that reported in the Southern District of West Virginia, with 15,144 total filings in 2008. *See S. D. W. Va. Judicial Case Load Profile*, relevant portions attached as Ex. 2. The case load per judgeship is also greater in the Central District of California which distributed 540 cases per judgeship in 2008, 433 of these were civil cases. The Central District of California also took more time to resolve its cases. In 2008, 821 cases were reported as “over [three] years old.” This number was over 8% of the Central District’s civil docket, and ranked the Central District 68th in the nation. However this was an improvement from 2006, when the Central District had 1,240 civil cases or 11.6% of its civil docket in this category. *Id.*

Finally, while various Toyota entities may have offices in California, this is a convenience primarily enjoyed only by those in Toyota’s California offices, to the detriment of

the plaintiffs, defendants other Toyota facilities and counsel located elsewhere in the United States. For these reasons, the Panel should not select the Central District of California to be the transferee district.

VI. THE EASTERN DISTRICT OF KENTUCKY DOES NOT PROVIDE A MORE APPROPRIATE TRANSFEREE DISTRICT.

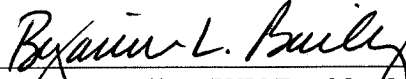
Plaintiffs in the case of *Al Viviano, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, (E.D. Ky.) (“Viviano Plaintiffs”) recently filed their own opposition challenging the transfer of this action to the Central District of California. *See Viviano Opposition*. While the *Viviano* Plaintiffs correctly point out many of the disadvantages of transferring the case to the Central District of California, the *Graves* plaintiffs suggest that the docket in the Eastern District of Kentucky should not be selected over the Southern District of West Virginia. The Eastern District of Kentucky has a heavier docket than that in the Southern District of West Virginia.

The Eastern District of Kentucky had 2,400 filings in 2008. *Judicial Case Load Profile*, relevant portions attached as Ex. 2. It also had a greater number of cases per judgeship, with 436 total and 313 of these reported as civil case. *Id.* The Eastern District of Kentucky also reported 73 civil cases, or 5% of its civil docket as over three years old. In addition, 36.7 % of jurors were not selected or subject to challenge. *Id.* These facts show that the Southern District of West Virginia has a more favorable docket for the litigation. Moreover, the *Viviano* case has not advanced as far in its litigation as *Graves* and *Alberto*.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully move for the consolidated cases to be transferred to the Southern District of West Virginia.

Respectfully submitted,



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Exhibit

“A”

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation, TOYOTA MOTOR
CORPORATION, a Japanese Corporation.**

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

Hereinafter all Defendants are referred to collectively as "Toyota" or the "Toyota Defendants."

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration ("NHTSA") investigators. Specifically, Defendant Toyota Motor North America ("TMNA") was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

15. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

¹ Defect Petition DP04-003; Investigation PE04-021

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

² "long duration" is defined as lasting longer than one (1) second

reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

³ ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," also supports this action under the Consumers Credit and Protection Act. The agency's analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY 2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007 through MY 2008;

Toyota Highlanders from MY 2004 through 2009;

Toyota Tacoma pickup trucks from MY 2003 through 2008;

Toyota Camrys from Model Year (MY) 2002 though 2009;

Lexus models from MY 1998 through 2009;

Toyota Tundra pickup trucks MY 2000 through 2009;

Toyota 4Runner SUVs from MY 2001 through 2009;

Toyota Avalons from MY 2005 through 2009;

Toyota Land Cruisers from MY 2001 through 2009;

Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?

- d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?
- e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?
- f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?
- g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?
- h. Did Plaintiff and others similarly situated suffer ascertainable loss?
- i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?
- j. Was Toyota unjustly enriched?
- k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

- l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?
- m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

**FIRST CLAIM FOR RELIEF
(Negligence)**

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF
(Unjust Enrichment)**

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)**

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

65. Plaintiffs and each member of the Class are “consumers” within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia’s Consumer Credit and Protection Act (“CCPA”) codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota, via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of \$200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

76. The Toyota is a “manufacturer” within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia’s Consumer Protection – New Motor Vehicle Warranties Act (“Lemon Law”) codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because the stated legislative intent of this law is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs’ vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota as a duty to replace the Sub-Class Plaintiffs’ vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

(1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

(2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

(3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and

(4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;
- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding each Plaintiff its actual damages or \$200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);
- g. Awarding attorneys' fees, expenses and costs;
- h. Punitive Damages
- i. Awarding pre- and post-judgment interest; and
- j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

/s/ Eric B. Snyder
BAILEY & GLASSER, LLP
Benjamin L. Bailey (WVSB #6597)
Eric B. Snyder (WVSB #9143)
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Facsimile: (304) 342-1110

Edgar F. Heiskell, III (WVSB #1668)
Attorney at Law
P.O. Box 3232
Charleston, West Virginia 25332-3232

CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

Rebecca A. Betts (WVSB #329)
Nicholas S. Johnson (WVSB #10272)
ALLEN GUTHERIE & THOMAS, PLLC
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Charleston, WV 2533-3394

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Los Angeles, CA 90071

*Counsel for Defendants
Toyota Motor Manufacturing, West Virginia, Inc.;
Toyota Motor North America, Inc.;
Toyota Motor Engineering & Manufacturing North America, Inc.; and
Toyota Motor Sales U.S.A., Inc.*

/s/ Eric B. Snyder

Exhibit

“B”

| CASE CAPTION | COURT | CIVIL ACTION NO. |
|--|--|------------------|
| 1. Abken et al v. Toyota Motor North America Inc et al | US District Court for the District of New Jersey | 3:10cv763 |
| 2. Abken, et al. v. Toyota Motor North America, Inc., et al. | US District Court for the District of New Jersey | 1:33av1 |
| 3. Baldiseeri v. Toyota Motor Sales, USA, Inc et al | US District Court for the Central District of California | 2:09cv9386 |
| 4. Beard et al v. Toyota Motor Corporation et al | US District Court for the Central District of California | 8:10cv183 |
| 5. Bithorn et al v. Toyota Motor North America, Inc et al | US District Court for the District of Puerto Rico | 3:10cv1083 |
| 6. Brock v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of Louisiana | 2:10cv281 |
| 7. Colaberdino v. Toyota Motor North America Inc et al | US District Court for the District of New Jersey | 3:10cv672 |
| 8. Deborah v. Toyota Motor North America, Incorporated et al | US District Court for the Eastern District of Michigan | 2:10cv10525 |
| 9. Donahue v. Toyota Motors Manufacturing USA Inc et al | US District Court for the Middle District of Louisiana | 3:10cv108 |
| 10. Early et al v. Toyota Motor Corporation et al | US District Court for the Northern District of Texas | 3:10cv332 |
| 11. Enderle v. Toyota Motor North America, Inc et al | US District Court for the Southern District of Indiana | 1:10cv142 |
| 12. Firgon v. Toyota Motor Corporation et al | US District Court for the District of Kansas | 2:10cv2075 |
| 13. Fitts et al v. Toyota Motor Corporation | US District Court for the Eastern District of Texas | 2:10cv52 |
| 14. Fogarty et al v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of New York | 1:10cv542 |
| 15. Gaspard | US District Court for the Western District of Louisiana | 1:10cv179 |
| 16. Gazaryan et al v. Toyota Motor Sales USA, Inc et al | US District Court for the Central District of California | 2:10cv849 |

| | CASE CAPTION | COURT | CIVIL ACTION NO. |
|-----|---|--|------------------|
| 17. | Gellman v. Toyota Motor Sales USA, Inc | US District Court for the Southern District of Florida | 1:10cv20006 |
| 18. | Gonzalez v. Toyota Motor Sales USA Inc et al | US District Court for the District of New Jersey | 3:10cv595 |
| 19. | Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc Et A | US District Court for the Southern District of West Virginia | 2:09cv1247 |
| 20. | Greisiger et al v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of Pennsylvania | 5:10cv554 |
| 21. | Gumble v. Toyota Motor Corporation et al | US District Court for the Eastern District of Pennsylvania | 5:10cv521 |
| 22. | Guokas v. Toyota Motor Corporation et al | US District Court for the District of New Jersey | 3:10cv778 |
| 23. | Haustein v. Toyota Motor Corporation et al | US District Court for the Northern District of New York | 5:10cv178 |
| 24. | Hauter et al v. Toyota Motor Sales USA Inc et al | US District Court for the Central District of California | 8:10cv105 |
| 25. | Heather A Lane v. Toyota Motor Sales, USA, Inc | US District Court for the Central District of California | 2:09cv9158 |
| 26. | Heilbrunn v. Toyota Motor Corporation et al | US District Court for the Southern District of Florida | 9:10cv80208 |
| 27. | Horn v. Toyota Motor Sales USA Inc et al | US District Court for the Eastern District of Arkansas | 4:10cv90 |
| 28. | Hulsen v. Toyota Motor Corporation et al | US Consolidated Court for the Western District of Missouri | 4:10cv103 |
| 29. | Iglesias et al v. Toyota Motor Corporation et al | US District Court for the Southern District of New York | 1:10cv1014 |
| 30. | Jacobson v. American Honda Motor Company, Inc et al | US District Court for the District of Oregon | 3:10cv134 |
| 31. | Jerry Baker Auto Sales, LLC v. Toyota Motor Sales, Inc | US Consolidated Court for the Western District of Oregon | 2:10cv4025 |

| CASE CAPTION | COURT | CIVIL ACTION NO. |
|---|--|------------------|
| USA, Inc Et A | Missouri | |
| 32. Johnson v. Toyota Motor Corporation et al | US District Court for the Northern District of Florida | 5:10cv26 |
| 33. Leaverton v. Toyota Motor Engineering & Manufacturing North America, Inc Et A | US District Court for the Eastern District of Kentucky | 2:10cv32 |
| 34. Lee v. Toyota Motor North America, Inc | US District Court for the Northern District of Ohio | 3:10cv280 |
| 35. Lynch v. Toyota Motor Corporation et al | US District Court for the Middle District of Florida | 8:10cv326 |
| 36. Maillho v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of Louisiana | 2:10cv279 |
| 37. Menssen v. Toyota Motor Sales, USA, Inc et al | US District Court for the Northern District of Ohio | 1:10cv260 |
| 38. Miller et al v. Toyota Motor Sales, USA, Inc et al | US District Court for the Eastern District of Kentucky | 2:10cv31 |
| 39. Mitchell v. Toyota Motor North America, Inc et al | US District Court for the Southern District of Mississippi | 3:10cv104 |
| 40. Ochs v. Toyota Motor Corporation et al | US District Court for the Northern District of Illinois | 1:10cv918 |
| 41. Patel v. Toyota Motor North America Inc et al | US District Court for the District of Connecticut | 3:10cv210 |
| 42. Pena et al v. Toyota Motor Corporation et al | US Consolidated Court for the Southern District of Texas | 2:10cv37 |
| 43. Phaneuf v. Toyota Motor Sales USA, Inc et al | US District Court for the Eastern District of New York | 2:10cv487 |
| 44. Poynter et al v. Toyota Motor North America Inc, et al | US District Court for the Eastern District of Kentucky | 2:10cv21 |
| 45. Rainwater v. Toyota Motor Sales USA Inc | US District Court for the Eastern District of Arkansas | 4:10cv116 |
| 46. Real v. Toyota Motor Sales USA Inc et al | US District Court for the Central District of California | 8:10cv173 |

| | CASE CAPTION | COURT | CIVIL ACTION NO. |
|-----|---|--|------------------|
| 47. | Rivas-Vigil v. Toyota Motor North America, Inc et al | US District Court for the Southern District of Florida | 0:10cv60183 |
| 48. | Roberts v. Toyota Motor Corporation et al | US District Court for the District of South Carolina | 7:10cv281 |
| 49. | Roz Schwartz v. Toyota Motor Sales USA Inc et al | US District Court for the Central District of California | 2:10cv710 |
| 50. | Sander et al v. Toyota Motor Sales, U.sa, Inc et al | US District Court for the Southern District of New York | 1:10cv1111 |
| 51. | Scharrel v. Toyota Motor North America, Inc et al | US District Court for the District of Colorado | 1:10cv227 |
| 52. | Seong Bae Choi et al v. Toyota Motor Corporation et al | US District Court for the Central District of California | 2:09cv8143 |
| 53. | Shah et al v. Toyota Motor North America, Inc et al | US District Court for the District of Massachusetts | 1:10cv10263 |
| 54. | Shumaker v. Toyota Motor Engineering et al | US District Court for the Southern District of Ohio | 3:10cv61 |
| 55. | Sill et al v. Toyota Motor Sales USA Inc et al | US District Court for the Western District of Oklahoma | 5:10cv117 |
| 56. | Simmons v. Toyota Motor Corporation et al | US District Court for the Northern District of Mississippi | 3:10cv9 |
| 57. | Stackhouse v. Toyota Motor Corporation et al | US District Court for the Central District of California | 2:10cv922 |
| 58. | Stadler v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of Kentucky | 2:10cv30 |
| 59. | Viviano et al v. Toyota Motor Engineering and Manufacturing North America, Inc Et A | US District Court for the Eastern District of Kentucky | 2:10cv24 |
| 60. | Weimer et al v. Toyota Motor North America, Inc et al | US District Court for the Eastern District of Louisiana | 2:10cv219 |
| 61. | Whiddon v. Toyota Motor Sales USA Inc et al | US District Court for the Eastern District of Texas | 1:10cv80 |
| 62. | Wisner v. Toyota Motor Corporation et al | US District Court for the Central District of California | 2:10cv942 |

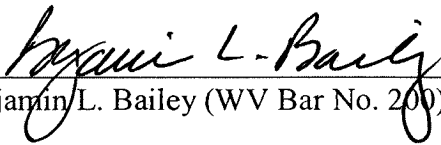
| | CASE CAPTION | COURT | CIVIL ACTION NO. |
|-----|--|--|------------------|
| 63. | Wooten v. Toyota Motor North America Inc et al | US District Court for the District of South Carolina | 3:10cv229 |

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

| | | |
|--------------------------|---|---------------------|
| IN RE: TOYOTA UNINTENDED |) | |
| ACCELERATION PRODUCT |) | MDL Docket No. 2151 |
| LIABILITY LITIGATION |) | |
| |) | |
| |) | |
| |) | |

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of February 2010 caused to be served a copy of the foregoing "Motion to Transfer to the Southern District of West Virginia and Opposition to Various Other Transfer Motions" and "Memorandum in Support of Motion to Transfer to the Southern District of West Virginia and Opposition to Various Other Transfer Motions" by United States mail with postage paid thereon to parties listed below:



Benjamin L. Bailey (WV Bar No. 200)

Service on Courts:

United States District Court
California, Central
312 N. Spring St.
Los Angeles, CA 90012-4793

United States District Court
California, Central
255 East Temple Street.
Los Angeles, CA 90012

United States District Court
California, Central
411 West Fourth Street, Room 1053
Santa Ana, CA 92701-4516

United States District Court
West Virginia, Southern
P. O. Box 2546
Charleston, WV 25329

United States District Court
Florida, Southern
400 N. Miami Ave., 8th Floor
Miami, FL 33128

United States District Court
Florida, Middle
801 N. Florida Avenue
Tampa, FL 33602

United States District Court
Texas, Southern
1133 N. Shoreline Blvd.
Corpus Christi, TX 78401

United States District Court
Texas, Eastern
100 E. Houston, Rm. 125
Marshall, TX 75670

United States District Court
Louisiana, Eastern
500 Poydras Street
New Orleans, LA 70130

United States District Court
District of Utah
350 Main Street, Rm. 150
Salt Lake City, Utah 84101-2180

United States District Court
South Carolina
901 Richland Street
Columbia, SC 29201

United States District Court
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150 Carlos Chardon Street
San Juan, Puerto Rico 00918-1767

United States District Court
New Jersey
Clarkson S. Fisher Building
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402 East State Street Room 2020
Trenton, NJ 08608

United States District Court
Kentucky, Eastern
Lynn Battaglia, Deputy-in-Charge
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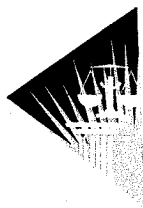
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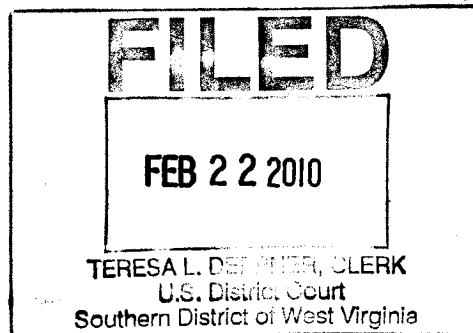
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February 17, 2010

Via Federal Express and Facsimile (202) 502-2888

Mr. Jeffrey N. Löthi
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Room G-255, North Lobby
Washington, DC 20002



**Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
MDL No. 2151**

CA 2:09-1247

*Graves v. Toyota motor
manufacturing et al*

Dear Mr. Löthi:

We were informed by Teresa Bishop of the Panel staff, that our motion papers were not filed by the cut-off date.

Therefore, as instructed, pursuant to 7.2(h), please file our motion papers as a response.

Thank you for your attention in this matter.

Very truly yours,


John R. Cimase

*One of the Attorneys for
Plaintiff Troy Menssen*

cc: (See attached Certificate of Service)

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP.) MDL NO. 2151
DEFECTIVE GAS PEDAL)
PRODUCTS LIABILITY)
LITIGATION)

CERTIFICATE OF SERVICE

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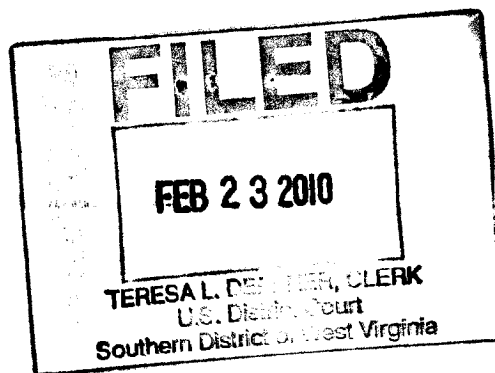
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February 19, 2010

Via Overnight Delivery

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Re: Motion for Transfer – MDL-2151 – Toyota Motor Corp. Defective Gas Pedal

2:09-1247

Dear Mr. Lüthi:

We were informed by Teresa Bishop of the Panel staff that the motion papers filed on behalf of Seong Bae Choi, Chris Chan Park, Sandra Reece, Donald Pritchett, Un Jin Choi, and Mary Ann Tucker, plaintiffs in the class action lawsuit *Choi, et al. v. Toyota Motor Corporation, et al.*, Case No. CV 09-1853 AHM (FMOx), were submitted too late to be included on the same hearing session as the previous motions filed on February 4, 2010, and February 5, 2010. **Please be advised that we hereby withdraw our motion papers and will file a response on or before February 26, 2010.**

If you have any questions, please do not hesitate to contact me. Thank you for your attention in this matter.

Very truly yours,
McCuneWright LLP

David C. Wright

:ce



**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: TOYOTA MOTOR CORP. DEFECTIVE) MDL Docket No.251
GAS PEDAL)
)

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I, E. CAROL ESPINPOSA, hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this Certificate of Service was served by First Class Mail, on February 19, 2010, to the following:

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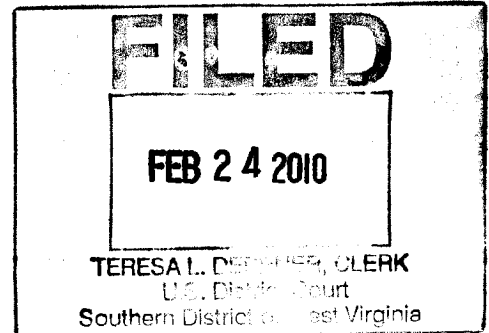
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In Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
MDL No. 2151

Dear Mr. Lüthi:

We were informed by Teresa Bishop of the Panel staff, that our motion papers were submitted too late to be included on the same hearing session as the previous motions filed on February 4, 2010 and February 5, 2010. Please file our motion papers as a "Response".

Sincerely,

Benjamin L. Bailey

BLB/tsc

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

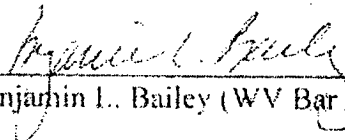
IN RE: TOYOTA UNINTENDED
ACCELERATION PRODUCT
LIABILITY LITIGATION

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MDL Docket No. 2151

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of February 2010 caused to be served a copy of the foregoing Letter to Jeffery N. Lüthi dated February 22, 2001 by United States mail with postage paid thereon to parties listed below:



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Counsel for Defendants Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. fka Toyota Technical Center, U.S. A., Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America, Inc., and Toyota Motor Sales U.S.A., Inc.

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Toyota Motor Corp.

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818 West Seventh Street

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5615 Corporate Blvd.Suite 400B

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UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Feb 26, 2010

FILED
CLERK'S OFFICE

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

Graves v. Toyota Motor Corp.
CA 2:09-1247

**IN RE: TOYOTA MOTOR CORP.
UNINTENDED ACCELERATION
PRODUCTS LIABILITY LITIGATION**

MDL No. 2151

ORDER RENAMING LITIGATION

When this litigation was commenced on February 4, 2010, with the filing of a motion by plaintiff Heather A. Lane for transfer pursuant to 28 U.S.C. § 1407, the Clerk of the Panel captioned it as *IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation*. In the interest of consistency with the Panel's naming conventions, and in order to reflect more accurately the subject matter of the litigation, it is appropriate at this time to rename MDL No. 2151.

IT IS THEREFORE ORDERED that this litigation is renamed as in *IN RE: Toyota Motor Corp. Unintended Acceleration Products Liability Litigation*.

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

**United States District Court
Southern District of West Virginia (Charleston)
CIVIL DOCKET FOR CASE #: 2:09-cv-01247**

Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc. Date Filed: 11/13/2009
et al Jury Demand: Plaintiff
Assigned to: Judge Joseph R. Goodwin Nature of Suit: 355 Motor Vehicle Prod.
Cause: 28:1332 Diversity-Motor Vehicle Product Liability Liability
Jurisdiction: Diversity

Plaintiff

Michael Graves
and

represented by **Benjamin L. Bailey**
BAILEY & GLASSER
209 Capitol Street
Charleston, WV 25301-1386
304/345-6555
Fax: 304/342-1110
Email: bbailey@baileyglasser.com
ATTORNEY TO BE NOTICED

Edgar F. Heiskell , III
P. O. Box 3232
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Fax: 434/951-7254
ATTORNEY TO BE NOTICED

Eric B. Snyder
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304/345-6555
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Email: rsmith@baileyglasser.com
ATTORNEY TO BE NOTICED

Plaintiff

Michael C. Graves
and

represented by **Benjamin L. Bailey**
(See above for address)
ATTORNEY TO BE NOTICED

Edgar F. Heiskell , III
(See above for address)
ATTORNEY TO BE NOTICED

Eric B. Snyder
(See above for address)
ATTORNEY TO BE NOTICED

Robert P. Lorea
(See above for address)
ATTORNEY TO BE NOTICED

Rodney Arthur Smith
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jeff Mullins
*Individually, and on Behalf of all others
similarly situated*

represented by **Benjamin L. Bailey**
(See above for address)
ATTORNEY TO BE NOTICED

Edgar F. Heiskell , III
(See above for address)
ATTORNEY TO BE NOTICED

Eric B. Snyder
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ATTORNEY TO BE NOTICED

Robert P. Lorea
(See above for address)
ATTORNEY TO BE NOTICED

Rodney Arthur Smith
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**Toyota Motor Manufacturing, West
Virginia, Inc.**
a West Virginia Corporation

represented by **Nicholas S. Johnson**
ALLEN GUTHRIE & THOMAS
P. O. Box 3394
Charleston, WV 25333-3394
304/345-7250
Fax: 304/345-9941
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

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404/881-7000
Fax: 404/881-7777

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ATTORNEY TO BE NOTICED

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304/345-7250
Fax: 304/345-9941
Email: dbthomas@agmtlaw.com
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor North America Inc.
a California corporation

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G.A. Wallace

(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa M. Gilford
(See above for address)
ATTORNEY TO BE NOTICED

David B. Thomas
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**Toyota Motor Engineering
& Manufacturing North America, Inc.**
a Kentucky corporation; and

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G.A. Wallace
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa M. Gilford
(See above for address)
ATTORNEY TO BE NOTICED

David B. Thomas
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Sales U.S.A., Inc.
a California corporation

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)

*PRO HAC VICE
ATTORNEY TO BE NOTICED*

Kyle G.A. Wallace
(See above for address)
*PRO HAC VICE
ATTORNEY TO BE NOTICED*

Lisa M. Gilford
(See above for address)
ATTORNEY TO BE NOTICED

David B. Thomas
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Corporation
a Japanese Corporation

| Date Filed | # | Docket Text |
|------------|----------|---|
| 11/13/2009 | <u>1</u> | COMPLAINT. Filing Fee \$350.00. Receipt # 0425-1130648. (Attachments: # <u>1</u> Civil Cover Sheet) (rap) Modified on 11/25/2009 to append # <u>2</u> Exhibit A) (rap). |
| 11/13/2009 | | CASE assigned to Judge Joseph R. Goodwin. (ras) (Entered: 11/18/2009) |
| 11/18/2009 | <u>2</u> | STANDING ORDER IN RE: ASSIGNMENT AND REFERRAL OF CIVIL ACTIONS AND MATTERS TO MAGISTRATE JUDGES ENTERED AUGUST 1, 2006. This matter referred to Magistrate Judge Stanley for discovery. (cc:attys; any unrepresented party) (skh) |
| 11/19/2009 | <u>3</u> | SUMMONS ISSUED by the Clerk on behalf of Michael Graves, Jeff Mullins, Michael C. Graves for Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc., re: <u>1</u> Complaint, returnable 20 days. Original Summons and 2 copies mailed to Mr. Snyder for service. (rap) |
| 11/25/2009 | | NOTICE OF DOCKET CORRECTION re: <u>1</u> COMPLAINT. Filing Fee \$350.00. Receipt # 0425-1130648. (Attachments: # <u>1</u> Civil Cover Sheet) (rap) Error: Failed to pull exhibit A from shell case upon processing. Correction: Exhibit A added to Complaint this date. (rap) |
| 11/25/2009 | <u>4</u> | SUMMONS ACCEPTED FOR SERVICE BY SECRETARY OF STATE as to Toyota Motor Engineering & Manufacturing North America, Inc. re: <u>1</u> Complaint. Accepted by Secretary of State on 11/23/2009 as to Toyota Motor Engineering & Manufacturing North America, Inc.; answer due 12/14/2009. (taq) (Entered: 11/30/2009) |
| 11/25/2009 | <u>5</u> | SUMMONS ACCEPTED FOR SERVICE BY SECRETARY OF STATE to Toyota Motor Manufacturing, West Virginia, Inc. re: <u>1</u> Complaint. Accepted by Secretary of State on 11/23/2009 as to Toyota Motor Manufacturing, West Virginia, Inc.; answer due 12/14/2009. (taq) (Modified text to correctly note summons has been accepted by the secretary of state on 12/01/2009) (skh). (Entered: 11/30/2009) |
| 11/25/2009 | <u>6</u> | SUMMONS ACCEPTED FOR SERVICE BY SECRETARY OF STATE as to Toyota Motor Sales U.S.A., Inc. re: <u>1</u> Complaint. Accepted by Secretary of State on 11/23/2009 as to Toyota Motor Sales U.S.A., Inc.; answer due 12/14/2009. (taq) (Entered: 11/30/2009) |
| 11/25/2009 | <u>7</u> | SUMMONS ACCEPTED FOR SERVICE BY SECRETARY OF STATE as to Toyota Motor North America Inc., re: <u>1</u> Complaint. Accepted by Secretary of State on 11/23/2009 as to Toyota Motor North America Inc.; answer due 12/14/2009. (taq) (Modified text to correctly note summons has been accepted by the secretary of state on 12/1/2009) (skh). (Entered: 11/30/2009) |

| | | |
|------------|-----------|---|
| 12/14/2009 | <u>8</u> | STIPULATION EXTENDING TIME to answer <u>1</u> Complaint to January 13, 2010 by Michael Graves, Michael C. Graves, Jeff Mullins, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. (Betts, Rebecca) Modified on 12/15/2009 for clarity. (rap). |
| 12/22/2009 | <u>9</u> | STATEMENT OF VISITING ATTORNEY from Cari K. Dawson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164799. (Thomas, David) |
| 12/22/2009 | <u>10</u> | STATEMENT OF VISITING ATTORNEY from Derin B. Dickerson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164805. (Thomas, David) |
| 12/22/2009 | <u>11</u> | STATEMENT OF VISITING ATTORNEY from Kyle G.A. Wallace on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164808. (Thomas, David) |
| 12/22/2009 | <u>12</u> | STATEMENT OF VISITING ATTORNEY from Lisa M. Gilford on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164921. (Thomas, David) |
| 12/29/2009 | <u>13</u> | RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Engineering & Manufacturing North America, Inc. re: <u>4</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras) |
| 12/29/2009 | <u>14</u> | RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Manufacturing West Virginia, Inc. re: <u>5</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras) |
| 12/29/2009 | <u>15</u> | RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Sales U.S.A., Inc. re: <u>6</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras) |
| 12/29/2009 | <u>16</u> | RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor North America Inc. re: <u>7</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Pablo Ch___ on 11/30/2009; answer deadline previously set. (ras) |
| 01/11/2010 | <u>17</u> | INCORRECT ENTRY; SEE ENTRY #19. (Modified on 1/12/2010 to remove image and file as entry #19) (skh). |
| 01/11/2010 | <u>19</u> | FIRST AMENDED COMPLAINT by Michael Graves, Michael C. Graves and Jeff Mullins against 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. and Toyota Motor Corporation. (Attachment: # <u>1</u> Exhibit A) (skh) (Entered: 01/12/2010) |
| 01/12/2010 | <u>18</u> | NOTICE OF CHANGE OF ATTORNEY INFORMATION by Rebecca A. Betts on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc.. (Betts, Rebecca) |
| 01/12/2010 | | NOTICE OF DOCKET CORRECTION re: <u>17</u> MOTION by Michael Graves, Michael C. Graves, Jeff Mullins to Amend <u>1</u> Complaint. ERROR: Incorrect event selected. CORRECTION: Removed image and filed using the event Complaint - Amended (event not available to e-filers). (skh) |

| | | |
|------------|-----------|--|
| 01/13/2010 | <u>20</u> | NOTICE OF CHANGE OF ATTORNEY INFORMATION by Nicholas S. Johnson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc.. (Johnson, Nicholas) (Modified on 1/14/2010 to remove extra filer) (skh). |
| 01/13/2010 | <u>21</u> | STIPULATION EXTENDING TIME for defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Respond to <u>19</u> First Amended Complaint to 1/28/2010 by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc., Michael Graves, Michael C. Graves, Jeff Mullins (Johnson, Nicholas) (Modified text to conform to filed document and to add additional filers on 1/14/2010) (skh). |
| 01/13/2010 | | SET DEADLINE: Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc. and Toyota Motor Sales U.S.A., Inc. answer to first amended complaint due 1/28/2010 pursuant to the <u>21</u> Stipulation. (skh) (Entered: 01/14/2010) |
| 01/22/2010 | <u>22</u> | UNOPPOSED MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. for Leave to Exceed Page Limitation for memorandum in support of motion to dismiss (Betts, Rebecca) (Modified text to conform to filed document on 1/24/2010) (skh). |
| 01/25/2010 | <u>23</u> | ORDER granting defendants' <u>22</u> UNOPPOSED MOTION for Leave to Exceed Page Limitation; the defendants may submit a memorandum of not more than 25 pages in support of their motion to dismiss, and the plaintiff may submit a response of not more than 25 pages. Signed by Judge Joseph R. Goodwin on 1/25/2010. (cc: attys; any unrepresented party) (mkw) |
| 01/28/2010 | <u>24</u> | MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Dismiss re: <u>19</u> First Amended Complaint (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Betts, Rebecca) |
| 01/28/2010 | <u>25</u> | MEMORANDUM by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. in support of <u>24</u> MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Dismiss re: <u>19</u> First Amended Complaint (Betts, Rebecca) (Modified on 1/29/2010 to remove duplicate text) (skh). |
| 01/29/2010 | <u>26</u> | ORDER AND NOTICE: Rule 12(b) Motions 3/1/2010. Rule 26(f) Meeting 3/29/2010. Last day to file report of Rule 26(f) Meeting 4/5/2010. Scheduling Conference at 10:30 AM on 4/19/2010 in Charleston. Entry of Scheduling Order 5/3/2010. Last Day to make Rule 26(a)(1) disclosures 5/7/2010. Signed by Judge Joseph R. Goodwin on 1/29/2010. (cc:attys; any unrepresented parties) (taq) |
| 02/12/2010 | <u>27</u> | STIPULATION EXTENDING TIME for plaintiffs to respond to <u>24</u> MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Dismiss <u>19</u> First Amended Complaint to 03/04/2010 and defendants to reply to 3/15/2010 by Michael Graves, Michael C. Graves, Jeff Mullins, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. (Snyder, Eric) (Modified for clarity of text, to add additional filers and to remove duplicate text on 2/12/2010) (skh). |
| 02/12/2010 | <u>28</u> | COPY OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. SECTION 1407, MEMORANDUM IN SUPPORT AND |

| | | |
|------------|-----------|--|
| | | ACCOMPANYING DOCUMENTS. (original filed Before the Judicial Panel on Multidistrict Litigation) (mkw) (Modified on 2/16/2010 to note the original was filed before the MDL Panel) (skh). |
| 02/17/2010 | <u>29</u> | NOTICE OF ATTORNEY APPEARANCE by Rodney Arthur Smith for and on behalf of Michael Graves, Michael C. Graves, Jeff Mullins (Smith, Rodney) |
| 02/18/2010 | <u>30</u> | COPY OF MOTION FOR TRANSFER AND COORDINATION AND/OR CONSOLIDATION PURSUANT TO 28 U.S.C. SECTION 1407 AND MEMORANDUM IN SUPPORT. (original filed before the Judicial Panel on Multidistrict Litigation) (ras) |
| 02/18/2010 | <u>31</u> | COPY OF PETITION FOR TRANSFER, COORDINATION AND CONSOLIDATION PURSUANT TO 28 U.S.C. 1407 AND MEMORANDUM IN SUPPORT. (original filed before the Judicial Panel on Multidistrict Litigation) (ras) |
| 02/18/2010 | <u>32</u> | COPY OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. 1407 AND ACCOMPANYING DOCUMENTS. (original filed before the Judicial Panel on Multidistrict Litigation) (Attachments: # <u>1</u> Appendix-Part 1, # <u>2</u> Appendix-Part 2) (ras) |
| 02/22/2010 | <u>33</u> | COPY OF MOTION FOR TRANSFER OF RELATED ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. SECTION 1407 AND BRIEF IN SUPPORT. (original filed before the Judicial Panel on Multidistrict Litigation) (Attachment: # <u>1</u> Exhibits A through D) (taq) (Entered: 02/23/2010) |
| 02/22/2010 | <u>34</u> | COPY OF MOTION TO TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA AND OPPOSITION TO VARIOUS OTHER TRANSFER MOTIONS AND MEMORANDUM IN SUPPORT by Michael Graves, Michael C. Graves, Jeff Mullins, with Exhibits A and B attached. (original filed before the Judicial Panel on Multidistrict Litigation) (taq) (Entered: 02/23/2010) |
| 02/22/2010 | <u>35</u> | COPY OF LETTER to Judicial Panel on Multidistrict Litigation, dated 2/17/2010, by Attorney John R. Climaco, enclosing a Certificate of Service for their motion papers/response on behalf of Plaintiff Messen and Plaintiff Horn. (taq) (Entered: 02/23/2010) |
| 02/23/2010 | <u>36</u> | COPY OF LETTER to Judicial Panel on Multidistrict Litigation, dated 2/19/2010, by David C. Wright, enclosing a Certificate of Service and advising that they are withdrawing their motion papers and will file a response by 2/26/2010 on behalf of plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reece, Donald Pritchett, Un Jin Choi, and Mary Ann Tucker, Case No. CV 09-1853 AHM (FMOx). (original filed before the Judicial Panel on Multidistrict Litigation) (taq) (Modified on 2/25/2010 to note the original document was filed with the MDL Panel) (skh). (Entered: 02/24/2010) |
| 02/24/2010 | <u>37</u> | COPY OF LETTER to Judicial Panel on Multidistrict Litigation, dated 2/12/2010, by Attorney Benjamin L. Bailey, enclosing a Certificate of Service for their motion papers/response on behalf of plaintiffs Michael Graves, Michael C. Graves, Jeff Mullins. (original filed before the Judicial Panel on Multidistrict Litigation) (taq) (Modified on 2/25/2010 to note the original document was filed with the MDL Panel) (skh). |
| 02/26/2010 | <u>38</u> | ORDER RENAMING LITIGATION, JUDICIAL PANEL ON MDL: This litigation is renamed as IN RE: Toyota Motor Corp. Unintended Acceleration Products Liability Litigation, MDL No. 2151. (taq) |



<Process@wvsos.com>

12/07/2009 11:48 AM

Please respond to
<Process@wvsos.com>

To <sop_delivered@wvsos.com>

cc

bcc

Subject Case # 2:06-cv-1247 Return Receipt Notification From WV
Secretary of State's Office

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**This notification is sent to alert you that a return receipt has been received.
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To :

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
C. T. CORPORATION SYSTEM
P.O. BOX 951
CHARLESTON, WV 25323

The letter was sent on 11/23/2009

Civil Action Number: 2:06-cv-1247

Restricted: N

Certified Number : 9171923790001000172108

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Date Produced: 12/07/2009

WV SECRETARY OF STATE

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Signature of Recipient:

A handwritten signature in cursive script that reads "Sharon Baxth".

Address of Recipient:

A handwritten number "951" in cursive script.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

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Please respond to
<Process@wvsos.com>

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Subject Case # 2:09-cv-1247 Return Receipt Notification From WV
Secretary of State's Office

**** THIS IS AN AUTOMATED E-MAIL MESSAGE. ****

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**This notification is sent to alert you that a return receipt has been received.
Please find the return receipt in the body of this message below.**

To :

TOYOTA MOTOR MANUFACTURING WEST VIRGINIA INC
C. T. CORPORATION SYSTEM
P.O. BOX 951
CHARLESTON, WV 25323

The letter was sent on 11/23/2009

Civil Action Number: 2:09-cv-1247

Restricted: N

Certified Number : 9171923790001000172092

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Date Produced: 12/07/2009

WV SECRETARY OF STATE

The following is the delivery information for Certified Mail™ item number 7192 3790 0010 0017 2092. Our records indicate that this item was delivered on 11/30/2009 at 07:50 a.m. in CHARLESTON, WV, 25301. The scanned image of the recipient information is provided below.

Signature of Recipient:

A handwritten signature in cursive script that reads "Sharon Baxth".

Address of Recipient:

A handwritten number "951" in cursive script.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3418879 47895721



<Process@wvsos.com>

12/07/2009 11:47 AM

Please respond to
<Process@wvsos.com>

To <sop_delivered@wvsos.com>

cc

bcc

Subject Case # 2:09-cv-1247 Return Receipt Notification From WV
Secretary of State's Office

**** THIS IS AN AUTOMATED E-MAIL MESSAGE. ****

**** If you received this message in error, please notify the WV Secretary of State's Office by
replying to this message. ****

**This notification is sent to alert you that a return receipt has been received.
Please find the return receipt in the body of this message below.**

To :

TOYOTA MOTOR NORTH AMERICA
C/O CT CORPORATION SYSTEM
818 WEST SEVENTH STREET
LOS ANGELES, CA 90017

The letter was sent on 11/23/2009

Civil Action Number: 2:09-cv-1247

Restricted: N

Certified Number : 9171923790001000172078

This information supplied from Pitney Bowes Distribution Solutions



Date Produced: 12/07/2009

WV SECRETARY OF STATE

The following is the delivery information for Certified Mail™ item number 7192 3790 0010 0017 2078. Our records indicate that this item was delivered on 11/30/2009 at 11:00 a.m. in LOS ANGELES, CA, 90071. The scanned image of the recipient information is provided below.

Signature of Recipient:

| Delivery Section | |
|------------------|------------------|
| rs | Pablo Luis Chite |
| d | PABLO CHITE |

Address of Recipient:

| | |
|----|-----------------|
| cy | 555 Flower 31st |
| ss | 90071 |

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3418879 47895721



<Process@wvsos.com>

12/07/2009 11:47 AM

Please respond to
<Process@wvsos.com>

To <sop_delivered@wvsos.com>

cc

bcc

Subject Case # 2:09-cv-1247 Return Receipt Notification From WV
Secretary of State's Office

**** THIS IS AN AUTOMATED E-MAIL MESSAGE. ****

**** If you received this message in error, please notify the WV Secretary of State's Office by
replying to this message. ****

**This notification is sent to alert you that a return receipt has been received.
Please find the return receipt in the body of this message below.**

To :

TOYOTA MOTOR SALES U.S.A., INC.
C. T. CORPORATION SYSTEM
P.O. BOX 951
CHARLESTON, WV 25323

The letter was sent on 11/23/2009

Civil Action Number: 2:09-cv-1247

Restricted: N

Certified Number : 9171923790001000172085

This information supplied from Pitney Bowes Distribution Solutions



Date Produced: 12/07/2009

WV SECRETARY OF STATE

The following is the delivery information for Certified Mail™ item number 7192 3790 0010 0017 2085. Our records indicate that this item was delivered on 11/30/2009 at 07:50 a.m. in CHARLESTON, WV, 25301. The scanned image of the recipient information is provided below.

Signature of Recipient:

A handwritten signature in cursive script that reads "Sharon Baxth".

Address of Recipient:

A handwritten number "951" in cursive script.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3418879 47895721

