

**FILE START**

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX AND  
PAMELA M. COX,  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

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

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

And

CIVIL CASE NO.: A1000992

JUDGE:

VERIFIED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

FILED

2010 FEB - 2 P 3:43

PATRICIA M. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH

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CLERKS FEES	_____
SECURITY FOR COST	_____
DEPOSITED BY	_____
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**TOYOTA NORTH AMERICAN** :  
**TECHNICAL TRAINING CENTER,** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**CLYDE DYSON** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**BEECHMONT TOYOTA, INC.,** :  
**8639 Beechmont Avenue** :  
**Cincinnati, Ohio 45255** :  
: :  
**Defendants.** :

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**INTRODUCTION**

1. Hugh and Pamela Cox, on behalf of themselves and all Ohio residents similarly situated (“Plaintiffs), for their Complaint (“Complaint”) against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, “Toyota”) have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing -- other than deny there was a problem.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that were subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling 2.3 million vehicles for the admitted reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota stopped selling the eight models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

9. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: "all agents are busy assisting other customers due to high call volume; please try your call later."

10. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

11. And instead of sending replacement parts to dealerships so that vehicles like the Coxes' can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

#### **JURISDICTION AND VENUE**

12. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents and entered into a lease with Toyota Lease Trust in Hamilton County, Ohio which inure to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, And several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

## THE PARTIES

13. Plaintiffs Hugh and Pamela Cox are residents of Hamilton County, Ohio.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

15. Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese corporation with its headquarters in Japan.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

17. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Cyde Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is Ohio corporation with its principal place of business in Hamilton County, Ohio.

## CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

19. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

20. This action may properly be maintained as a class action under Civil Rule 23 \_\_\_\_\_ because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

21. Plaintiffs bring this action on behalf of class consisting of: All residents of the State of Ohio who entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

22. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.



23. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believes that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

24. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects.. Additionally, each member of the Class is entitled to the same form of relief.

25. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

26. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;

- H. Whether the defendants are strictly liable for damages to the plaintiff and the members of the Plaintiffs' Class;
  - I. Whether the Court should issue an Order preserving documents;
  - J. Whether the defendants acted negligently;
  - L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
  - M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
  - N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
27. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving on dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

28. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and

allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

29. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment

30. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

31. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

32. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought

the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

33. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

34. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

35. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

36. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

37. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

38. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

Toyota intentionally made the false statements in order to sell vehicles.

39. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

40. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### **COUNT III**

#### **Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

41. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

42. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits "representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . ." "representing that goods or services are of a particular standard, quality or grade . . . if they are of another" and "advertising goods or services with intent not to sell them as advertised."

43. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

44. Defendants’ conduct caused Plaintiffs damages as alleged throughout.

45. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

46. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

#### COUNT IV

##### Violation of Deceptive Trade Practices Act., R.C. 4165.02

47. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

48. Defendants’ conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

49. Defendants’ conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

50. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

## COUNT V

### Breach of Lease/ Contract

51. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

52. Plaintiffs entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

53. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

54. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

55. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

56. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

57. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

58. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by

dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

59. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

60. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease for purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

61. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

62. Plaintiffs pray that all damages caused by these breaches be awarded

**COUNT VII**  
**Unjust Enrichment**

63. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

64. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched



at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

67. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

68. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

69. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

70. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

71. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

72. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

73. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. § 1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

74. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

75. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT X**

#### **Negligence**

76. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

77. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

78. Toyota breached its duty to Plaintiffs and Class members.

79. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

### **COUNT XI**

#### **Strict Product Liability**

80. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

81. Toyota is a manufacturer and supplier of automobiles.

82. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

83. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

84. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

85. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

86. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

87. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **PUNITIVE DAMAGES**

88. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

89. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

**TEMPORARY RESTRAINING ORDER**

90. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

91. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

92. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

93. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

94. Defendants conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from every having the opportunity to review and use the documents.

95. Defendants' knowledge of the defect as far back as 2002 demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios

Billier, lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

96. Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relate to the recall and the allegations contained in this complaint, therefore, for is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not cause the Defendants and prejudice.

#### **ADDITIONAL INJUNCTION RELIEF**

97. Plaintiffs Pray for an Order

A. Requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, nondefective, replacement vehicles to all members of the Class until the vehicles owned or leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

### **COMPENSATORY DAMAGES**

98. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

### **PUNATIVE DAMAGES**

99. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

### **ADDITIONAL DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

101. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

102. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

### **JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)

*Lead Counsel and Trial Attorney*

Robert A. Steinberg

Joseph T. Deters

WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.

1513 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

Phone: (513) 621-0267

Facsimile: (513) 621-0262

Email: wsbcclaw@aol.com

### **SERVICE REQUEST**

Pursuant to Civil Rule 4.1(A) and 4.3(B), Plaintiff requests that service be made certified mail, return receipt requested, on the following:

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

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING &

MANUFACTURING NORTH

AMERICA, INC.

Agent for Service of Process:

CT Corporation System

4169 Westport Road

Louisville, Kentucky 40207

TOYOTA NORTH AMERICAN

TECHNICAL TRAINING CENTER,

4550 Creek Road

Cincinnati, Ohio 45242

CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242

BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255



**LEASE ORDER**

8667 BEECHMONT AVENUE - CINCINNATI, OHIO 45255

67691

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. QU074819

ADDRESS 3656 ARBOR GREEN DR PHONE (513)689-0811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN

Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.

ENTER MY ORDER FOR ONE  NEW  USED  CAR  TRUCK  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	CAMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH

MVI OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT	STOCK NO.
1T1BF3E1K2A0074819	NOV 29 09	QU074819

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:

1. The number of months this closed-end lease is for:	36
2. The number of miles you may drive per year is:	12000
And over the entire lease without an additional charge is:	36000
Charge you will pay for each mile over the amount listed:	\$ 0.15
3. Your approximate monthly payment will be:	\$ 234.95
4. The approximate capitalized cost will be:	\$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY		AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION		937.84
MODEL		FIRST PAYMENT		234.95
VIN		SECURITY DEPOSIT		N/A
MILEAGE	N/A	TITLE FEE		N/A
PAYOFF TO:		LICENSE FEE		N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION		77.2
ACCOUNT NO.:		USE TAX		N/A
TRADE IN ALLOWANCE				N/A
PAYOFF AMOUNT				N/A
NET TRADE IN ALLOWANCE				N/A
REBATE		DOC. FEE		250.00
DEPOSIT		TOTAL DUE AT DELIVERY		1500.00
TOTAL CREDIT		LESS CREDITS		N/A
		BALANCE		1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ N/A to cover negative equity from my trade-in/the amount owed on my lease turn-in.

**DEPOSIT RECEIPT**  
Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

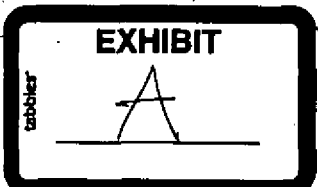
**ODOMETER MILEAGE STATEMENT**  
The odometer of the above-described vehicle now reads 0 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



[Signature] LESSEE'S SIGNATURE  
11/29/09 DATE

## ADDITIONAL TERMS AND CONDITIONS

### 1. DEFINITIONS

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance. (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement. (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer. (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

### 2. PRICE CHANGES

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered, only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall re-deliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle, less any negative equity adjustment.

### 3. MANUFACTURER'S DESIGN CHANGES

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

### 4. DELAYS IN DELIVERY

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

### 5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

### 6. TRADE-IN VEHICLE APPRAISAL

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

### 7. BALANCE OWED ON TRADE-IN

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

### 8. TITLE TO THE TRADE-IN VEHICLE

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

### 9. TRADE-IN AND OTHER CREDITS

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

### 10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

### 11. TAX LIABILITY

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

### 12. INSURANCE UNAVAILABILITY

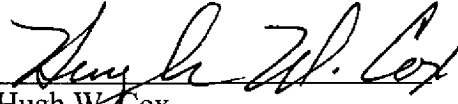
In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

### 13. SIGNING OF OTHER DOCUMENTS

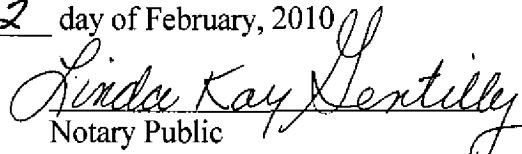
Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Hugh W. Cox

Sworn to and subscribed before me this 2 day of February, 2010

  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

Pamela M Cox  
Pamela M. Cox

Sworn to and subscribed before me this 2 day of February, 2010

Linda Kay Gentilly  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX AND  
PAMELA M. COX,  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

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

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System  
1300 Eat Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

And

CIVIL CASE NO.: A1000992

JUDGE:

VERIFIED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

FILED

# 200 FEB - 2 P 3:43

PATRICIA H. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH

6

ORIG	COMP, PARTIES, SUMMONS				
<input checked="" type="checkbox"/>	CERT MAIL	<input type="checkbox"/>	SHERIFF	<input type="checkbox"/>	WAVE
<input type="checkbox"/>	PROCESS SERVER	<input type="checkbox"/>	NONE		
CLERKS FEES _____					
SECURITY FOR COST _____					
DEPOSITED BY _____					
FILING CODE <u>H-770/852</u>					



D86875626 IN1

**TOYOTA NORTH AMERICAN** :  
**TECHNICAL TRAINING CENTER,** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**CLYDE DYSON** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**BEECHMONT TOYOTA, INC.,** :  
**8639 Beechmont Avenue** :  
**Cincinnati, Ohio 45255** :  
: :  
**Defendants.** :

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**INTRODUCTION**

1. Hugh and Pamela Cox, on behalf of themselves and all Ohio residents similarly situated (“Plaintiffs), for their Complaint (“Complaint”) against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, “Toyota”) have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing -- other than deny there was a problem.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that were subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling 2.3 million vehicles for the admitted reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota stopped selling the eight models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated nor did it offer to cancel leases and purchases and refund the monies paid by its customers.



9. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: "all agents are busy assisting other customers due to high call volume; please try your call later."

10. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

11. And instead of sending replacement parts to dealerships so that vehicles like the Coxes' can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

#### **JURISDICTION AND VENUE**

12. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents and entered into a lease with Toyota Lease Trust in Hamilton County, Ohio which inure to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, And several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

## THE PARTIES

13. Plaintiffs Hugh and Pamela Cox are residents of Hamilton County, Ohio.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

15. Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese corporation with its headquarters in Japan.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

17. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Cyde Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is Ohio corporation with its principal place of business in Hamilton County, Ohio.

## CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

19. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

20. This action may properly be maintained as a class action under Civil Rule 23 \_\_\_\_\_ because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

21. Plaintiffs bring this action on behalf of class consisting of: All residents of the State of Ohio who entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

22. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

23. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believes that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

24. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects.. Additionally, each member of the Class is entitled to the same form of relief.

25. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

26. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;

- H. Whether the defendants are strictly liable for damages to the plaintiff and the members of the Plaintiffs' Class;
  - I. Whether the Court should issue an Order preserving documents;
  - J. Whether the defendants acted negligently;
  - L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
  - M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
  - N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
27. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving on dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

28. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and

allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

29. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

### COUNT I

#### Fraudulent Concealment

30. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

31. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

32. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought

the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

33. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

34. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

35. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

36. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

37. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

38. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

Toyota intentionally made the false statements in order to sell vehicles.

39. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

40. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### **COUNT III**

#### **Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

41. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

42. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits "representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . ." "representing that goods or services are of a particular standard, quality or grade . . . if they are of another" and "advertising goods or services with intent not to sell them as advertised."



43. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

44. Defendants’ conduct caused Plaintiffs damages as alleged throughout.

45. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

46. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

#### **COUNT IV**

##### **Violation of Deceptive Trade Practices Act., R.C. 4165.02**

47. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

48. Defendants’ conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

49. Defendants’ conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

50. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

## COUNT V

### Breach of Lease/ Contract

51. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

52. Plaintiffs entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

53. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

54. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

55. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

56. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

57. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

58. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by

dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

59. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

60. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease for purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

61. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

62. Plaintiffs pray that all damages caused by these breaches be awarded

**COUNT VII**  
**Unjust Enrichment**

63. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

64. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched

at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

67. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

68. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

69. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

70. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

71. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

72. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

73. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. § 1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

74. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

75. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **COUNT X**

##### **Negligence**

76. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

77. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

78. Toyota breached its duty to Plaintiffs and Class members.

79. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

#### **COUNT XI**

##### **Strict Product Liability**

80. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

81. Toyota is a manufacturer and supplier of automobiles.

82. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

83. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

84. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

85. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

86. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

87. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **PUNITIVE DAMAGES**

88. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

89. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. *Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit.* Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

#### **TEMPORARY RESTRAINING ORDER**

90. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

91. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

92. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

93. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

94. Defendants conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from every having the opportunity to review and use the documents.

95. Defendants' knowledge of the defect as far back as 2002 demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios

Biller, lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

96. Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relate to the recall and the allegations contained in this complaint, therefore, for is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not cause the Defendants and prejudice.

#### **ADDITIONAL INJUNCTION RELIEF**

97. Plaintiffs Pray for an Order

A. Requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, nondefective, replacement vehicles to all members of the Class until the vehicles owned or leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;



D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

98. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNATIVE DAMAGES**

99. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

#### **ADDITIONAL DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

101. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

102. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

#### **JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)

*Lead Counsel and Trial Attorney*

Robert A. Steinberg

Joseph T. Deters

WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.

1513 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

Phone: (513) 621-0267

Facsimile: (513) 621-0262

Email: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)

### SERVICE REQUEST

Pursuant to Civil Rule 4.1(A) and 4.3(B), Plaintiff requests that service be made certified mail, return receipt requested, on the following:

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

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING &

MANUFACTURING NORTH

AMERICA, INC.

Agent for Service of Process:

CT Corporation System

4169 Westport Road

Louisville, Kentucky 40207

TOYOTA NORTH AMERICAN

TECHNICAL TRAINING CENTER,

4550 Creek Road

Cincinnati, Ohio 45242

CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242

BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

LEASE ORDER

8667 BEECHMONT AVENUE - CINCINNATI, OHIO 45255

67681

LESSEE'S NAME: HUGH COX DATE: NOV 29 2009 STOCK NO. AU874819

ADDRESS: 3856 ARBOR GREEN DR PHONE: (513)689-0811

CITY: CINCINNATI COUNTY: CLERMONT STATE: OH ZIP: 45255 SALESPERSON: JACK R HECKMAN

IN ACCORDANCE WITH THE TERMS AND CONDITIONS LISTED HEREIN, THE UNDERSIGNED LESSEE HEREBY AGREES TO LEASE THE LISTED VEHICLE FROM OR THROUGH A THIRD PARTY IF DEALER CAN OBTAIN THIRD PARTY APPROVAL.

ENTER MY ORDER FOR ONE [ ] NEW [ ] USED / [ ] CAR [ ] TRUCK / [ ] DEMONSTRATOR [ ] RENTAL VEHICLE [ ] FACTORY OFFICIAL

YEAR: 2010 MAKE: TOYOTA MODEL: CAMRY BODY TYPE: 4DR 2.4L AUTO LEASING MAGNETIC GRAY TRIM: ASH

TO BE DELIVERED ON OR ABOUT: NOV 29 09 STOCK NO.: AU874819

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS: 1. The number of months this closed-end lease is for: 36 2. The number of miles you may drive per year is: 12000 And over the entire lease without an additional charge is: 36500 Charge you will pay for each mile over the amount listed: \$ 0.15 3. Your approximate monthly payment will be: \$ 234.95 4. The approximate capitalized cost will be: \$ 22040.13

Table with columns: TRADE-IN VEHICLE, DUE AT DELIVERY, AMOUNT. Rows include: TOYOTA LEASE TRUST, YEAR, MAKE, CAPITALIZED COST REDUCTION (937.84), MODEL, FIRST PAYMENT (234.95), VIN, SECURITY DEPOSIT (N/A), MILEAGE (N/A), TITLE FEE (N/A), PAYOFF TO: (N/A), LICENSE FEE (N/A), PAYOFF GOOD THRU: (N/A), TAX ON CAPITAL COST REDUCTION (77.2), ACCOUNT NO.: (N/A), USE TAX (N/A), TRADE IN ALLOWANCE (N/A), PAYOFF AMOUNT (N/A), NET TRADE IN ALLOWANCE (N/A), REBATE (N/A), DEPOSIT (N/A), TOTAL DUE AT DELIVERY (1500.00)

NEGATIVE EQUITY DISCLOSURE: I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ to cover negative equity from my trade-in/the amount owed on my lease turn-in.

DEPOSIT RECEIPT: Dealer hereby acknowledges receipt of the sum of \$ as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for days. This Deposit/Partial Payment is NOT refundable, subject to the conditions on the reverse side and the following:

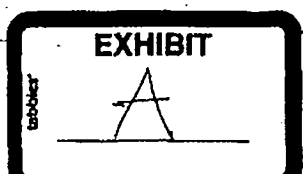
ODOMETER MILEAGE STATEMENT: The odometer of the above-described vehicle now reads 299 miles/kilometers and is accurate unless checked below. [ ] Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if they were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE: [Signature] DATE: 11/29/09

## ADDITIONAL TERMS AND CONDITIONS

### 1. DEFINITIONS

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer. (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

### 2. PRICE CHANGES

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered, only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle, less any negative equity adjustment.

### 3. MANUFACTURER'S DESIGN CHANGES

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

### 4. DELAYS IN DELIVERY

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

### 5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

### 6. TRADE-IN VEHICLE APPRAISAL

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

### 7. BALANCE OWED ON TRADE-IN

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

### 8. TITLE TO THE TRADE-IN VEHICLE

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

### 9. TRADE-IN AND OTHER CREDITS

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

### 10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

### 11. TAX LIABILITY

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

### 12. INSURANCE UNAVAILABILITY

In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

### 13. SIGNING OF OTHER DOCUMENTS

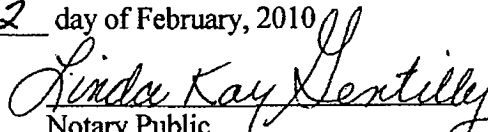
Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Hugh W. Cox

Sworn to and subscribed before me this 2 day of February, 2010

  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

**VERIFICATION**

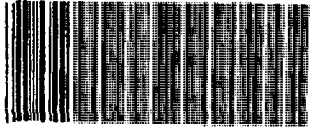
I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

Pamela M Cox  
Pamela M. Cox

Sworn to and subscribed before me this 2 day of February, 2010

Linda Kay Gentilly  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10



D86875621 CLF



COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO	CLASSIFICATION FORM  WWW.COURTCLERK.ORG	PATRICIA M. CLANCY CLERK OF COURTS
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CASE NUMBER: A1000992 PLAINTIFF: Hugh and Pam Cox

PURSUANT TO SUPERINTENDENCE RULE 4, THIS CASE WAS ORIGINALLY FILED AND DISMISSED  
UNDER CASE NUMBER: \_\_\_\_\_ BY JUDGE \_\_\_\_\_

PLEASE INDICATE CLASSIFICATION INTO WHICH THIS CASE FALLS:

- |  |   |
|--|---|
| <input type="checkbox"/> OTHER TORT – C360<br><input type="checkbox"/> Personal Injury – C310<br><input type="checkbox"/> Wrongful Death – C320<br><input type="checkbox"/> Vehicle Accident – C370<br><br><input type="checkbox"/> PROFESSIONAL TORT – A300<br><input type="checkbox"/> Personal Injury – A310<br><input type="checkbox"/> Wrongful Death – A320<br><input type="checkbox"/> Legal Malpractice – A330<br><input type="checkbox"/> Medical Malpractice – A340<br><br><input type="checkbox"/> PRODUCT LIABILITY – B350<br><input type="checkbox"/> Personal Injury – B310<br><input type="checkbox"/> Wrongful Death – B320<br><br><b>WORKER'S COMPENSATION</b><br><input type="checkbox"/> Non-Compliant Employer – D410<br><input type="checkbox"/> Appeal – D420<br><br><b>FORECLOSURE</b><br><input type="checkbox"/> Foreclosure – E510<br><input type="checkbox"/> Foreclosure-Taxes – E520<br><input type="checkbox"/> Foreclosure-Mechanics Lien – E530<br><br><input type="checkbox"/> ADMINISTRATIVE APPEALS – F600<br><input type="checkbox"/> Appeal Civil Service – F610<br><input type="checkbox"/> Appeal Motor Vehicle – F620<br><input type="checkbox"/> Appeal Unemployment – F630<br><input type="checkbox"/> Appeal Liquor – F640<br><input type="checkbox"/> Appeal Taxes – F650<br><input type="checkbox"/> Appeal Zoning – F660 | <input type="checkbox"/> OTHER CIVIL – H700-34<br><input type="checkbox"/> Appropriation – H710<br><input type="checkbox"/> Accounting – H720<br><input type="checkbox"/> Beyond Jurisdiction – H730<br><input type="checkbox"/> Breach of Contract – H740<br><input type="checkbox"/> Cancel Land Contract – H750<br><input type="checkbox"/> Change of Venue – H760<br><input checked="" type="checkbox"/> Class Action – H770<br><input type="checkbox"/> Convey Declared Void – H780<br><input type="checkbox"/> Declaratory Judgment – H790<br><input type="checkbox"/> Discharge Mechanics Lien – H800<br><input type="checkbox"/> Dissolve Partnership – H810<br><input type="checkbox"/> CONSUMER SALES ACT (1345 ORC) – H820<br><input type="checkbox"/> Check here if relief includes declaratory judgment, injunction or class action recovery – H825<br><input type="checkbox"/> Habeas Corpus – H830<br><input type="checkbox"/> Injunction – H840<br><input type="checkbox"/> Mandamus – H850<br><input type="checkbox"/> On Account – H860<br><input type="checkbox"/> Partition – H870<br><input type="checkbox"/> Quiet Title – H880<br><input type="checkbox"/> Replevin – H890<br><input type="checkbox"/> Sale of Real Estate – H900<br><input type="checkbox"/> Specific Performance – H910<br><input type="checkbox"/> Restraining Order – H920<br><input type="checkbox"/> Testimony – H930-21<br><input type="checkbox"/> Environmental – H940<br><input type="checkbox"/> Cognovit – H950<br><input type="checkbox"/> Menacing by Stalking – H960<br><input type="checkbox"/> Repo Title – Transfer of Title Only – H970<br><input type="checkbox"/> Repo Title – With Money Claim – H980<br><input type="checkbox"/> Injunction Sexual Predator – H990<br><input type="checkbox"/> SB 10 – Termination – H690<br><input type="checkbox"/> SB 10 – Reclassification – H697 |
|--|---|

DATE: February 2, 2010

ATTORNEY (PRINT): Stanley M. Chesley

OHIO SUPREME COURT NUMBER: 0000852





something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: “all agents are busy assisting other customers due to high call volume; please try your call later.”

8. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

9. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

10. Plaintiff Ernestine Montgomery owns a 2005 Toyota Camry. On Sunday, September 3, 2006, while parking at a grocery store after attending church, Plaintiff Montgomery's Camry suddenly accelerated when her foot was on the brake pedal, traveled across a sidewalk, and struck a brick wall. During the incident, Ms. Montgomery applied her brakes as hard as she could, but the brakes failed to stop the Camry. Ms. Montgomery suffered injuries to her chest, property damage to her Camry, and was forced to incur repair expenses, higher insurance premiums, and the cost of a rental car.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Traffic Safety Administration ("NHTSA") supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations that the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that was subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

11. Approximately one month before her Camry suddenly accelerated and struck the brick wall, Ms. Montgomery took her Camry to Joseph Toyota on Colerain Avenue in Cincinnati, Ohio for routine service. After her service appointment, Joseph Toyota confirmed that the brakes on her Camry were in good working order. During the next month, nothing out of the ordinary occurred when Ms. Montgomery drove her Camry.

12. Immediately after the sudden acceleration incident, Ms. Montgomery took her Camry to Joseph Toyota for repair. During the repair, after consulting with a Toyota Regional official, Joseph Toyota installed a new gas pedal. Ms. Montgomery observed that the new pedal was shorter than the Camry's original pedal.

13. During December 2009, Ms. Montgomery noticed news reports concerning Toyota's sudden acceleration problems. She took the 2005 Camry to Joseph Toyota for routine service, and the personnel discussed with her a recall to install an accelerator pedal. She explained that her accelerator pedal had been replaced in September 2006. A service manager examined her accelerator pedal and was surprised to discover that Ms. Montgomery had the shorter gas pedal. He informed her that the shortened accelerator pedal that Joseph installed in 2006 is the same pedal that Toyota is using to repair the acceleration problems on recalled Toyota vehicles.

14. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the

problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies, Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

15. On January 26, 2010, Toyota stopped selling the eight recalled models as set forth above, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

#### **JURISDICTION AND VENUE**

16. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents. The Coxes entered into a lease with Toyota Lease Trust in Hamilton County, Ohio. Plaintiff Montgomery purchased her Toyota in Hamilton County. Plaintiffs’ lease and purchase inured to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

## THE PARTIES

17. Plaintiffs Hugh and Pamela Cox, and Ernestine Montgomery are residents of Ohio.

18. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

19. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

20. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is an Ohio corporation with its principal place of business in Hamilton County, Ohio.

## CLASS ACTION ALLEGATIONS

21. Plaintiffs bring this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design

and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration.

22. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

23. This action may properly be maintained as a class action pursuant to Ohio Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

24. The Plaintiffs and all Class Members seek compensatory damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

25. The number of Class Members is so numerous that joinder of all members is impracticable. The Class consists of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

26. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

27. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs' chosen counsel was experienced in class action litigation and will diligently and professionally prosecute the litigation.

28. Common questions of law and fact exist as to the Plaintiffs and all members of the

Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;
- H. Whether the defendants are strictly liable for damages to the plaintiffs and the members of the Plaintiffs' Class;
- I. Whether the Court should issue an Order preserving documents;
- J. Whether the defendants acted negligently;
- L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
- M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
- N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

29. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving in dangerous cars from pursuing their claims because of the expense of individual litigation.



Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

30. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping lease and car payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

31. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment and Fraud by Omission

32. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

33. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles are subject to sudden and uncontrollable acceleration that placed occupants

of its vehicles and pedestrians at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless disregard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

34. Toyota's customers relied on Toyota's reputation, coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought or leased the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

35. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

36. Defendants' conduct was knowing, intentional, and with malice. Defendants demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

38. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, were free of defects, and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are “reliable.”

39. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe, unreliable, and not free of defects because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

40. The aforesaid representations of Defendants were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the representations in purchasing their vehicles. Toyota intentionally made the false statements in order to sell vehicles.

41. As a result of Toyota’s conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

42. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### COUNT III

#### Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02

43. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

44. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits “representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . .” “representing that goods or services are of a particular standard, quality or grade . . . if they are of another” and “advertising goods or services with intent not to sell them as advertised.”

45. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

46. Defendants’ conduct caused Plaintiffs damages as alleged.

47. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

48. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

### COUNT IV

#### Violation of Deceptive Trade Practices Act., R.C. 4165.02

49. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

50. Defendants' conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

51. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

52. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

#### **COUNT V**

##### **Breach of Lease/ Contract**

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Plaintiffs and other members of the class entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

55. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

56. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

57. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

58. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

59. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

60. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

61. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and instead are forcing customers to drive what were publicly identified as unsafe vehicles.

62. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and

this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

63. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

64. Plaintiffs pray that all damages caused by these breaches be awarded

### **COUNT VII**

#### **Unjust Enrichment**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

67. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

68. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

69. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

70. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which do not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

71. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

72. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

73. Defendants are, and at all relevant times have been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

74. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

75. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under



R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and Class members intended for them.

76. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture are so defective as to cause such vehicles to suddenly and unintentionally accelerate. Additionally, the vehicles fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

77. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### COUNT X

#### Negligence

78. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

79. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

80. Toyota breached its duty to Plaintiffs and Class members.

81. As direct and proximate causes of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

## COUNT XI

### Strict Product Liability

82. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

83. Toyota is a manufacturer and supplier of automobiles.

84. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

85. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

86. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

87. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction after Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

**PUNITIVE CONDUCT**

90. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants intentionally have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

91. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights and safety of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due to their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

**TEMPORARY RESTRAINING ORDER**

92. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

93. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

94. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

95. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

96. Defendants' conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from ever having the opportunity to review and use the documents.

97. Defendants' knowledge of the defect, as far back as 2002 and possibly earlier, demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that a Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios Biller, a lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

98. A Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relates to the recall and the allegations contained in this complaint, therefore, is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not prejudice the Defendants.

#### **ADDITIONAL INJUNCTION RELIEF**

99. Plaintiffs Pray for an Order:

A. Requiring Defendants to provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining non-defective, replacement vehicles until the vehicles owned or

leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first to dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNITIVE DAMAGES**

101. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. By Defendants knowingly withholding knowledge of dangerous conditions caused physical injuries to Ohio residents and caused Ohio residents economic loss.

**ADDITIONAL RELIEF**

102. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

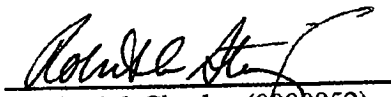
103. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

104. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

**JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)

*Lead Counsel and Trial Attorney*

Robert A. Steinberg (0032932)

Joseph T. Deters (0012084)

WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.

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Facsimile: (513) 621-0262

Email: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served regular U.S. mail upon the following in this case this 5<sup>th</sup> day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114


Toyota Lease Trust  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Motor Engineering &  
Manufacturing North America, Inc.  
Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

Toyota North American Technical Training Center  
4550 Creek Road  
Cincinnati, Ohio 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, Ohio 45242

Beechmont Toyota, Inc.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

  
Robert A. Steinberg (0032932)

**LEASE ORDER**

8667 L ECHMONT AVENUE - CINCINNATI, OH IO 45255

67681

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. 01074819

ADDRESS 3656 ARBOR GREEN DR PHONE (513)668-8811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN

Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.  
 ENTER MY ORDER FOR ONE  NEW  USED /  CAR  TRUCK /  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	EMERY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH
MV OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT			STOCK NO.	
1B F 3 E K 2 A U 0 7 4 8 1 9			NOV 29 09		01074819

REMARKS:  
 SEE VEHICLE DELIVERY REPORT ATTACHED  
 SEE SPOT DELIVERY AGREEMENT ATTACHED  
 SEE USED VEHICLE LIMITED WARRANTY ATTACHED

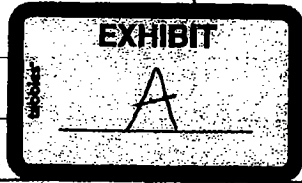
THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:  
 1. The number of months this closed-end lease is for: 36  
 2. The number of miles you may drive per year is: 12000  
 And over the entire lease without an additional charge is: 36000  
 Charge you will pay for each mile over the amount listed: \$ 0.15  
 3. Your approximate monthly payment will be: \$ 234.95  
 4. The approximate capitalized cost will be: \$ 22046.13

TRADE-IN VEHICLE		DUE AT DELIVERY	AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION	937.84
MODEL		FIRST PAYMENT	234.95
VIN		SECURITY DEPOSIT	N/A
MILEAGE	N/A	TITLE FEE	N/A
PAYOFF TO:		LICENSE FEE	N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION	77.2
ACCOUNT NO.:		USE TAX	N/A
TRADE IN ALLOWANCE			N/A
PAYOFF AMOUNT			N/A
NET TRADE IN ALLOWANCE			N/A
REBATE		N/A DOC. FEE	250.00
DEPOSIT			N/A
		TOTAL DUE AT DELIVERY	1500.00
			N/A
		LESS CREDITS	N/A
		BALANCE	1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
 I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ N/A to cover negative equity from my trade-in/the amount owed on my lease turn-in.  
 X

**DEPOSIT RECEIPT**  
 Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

**ODOMETER MILEAGE STATEMENT**  
 The odometer of the above-described vehicle now reads 298 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.



ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature] ACCEPTED BY: [Signature] DATE: 11/29/09  
 LESSEE'S SIGNATURE



## ADDITIONAL TERMS AND CONDITIONS

### **1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer. (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

### **2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered, only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle, less any negative equity adjustment.

### **3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

### **4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

### **5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

### **6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

### **7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

### **8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

### **9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

### **10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

### **11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

### **12. INSURANCE UNAVAILABILITY**

In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

### **13. SIGNING OF OTHER DOCUMENTS**

Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX AND  
PAMELA M. COX,  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

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

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA LEASE TRUST,

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

And

CIVIL CASE NO.: A1000992

JUDGE:

VERIFIED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

FILED  
2010 FEB -2 P 3:43  
PATRICIA M. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH

6

ORIG COMP, PARTIES, SUMMONS
<input checked="" type="checkbox"/> CERT MAIL <input type="checkbox"/> SHERIFF <input type="checkbox"/> WAVE
<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> NONE
CLERKS FEES _____
SECURITY FOR COST _____
DEPOSITED BY _____
FILING CODE _____ <u>H.70/852</u>



D86875626 INI

**TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
4550 Creek Road  
Cincinnati, Ohio 45242**

**And**

**CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242**

**And**

**BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255**

**Defendants.**

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**INTRODUCTION**

1. Hugh and Pamela Cox, on behalf of themselves and all Ohio residents similarly situated ("Plaintiffs), for their Complaint ("Complaint") against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing -- other than deny there was a problem.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that were subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling 2.3 million vehicles for the admitted reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota stopped selling the eight models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

9. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: "all agents are busy assisting other customers due to high call volume; please try your call later."

10. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

11. And instead of sending replacement parts to dealerships so that vehicles like the Coxes' can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

#### **JURISDICTION AND VENUE**

12. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents and entered into a lease with Toyota Lease Trust in Hamilton County, Ohio which inure to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, And several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

### THE PARTIES

13. Plaintiffs Hugh and Pamela Cox are residents of Hamilton County, Ohio.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

15. Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese corporation with its headquarters in Japan.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

17. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Cyde Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is Ohio corporation with its principal place of business in Hamilton County, Ohio.

### CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

19. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

20. This action may properly be maintained as a class action under Civil Rule 23 \_\_\_\_\_ because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

21. Plaintiffs bring this action on behalf of class consisting of: All residents of the State of Ohio who entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

22. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.



23. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believes that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

24. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects.. Additionally, each member of the Class is entitled to the same form of relief.

25. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

26. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;

- H. Whether the defendants are strictly liable for damages to the plaintiff and the members of the Plaintiffs' Class;
  - I. Whether the Court should issue an Order preserving documents;
  - J. Whether the defendants acted negligently;
  - L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
  - M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
  - N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
27. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving on dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

28. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and

allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

29. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment

30. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

31. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

32. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought

the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

33. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

34. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

35. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

36. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

37. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

38. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

Toyota intentionally made the false statements in order to sell vehicles.

39. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

40. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### COUNT III

#### Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02

41. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

42. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits "representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . ." "representing that goods or services are of a particular standard, quality or grade . . . if they are of another" and "advertising goods or services with intent not to sell them as advertised."

43. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

44. Defendants' conduct caused Plaintiffs damages as alleged throughout.

45. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

46. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

#### **COUNT IV**

##### **Violation of Deceptive Trade Practices Act., R.C. 4165.02**

47. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

48. Defendants' conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

49. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

50. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

**COUNT V**

**Breach of Lease/ Contract**

51. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

52. Plaintiffs entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

53. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

54. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

55. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

56. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

**COUNT VI**

**Breach of Express Warranties**

57. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

58. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by

dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

59. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

60. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease for purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

61. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

62. Plaintiffs pray that all damages caused by these breaches be awarded

**COUNT VII**  
**Unjust Enrichment**

63. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

64. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched



at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

67. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

68. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

69. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

70. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

71. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

72. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

73. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. § 1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

74. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

75. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **COUNT X**

##### **Negligence**

76. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

77. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

78. Toyota breached its duty to Plaintiffs and Class members.

79. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

#### **COUNT XI**

##### **Strict Product Liability**

80. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

81. Toyota is a manufacturer and supplier of automobiles.

82. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

83. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

84. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

85. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

86. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

87. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **PUNITIVE DAMAGES**

88. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

89. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

#### **TEMPORARY RESTRAINING ORDER**

90. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

91. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

92. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

93. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

94. Defendants conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from every having the opportunity to review and use the documents.

95. Defendants' knowledge of the defect as far back as 2002 demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios

Billie, lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

96. Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relate to the recall and the allegations contained in this complaint, therefore, for is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not cause the Defendants and prejudice.

#### **ADDITIONAL INJUNCTION RELIEF**

97. Plaintiffs Pray for an Order

A. Requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, nondefective, replacement vehicles to all members of the Class until the vehicles owned or leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

98. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNATIVE DAMAGES**

99. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

#### **ADDITIONAL DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

101. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

102. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

#### **JURY DEMAND**

Plaintiff's hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)

*Lead Counsel and Trial Attorney*

Robert A. Steinberg

Joseph T. Deters

WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.

1513 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

Phone: (513) 621-0267

Facsimile: (513) 621-0262

Email: wsbcclaw@aol.com

### SERVICE REQUEST

Pursuant to Civil Rule 4.1(A) and 4.3(B), Plaintiff requests that service be made certified mail, return receipt requested, on the following:

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

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:

CT Corporation System

4169 Westport Road

Louisville, Kentucky 40207

TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
4550 Creek Road  
Cincinnati, Ohio 45242

CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242

BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255



LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. RU074819  
ADDRESS 3856 ARBOR GREEN DR PHONE (513)688-8811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN

Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.  
ENTER MY ORDER FOR ONE  NEW  USED /  CAR  TRUCK /  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	COMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH
MVI OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT			STOCK NO.	
	NOV 29 09			RU074819	

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:

1. The number of months this closed-end lease is for:	35
2. The number of miles you may drive per year is:	12000
And over the entire lease without an additional charge is:	36000
Charge you will pay for each mile over the amount listed:	\$ 0.15
3. Your approximate monthly payment will be:	\$ 234.95
4. The approximate capitalized cost will be:	\$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY	AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION	937.84
MODEL		FIRST PAYMENT	234.95
VIN		SECURITY DEPOSIT	N/A
MILEAGE	N/A	TITLE FEE	N/A
PAYOFF TO:		LICENSE FEE	N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION	77.2
ACCOUNT NO.:		USE TAX	N/A
TRADE IN ALLOWANCE			N/A
PAYOFF AMOUNT			N/A
NET TRADE IN ALLOWANCE			N/A
REBATE		DCC FEE	250.00
DEPOSIT		TOTAL DUE AT DELIVERY	1500.00
TOTAL CREDIT		LESS CREDITS	N/A
		BALANCE	1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ 116.67 to cover negative equity from my trade-in/the amount owed on my lease turn-in.

**DEPOSIT RECEIPT**  
Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

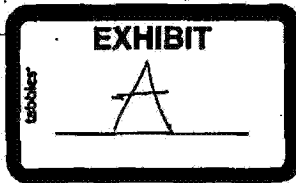
**ODOMETER MILEAGE STATEMENT**  
The odometer of the above-described vehicle now reads 198 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE: [Signature] DATE: 11/29/09

**1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer; (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

**2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle less any negative equity adjustment.

**3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

**4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

**5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

**6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

**7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

**8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

**9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

**10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

**11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

**12. INSURANCE UNAVAILABILITY**


In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

**13. SIGNING OF OTHER DOCUMENTS**

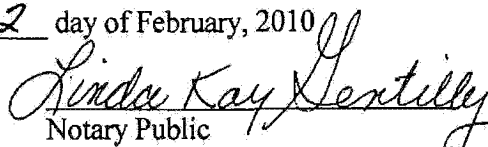
Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Hugh W. Cox

Sworn to and subscribed before me this 2 day of February, 2010

  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

Pamela M Cox  
Pamela M. Cox

Sworn to and subscribed before me this 2 day of February, 2010

Linda Kay Gentilly  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10



D86875621 CLF



COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO	CLASSIFICATION FORM  WWW.COURTCLERK.ORG	PATRICIA M. CLANCY CLERK OF COURTS
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CASE NUMBER: A1000992 PLAINTIFF: Hugh and Pam Cox

PURSUANT TO SUPERINTENDENCE RULE 4, THIS CASE WAS ORIGINALLY FILED AND DISMISSED

UNDER CASE NUMBER: \_\_\_\_\_ BY JUDGE \_\_\_\_\_

PLEASE INDICATE CLASSIFICATION INTO WHICH THIS CASE FALLS:

- OTHER TORT – C360
  - Personal Injury – C310
  - Wrongful Death – C320
  - Vehicle Accident – C370
- PROFESSIONAL TORT – A300
  - Personal Injury – A310
  - Wrongful Death – A320
  - Legal Malpractice – A330
  - Medical Malpractice – A340
- PRODUCT LIABILITY – B350
  - Personal Injury – B310
  - Wrongful Death – B320
- WORKER'S COMPENSATION
  - Non-Compliant Employer – D410
  - Appeal – D420
- FORECLOSURE
  - Foreclosure – E510
  - Foreclosure-Taxes – E520
  - Foreclosure-Mechanics Lien – E530
- ADMINISTRATIVE APPEALS – F600
  - Appeal Civil Service – F610
  - Appeal Motor Vehicle – F620
  - Appeal Unemployment – F630
  - Appeal Liquor – F640
  - Appeal Taxes – F650
  - Appeal Zoning – F660
- OTHER CIVIL – H700-34
  - Appropriation – H710
  - Accounting – H720
  - Beyond Jurisdiction – H730
  - Breach of Contract – H740
  - Cancel Land Contract – H750
  - Change of Venue – H760
  - Class Action – H770
  - Convey Declared Void – H780
  - Declaratory Judgment – H790
  - Discharge Mechanics Lien – H800
  - Dissolve Partnership – H810
  - CONSUMER SALES ACT (1345 ORC) – H820
  - Check here if relief includes declaratory judgment, injunction or class action recovery – H825
  - Habeas Corpus – H830
  - Injunction – H840
  - Mandamus – H850
  - On Account – H860
  - Partition – H870
  - Quiet Title – H880
  - Replevin – H890
  - Sale of Real Estate – H900
  - Specific Performance – H910
  - Restraining Order – H920
  - Testimony – H930-21
  - Environmental – H940
  - Cognovit – H950
  - Menacing by Stalking – H960
  - Repo Title – Transfer of Title Only – H970
  - Repo Title – With Money Claim – H980
  - Injunction Sexual Predator – H990
  - SB 10 – Termination – H690
  - SB 10 – Reclassification – H697

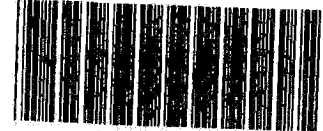
DATE: February 2, 2010

ATTORNEY (PRINT): Stanley M. Chesley

OHIO SUPREME COURT NUMBER: 0000852

Revised 01/05/09

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



D87077256

HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A., INC.  
et al.

Defendants.

CIVIL CASE NO.: A1000992

JUDGE: Robert P. Ruehlman

FIRST AMENDED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

INTRODUCTION

1. Hugh and Pamela Cox, and Ernestine Montgomery, on behalf of themselves and all Ohio residents similarly situated ("Plaintiffs), for their Complaint ("Complaint") against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing other than deny there was a problem.

PATRICIA J. CLANCY  
CLERK OF COURT  
HAMILTON COUNTY, OHIO  
2010 FEB 23 4:00 PM

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: “all agents are busy assisting other customers due to high call volume; please try your call later.”

8. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

9. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

10. Plaintiff Ernestine Montgomery owns a 2005 Toyota Camry. On Sunday, September 3, 2006, while parking at a grocery store after attending church, Plaintiff Montgomery's Camry suddenly accelerated when her foot was on the brake pedal, traveled across a sidewalk, and struck a brick wall. During the incident, Ms. Montgomery applied her brakes as hard as she could, but the brakes failed to stop the Camry. Ms. Montgomery suffered injuries to her chest, property damage to her Camry, and was forced to incur repair expenses, higher insurance premiums, and the cost of a rental car.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Traffic Safety Administration ("NHTSA") supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations that the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that was subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and



11. Approximately one month before her Camry suddenly accelerated and struck the brick wall, Ms. Montgomery took her Camry to Joseph Toyota on Colerain Avenue in Cincinnati, Ohio for routine service. After her service appointment, Joseph Toyota confirmed that the brakes on her Camry were in good working order. During the next month, nothing out of the ordinary occurred when Ms. Montgomery drove her Camry.

12. Immediately after the sudden acceleration incident, Ms. Montgomery took her Camry to Joseph Toyota for repair. During the repair, after consulting with a Toyota Regional official, Joseph Toyota installed a new gas pedal. Ms. Montgomery observed that the new pedal was shorter than the Camry's original pedal.

13. During December 2009, Ms. Montgomery noticed news reports concerning Toyota's sudden acceleration problems. She took the 2005 Camry to Joseph Toyota for routine service, and the personnel discussed with her a recall to install an accelerator pedal. She explained that her accelerator pedal had been replaced in September 2006. A service manager examined her accelerator pedal and was surprised to discover that Ms. Montgomery had the shorter gas pedal. He informed her that the shortened accelerator pedal that Joseph installed in 2006 is the same pedal that Toyota is using to repair the acceleration problems on recalled Toyota vehicles.

14. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the

problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies, Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

15. On January 26, 2010, Toyota stopped selling the eight recalled models as set forth above, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

#### **JURISDICTION AND VENUE**

16. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents. The Coxes entered into a lease with Toyota Lease Trust in Hamilton County, Ohio. Plaintiff Montgomery purchased her Toyota in Hamilton County. Plaintiffs’ lease and purchase inured to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

### **THE PARTIES**

17. Plaintiffs Hugh and Pamela Cox, and Ernestine Montgomery are residents of Ohio.

18. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

19. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

20. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is an Ohio corporation with its principal place of business in Hamilton County, Ohio.

### **CLASS ACTION ALLEGATIONS**

21. Plaintiffs bring this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design

and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration.

22. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

23. This action may properly be maintained as a class action pursuant to Ohio Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

24. The Plaintiffs and all Class Members seek compensatory damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

25. The number of Class Members is so numerous that joinder of all members is impracticable. The Class consists of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

26. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

27. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs' chosen counsel was experienced in class action litigation and will diligently and professionally prosecute the litigation.

28. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;
- H. Whether the defendants are strictly liable for damages to the plaintiffs and the members of the Plaintiffs' Class;
- I. Whether the Court should issue an Order preserving documents;
- J. Whether the defendants acted negligently;
- L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
- M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
- N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

29. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving in dangerous cars from pursuing their claims because of the expense of individual litigation.

Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

30. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping lease and car payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

31. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment and Fraud by Omission

32. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

33. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles are subject to sudden and uncontrollable acceleration that placed occupants

of its vehicles and pedestrians at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless disregard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

34. Toyota's customers relied on Toyota's reputation, coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought or leased the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

35. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

36. Defendants' conduct was knowing, intentional, and with malice. Defendants demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

**COUNT II**

**Fraud**

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

38. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, were free of defects, and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are “reliable.”

39. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe, unreliable, and not free of defects because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

40. The aforesaid representations of Defendants were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the representations in purchasing their vehicles. Toyota intentionally made the false statements in order to sell vehicles.

41. As a result of Toyota’s conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

42. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.



**COUNT III**

**Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

43. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

44. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits “representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . .” “representing that goods or services are of a particular standard, quality or grade . . . if they are of another” and “advertising goods or services with intent not to sell them as advertised.”

45. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

46. Defendants’ conduct caused Plaintiffs damages as alleged.

47. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

48. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

**COUNT IV**

**Violation of Deceptive Trade Practices Act., R.C. 4165.02**

49. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

50. Defendants' conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

51. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

52. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

#### **COUNT V**

##### **Breach of Lease/ Contract**

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Plaintiffs and other members of the class entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

55. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

56. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

57. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

58. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

59. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

60. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

61. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and instead are forcing customers to drive what were publicly identified as unsafe vehicles.

62. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and

this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

63. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

64. Plaintiffs pray that all damages caused by these breaches be awarded

#### **COUNT VII**

##### **Unjust Enrichment**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

#### **COUNT VIII**

##### **Breach of Implied Warranty of Merchantability**

67. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

68. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

69. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

70. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which do not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

71. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### COUNT IX

#### Breach of Implied Warranty of Fitness for a Particular Purpose

72. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

73. Defendants are, and at all relevant times have been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

74. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

75. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under

R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and Class members intended for them.

76. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture are so defective as to cause such vehicles to suddenly and unintentionally accelerate. Additionally, the vehicles fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

77. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT X**

#### **Negligence**

78. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

79. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

80. Toyota breached its duty to Plaintiffs and Class members.

81. As direct and proximate causes of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

**COUNT XI**

**Strict Product Liability**

82. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

83. Toyota is a manufacturer and supplier of automobiles.

84. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

85. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

86. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

87. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction after Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

**PUNITIVE CONDUCT**

90. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants intentionally have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

91. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights and safety of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due to their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

**TEMPORARY RESTRAINING ORDER**

92. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

93. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.



94. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

95. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

96. Defendants' conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from ever having the opportunity to review and use the documents.

97. Defendants' knowledge of the defect, as far back as 2002 and possibly earlier, demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that a Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios Biller, a lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

98. A Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relates to the recall and the allegations contained in this complaint, therefore, is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not prejudice the Defendants.

#### **ADDITIONAL INJUNCTION RELIEF**

99. Plaintiffs Pray for an Order:

A. Requiring Defendants to provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining non-defective, replacement vehicles until the vehicles owned or

leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first to dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNITIVE DAMAGES**

101. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. By Defendants knowingly withholding knowledge of dangerous conditions caused physical injuries to Ohio residents and caused Ohio residents economic loss.

**ADDITIONAL RELIEF**

102. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

103. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

104. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

**JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (0032932)  
Joseph T. Deters (0012084)  
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Cincinnati, OH 45202  
Phone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: wsbclaw@aol.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served regular U.S. mail upon the following in this case this 5<sup>th</sup> day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Lease Trust

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Motor Engineering &  
Manufacturing North America, Inc.

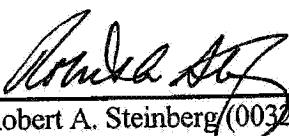
Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

Toyota North American Technical Training Center  
4550 Creek Road  
Cincinnati, Ohio 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, Ohio 45242

Beechmont Toyota, Inc.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

  
Robert A. Steinberg (0032932)

**LEASE ORDER**

8667 L ECHMONT AVENUE - CINCINNATI, OH IO 45255

6768

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. 01874819  
 ADDRESS 3556 ARBOR GREEN DR PHONE (513)688-8811  
 CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R NECKMAN

Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.  
 ENTER MY ORDER FOR ONE  NEW  USED  CAR  TRUCK  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR: 2010 MAKE: TOYOTA MODEL: CAMRY BODY TYPE: 4DR 2.4L AUTO COLOR: MAGNETIC GRAY TRIM: ASH  
 MVI OR SERIAL NO. 4T1B13EKEAUG74919 TO BE DELIVERED ON OR ABOUT NOV 29 09 STOCK NO. 01874819

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:  
 1. The number of months this closed-end lease is for: 36  
 2. The number of miles you may drive per year is: 12000  
 And over the entire lease without an additional charge is: 35000  
 Charge you will pay for each mile over the amount listed: \$ 0.15  
 3. Your approximate monthly payment will be: \$ 234.95  
 4. The approximate capitalized cost will be: \$ 22048.13

TRADE-IN VEHICLE		DUE AT DELIVERY		AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION		937.84
MODEL		FIRST PAYMENT		234.95
VIN		SECURITY DEPOSIT		N/A
MILEAGE		TITLE FEE		N/A
PAYOFF TO:		LICENSE FEE		N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION		77.2
ACCOUNT NO.:		USE TAX		N/A
TRADE IN ALLOWANCE				N/A
PAYOFF AMOUNT				N/A
NET TRADE IN ALLOWANCE				N/A
REBATE		DOC. FEE		250.00
DEPOSIT		TOTAL DUE AT DELIVERY		1500.00
TOTAL CREDIT		LESS CREDITS		N/A
		BALANCE		1500.00



ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature] ACCEPTED BY: [Signature] DATE: 11/29/09  
 LESSEE'S SIGNATURE

**ADDITIONAL TERMS AND CONDITIONS****1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance. (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement. (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer. (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

**2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered, only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle less any negative equity adjustment.

**3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

**4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

**5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

**6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

**7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

**8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

**9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

**10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

**11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

**12. INSURANCE UNAVAILABILITY**

In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

**13. SIGNING OF OTHER DOCUMENTS**

Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX AND  
PAMELA M. COX,  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

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

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA LEASE TRUST,

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

And

CIVIL CASE NO.: A1000992

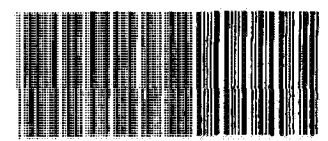
JUDGE:

VERIFIED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

FILED  
2010 FEB 22 P 3:43  
PATRICIA M. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH

6

ORIG COMP, PARTIES, SUMMONS
<input checked="" type="checkbox"/> CERT MAIL <input type="checkbox"/> SHERIFF <input type="checkbox"/> WAVE
<input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> NONE
CLERKS FEES _____
SECURITY FOR COST _____
DEPOSITED BY _____
FILING CODE _____ <u>H.70/852</u>



D86875626 INI

**TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
4550 Creek Road  
Cincinnati, Ohio 45242**

**And**

**CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242**

**And**

**BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255**

**Defendants.**

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**INTRODUCTION**

1. Hugh and Pamela Cox, on behalf of themselves and all Ohio residents similarly situated ("Plaintiffs), for their Complaint ("Complaint") against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing -- other than deny there was a problem.



3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that were subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling 2.3 million vehicles for the admitted reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota stopped selling the eight models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

9. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: "all agents are busy assisting other customers due to high call volume; please try your call later."

10. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

11. And instead of sending replacement parts to dealerships so that vehicles like the Coxes' can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

#### **JURISDICTION AND VENUE**

12. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents and entered into a lease with Toyota Lease Trust in Hamilton County, Ohio which inure to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, And several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

### THE PARTIES

13. Plaintiffs Hugh and Pamela Cox are residents of Hamilton County, Ohio.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

15. Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese corporation with its headquarters in Japan.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

17. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Cyde Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is Ohio corporation with its principal place of business in Hamilton County, Ohio.

### CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

19. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

20. This action may properly be maintained as a class action under Civil Rule 23 \_\_\_\_\_ because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

21. Plaintiffs bring this action on behalf of class consisting of: All residents of the State of Ohio who entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

22. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

23. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believes that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

24. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects.. Additionally, each member of the Class is entitled to the same form of relief.

25. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

26. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;

- H. Whether the defendants are strictly liable for damages to the plaintiff and the members of the Plaintiffs' Class;
  - I. Whether the Court should issue an Order preserving documents;
  - J. Whether the defendants acted negligently;
  - L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
  - M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
  - N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
27. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving on dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

28. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and

allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

29. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

### COUNT I

#### Fraudulent Concealment

30. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

31. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

32. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought



the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

33. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

34. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

35. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

36. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

37. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

38. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

Toyota intentionally made the false statements in order to sell vehicles.

39. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

40. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### COUNT III

#### Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02

41. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

42. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits "representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . ." "representing that goods or services are of a particular standard, quality or grade . . . if they are of another" and "advertising goods or services with intent not to sell them as advertised."

43. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

44. Defendants’ conduct caused Plaintiffs damages as alleged throughout.

45. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

46. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

#### **COUNT IV**

##### **Violation of Deceptive Trade Practices Act., R.C. 4165.02**

47. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

48. Defendants’ conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

49. Defendants’ conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

50. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

**COUNT V**

**Breach of Lease/ Contract**

51. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

52. Plaintiffs entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

53. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

54. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

55. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

56. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

**COUNT VI**

**Breach of Express Warranties**

57. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

58. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by

dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

59. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

60. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease for purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

61. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

62. Plaintiffs pray that all damages caused by these breaches be awarded

**COUNT VII**  
**Unjust Enrichment**

63. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

64. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched

at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

67. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

68. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

69. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

70. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

71. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

72. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

73. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. § 1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

74. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

75. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **COUNT X**

##### **Negligence**

76. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

77. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

78. Toyota breached its duty to Plaintiffs and Class members.

79. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

#### **COUNT XI**

##### **Strict Product Liability**

80. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

81. Toyota is a manufacturer and supplier of automobiles.

82. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

83. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

84. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

85. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

86. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

87. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **PUNITIVE DAMAGES**

88. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.



89. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

#### **TEMPORARY RESTRAINING ORDER**

90. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

91. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

92. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

93. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

94. Defendants conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from every having the opportunity to review and use the documents.

95. Defendants' knowledge of the defect as far back as 2002 demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios

Billar, lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

96. Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relate to the recall and the allegations contained in this complaint, therefore, for is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not cause the Defendants and prejudice.

#### **ADDITIONAL INJUNCTION RELIEF**

97. Plaintiffs Pray for an Order

A. Requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, nondefective, replacement vehicles to all members of the Class until the vehicles owned or leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

98. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNATIVE DAMAGES**

99. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

#### **ADDITIONAL DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

101. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

102. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

#### **JURY DEMAND**

Plaintiff's hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg  
Joseph T. Deters  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Phone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: wsbcclaw@aol.com

**SERVICE REQUEST**

Pursuant to Civil Rule 4.1(A) and 4.3(B), Plaintiff requests that service be made certified mail, return receipt requested, on the following:

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

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
4550 Creek Road  
Cincinnati, Ohio 45242

CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242

BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

**LEASE ORDER**

67681

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. RU074819  
 ADDRESS 3856 ARBOR GREEN DR PHONE (513)688-8811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN  
 Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.

ENTER MY ORDER FOR ONE  NEW  USED /  CAR  TRUCK /  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	COMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH
MVI OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT			STOCK NO.	
	NOV 29 09			RU074819	

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:  
 1. The number of months this closed-end lease is for: 36  
 2. The number of miles you may drive per year is: 12000  
 And over the entire lease without an additional charge is: 36000  
 Charge you will pay for each mile over the amount listed: \$ 0.15  
 3. Your approximate monthly payment will be: \$ 234.95  
 4. The approximate capitalized cost will be: \$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY	AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION	937.84
MODEL		FIRST PAYMENT	234.95
VIN		SECURITY DEPOSIT	N/A
MILEAGE	N/A	TITLE FEE	N/A
PAYOFF TO:		LICENSE FEE	N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION	77.2
ACCOUNT NO.:		USE TAX	N/A
TRADE IN ALLOWANCE			N/A
PAYOFF AMOUNT			N/A
NET TRADE IN ALLOWANCE			N/A
REBATE		DOC. FEE	250.00
DEPOSIT		TOTAL DUE AT DELIVERY	1500.00
TOTAL CREDIT		LESS CREDITS	N/A
		BALANCE	1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
 I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ 116.67 to cover negative equity from my trade-in/the amount owed on my lease turn-in.  
 X

**DEPOSIT RECEIPT**  
 Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

**ODOMETER MILEAGE STATEMENT**  
 The odometer of the above-described vehicle now reads 198 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE [Signature] DATE 11/29/09

**1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer; (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

**2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle less any negative equity adjustment.

**3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

**4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

**5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

**6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

**7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

**8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

**9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

**10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

**11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

**12. INSURANCE UNAVAILABILITY**


In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

**13. SIGNING OF OTHER DOCUMENTS**

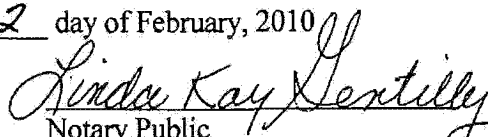
Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Hugh W. Cox

Sworn to and subscribed before me this 2 day of February, 2010


  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

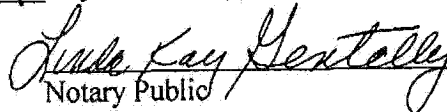


**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Pamela M. Cox

Sworn to and subscribed before me this 2 day of February, 2010

  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



D87077256

HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A., INC.  
et al.

Defendants.

CIVIL CASE NO.: A1000992

JUDGE: Robert P. Ruehlman

FIRST AMENDED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

INTRODUCTION

1. Hugh and Pamela Cox, and Ernestine Montgomery, on behalf of themselves and all Ohio residents similarly situated ("Plaintiffs), for their Complaint ("Complaint") against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing other than deny there was a problem.

PATRICIA J. CLAWY  
CLERK OF COURT  
HAMILTON COUNTY, OHIO  
2010 FEB 23 4:00 PM

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: “all agents are busy assisting other customers due to high call volume; please try your call later.”

8. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

9. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

10. Plaintiff Ernestine Montgomery owns a 2005 Toyota Camry. On Sunday, September 3, 2006, while parking at a grocery store after attending church, Plaintiff Montgomery's Camry suddenly accelerated when her foot was on the brake pedal, traveled across a sidewalk, and struck a brick wall. During the incident, Ms. Montgomery applied her brakes as hard as she could, but the brakes failed to stop the Camry. Ms. Montgomery suffered injuries to her chest, property damage to her Camry, and was forced to incur repair expenses, higher insurance premiums, and the cost of a rental car.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Traffic Safety Administration ("NHTSA") supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations that the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that was subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

11. Approximately one month before her Camry suddenly accelerated and struck the brick wall, Ms. Montgomery took her Camry to Joseph Toyota on Colerain Avenue in Cincinnati, Ohio for routine service. After her service appointment, Joseph Toyota confirmed that the brakes on her Camry were in good working order. During the next month, nothing out of the ordinary occurred when Ms. Montgomery drove her Camry.

12. Immediately after the sudden acceleration incident, Ms. Montgomery took her Camry to Joseph Toyota for repair. During the repair, after consulting with a Toyota Regional official, Joseph Toyota installed a new gas pedal. Ms. Montgomery observed that the new pedal was shorter than the Camry's original pedal.

13. During December 2009, Ms. Montgomery noticed news reports concerning Toyota's sudden acceleration problems. She took the 2005 Camry to Joseph Toyota for routine service, and the personnel discussed with her a recall to install an accelerator pedal. She explained that her accelerator pedal had been replaced in September 2006. A service manager examined her accelerator pedal and was surprised to discover that Ms. Montgomery had the shorter gas pedal. He informed her that the shortened accelerator pedal that Joseph installed in 2006 is the same pedal that Toyota is using to repair the acceleration problems on recalled Toyota vehicles.

14. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the

problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies, Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

15. On January 26, 2010, Toyota stopped selling the eight recalled models as set forth above, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

#### **JURISDICTION AND VENUE**

16. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents. The Coxes entered into a lease with Toyota Lease Trust in Hamilton County, Ohio. Plaintiff Montgomery purchased her Toyota in Hamilton County. Plaintiffs’ lease and purchase inured to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

### **THE PARTIES**

17. Plaintiffs Hugh and Pamela Cox, and Ernestine Montgomery are residents of Ohio.

18. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

19. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

20. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is an Ohio corporation with its principal place of business in Hamilton County, Ohio.

### **CLASS ACTION ALLEGATIONS**

21. Plaintiffs bring this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design

and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration.

22. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

23. This action may properly be maintained as a class action pursuant to Ohio Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

24. The Plaintiffs and all Class Members seek compensatory damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

25. The number of Class Members is so numerous that joinder of all members is impracticable. The Class consists of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

26. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

27. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs' chosen counsel was experienced in class action litigation and will diligently and professionally prosecute the litigation.



28. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;
- H. Whether the defendants are strictly liable for damages to the plaintiffs and the members of the Plaintiffs' Class;
- I. Whether the Court should issue an Order preserving documents;
- J. Whether the defendants acted negligently;
- L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
- M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
- N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

29. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving in dangerous cars from pursuing their claims because of the expense of individual litigation.

Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

30. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping lease and car payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

31. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment and Fraud by Omission

32. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

33. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles are subject to sudden and uncontrollable acceleration that placed occupants

of its vehicles and pedestrians at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless disregard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

34. Toyota's customers relied on Toyota's reputation, coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought or leased the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

35. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

36. Defendants' conduct was knowing, intentional, and with malice. Defendants demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

**COUNT II**

**Fraud**

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

38. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, were free of defects, and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are “reliable.”

39. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe, unreliable, and not free of defects because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

40. The aforesaid representations of Defendants were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the representations in purchasing their vehicles. Toyota intentionally made the false statements in order to sell vehicles.

41. As a result of Toyota’s conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

42. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

**COUNT III**

**Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

43. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

44. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits “representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . .” “representing that goods or services are of a particular standard, quality or grade . . . if they are of another” and “advertising goods or services with intent not to sell them as advertised.”

45. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

46. Defendants’ conduct caused Plaintiffs damages as alleged.

47. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

48. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

**COUNT IV**

**Violation of Deceptive Trade Practices Act., R.C. 4165.02**

49. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

50. Defendants' conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

51. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

52. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

#### COUNT V

##### Breach of Lease/ Contract

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Plaintiffs and other members of the class entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

55. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

56. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

57. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

58. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

59. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

60. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

61. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and instead are forcing customers to drive what were publicly identified as unsafe vehicles.

62. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and

this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

63. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

64. Plaintiffs pray that all damages caused by these breaches be awarded

### **COUNT VII**

#### **Unjust Enrichment**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

67. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

68. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

69. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable



safety during normal operation, and without itself unduly endangering them or members of the public.

70. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which do not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

71. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### COUNT IX

#### Breach of Implied Warranty of Fitness for a Particular Purpose

72. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

73. Defendants are, and at all relevant times have been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

74. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

75. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under

R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and Class members intended for them.

76. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture are so defective as to cause such vehicles to suddenly and unintentionally accelerate. Additionally, the vehicles fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

77. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT X**

#### **Negligence**

78. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

79. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

80. Toyota breached its duty to Plaintiffs and Class members.

81. As direct and proximate causes of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

**COUNT XI**

**Strict Product Liability**

82. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

83. Toyota is a manufacturer and supplier of automobiles.

84. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

85. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

86. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

87. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction after Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

**PUNITIVE CONDUCT**

90. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants intentionally have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

91. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights and safety of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due to their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

**TEMPORARY RESTRAINING ORDER**

92. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

93. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

94. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

95. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

96. Defendants' conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from ever having the opportunity to review and use the documents.

97. Defendants' knowledge of the defect, as far back as 2002 and possibly earlier, demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that a Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios Biller, a lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

98. A Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relates to the recall and the allegations contained in this complaint, therefore, is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not prejudice the Defendants.

#### **ADDITIONAL INJUNCTION RELIEF**

99. Plaintiffs Pray for an Order:

A. Requiring Defendants to provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining non-defective, replacement vehicles until the vehicles owned or

leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first to dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNITIVE DAMAGES**

101. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. By Defendants knowingly withholding knowledge of dangerous conditions caused physical injuries to Ohio residents and caused Ohio residents economic loss.

**ADDITIONAL RELIEF**

102. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

103. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

104. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

**JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



Stanley M. Chesley (0000852)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (0032932)  
Joseph T. Deters (0012084)  
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Cincinnati, OH 45202  
Phone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: wsbclaw@aol.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served regular U.S. mail upon the following in this case this 5<sup>th</sup> day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Lease Trust

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Motor Engineering &  
Manufacturing North America, Inc.

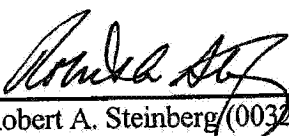
Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

Toyota North American Technical Training Center  
4550 Creek Road  
Cincinnati, Ohio 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, Ohio 45242

Beechmont Toyota, Inc.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

  
Robert A. Steinberg (0032932)



**LEASE ORDER**

67681

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. RU074819  
 ADDRESS 3856 ARBOR GREEN DR PHONE (513)688-8811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN  
 Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.

ENTER MY ORDER FOR ONE  NEW  USED /  CAR  TRUCK /  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	COMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH
MVI OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT			STOCK NO.	
	NOV 29 09			RU074819	

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:  
 1. The number of months this closed-end lease is for: 35  
 2. The number of miles you may drive per year is: 12000  
 And over the entire lease without an additional charge is: 36000  
 Charge you will pay for each mile over the amount listed: \$ 0.15  
 3. Your approximate monthly payment will be: \$ 234.95  
 4. The approximate capitalized cost will be: \$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY	AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION	937.84
MODEL		FIRST PAYMENT	234.95
VIN		SECURITY DEPOSIT	N/A
MILEAGE	N/A	TITLE FEE	N/A
PAYOFF TO:		LICENSE FEE	N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION	77.2
ACCOUNT NO.:		USE TAX	N/A
TRADE IN ALLOWANCE			N/A
PAYOFF AMOUNT			N/A
NET TRADE IN ALLOWANCE			N/A
REBATE		DCC FEE	250.00
DEPOSIT		TOTAL DUE AT DELIVERY	1500.00
TOTAL CREDIT		LESS CREDITS	N/A
		BALANCE	1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
 I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ 116.67 to cover negative equity from my trade-in/the amount owed on my lease turn-in.

**DEPOSIT RECEIPT**  
 Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

**ODOMETER MILEAGE STATEMENT**  
 The odometer of the above-described vehicle now reads 198 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE: [Signature] DATE: 11/29/09

**1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer; (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

**2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle less any negative equity adjustment.

**3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

**4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

**5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

**6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

**7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

**8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

**9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

**10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

**11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

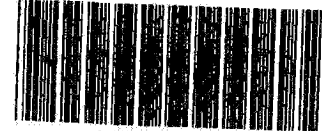
**12. INSURANCE UNAVAILABILITY**

In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

**13. SIGNING OF OTHER DOCUMENTS**

Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**



**D87077256**

<b>HUGH W. COX and</b>	:	<b>CIVIL CASE NO.: A1000992</b>
<b>PAMELA M. COX, and</b>	:	
<b>ERNESTINE MONTGOMERY</b>	:	
<b>AND OTHERS SIMILARLY SITUATED,</b>	:	
	:	<b>JUDGE: Robert P. Ruchlman</b>
<b>Plaintiffs,</b>	:	
	:	
<b>vs.</b>	:	<b>FIRST AMENDED REQUEST FOR</b>
	:	<b>TEMPORARY RESTRAINING ORDER</b>
	:	<b>AND CLASS ACTION COMPLAINT</b>
<b>TOYOTA MOTOR SALES, U.S.A., INC.</b>	:	<b>AND JURY DEMAND</b>
<b>et al.</b>	:	
	:	
<b>Defendants.</b>	:	

**INTRODUCTION**

1. Hugh and Pamela Cox, and Ernestine Montgomery, on behalf of themselves and all Ohio residents similarly situated (“Plaintiffs), for their Complaint (“Complaint”) against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, “Toyota”) have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing other than deny there was a problem.

PATRICK J. CLAWG  
CLERK OF COURT  
HAMILTON COUNTY, OHIO  
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something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: “all agents are busy assisting other customers due to high call volume; please try your call later.”

8. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

9. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

10. Plaintiff Ernestine Montgomery owns a 2005 Toyota Camry. On Sunday, September 3, 2006, while parking at a grocery store after attending church, Plaintiff Montgomery's Camry suddenly accelerated when her foot was on the brake pedal, traveled across a sidewalk, and struck a brick wall. During the incident, Ms. Montgomery applied her brakes as hard as she could, but the brakes failed to stop the Camry. Ms. Montgomery suffered injuries to her chest, property damage to her Camry, and was forced to incur repair expenses, higher insurance premiums, and the cost of a rental car.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Traffic Safety Administration ("NHTSA") supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver's side had been clipped down and therefore were led to believe by Toyota's representations that the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that was subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: "At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

11. Approximately one month before her Camry suddenly accelerated and struck the brick wall, Ms. Montgomery took her Camry to Joseph Toyota on Colerain Avenue in Cincinnati, Ohio for routine service. After her service appointment, Joseph Toyota confirmed that the brakes on her Camry were in good working order. During the next month, nothing out of the ordinary occurred when Ms. Montgomery drove her Camry.

12. Immediately after the sudden acceleration incident, Ms. Montgomery took her Camry to Joseph Toyota for repair. During the repair, after consulting with a Toyota Regional official, Joseph Toyota installed a new gas pedal. Ms. Montgomery observed that the new pedal was shorter than the Camry's original pedal.

13. During December 2009, Ms. Montgomery noticed news reports concerning Toyota's sudden acceleration problems. She took the 2005 Camry to Joseph Toyota for routine service, and the personnel discussed with her a recall to install an accelerator pedal. She explained that her accelerator pedal had been replaced in September 2006. A service manager examined her accelerator pedal and was surprised to discover that Ms. Montgomery had the shorter gas pedal. He informed her that the shortened accelerator pedal that Joseph installed in 2006 is the same pedal that Toyota is using to repair the acceleration problems on recalled Toyota vehicles.

14. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the

problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies, Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

15. On January 26, 2010, Toyota stopped selling the eight recalled models as set forth above, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

#### **JURISDICTION AND VENUE**

16. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents. The Coxes entered into a lease with Toyota Lease Trust in Hamilton County, Ohio. Plaintiff Montgomery purchased her Toyota in Hamilton County. Plaintiffs’ lease and purchase inured to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.

### **THE PARTIES**

17. Plaintiffs Hugh and Pamela Cox, and Ernestine Montgomery are residents of Ohio.

18. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

19. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

20. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is an Ohio corporation with its principal place of business in Hamilton County, Ohio.

### **CLASS ACTION ALLEGATIONS**

21. Plaintiffs bring this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design



and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration.

22. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

23. This action may properly be maintained as a class action pursuant to Ohio Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

24. The Plaintiffs and all Class Members seek compensatory damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

25. The number of Class Members is so numerous that joinder of all members is impracticable. The Class consists of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

26. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

27. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs' chosen counsel was experienced in class action litigation and will diligently and professionally prosecute the litigation.

28. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;
- H. Whether the defendants are strictly liable for damages to the plaintiffs and the members of the Plaintiffs' Class;
- I. Whether the Court should issue an Order preserving documents;
- J. Whether the defendants acted negligently;
- L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
- M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
- N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

29. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving in dangerous cars from pursuing their claims because of the expense of individual litigation.

Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

30. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping lease and car payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

31. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment and Fraud by Omission

32. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

33. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles are subject to sudden and uncontrollable acceleration that placed occupants

of its vehicles and pedestrians at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless disregard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

34. Toyota's customers relied on Toyota's reputation, coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought or leased the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

35. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

36. Defendants' conduct was knowing, intentional, and with malice. Defendants demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

**COUNT II**

**Fraud**

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

38. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, were free of defects, and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are “reliable.”

39. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe, unreliable, and not free of defects because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

40. The aforesaid representations of Defendants were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the representations in purchasing their vehicles. Toyota intentionally made the false statements in order to sell vehicles.

41. As a result of Toyota’s conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

42. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

**COUNT III**

**Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

43. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

44. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits “representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . .” “representing that goods or services are of a particular standard, quality or grade . . . if they are of another” and “advertising goods or services with intent not to sell them as advertised.”

45. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

46. Defendants’ conduct caused Plaintiffs damages as alleged.

47. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

48. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

**COUNT IV**

**Violation of Deceptive Trade Practices Act., R.C. 4165.02**

49. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

50. Defendants' conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

51. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

52. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

#### **COUNT V**

##### **Breach of Lease/ Contract**

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Plaintiffs and other members of the class entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

55. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

56. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

57. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

58. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

59. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

60. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

61. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and instead are forcing customers to drive what were publicly identified as unsafe vehicles.

62. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and



this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

63. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

64. Plaintiffs pray that all damages caused by these breaches be awarded

### **COUNT VII**

#### **Unjust Enrichment**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

67. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

68. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

69. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

70. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which do not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

71. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### COUNT IX

#### Breach of Implied Warranty of Fitness for a Particular Purpose

72. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

73. Defendants are, and at all relevant times have been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

74. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

75. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under

R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and Class members intended for them.

76. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture are so defective as to cause such vehicles to suddenly and unintentionally accelerate. Additionally, the vehicles fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

77. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT X**

#### **Negligence**

78. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

79. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

80. Toyota breached its duty to Plaintiffs and Class members.

81. As direct and proximate causes of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

**COUNT XI**

**Strict Product Liability**

82. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

83. Toyota is a manufacturer and supplier of automobiles.

84. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

85. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

86. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

87. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction after Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

**PUNITIVE CONDUCT**

90. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants intentionally have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

91. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights and safety of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due to their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

**TEMPORARY RESTRAINING ORDER**

92. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

93. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

94. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

95. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

96. Defendants' conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from ever having the opportunity to review and use the documents.

97. Defendants' knowledge of the defect, as far back as 2002 and possibly earlier, demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that a Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios Biller, a lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

98. A Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relates to the recall and the allegations contained in this complaint, therefore, is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not prejudice the Defendants.

#### **ADDITIONAL INJUNCTION RELIEF**

99. Plaintiffs Pray for an Order:

A. Requiring Defendants to provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining non-defective, replacement vehicles until the vehicles owned or

leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first to dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNITIVE DAMAGES**

101. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. By Defendants knowingly withholding knowledge of dangerous conditions caused physical injuries to Ohio residents and caused Ohio residents economic loss.

**ADDITIONAL RELIEF**

102. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

103. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

104. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

**JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,



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*Lead Counsel and Trial Attorney*  
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Facsimile: (513) 621-0262  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served regular U.S. mail upon the following in this case this 5<sup>th</sup> day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Lease Trust

Agent for Service of Process:

CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

Toyota Motor Engineering &  
Manufacturing North America, Inc.

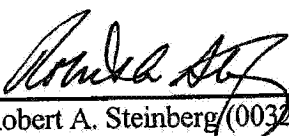
Agent for Service of Process:

CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

Toyota North American Technical Training Center  
4550 Creek Road  
Cincinnati, Ohio 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, Ohio 45242

Beechmont Toyota, Inc.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

  
Robert A. Steinberg (0032932)

**LEASE ORDER**

67681

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. RU074819  
 ADDRESS 3856 ARBOR GREEN DR PHONE (513)688-8811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN  
 Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.

ENTER MY ORDER FOR ONE  NEW  USED /  CAR  TRUCK /  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	COMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH
MVI OR SERIAL NO.	TO BE DELIVERED ON OR ABOUT			STOCK NO.	
	NOV 29 09			RU074819	

REMARKS: THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:  
 1. The number of months this closed-end lease is for: 35  
 2. The number of miles you may drive per year is: 12000  
 And over the entire lease without an additional charge is: 36000  
 Charge you will pay for each mile over the amount listed: \$ 0.15  
 3. Your approximate monthly payment will be: \$ 234.95  
 4. The approximate capitalized cost will be: \$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY	AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION	937.84
MODEL		FIRST PAYMENT	234.95
VIN		SECURITY DEPOSIT	N/A
MILEAGE	N/A	TITLE FEE	N/A
PAYOFF TO:		LICENSE FEE	N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION	77.2
ACCOUNT NO.:		USE TAX	N/A
TRADE IN ALLOWANCE			N/A
PAYOFF AMOUNT			N/A
NET TRADE IN ALLOWANCE			N/A
REBATE		DCC FEE	250.00
DEPOSIT		TOTAL DUE AT DELIVERY	1500.00
TOTAL CREDIT		LESS CREDITS	N/A
		BALANCE	1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
 I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ 116.67 to cover negative equity from my trade-in/the amount owed on my lease turn-in.  
 X

**DEPOSIT RECEIPT**  
 Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

**ODOMETER MILEAGE STATEMENT**  
 The odometer of the above-described vehicle now reads 198 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE [Signature] DATE 11/29/09

**1. DEFINITIONS**

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance; (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement; (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer; (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

**2. PRICE CHANGES**

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall redeliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle less any negative equity adjustment.

**3. MANUFACTURER'S DESIGN CHANGES**

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

**4. DELAYS IN DELIVERY**

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

**5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES**

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

**6. TRADE-IN VEHICLE APPRAISAL**

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

**7. BALANCE OWED ON TRADE-IN**

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

**8. TITLE TO THE TRADE-IN VEHICLE**

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

**9. TRADE-IN AND OTHER CREDITS**

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

**10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM**

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

**11. TAX LIABILITY**

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

**12. INSURANCE UNAVAILABILITY**

In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

**13. SIGNING OF OTHER DOCUMENTS**

Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX AND  
PAMELA M. COX,  
AND OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

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

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA LEASE TRUST,

Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

And

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.

Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, Kentucky 40207

And

CIVIL CASE NO.: A1000992

JUDGE:

VERIFIED REQUEST FOR  
TEMPORARY RESTRAINING ORDER  
AND CLASS ACTION COMPLAINT  
AND JURY DEMAND

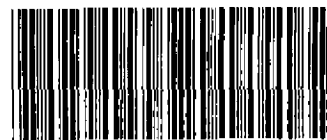
FILED

2010 FEB - 2 P 3:43

PATRICIA M. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH

6

ORIG	COMP, PARTIES, SUMMONS
<input checked="" type="checkbox"/>	CERT MAIL
<input type="checkbox"/>	SHERIFF
<input type="checkbox"/>	WAVE
<input type="checkbox"/>	PROCESS SERVER
<input type="checkbox"/>	NONE
CLERKS FEES	_____
SECURITY FOR COST	_____
DEPOSITED BY	_____
FILING CODE	H170/852



D86875626 INI

**TOYOTA NORTH AMERICAN** :  
**TECHNICAL TRAINING CENTER,** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**CLYDE DYSON** :  
**4550 Creek Road** :  
**Cincinnati, Ohio 45242** :  
: :  
**And** :  
: :  
**BEECHMONT TOYOTA, INC.,** :  
**8639 Beechmont Avenue** :  
**Cincinnati, Ohio 45255** :  
: :  
**Defendants.** :

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**INTRODUCTION**

1. Hugh and Pamela Cox, on behalf of themselves and all Ohio residents similarly situated (“Plaintiffs), for their Complaint (“Complaint”) against Defendants allege as follows:

2. Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, “Toyota”) have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing -- other than deny there was a problem.

3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on “floor mats.” Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers’ side. As of November 2009, Toyota stated “there is no evidence to support” any other conclusion. Toyota stated that the National Highway Safety Administration supported the company’s conclusion, but the agency responded by stating that Toyota’s statement was “misleading and inaccurate.”

5. On November 29, 2009, Mr. and Mrs. Cox went to Beechmont Toyota in Hamilton County, Ohio, to consider whether to lease a new 2010 Toyota Camry automobile. The Coxes saw that the floor mat on the driver’s side had been clipped down and therefore were led to believe by Toyota’s representations the car was safe. Mr. Cox entered into a 36-month lease that date with Toyota Lease Trust, an affiliate of Toyota. A copy of the lease is attached hereto as Exhibit A. The Coxes were unaware when they signed the lease that theirs was one of the millions of Toyota vehicles that were subject to extremely dangerous, and possibly fatal, uncontrolled acceleration. Moreover, none of the Defendants informed them of the true cause of the sudden acceleration problem, nor did they inform them that the problems causing the uncontrolled acceleration had not been fixed.

6. Instead, the Coxes were given assurances that their vehicle was safe and defect free. For example, they were given a Warranty and Maintenance Guide which states: “At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and

something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability. . . . Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind . . . .”

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling 2.3 million vehicles for the admitted reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” (emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized “drive-by-wire” acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota stopped selling the eight models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was “necessary” to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

9. On January 27, 2010, the Coxes called Toyota's 800 number but received a recorded message: "all agents are busy assisting other customers due to high call volume; please try your call later."

10. The Coxes attempted to schedule a repair but were told they could not get their vehicle fixed until they received a letter. When they called Toyota's 800 number that day, they were told there was no fix available yet for the problem. They informed the Toyota agent that they were afraid to drive the vehicle. He transferred them to another Toyota agent. The Coxes again stated they were too afraid to drive the leased Toyota and asked for a loaner vehicle. The Toyota agent said they would receive a call back within two days. However, Toyota has failed and refused to return the call and has not provided a loaner vehicle that does not have the acceleration problem.

11. And instead of sending replacement parts to dealerships so that vehicles like the Coxes' can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. The Coxes are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

#### **JURISDICTION AND VENUE**

12. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents and entered into a lease with Toyota Lease Trust in Hamilton County, Ohio which inure to the benefit of Defendants, who designed, manufactured, marketed and leased the vehicle in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, And several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because the Defendants do business in Ohio and have registered with the State to do business in Ohio.



## THE PARTIES

13. Plaintiffs Hugh and Pamela Cox are residents of Hamilton County, Ohio.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. TMS-USA is a wholly-owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and Lexus automobiles and trucks in the United States.

15. Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese corporation with its headquarters in Japan.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMS-USA and was incorporated in California in 1982. In October 1996, TMCC created Toyota Lease Trust ("TLT"), a Delaware business trust to act as lessor and to hold title to leased Toyota vehicles in specified states in connection with a lease securitization program. TMCC acts as the servicer for lease contracts purchased by TLT from the Toyota and Lexus dealers and services such lease contracts in the same manner as contracts owned directly by TMCC. TMCC holds an undivided trust interest in lease contracts owned by the TLT.

17. Defendant Toyota North American Training Center is located in Blue Ash in Hamilton County, Ohio. The Center is responsible for training Toyota service technicians. Defendant Cyde Dyson is the highest ranking official at that facility. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Erlanger, Kentucky. Defendant Beechmont Toyota, Inc. is Ohio corporation with its principal place of business in Hamilton County, Ohio.

## CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

19. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants.

20. This action may properly be maintained as a class action under Civil Rule 23 \_\_\_\_\_ because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

21. Plaintiffs bring this action on behalf of class consisting of: All residents of the State of Ohio who entered into agreements to purchase or lease vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

22. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

23. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believes that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

24. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects.. Additionally, each member of the Class is entitled to the same form of relief.

25. The Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

26. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;
- B. Whether the recalled cars are defective;
- C. Whether design defects cause the recalled vehicles to crash;
- D. Whether the defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;
- E. Whether the defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;
- F. Whether the defendants failed to give adequate warnings regarding the recalled cars;
- G. Whether the defendants, through written advertising and other representations, created express or implied warranties that were breached;

- H. Whether the defendants are strictly liable for damages to the plaintiff and the members of the Plaintiffs' Class;
  - I. Whether the Court should issue an Order preserving documents;
  - J. Whether the defendants acted negligently;
  - L. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
  - M. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
  - N. Whether plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
27. A class action is superior to all other available methods to adjudicate this litigation.

Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving on dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

28. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring the Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting the Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and

allow Defendants to selectively preserve important information. Obviously, the Defendants could not comply with differing sets of inconsistent orders.

29. Class Certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because the Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

## COUNT I

### Fraudulent Concealment

30. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

31. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were more than 1,000 fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

32. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought

the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

33. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

34. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

## COUNT II

### Fraud

35. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

36. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

37. The vehicles purchased or leased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

38. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

Toyota intentionally made the false statements in order to sell vehicles.

39. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

40. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

### **COUNT III**

#### **Violation of Consumer Sales Practices Act, R.C. 1345.01-1345.02**

41. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

42. The Consumer Sales Practices Act, Revised Code 1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Act prohibits "representing that goods . . . have characteristics . . . uses, [or] benefits which they do not have . . ." "representing that goods or services are of a particular standard, quality or grade . . . if they are of another" and "advertising goods or services with intent not to sell them as advertised."

43. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. 1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the “standard, quality or grade” of new vehicles.

44. Defendants’ conduct caused Plaintiffs damages as alleged throughout.

45. Plaintiffs specifically do not allege herein a claim for violation of R.C. § 1345.72.

46. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proved at trial.

#### COUNT IV

##### Violation of Deceptive Trade Practices Act., R.C. 4165.02

47. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

48. Defendants’ conduct violated the Deceptive Trade Practices Act, R.C. 4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members leased or purchased.

49. Defendants’ conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

50. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants’ conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.



## COUNT V

### Breach of Lease/ Contract

51. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

52. Plaintiffs entered into a lease agreement with Defendant Trust which inured to the benefit of all Defendants. Other members of the Class entered into agreements to purchase Toyota vehicles which also directly or indirectly benefited Defendants.

53. The leases and purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly and undisclosed defects which Defendants knew about.

54. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

55. Plaintiffs and other Class members have fully performed their duties under the purchase and lease agreements.

56. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

## COUNT VI

### Breach of Express Warranties

57. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

58. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by

dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. Section 1302.26.

59. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota and Beechmont further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

60. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to lease for purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

61. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. § 1345.72, and this cause of action is not based on that section.

62. Plaintiffs pray that all damages caused by these breaches be awarded

**COUNT VII**  
**Unjust Enrichment**

63. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

64. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched

at the expense of Plaintiffs and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

### **COUNT VIII**

#### **Breach of Implied Warranty of Merchantability**

65. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

66. Defendants impliedly warranted under R.C. § 1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

67. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

68. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

69. Plaintiffs and Class members have been damaged in an amount to be proved at trial.

### **COUNT IX**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

70. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

71. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

72. Defendants knew, when it leased and sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

73. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. § 1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

74. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

75. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **COUNT X**

##### **Negligence**

76. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

77. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

78. Toyota breached its duty to Plaintiffs and Class members.

79. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

#### **COUNT XI**

##### **Strict Product Liability**

80. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

81. Toyota is a manufacturer and supplier of automobiles.

82. The automobiles that were leased or purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

83. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

84. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

85. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

86. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

87. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

#### **PUNITIVE DAMAGES**

88. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

89. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs pray for relief as follows:

### **TEMPORARY RESTRAINING ORDER**

90. Plaintiffs pray for a Temporary Restraining Order to preserve documents and other important evidence.

91. Defendants control documents, video, and other forms of media and electronic information that relates to the recall and the allegations contained in this complaint.

92. This information is invaluable and necessary for Plaintiffs to prosecute their claims on behalf of themselves and the class they seek to represent.

93. Plaintiffs lack the ability to recreate this information in the event that Defendants should decide to destroy the documents.

94. Defendants conduct in hiding the dangers associated with issues related to the recall and the allegations of this complaint demonstrate that Defendants likely will take action to prevent Plaintiffs from every having the opportunity to review and use the documents.

95. Defendants' knowledge of the defect as far back as 2002 demonstrates that Defendants have a propensity to conceal information. Plaintiffs have good reason to believe that Court order preserving information is necessary. Toyota hiding documents is not new. Dimitrios

Billier, lawyer who oversaw rollover litigation at Toyota from 2003 to 2007, has claimed in a lawsuit against Toyota that Toyota was hiding crash safety data in rollover cases. He filed suit in federal court, accusing Toyota's in-house legal team of a giant cover-up.

96. Court order compelling Defendants to preserve all documents, video, and all other forms of media and electronic information that relate to the recall and the allegations contained in this complaint, therefore, for is necessary and urgent. Absent an Order, Plaintiffs will suffer immediate irreparable injury. The Order, on the other hand, will not cause the Defendants and prejudice.

#### **ADDITIONAL INJUNCTION RELIEF**

97. Plaintiffs Pray for an Order

A. Requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, nondefective, replacement vehicles to all members of the Class until the vehicles owned or leased by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

B. Requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold or leased, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

C. Requiring Defendants to provide counseling services to all Class members who have suffered emotional distress as a result of being forced to drive defective, dangerous vehicles after Defendants' numerous announcements of defects but failure to provide replacement vehicles;

D. Requiring Defendants to reform their lease and finance contracts with class members and cease collecting lease payments or car payments from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.

#### **COMPENSATORY DAMAGES**

98. Plaintiffs on behalf of themselves and the Class seek an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial.

#### **PUNATIVE DAMAGES**

99. Plaintiffs on behalf of themselves and the Class seek an award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

#### **ADDITIONAL DAMAGES**

100. Plaintiffs on behalf of themselves and the Class seek an award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched;

101. Plaintiffs on behalf of themselves and the Class seek or an award of attorneys' fees and prejudgment interest; and

102. Plaintiffs on behalf of themselves and the Class seek for such other and further relief as the Court and/or Jury may deem appropriate.

#### **JURY DEMAND**

Plaintiff s hereby request trial by jury on all claims so triable.

Respectfully submitted,





Stanley M. Chesley (0000852)

*Lead Counsel and Trial Attorney*

Robert A. Steinberg

Joseph T. Deters

WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.

1513 Fourth & Vine Tower

One West Fourth Street

Cincinnati, OH 45202

Phone: (513) 621-0267

Facsimile: (513) 621-0262

Email: wsbcclaw@aol.com

### **SERVICE REQUEST**

Pursuant to Civil Rule 4.1(A) and 4.3(B), Plaintiff requests that service be made certified mail, return receipt requested, on the following:

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

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA LEASE TRUST,

Agent for Service of Process:

CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING &

MANUFACTURING NORTH

AMERICA, INC.

Agent for Service of Process:

CT Corporation System

4169 Westport Road

Louisville, Kentucky 40207

TOYOTA NORTH AMERICAN

TECHNICAL TRAINING CENTER,

4550 Creek Road

Cincinnati, Ohio 45242

CLYDE DYSON  
4550 Creek Road  
Cincinnati, Ohio 45242

BEECHMONT TOYOTA, INC.,  
8639 Beechmont Avenue  
Cincinnati, Ohio 45255

**LEASE ORDER**

8667 BEECHMONT AVENUE - CINCINNATI, OHIO 45255

67691

LESSEE'S NAME HUGH COX DATE NOV 29 2009 STOCK NO. QU074819

ADDRESS 3656 ARBOR GREEN DR PHONE (513)689-0811

CITY CINCINNATI COUNTY CLERMONT STATE OH ZIP 45255 SALESPERSON JACK R HECKMAN

Pursuant to the terms and conditions listed herein, the undersigned lessee hereby agrees to lease the listed vehicle from or through a third party if Dealer can obtain third party approval.

ENTER MY ORDER FOR ONE  NEW  USED  CAR  TRUCK  DEMONSTRATOR  RENTAL VEHICLE  FACTORY OFFICIAL

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2010	TOYOTA	CAMRY	4DR 2.4L AUTO	LEMAGNETIC GRAY	ASH

MVI OR SERIAL NO. 4T1B13E12A0074819 TO BE DELIVERED ON OR ABOUT NOV 29 09 STOCK NO. QU074819

- REMARKS:
- SEE VEHICLE DELIVERY REPORT ATTACHED
  - SEE SPOT DELIVERY AGREEMENT ATTACHED
  - SEE USED VEHICLE LIMITED WARRANTY ATTACHED

THE MAJOR TERMS OF THIS AGREEMENT ARE AS FOLLOWS:

- The number of months this closed-end lease is for: 36
- The number of miles you may drive per year is: 12000  
And over the entire lease without an additional charge is: 36000  
Charge you will pay for each mile over the amount listed: \$ 0.15
- Your approximate monthly payment will be: \$ 234.95
- The approximate capitalized cost will be: \$ 22040.13

TRADE-IN VEHICLE		DUE AT DELIVERY		AMOUNT
YEAR	MAKE	CAPITALIZED COST REDUCTION		937.84
MODEL		FIRST PAYMENT		234.95
VIN		SECURITY DEPOSIT		N/A
MILEAGE	N/A	TITLE FEE		N/A
PAYOFF TO:		LICENSE FEE		N/A
PAYOFF GOOD THRU:		TAX ON CAPITAL COST REDUCTION		77.2
ACCOUNT NO.:		USE TAX		N/A
TRADE IN ALLOWANCE				N/A
PAYOFF AMOUNT				N/A
NET TRADE IN ALLOWANCE				N/A
REBATE		DOC. FEE		250.00
DEPOSIT				N/A
		TOTAL DUE AT DELIVERY		1500.00
TOTAL CREDIT		LESS CREDITS		N/A
		BALANCE		1500.00

**NEGATIVE EQUITY DISCLOSURE:**  
I am aware that the balance owed on my trade-in vehicle or the amount owed on my lease turn-in vehicle exceeds the trade-in allowance from Dealer and, as a result, I have requested that the capitalized cost be increased by \$ N/A to cover negative equity from my trade-in/the amount owed on my lease turn-in.

**DEPOSIT RECEIPT**  
Dealer hereby acknowledges receipt of the sum of \$ N/A as a Deposit/Partial Payment for the vehicle described above. If this Receipt is for a Deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit/Partial Payment  IS  NOT refundable, subject to the conditions on the reverse side and the following:

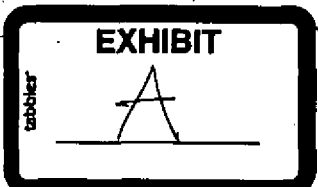
**ODOMETER MILEAGE STATEMENT**  
The odometer of the above-described vehicle now reads 0 miles/kilometers and is accurate unless checked below.  Odometer mileage is not accurate. Refer to the Federal Mileage Statement for full disclosure.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES LESSEE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE LEASE OF THE VEHICLE AND THE SALE OF RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Document and any documents incorporated herein comprise the entire agreement affecting this Retail Lease Order and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Document. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

APPROVED: [Signature]



LESSEE'S SIGNATURE: [Signature] DATE: 11/29/09

## ADDITIONAL TERMS AND CONDITIONS

### 1. DEFINITIONS

As used in this Agreement the terms (A) "Dealer" shall mean the person or company to whom this Agreement is addressed and who shall become a party to this Agreement by its acceptance. (B) "Lessee" shall mean the party initiating this Agreement as stated on the face of the Agreement. (C) "Manufacturer" shall mean the corporation that manufactured the vehicle or chassis, it being understood, by the Lessee and Dealer that the Dealer is in no respect the agent of the Manufacturer. The Dealer and Lessee are the sole parties to this Agreement and any reference to the Manufacturer is for the purpose of explaining generally certain contractual relationships existing between the Dealer and Manufacturer. (D) "Document" and "Agreement" shall mean this Retail Buyers Order plus any other writing relative in any way to the purchase transaction noted on the face of this Retail Buyers Order.

### 2. PRICE CHANGES

In the event the Manufacturer shall notify the Dealer of a change in price for new motor vehicles of the same style and type as the vehicle ordered by this Agreement, and prior to delivery of the vehicle ordered by Lessee, the Dealer shall have the right to adjust the cash price of the vehicle ordered, only in the amount of the increase. In the event of any such change in the cash price, the Lessee shall have the option of concluding the purchase at the adjusted price or canceling this Agreement. Should the Lessee elect to cancel this Agreement, the Dealer will refund to the Lessee all amounts previously paid, and if the Lessee has delivered to the Dealer a trade-in vehicle as all or part of the payment required, the Dealer shall re-deliver the trade-in vehicle to the Lessee. If the Dealer has sold the trade-in vehicle, the Dealer shall pay to the Lessee the trade-in allowance for the vehicle, less any negative equity adjustment.

### 3. MANUFACTURER'S DESIGN CHANGES

In the event the Manufacturer shall change or modify the design of or any part or accessory of the new motor vehicle after the Lessee's order for the new vehicle has been entered by the Dealer, the Lessee shall have no claim or right against the Dealer should the Lessee's new vehicle not contain such changes or modifications, nor shall the Dealer be required to effect such changes or modifications to the Lessee's new vehicle.

### 4. DELAYS IN DELIVERY

The Lessee understands that the Dealer shall not be liable for any damages resulting from a failure to deliver or other delays caused by the Manufacturer, accidents, fire or any other causes beyond the Dealer's control. This Agreement may be renegotiated or canceled by the Lessee with full refund of deposit if the vehicle is not delivered by the date specified on the face of this Agreement.

### 5. CHANGES OTHER THAN MANUFACTURER'S DESIGN CHANGES

If the ordered vehicle arrives at the Dealer's place of business not equipped in accordance with this Agreement, the Lessee has the right to refuse to accept delivery, with no loss of deposit, or renegotiate a new purchase agreement.

### 6. TRADE-IN VEHICLE APPRAISAL

If the Lessee is delivering a trade-in vehicle as part of this Agreement and the delivery will not be made until delivery of the Lessee's ordered vehicle, the Dealer shall have the right to reappraise the Lessee's trade-in vehicle at the time of delivery of the ordered vehicle. The reappraised amount shall be the amount allowed for the trade-in vehicle in this Agreement. If the Lessee is dissatisfied with the reappraisal, the Lessee may cancel this Agreement with full refund of deposit, provided that the cancellation occurs prior to the Lessee taking delivery of the ordered vehicle.

### 7. BALANCE OWED ON TRADE-IN

If the Lessee is delivering a trade-in vehicle or is turning in a leased vehicle as part of this transaction and the actual amount of the balance owed on the trade-in vehicle/lease turn-in is different than the amount of the balance owed as listed in this Agreement, the Lessee agrees to pay the difference to the Dealer if the actual amount of the balance owed is greater than the amount listed and, if the actual amount of the balance owed is less than the amount listed, the Dealer agrees to pay the difference to the Lessee.

### 8. TITLE TO THE TRADE-IN VEHICLE

Any trade-in vehicle delivered by the Lessee to the Dealer in connection with this Agreement shall be accompanied by documents sufficient to enable the Dealer to obtain a title to the trade-in vehicle in accordance with applicable state law. The Lessee warrants that any trade-in vehicle delivered to the Dealer is properly titled to the Lessee, has never been a salvage vehicle or lemon buyback, that the Lessee has the right to sell or otherwise convey such vehicle, that such vehicle is free and clear of all liens or encumbrances, except as may be noted on the front side of this Agreement, and that all emission control equipment is on the vehicle and in satisfactory working order and the odometer reading is accurate unless otherwise disclosed.

### 9. TRADE-IN AND OTHER CREDITS

Lessee agrees that no Trade-In or Other Credits have been provided by Dealer to Lessee in connection with this lease transaction except as appears in writing on the front side of this Agreement.

### 10. LESSEE'S DEFAULT OR REFUSAL TO PERFORM

In the event of any failure by the Lessee to perform the Lessee's obligations, including but not limited to, any failure to take delivery of or to pay the agreed purchase price for the ordered vehicle, the Dealer shall be permitted to retain an amount equal to any actual damages the Dealer incurred due to the Lessee's default. If the Lessee has delivered a trade-in vehicle to the Dealer as part of this Agreement, the Dealer may return the trade-in vehicle to the Lessee if the Dealer has not already sold the trade-in vehicle. If the Dealer has already sold the trade-in vehicle, the Dealer may refund to the Lessee the proceeds of said sale less any reasonable expenses incurred in connection with preparing or reconditioning the trade-in vehicle for sale and the Balance paid on Lessee's behalf to a Lienholder. If the vehicle was a lease turn-in and Dealer has already paid the Balance Owed, Lessee shall pay to Dealer the amount paid on Lessee's behalf.

### 11. TAX LIABILITY

The Lessee shall be liable for all sales, use or other taxes of a similar nature applicable to the transaction unless such payment otherwise is prohibited by law, provided that the Lessee shall in no event be liable for any taxes calculated on the Dealer's income.

### 12. INSURANCE UNAVAILABILITY

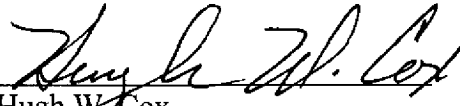
In the event this Agreement includes a charge for credit life or credit disability insurance and for any reason such insurance cannot be provided, the Lessee shall receive a credit for the amount charged for such insurance, which shall be applied to any outstanding balance owed to Dealer or any assignee of Dealer. The inability of the Dealer or any assignee of the Dealer to secure such insurance for the Lessee shall not relieve the Lessee from the Lessee's obligation to lease the vehicle described in this Agreement. Credit life and credit disability insurance are not mandatory.

### 13. SIGNING OF OTHER DOCUMENTS

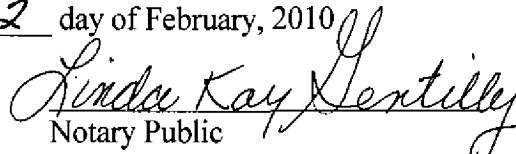
Lessee agrees to sign any and all documents necessary to complete the terms of this transaction.

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

  
Hugh W. Cox

Sworn to and subscribed before me this 2 day of February, 2010

  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

**VERIFICATION**

I verify that the allegations in the foregoing Verified Class Action Complaint are true and accurate to the best of my knowledge.

Pamela M Cox  
Pamela M. Cox

Sworn to and subscribed before me this 2 day of February, 2010

Linda Kay Gentilly  
Notary Public

LINDA KAY GENTILLY  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 10-17-10

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA  
%CT CORP SYSTEM D-3  
4169 WEST PORT RD  
LOUISVILLE KY 40207

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880639

TOY-RQ-05E-00007673

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D3  
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI  
FILED: 02/08/2010 14:01:42



Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6538. Our records indicate that this item was delivered on 02/04/2010 at 09:44 a.m. in LOUISVILLE, KY, 40207. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section	
del	FEB - 4 2010
del to	P FARMER

Address of Recipient:

del to	4169 Westport #100
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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: 7756847SEQ1

TOY-RQ-05E-00007674



COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER  
4550 CREEK RD D-4  
CINCINNATI OH 45242

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880650

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D4  
TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER  
FILED: 02/08/2010 14:01:42

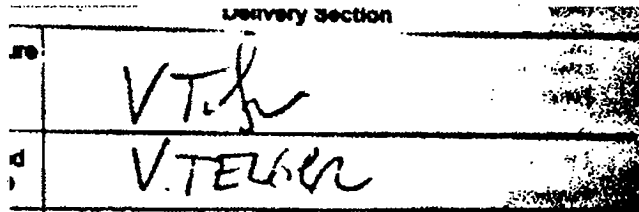


Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6545. Our records indicate that this item was delivered on 02/05/2010 at 08:20 a.m. in CINCINNATI, OH, 45242. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756849SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

CLYDE DYSON  
4550 CREEK RD  
CINCINNATI OH 45242

D-5

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN Deputy

Date: February 3, 2010



D86880654

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D5  
CLYDE DYSON  
FILED: 02/08/2010 14:01:43

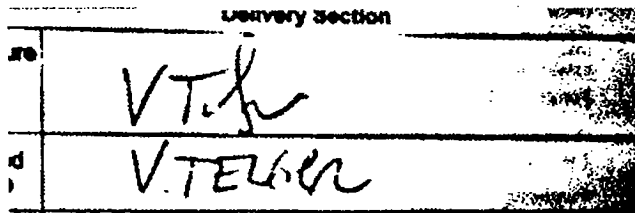


Date Produced: 02/08/2010

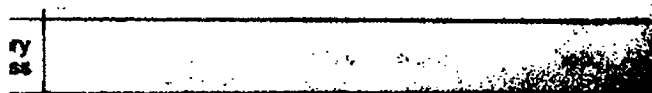
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6552. Our records indicate that this item was delivered on 02/05/2010 at 08:20 a.m. in CINCINNATI, OH, 45242. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756851SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
%CT CORP SYSTEM  
1300 EAST NINTH ST  
CLEVELAND OH 44114

D-1

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN

Deputy

Date: February 3, 2010



D86880606

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
THIRD PARTY COMPLAINT  
A 1000992 D1  
TOYOTA MOTOR SALES USA INC  
FILED: 02/16/2010 8:29:21

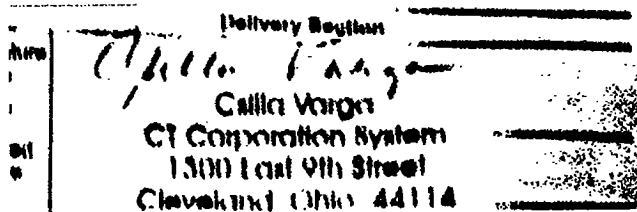


Date Produced: 02/15/2010

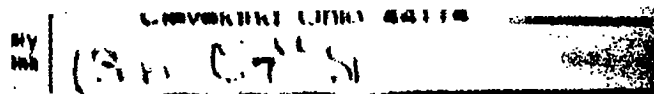
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6514. Our records indicate that this item was delivered on 02/08/2010 at 04:30 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756843SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
**PLAINTIFF**

-- vs --

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
**DEFENDANT**

BEECHMONT TOYOTA INC  
8639 BEECHMONT AVE  
CINCINNATI OH 45255

D-6

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880661

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D6  
BEECHMONT TOYOTA INC  
FILED: 02/08/2010 14:01:44




Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6569. Our records indicate that this item was delivered on 02/05/2010 at 10:09 a.m. in CINCINNATI, OH, 45255. The scanned image of the recipient information is provided below.

Signature of Recipient:

Signature	
Printed Name	Billy Knapp

Address of Recipient:

Address	2639 Beechmont
---------	----------------

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: 7756855SEQ1



COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA LEASE TRUST  
& CT CORP SYSTEM  
1300 EAST NINTH ST  
CLEVELAND OH 44114

D-2

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880614

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D2  
TOYOTA LEASE TRUST  
FILED: 02/16/2010 8:29:23

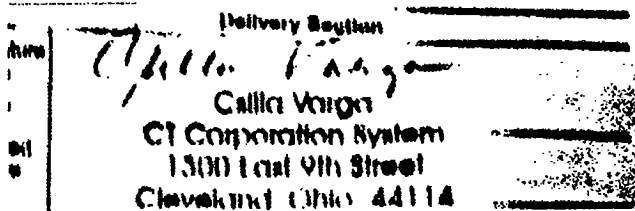


Date Produced: 02/15/2010

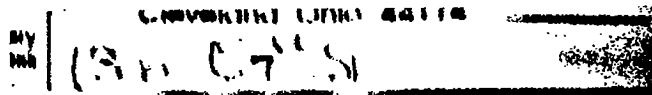
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6521. Our records indicate that this item was delivered on 02/08/2010 at 04:30 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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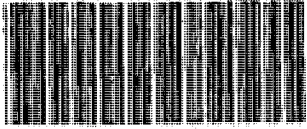
Sincerely,

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: 7756845SEQ1

JUDGE ROBERT P. RUEHLMAN  
Court of Common Pleas  
Hamilton County, Ohio



D86913721

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

A1000992

HUGH W. COX AND  
PAMELA M. COX,

CIVIL CASE NO.:

Plaintiffs,

JUDGE:

v.

**ENTERED**  
FEB 02 2010  
TEMPORARY  
RESTRAINING ORDER  
TO PRESERVE EVIDENCE  
AND RECORDS

TOYOTA MOTOR CORPORATION, et al.

Defendants.

Plaintiffs filed a Verified Complaint on behalf of themselves and a class of similarly situated persons seeking, among other things, a Temporary Restraining Order requiring Defendants to preserve all documents of any kind, electronic and otherwise, related to the allegations in this case, including all representations of reliability and suitability of the subject vehicles for their designed purpose. Based upon the Verified Complaint and the certification of counsel, the Court is persuaded that Plaintiffs and the proposed class members will suffer irreparable injury if the Court does not issue a Temporary Restraining Order requiring Defendants to preserve such documents and records. The Court finds that, if Defendants fail to retain such documents and records, Plaintiffs and the proposed class members will suffer irreparable injury because their ability to prove their case at trial may be jeopardized. The Court further finds that Plaintiffs' Rule 65 certification supports Plaintiffs position that it was urgent that Plaintiffs seek the Temporary Restraining Order before Plaintiffs could provide, and the Court finds that Defendants will not suffer prejudice from the Order requiring them to preserve their own records.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendants shall preserve, until further notice, all documents of any kind, electronic and otherwise, hardcopy, audio and video, related to the allegations in this case, including all public representations of reliability and suitability of the subject vehicles for their designed purpose.

**IT IS FURTHER ORDERED AND ADJUDGED** that the nature of the case is such a that bond is unnecessary.

Dated this \_\_\_\_ day of February, 2010

---

Judge Court of Common Pleas  
Hamilton County, Ohio

Submitted By:

Stanley M. Chesley (0000852)  
Robert A. Steinberg (0032932)  
Joseph T. Deters (0012084)  
Waite, Schneider, Bayless & Chesley Co., L.P.A.  
1513 Fourth & Vine Tower  
Cincinnati, OH 45202  
(513) 621-0267

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

Use below number on  
all future pleadings

-- vs --

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
DEFENDANT

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA  
&CT CORP SYSTEM D-3  
4169 WEST PORT RD  
LOUISVILLE KY 40207

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880639

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D3  
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI  
FILED: 02/08/2010 14:01:42



Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6538. Our records indicate that this item was delivered on 02/04/2010 at 09:44 a.m. in LOUISVILLE, KY, 40207. The scanned image of the recipient information is provided below.

Signature of Recipient:

		<b>Delivery Section</b>	
DATE		FEB - 4 2010	
SIGNATURE		P. FARMER	

Address of Recipient:

ADDRESS		4169 Westport #70C
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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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Customer Reference Number: 7756847SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

Use below number on  
all future pleadings

-- vs --

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
DEFENDANT

TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER  
4550 CREEK RD D-4  
CINCINNATI OH 45242

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880650

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D4  
TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER  
FILED: 02/08/2010 14:01:42




Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6545. Our records indicate that this item was delivered on 02/05/2010 at 08:20 a.m. in CINCINNATI, OH, 45242. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section	
Signature	
Name	V. TELER

Address of Recipient:

Address	
---------	--

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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Customer Reference Number: 7756849SEQ1



COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

Use below number on  
all future pleadings

-- vs --

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
DEFENDANT

CLYDE DYSON  
4550 CREEK RD  
CINCINNATI OH 45242

D-5

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880654

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D5  
CLYDE DYSON  
FILED: 02/08/2010 14:01:43

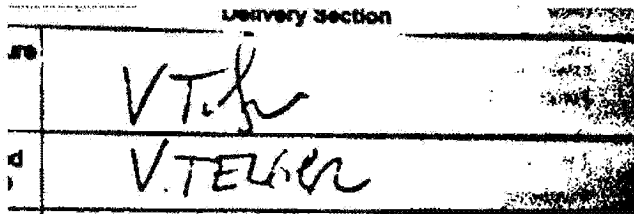


Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6552. Our records indicate that this item was delivered on 02/05/2010 at 08:20 a.m. in CINCINNATI, OH, 45242. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756851SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC  
DEFENDANT

Use below number on  
all future pleadings

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
%CT CORP SYSTEM  
1300 EAST NINTH ST  
CLEVELAND OH 44114

D-1

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880606

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
THIRD PARTY COMPLAINT  
A 1000992 D1  
TOYOTA MOTOR SALES USA INC  
FILED: 02/16/2010 8:29:21

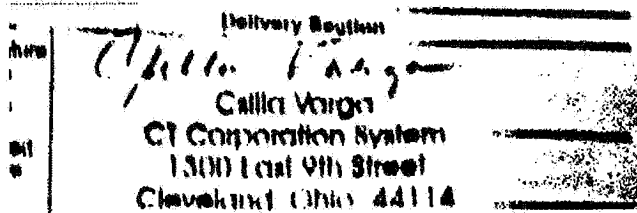


Date Produced: 02/15/2010

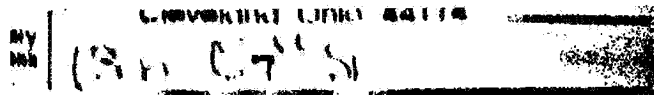
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6514. Our records indicate that this item was delivered on 02/08/2010 at 04:30 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756843SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

Use below number on  
all future pleadings

-- vs --

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
DEFENDANT

BEECHMONT TOYOTA INC  
8639 BEECHMONT AVE  
CINCINNATI OH 45255

D-6

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,**  
**CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880661

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D6  
BEECHMONT TOYOTA INC  
FILED: 02/08/2010 14:01:44



Date Produced: 02/08/2010

HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6569. Our records indicate that this item was delivered on 02/05/2010 at 10:09 a.m. in CINCINNATI, OH, 45255. The scanned image of the recipient information is provided below.

Signature of Recipient:

NAME	Billy Knapp
ADDRESS	Billy Knapp

Address of Recipient:

ADDRESS	8639 BEECHMONT
---------	----------------

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: 7756855SEQ1

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W COX  
PLAINTIFF

Use below number on  
all future pleadings

-- vs --

No. A 1000992  
SUMMONS

TOYOTA MOTOR SALES USA INC  
DEFENDANT

TOYOTA LEASE TRUST  
& CT CORP SYSTEM  
1300 EAST NINTH ST  
CLEVELAND OH 44114

D-2

You are notified  
that you have been named Defendant(s) in a complaint filed by

HUGH W COX

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,  
**PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,  
CINCINNATI, OH 45202.**

You are hereby summoned and required to serve upon the plaintiff's  
attorney, or upon the plaintiff, if he/she has no attorney of record, a  
copy of an answer to the complaint within twenty-eight (28) days after  
service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the  
service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to  
file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered  
against you for the relief demanded in the attached complaint.

Name and Address of attorney  
STANLEY M CHESLEY  
1513 CENTRAL TRUST TOWER  
4TH & VINE STREET  
CINCINNATI OH 45202

PATRICIA M. CLANCY  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

By RICK HOFMANN  
Deputy

Date: February 3, 2010



D86880614

ELECTRONIC CERTIFIED MAIL SERVICE RETURN  
SUMMONS & COMPLAINT  
A 1000992 D2  
TOYOTA LEASE TRUST  
FILED: 02/16/2010 8:29:23

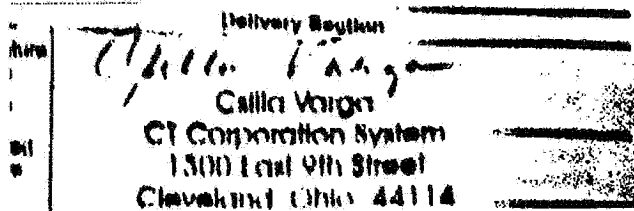


Date Produced: 02/15/2010

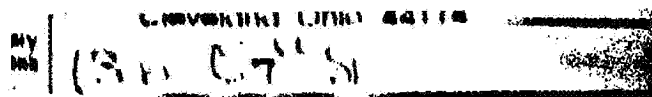
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0490 6521. Our records indicate that this item was delivered on 02/08/2010 at 04:30 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



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: 7756845SEQ1





D86913721

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN  
Court of Common Pleas  
Hamilton County, Ohio

A1000992

HUGH W. COX AND  
PAMELA M. COX,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, et al.

Defendants.

CIVIL CASE NO.:

JUDGE:

TEMPORARY  
RESTRAINING ORDER  
TO PRESERVE EVIDENCE  
AND RECORDS

ENTERED  
FEB 02 2010

Plaintiffs filed a Verified Complaint on behalf of themselves and a class of similarly situated persons seeking, among other things, a Temporary Restraining Order requiring Defendants to preserve all documents of any kind, electronic and otherwise, related to the allegations in this case, including all representations of reliability and suitability of the subject vehicles for their designed purpose. Based upon the Verified Complaint and the certification of counsel, the Court is persuaded that Plaintiffs and the proposed class members will suffer irreparable injury if the Court does not issue a Temporary Restraining Order requiring Defendants to preserve such documents and records. The Court finds that, if Defendants fail to retain such documents and records, Plaintiffs and the proposed class members will suffer irreparable injury because their ability to prove their case at trial may be jeopardized. The Court further finds that Plaintiffs' Rule 65 certification supports Plaintiffs position that it was urgent that Plaintiffs seek the Temporary Restraining Order before Plaintiffs could provide, and the Court finds that Defendants will not suffer prejudice from the Order requiring them to preserve their own records.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendants shall preserve, until further notice, all documents of any kind, electronic and otherwise, hardcopy, audio and video, related to the allegations in this case, including all public representations of reliability and suitability of the subject vehicles for their designed purpose.

**IT IS FURTHER ORDERED AND ADJUDGED** that the nature of the case is such a that bond is unnecessary.

Dated this \_\_\_\_ day of February, 2010

---

Judge Court of Common Pleas  
Hamilton County, Ohio

Submitted By:

Stanley M. Chesley (0000852)  
Robert A. Steinberg (0032932)  
Joseph T. Deters (0012084)  
Waite, Schneider, Bayless & Chesley Co., L.P.A.  
1513 Fourth & Vine Tower  
Cincinnati, OH 45202  
(513) 621-0267

**Notices**

1:10-cv-00127-MRB Cox et al v. Toyota Motor Sales USA Inc. et al  
JURY

**U.S. District Court****Southern District of Ohio****Notice of Electronic Filing**

The following transaction was entered by Harrison, Gregory on 2/24/2010 at 11:40 PM EST and filed on 2/24/2010

**Case Name:** Cox et al v. Toyota Motor Sales USA Inc. et al

**Case Number:** 1:10-cv-00127-MRB

**Filer:** Beechmont Toyota, Inc.

**Document Number:** 2

**Docket Text:**

**NOTICE by Defendant Beechmont Toyota, Inc. re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) (Consent to Removal) (Harrison, Gregory)**

**1:10-cv-00127-MRB Notice has been electronically mailed to:**

Gregory Alan Harrison greg.harrison@dinslaw.com

**1:10-cv-00127-MRB Notice has been delivered by other means to:**

Ernestine Montgomery

Hugh W Cox

Pamela M Cox

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608455-0

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)**

HUGH W. COX,  
PAMELA M. COX,  
and  
others similarly situated,

**Plaintiffs,**

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
TOYOTA LEASE TRUST,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.,  
TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
CLYDE DYSON,

and

BEECHMONT TOYOTA, INC.,

**Defendants.**

Civil Action No. 10-127

JUDGE MICHAEL R. BARRETT

**DEFENDANT BEECHMONT  
TOYOTA, INC.'S CONSENT TO  
REMOVAL TO THE UNITED  
STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION**

Defendant, Beechmont Toyota, Inc., by counsel, hereby consents to the removal of *Hugh W. Cox v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1000992, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Beechmont Toyota, Inc. does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441 and 1453.

Respectfully submitted,

/s/ **Gregory A. Harrison**

Gregory A. Harrison, Esq.  
Trial Attorney for Defendants  
**DINSMORE & SHOHL, LLP**  
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255 E. Fifth Street  
Cincinnati, Ohio 45202  
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Fax: (513) 977-8141  
[greg.harrison@dinslaw.com](mailto:greg.harrison@dinslaw.com)

***Attorney for Defendants Toyota  
Motor Sales, U.S.A., Inc., Toyota  
Lease Trust, Toyota Motor  
Engineering & Manufacturing  
North America, Inc., Beechmont  
Toyota, Inc., and Clyde Dyson***

***Of counsel:***

Jeffrey P. Hinebaugh, Esq.  
M. Gabrielle Hils, Esq.  
Andrew R. Kwiatkowski, Esq.  
Sarah V. Lewis, Esq.  
**DINSMORE & SHOHL, LLP**  
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Kyle G.A. Wallace, Esq.  
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Dallas, Texas 75201  
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Fax: (214) 922-3855  
[glenn.morris@alston.com](mailto:glenn.morris@alston.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

**Notices**

1:10-cv-00127-MRB Cox et al v. Toyota Motor Sales USA Inc. et al  
JURY

**U.S. District Court****Southern District of Ohio****Notice of Electronic Filing**

The following transaction was entered by Harrison, Gregory on 2/24/2010 at 11:41 PM EST and filed on 2/24/2010

**Case Name:** Cox et al v. Toyota Motor Sales USA Inc. et al

**Case Number:** 1:10-cv-00127-MRB

**Filer:** Clyde Dyson

**Document Number:** 3

**Docket Text:**

**NOTICE by Defendant Clyde Dyson re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) (Consent to Removal) (Harrison, Gregory)**

**1:10-cv-00127-MRB Notice has been electronically mailed to:**

Gregory Alan Harrison greg.harrison@dinslaw.com

**1:10-cv-00127-MRB Notice has been delivered by other means to:**

Ernestine Montgomery

Hugh W Cox

Pamela M Cox

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

\_STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608458-0

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)**

HUGH W. COX,  
PAMELA M. COX,  
and  
others similarly situated,  
**Plaintiffs,**

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
TOYOTA LEASE TRUST,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.,  
TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
CLYDE DYSON,  
and  
BEECHMONT TOYOTA, INC.,  
**Defendants.**

Civil Action No.10-127  
JUDGE MICHAEL R. BARRETT

**DEFENDANT CLYDE DYSON'S  
CONSENT TO REMOVAL TO  
THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT OF OHIO, WESTERN  
DIVISION**

Defendant, Clyde Dyson, by counsel, hereby consents to the removal of *Hugh W. Cox v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1000992, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Clyde Dyson does not waive, and fully reserves, any rights or defenses to which he is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441, and 1453.



Respectfully submitted,

/s/ Gregory A. Harrison

Gregory A. Harrison, Esq.  
Trial Attorney for Defendants  
**DINSMORE & SHOHL, LLP**  
1900 Chemed Center  
255 E. Fifth Street  
Cincinnati, Ohio 45202  
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[greg.harrison@dinslaw.com](mailto:greg.harrison@dinslaw.com)

*Attorney for Defendants Toyota  
Motor Sales, U.S.A., Inc., Toyota  
Lease Trust, Toyota Motor  
Engineering & Manufacturing  
North America, Inc., Beechmont  
Toyota, Inc., and Clyde Dyson*

***Of counsel:***

Jeffrey P. Hinebaugh, Esq.  
M. Gabrielle Hils, Esq.  
Andrew R. Kwiatkowski, Esq.  
Sarah V. Lewis, Esq.  
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Lisa Gilford, Esq.  
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Kyle G.A. Wallace, Esq.  
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[cari.dawson@alston.com](mailto:cari.dawson@alston.com)

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Phone: (214) 922-3415  
Fax: (214) 922-3855  
[glenn.morris@alston.com](mailto:glenn.morris@alston.com)

**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Consent to Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
*Counsel for Plaintiffs*

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

**Other Answers**

1:10-cv-00127-MRB Cox et al v. Toyota Motor Sales USA Inc. et al  
JURY

**U.S. District Court**  
**Southern District of Ohio**

**Notice of Electronic Filing**

The following transaction was entered by Harrison, Gregory on 2/24/2010 at 11:44 PM EST and filed on 2/24/2010

**Case Name:** Cox et al v. Toyota Motor Sales USA Inc. et al  
**Case Number:** 1:10-cv-00127-MRB  
**Filer:** Toyota Motor Sales USA Inc.  
Toyota Lease Trust  
Toyota Motor Engineering & Manufacturing North America, Inc.

**Document Number:** 4

**Docket Text:**  
**AFFIDAVIT in Support re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) (*Declaration of George Morino*) by Defendants Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA Inc.. (Harrison, Gregory)**

**1:10-cv-00127-MRB Notice has been electronically mailed to:**

Gregory Alan Harrison greg.harrison@dinslaw.com

**1:10-cv-00127-MRB Notice has been delivered by other means to:**

Ernestine Montgomery

Hugh W Cox

Pamela M Cox

The following document(s) are associated with this transaction:

**Document description:**Main Document  
**Original filename:**n/a  
**Electronic document Stamp:**  
STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608461-0  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)

HUGH W. COX, et al.

Plaintiffs,

v.

TOYOTA MOTOR SALES U.S.A., INC., et  
al.

Defendants.

: CIVIL ACTION NO. 10-127

: JUDGE Michael K. Barnett

: **DECLARATION OF**  
: **GEORGE T. MORINO**  
: **IN SUPPORT OF**  
: **NOTICE OF REMOVAL**

**DECLARATION OF GEORGE T. MORINO**

George T. Morino, an employee of Toyota Motor Sales, U.S.A., Inc. states:

1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the National Quality Compliance Manager of Toyota Motor Sales, U.S.A., Inc. (the "Company"). I have been employed by the Company since 1990.

3. In my role as National Quality Compliance Manager, I have personal knowledge of and/or access to the information the Company supplies to the National Highway Safety Transportation Administration ("NHTSA") with respect to product recalls involving Toyota automobiles, as well as the information provided to Toyota customers and authorized Toyota dealerships regarding product recalls.

4. On January 21, 2010, in cooperation with the NHTSA, the Company announced the voluntary recall of the following vehicles: certain 2009-2010 RAV 4, certain 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, certain 2007-2010 Camry, certain 2010 Highlander, 2007-

2010 Tundra, and 2008-2010 Sequoia ("January Recall").

5. To the best of my understanding, the January Recall was announced in order to address isolated reports of sticking accelerator pedal mechanisms in certain vehicles.

6. In connection with the January Recall, the Company compiled information in order to notify owners of recalled automobiles that their vehicles were the subject of the January Recall.

7. The total number of vehicles in the United States subject to the January Recall is approximately 2,300,000. The January Recall letters are being sent to owners in stages based upon model type. The mailing of the first January Recall letters commenced on February 5, 2010, and it is anticipated that the last letters will be sent no later than March 11, 2010.

8. With respect to the State of Ohio, the total number of January Recall notices that will be sent to Ohio residents is approximately 52,159.

9. The first January recall notices were sent to Ohio residents on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent Ohio residents.

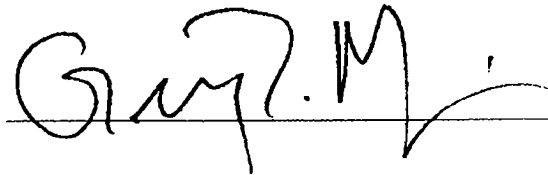
10. In conjunction with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue.

11. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in Ohio is \$80.05 per hour.

12. In the past, under certain circumstances, the Company has reimbursed its independent dealerships \$35.00 a day for the use of a loaner vehicle by a customer during a repair.

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

Executed on this 24<sup>th</sup> day of February, 2010.



**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

HUGH W. COX,  
PAMELA M. COX,  
ERNESTINE MONTGOMERY,

and

others similarly situated,

**Plaintiffs,**

v.

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

TOYOTA LEASE TRUST,

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC.,

TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,

CLYDE DYSON,

and

BEECHMONT TOYOTA, INC.

**Defendants.**

Civil Action No. A1000992

JUDGE ROBERT P. RUEHLMAN

**NOTICE OF NOTICE OF  
REMOVAL BY DEFENDANTS  
TOYOTA MOTOR SALES, U.S.A.,  
INC., TOYOTA LEASE TRUST,  
AND TOYOTA  
MANUFACTURING NORTH  
AMERICA, INC.**

Pursuant to 28 U.S.C. §§1332, 1441, 1446 and 1453, Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter the "Toyota Defendants") hereby give notice that they have filed a Notice of Removal with the Clerk of the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). A true and correct copy of the Notice of Removal is attached hereto as Exhibit A. This Notice is being filed with the Clerk of Courts for Hamilton County, Ohio.

Respectfully submitted,

/s/ Gregory A. Harrison

Gregory A. Harrison (0029814)

Trial Attorney for Defendants

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Fax: (513) 977-8141

greg.harrison@dinslaw.com

*Attorneys for Defendants*

*Toyota Motor Sales, U.S.A., Inc.,*

*Toyota Lease Trust, and*

*Toyota Motor Engineering &*

*Manufacturing North America,*

*Inc.*

***Of counsel:***

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M. Gabrielle Hils (0012693)

Andrew R. Kwiatkowski (0075413)

Sarah V. Lewis (0076948)

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2200 Ross Avenue  
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Phone: 214-922-3415  
Fax: 214-922-3855  
glenn.morris@alston.com

**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: wsbcclaw@aol.com**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison



**Complaints and Other Initiating Documents**

1:10-cv-00127 Cox et al v. Toyota Motor Sales USA Inc. et al

**U.S. District Court**

**Southern District of Ohio**

**Notice of Electronic Filing**

The following transaction was entered by Harrison, Gregory on 2/24/2010 at 11:32 PM EST and filed on 2/24/2010

**Case Name:** Cox et al v. Toyota Motor Sales USA Inc. et al  
**Case Number:** 1:10-cv-00127-MRB  
**Filer:** Toyota Motor Sales USA Inc.  
Toyota Lease Trust  
Toyota Motor Engineering & Manufacturing North America, Inc.

**Document Number:** 1  
**Judge(s) Assigned:** Michael R. Barrett (presiding)

**Docket Text:**  
**NOTICE OF REMOVAL from Hamilton County Court of Common Pleas, case number A1000992**  
**Filing fee \$ 350 paid - receipt number: 0648-2511575), filed by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA Inc., Toyota Lease Trust. (Attachments: # (1) Exhibit 1 State Court Pleadings, # (2) Exhibit 2 Certified Copy of Deed, # (3) Exhibit 3 Certified Copy of Merger Certificate) (Harrison, Gregory)**

**1:10-cv-00127-MRB Notice has been electronically mailed to:**

Gregory Alan Harrison greg.harrison@dinslaw.com

**1:10-cv-00127-MRB Notice has been delivered by other means to:**

Ernestine Montgomery

Lugh W Cox

Amela M Cox

The following document(s) are associated with this transaction:

**Document description:**Main Document  
**Original filename:**n/a  
**Electronic document Stamp:**  
STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608452-0  
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182598f8fa590fbd59d252b15226d23a48cedb8118194b5483a438ef806a]]

**Document description:**Exhibit 1 State Court Pleadings  
**Original filename:**n/a  
**Electronic document Stamp:**  
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<https://ecf.ohsd.uscourts.gov/cgi-bin/Dispatch.pl?124560663587751>

2/24/2010

46769c0e752b9c70b797cc50351f9e73ff564eb52a7682e3d3a96bf86db10]]

**Document description:**Exhibit 2 Certified Copy of Deed

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608452-2] [97cc2aae140d3f12c34b36be0310ca4bb8110f5f13bad3e5bf881f3c2090b3455d47854693d7151e345f9dd7c65b30e323f734a28be98b7c63341fcfd199ff6a]]

**Document description:**Exhibit 3 Certified Copy of Merger Certificate

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1040326259 [Date=2/24/2010] [FileNumber=2608452-3] [6bd3006075b6c44cbefda31f887debc56e4e1d5199c074f3e3e7a65366074c192d72beacefae284fe2f6c4be6d95bf36986abfec2aad71f5286b169543fb7e6d]]

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)

HUGH W. COX,  
PAMELA M. COX,  
ERNESTINE MONTGOMERY,

and

others similarly situated,

**Plaintiffs,**

v.

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

TOYOTA LEASE TRUST,

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC.,

TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,

CLYDE DYSON,

and

BEECHMONT TOYOTA, INC.

**Defendants.**

Civil Action No. 10-127

JUDGE \_\_\_\_\_

**NOTICE OF REMOVAL  
BY DEFENDANTS  
TOYOTA MOTOR SALES, U.S.A.,  
INC., TOYOTA LEASE TRUST,  
AND TOYOTA MOTOR  
ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.**

Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter the "Toyota Defendants") hereby jointly petition this Court for removal of this action from the Common Pleas Court of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446 and 1453, and in support thereof state the following:

## I. BACKGROUND

1. On or about February 2, 2010, Plaintiffs Hugh W. Cox and Pamela M. Cox commenced this putative class action by filing their Class Action Complaint ("Complaint") in the Common Pleas Court of Hamilton County, Ohio, Case No. A 1000992. Plaintiffs demanded a jury trial.

2. On or about February 5, 2010, Plaintiffs filed an amended complaint ("Amended Complaint") adding an additional plaintiff, Ernestine Montgomery.

3. Plaintiffs allege in their Amended Complaint that they are bringing "this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration." (Amended Complaint ¶ 21).

4. This action is just one of several recent putative class actions filed against some or all of the Toyota Defendants based on allegations regarding the recall of certain models of Toyota automobiles due to alleged accelerator defects.

5. As of the date of the filing of this notice of removal, there are more than seventy (70) class actions pending against some or all of the Toyota Defendants in various federal district courts bringing claims relating to these same allegations, including the United States District Court for the Southern District of Ohio, Western Division (Dayton), *Shumaker, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, Case No. 3:10-cv-00061-WHR.

6. On February 1, 2010, a petition was filed with the Judicial Panel on Multidistrict Litigation seeking pretrial coordination of all pending federal cases before one United States District Court judge. *See MDL 2151: In Re: Toyota Motor Corp.*

*Defective Gas Pedal Products Liability Litigation.* If the Judicial Panel decides to create multidistrict litigation proceedings for these cases, Defendants will seek to transfer this case to those proceedings.

7. Service of the Summons and the original Complaint was made on Toyota Motor Sales, U.S.A., Inc. ("TMS") via certified mail on February 8, 2010. (Ex. 1, Hamilton Co. Court Docket).

8. Service of the Summons and the original Complaint was made on Toyota Lease Trust ("TLT") via certified mail on February 8, 2010. *Id.*

9. Service of the Summons and the original Complaint was made on Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") via certified mail on February 4, 2010. *Id.*

10. Service of the Summons and the original Complaint was made on Beechmont Toyota, Inc. via certified mail on February 5, 2010. *Id.*

11. Service of the Summons and the original Complaint was made on Clyde Dyson via certified mail on February 5, 2010. *Id.*

12. The Summons and original Complaint were sent via certified mail to the Toyota North American Technical Training Center and received at that building on February 5, 2010, but the Center is simply a building, and is not a person or entity subject to suit or upon whom service is permissible as explained in more detail below. *Id.*

13. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b).

14. Pursuant to 28, U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Defendants in Case No. A 1000992 are attached as Exhibit 1.

Exhibit 1 also includes the state court docket and the contents of the state court case file, including the Amended Complaint and Plaintiffs' Motion for Preliminary Injunction.

15. No further proceedings have occurred in this action.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332(d), 1441 AND 1453**

16. This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”) as codified at 28 U.S.C. § 1332(d).

17. CAFA provides that a federal district court shall have original jurisdiction of any civil class action in which: (A) there are 100 or more members in the plaintiffs’ proposed class; (B) any member of the proposed class is a citizen of a state different from any defendant; and (C) the amount placed in controversy by the claims of the class members exceeds the sum or value of \$5,000,000 in the aggregate (exclusive of interest and costs). 28 U.S.C. § 1332(d). As demonstrated herein, all of these criteria are met.

**A. CLASS ACTION CONSISTING OF 100 OR MORE MEMBERS**

18. CAFA defines the term “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). This action has been filed as a state court class action pursuant to Ohio Civil Rule 23 which is similar to Federal Civil Rule 23. (Amended Complaint ¶¶ 21-31). Plaintiffs’ case falls within the definition of class action as contained in CAFA.

19. Plaintiffs allege that "[t]he Class consists of several thousand Ohio residents." (Amended Complaint ¶ 25).

20. Filed with this Petition is the declaration of George T. Morino, National Quality Compliance Manager for Toyota Motor Sales, U.S.A., Inc. His declaration establishes that based upon records maintained by Toyota Motor Sales, U.S.A., Inc., approximately 52,159 recall notices will be sent to Ohio residents for Toyota motor vehicles that are the subject of the voluntary recall initiated by TMS in cooperation with the National Highway Safety Transportation Administration ("NHSTA") on January 21, 2010, to address isolated reports of sticking accelerator pedal mechanisms. (Morino Dec. at ¶ 8).

21. Therefore, CAFA's requirement of a minimum putative class size of 100 or more persons is satisfied.

**B. DIVERSITY OF CITIZENSHIP UNDER CAFA**

22. Defendant TMS is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMS is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

23. Defendant TLT is a business trust. TLT is and was at the time this suit was commenced a business trust organized and existing under the laws of the state of Delaware with its principal place of business in Delaware. TLT is not now, nor was it at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

24. TMTT, Inc. is not a named defendant. TMTT, Inc. is the sole trustee of TLT. TMTT, Inc. is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Illinois.<sup>1</sup> TMTT, Inc. is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

25. Defendant TEMA is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Kentucky with its principal place of business in Kentucky. Defendant TEMA is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

26. Plaintiff has attempted to name "Toyota North American Technical Training Center" as a defendant, but this is not a corporate entity. It is a building located in Hamilton County, OH, owned by Defendant TMS.<sup>2</sup> (Ex. 2, certified copy of Deed).

27. Defendant Beechmont Toyota, Inc. is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Ohio with its principal place of business in Ohio.

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<sup>1</sup> R.C. 1746.02 provides that a business trust is an unincorporated legal entity. For purposes of CAFA, in determining the citizenship of an unincorporated association such as a business trust, the court must look to the trust's principal place of business and the state under whose laws it is organized. 28 U.S.C. § 1332(d)(10). In addition, outside the context of a class action, the Sixth Circuit has noted that for purposes of determining the citizenship of a trust, the court looks to the citizenship of the trustee of the trust. *See, e.g., Homfeld II, LLC v. Comair Holdings, Inc.*, 53 Fed. Appx. 731 (6th Cir. 2002) ("a business trust has the citizenship of its trustees"); *Smith v. Nelson*, 86 F. Supp. 2d 787 (N.D. Ohio 2000) (citizenship of trustee determines diversity analysis).

<sup>2</sup> The Deed identifies Toyota Motor Distributors ("TMD") as the owner of the building. TMD was merged into TMS in 1995. A certified copy of the certificate of merger is attached as Ex. 3.



28. Defendant Clyde Dyson is and was at the time this suit was commenced an employee of TMS and a resident of the state of Ohio.

29. Defendants are informed and believe that all the named Plaintiffs are and were at the time this suit was commenced, residents and citizens of the State of Ohio. (Amended Complaint ¶¶ 16-17).

30. The diversity of citizenship between Plaintiffs and the Toyota Defendants satisfies the minimal diversity requirements of CAFA as set forth in 28 U.S.C. § 1332(d)(2), which provides that the Court shall have jurisdiction if any member of a class of plaintiffs is a citizen of a State different from any defendant.

**C. AMOUNT IN CONTROVERSY UNDER CAFA <sup>3</sup>**

31. CAFA provides that a federal district court shall have original jurisdiction over a putative class action where the claims of the individual class members, when aggregated, exceed the sum of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

32. Other litigants recently have sued one of some of these same Toyota Defendants asserting that their putative class action claims exceed the sum of \$5,000,000 under CAFA. <sup>4</sup>

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<sup>3</sup> Though the Toyota Defendants dispute that Plaintiffs are entitled to bring this action, vehemently deny liability, and contend that Plaintiffs can recover nothing under the claims in the Complaint and the Amended Complaint, for purposes of removal only, Plaintiffs' allegations and the relief sought by Plaintiffs are to be considered in determining the value of the claims as pled and the amount in controversy.

<sup>4</sup> See, e.g., Complaint (¶ 6) in *Troy Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, N.D. Ohio, Case No. 1:10-cv-00260 ("This Court also has jurisdiction pursuant to 28 U.S.C. 1332 in that the amount in controversy exceeds the sum or value of \$5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants." see also Complaint (¶ 2) *Daniel Lee v. Toyota Motor North America, Inc., et al.*, N.D. Ohio, Case No. 3:10-cv-00280, ("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."); see also Complaint (¶ 4) in *Rebecca S. Shumaker v. Toyota Motor Sales, U.S.A., Inc., et al.*, S.D. Ohio, Case No.

33. The legislative history makes it clear that § 1332(d)(6) is to be interpreted expansively. The Senate Committee states: ". . . if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the case. By the same token, the Committee intends that a matter be subject to federal court jurisdiction under this provision if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." 109<sup>th</sup> Congress, 1<sup>st</sup> Session, Senate Rep. 109-14, at p. 43 (February 28, 2005).

34. Plaintiffs' Amended Complaint contains the following causes of action: (I) Fraudulent Concealment and Fraud by Omission; (II) Fraud; (III) Violation of the Ohio Consumer Sales Practices Act; (IV) Violation of the Ohio Deceptive Trade Practices Act; (V) Breach of Lease/Contract; (VI) Breach of Express Warranties; (VII) Unjust Enrichment; (VIII) Breach of Implied Warranty of Merchantability; (IX) Breach of Implied Warranty of Fitness for a Particular Purpose; (X) Negligence; (XI) Strict Product Liability. Plaintiffs also seek punitive damages, attorneys' fees and injunctive relief. (Amended Complaint, *passim*).

35. Although Plaintiffs' Amended Complaint does not specifically set forth the amount in controversy, Plaintiffs assert that as a result of their reliance on Toyota's alleged fraudulent concealment of defects in the automobiles at issue, Plaintiffs and

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3:10-cv-00061 ("This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) which, under the provisions of the Class Action Fairness Act (CAFA), explicitly provides for original jurisdiction in the Federal Courts of any class action where the amount in controversy exceeds the sum or value in the aggregate of \$5,000,000, exclusive of interest and costs." There are dozens of other similar cases recently filed in federal district courts across the country based on CAFA diversity jurisdiction that are currently pending against Toyota.

Class members have been injured in an amount including but not limited to “the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota’s refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.” (Amended Complaint ¶ 35).

36. They also claim that they have been subjected to the “very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds. . . .” (Amended Complaint ¶ 62).

37. Further, Plaintiffs allege they have incurred “the financial loss of owning or leasing vehicles that are unsafe as well as being subjected to the potential risk of injury.” (Amended Complaint ¶ 81).

38. Plaintiffs also claim that they **“have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles.”** (Amended Complaint ¶ 62) (emphasis added).

39. Plaintiffs assert that the defendants “have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members” such that “Defendants should be required to make restitution of all amounts by which they were enriched. . . .” (Amended Complaint ¶ 66).

40. Plaintiffs specifically pray for an Order “[r]equiring Defendants to **provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining, non-defective, replacement vehicles until the vehicles owned or leased by Class members have been repaired or have been replaced** with vehicles that do not have defects in the accelerator or any other system.” (Amended Complaint, ¶ 99A) (emphasis added).

41. Plaintiffs also seek an Order “[r]equiring Defendants to **provide counseling services to all Class members who have suffered emotional distress** as a result of being forced to drive defective, dangerous vehicles. . . .” (Amended Complaint, ¶ 99C) (emphasis added).

42. Plaintiffs further seek an Order “[r]equiring Defendants to **reform their lease and finance contracts with class members and cease collecting lease payments or car payments** from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.” (Amended Complaint, ¶ 99D) (emphasis added).

43. In addition, Plaintiffs ask for “an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered. . . .” (Amended Complaint, ¶ 100).

44. Plaintiffs further pray for “[a]n award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct. . . .” (Amended Complaint, ¶ 101).

45. Finally, Plaintiffs ask for “[a]n award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched; . . . an award of **attorneys’ fees** and prejudgment interest; . . . and for such other and further relief as the Court or Jury may deem appropriate.” (Amended Complaint, ¶¶ 102-104) (emphasis added).

46. It is well settled law that “[i]n calculating the amount in controversy, the court may consider compensatory damages, punitive damages, statutorily authorized attorneys fees, and economic value of the rights the plaintiff seeks to protect through injunctive relief.” *Curry v. Applebee’s International Inc.*, 2009 U.S. Dist. Lexis 114143, at \*14-15 (S.D. Ohio 2009) citing *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376

(6th Cir. 2007) (“As a general rule, attorneys’ fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees.”); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 407 (6th Cir. 2007) (value of injunctive relief based on economic value of rights the plaintiff seeks to protect); *Buckeye Recyclers v. CHEP USA*, 228 F. Supp. 2d 818, 822 (S.D. Ohio 2002) (injunctive relief); *Brown v. Jackson Hewitt, Inc.*, No. 1:06-cv-2632, 2007 U.S. Dist. LEXIS 13328, 2007 WL 642011, at \*3 (N.D. Ohio Feb. 27, 2007) (citing *Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (punitive damages); *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (attorneys’ fees); *Pennsylvania R.R. Co. v. Girard*, 210 F.2d 437, 439 (6th Cir. 1954) (injunctive relief).

47. Plaintiffs offer no explanation as to how they intend to calculate the damages they seek, and while Defendants dispute that Plaintiffs are entitled to any of the damages sought in their complaint, for purposes of determining the aggregate amount placed in controversy under CAFA, Defendants provide the court with the following facts.

48. The total number of notices that will be sent to Ohio residents in connection with the January 21, 2010 recall referenced in the Amended Complaint (“January Recall”) is approximately 52,159. (Morino Dec. ¶ 8).

49. In connection with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue. The Company has agreed to reimburse authorized dealerships seven tenths of one

hour of labor for the repair. The average hourly rate for this repair in the state of Ohio is \$80.05 per hour. (Morino Dec. ¶ 11).

50. Multiplying the labor cost of seven tenths of one hour times the average hourly rate in Ohio of \$80.05 per hour means the labor cost per vehicle equals \$56.04. If that amount is taken times the total number of recall notices sent for the state of Ohio the total amount of the labor repair cost is \$2,922,990.36.

51. Plaintiffs also seek the cost of a loaner car for the period of time during which their cars are awaiting repairs. In the past, under certain circumstances, the Company has reimbursed its independent dealerships \$35.00 a day for the use of a loaner vehicle by a customer during a repair. (Morino Dec. ¶ 12).

52. Plaintiffs' filed suit on February 2, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent to Ohio residents. (Morino Dec. ¶ 9. That means approximately 47,159 recall notices have not yet been sent to Ohio residents. The total number of days from the date of the filing of the plaintiffs' initial Complaint to February 22, 2010, is 20 days. For at least 20 days, 47,159 vehicles have not undergone repairs pursuant to the January Recall program. Multiplying the 20 days times 47,159 recall notices times \$35.00 per day equals \$33,011,300 as the amount placed in controversy by the loaner car relief sought in the Amended Complaint. Even if the cost of a rental car were just \$5.35 per day, that would exceed the \$5,000,000 aggregate amount in controversy necessary for purposes of determining jurisdiction under CAFA.

53. Plaintiffs also seek to reform their lease and purchase contracts so as to cease making payments for their vehicles. In that regard, they have sought a preliminary injunction from the state court granting that relief.

54. For plaintiff Cox, his lease payment is \$234.95 per month for a lease term of 36 months. (Amended Complaint Ex. A). He leased his vehicle on November 29, 2009. *Id.* If he were to cease making all payments starting with his March 2010 payment, the 32 monthly payments he would not be making would equal \$7,518.40. If this amount is typical of all class members, the amount placed in controversy on the contract reformation claim alone is \$7,518.40 times 52,159 which equals \$392,152,225.60.

55. But Plaintiffs' prayer for relief does not stop there. Plaintiffs also assert causes of action under both the Ohio Consumer Sales Practices Act ("OCSPA"), R.C. § 1345.01, *et seq.*, and the Ohio Deceptive Trade Practices Act ("ODTPA"), R.C. § 4165.01, *et seq.*, both of which provide for injunctive relief and the statutory award of attorneys' fees. R.C. §§ 1345.09; 4165.03. Since these statutes authorize awards for attorneys' fees, Plaintiffs' claim for attorneys' fees also may be considered for purposes of calculating the \$5,000,000 amount placed in controversy under CAFA.

56. As a reference point for awards of attorneys' fees in class actions, the Federal Judicial Center conducted a study in 1994-95 entitled "Empirical Study of Class Actions in Four Federal District Courts." The study found that the median rates for attorneys' fees ranged from 27% to 30% of the recovery for all class actions resolved or settled over a four year period in the four selected district courts. FJC-R-96-2.

57. In addition to attorneys fees, Plaintiffs seek counseling for emotional distress, punitive damages, disgorgement, and the loss in value of their vehicles due to the recall. When all of these claims for relief are viewed in the context of the number of recall notices to be issued to Ohio residents, the amount placed in controversy by plaintiffs' claims clearly is in excess of \$5,000,000.

58. Defendants contend that the named Plaintiffs and the putative class are not entitled to any relief, however, given the size of the proposed class and the breadth of the relief sought, the amount placed in controversy by this litigation far exceeds the \$5,000,000 requirement for CAFA jurisdiction.

**D. NO CAFA EXCEPTIONS APPLY**

59. Although CAFA has provisions under which the District Court may or shall decline jurisdiction, no statutory exception to CAFA jurisdiction applies in this case.<sup>5</sup> 28 U.S.C. § 1332(d)(3) and (4).

60. Section 1332(d)(3), (the "interest of justice" exception) does not apply because, among other reasons, the primary defendants, TMS, TLT and TEMA are not citizens of the state where this action was originally filed.

61. Section 1332(d)(4)(A), (the "local controversy exception"), does not apply because, among other reasons, neither Clyde Dyson nor Beechmont Toyota, Inc. — the only two named defendants alleged to be Ohio residents, — is a defendant from whom significant relief is sought or whose conduct forms a significant basis for the claims asserted by the class, and because during the three year period preceding the filing of this class action complaint other class actions have been filed against one or some of the Defendants asserting same or similar allegations on behalf of other persons.<sup>6</sup>

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<sup>5</sup> Plaintiffs bear the burden of proving that an exception to CAFA jurisdiction applies. *See Kendrick v. Standard Fire Ins. Co.*, 2007 U.S. Dist. LEXIS 28461 at \*4, (E.D. Ky. 2007).

<sup>6</sup> In the legislative history for this section of CAFA, the Committee stated its intent that cases such as the one at issue should be removable. Specifically, the Committee provided the following example of a case that would be exempted from the provisions of § 1332(d)(4):

A class action is brought in Florida against an out-of-state automobile manufacturer and a few in-state dealers, alleging that a certain vehicle model is unsafe because of an allegedly defective transmission. The vehicle model was sold in all fifty states but the class action is only brought on behalf of Floridians. This case would not fall within the Local Controversy Exception for two reasons. First, the automobile dealers are not defendants whose alleged conduct forms a significant basis of the claims or from whom significant



62. Section 1332(d)(4)(B) (the "home state exception") does not apply because, among other reasons, the primary defendants, TMS, TLT and TEMA are not citizens of the state where this action was originally filed.

63. This action is not one described in 28 U.S.C. § 1332 or § 1453 as being non-removable.<sup>7</sup>

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relief is sought by the class. Even if the plaintiffs are truly seeking relief from the dealers, that relief is just small change compared to what they are seeking from the manufacturer. Moreover, the main allegation is that the vehicles were defective. In product liability cases, the conduct of a retailer such as an automobile dealer does not form a significant basis for the claims of the class members. Second, the case falls outside the Local Controversy Exception because the "principal injuries resulting from the alleged conduct,"— i.e., selling a vehicle with a defective transmission — were incurred in all fifty states. The fact that the suit was brought as a single-state class action does not mean that the principal injuries were local. In other words, this provision looks at where the principal injuries were suffered by everyone who was affected by the alleged conduct—not just where the proposed class members were injured. Thus, any defendant could remove this case to federal court.

<sup>7</sup> In addition to jurisdiction based upon CAFA, this court also has diversity jurisdiction based upon 28 U.S.C. §§ 1332(a) and 1441 because there is complete diversity of citizenship among all properly joined parties, and the amount in controversy exceeds \$75,000 exclusive of interest and costs. The non-diverse defendants, Clyde Dyson and Beechmont Toyota, Inc. have been fraudulently joined in order to defeat diversity jurisdiction. Accordingly, their citizenship should be ignored for purposes of determining diversity. *Rose v. Giamatti*, 721 F.Supp. 906, 917 (S.D. Ohio 1989). Their joinder is fraudulent because there exists no reasonable basis in fact or in law supporting a claim against them. Specifically, there is no reasonable basis for predicting that the state law might impose liability on the facts involved." *Alexander v. Elec. Data Sys. Corp.*, 13 F.3d 940, 949 (6th Cir. 1994) (internal citations omitted). See also *Ludwig v. Learjet, Inc.*, 830 F.Supp. 995 (E.D. Mich. 1993).

In addition, pursuant to 28 U.S.C. § 1331, this court also has jurisdiction based on Plaintiffs' claims under the Magnuson-Moss Warranty Act ("MMWA"), because such claims arise under the "Constitution, laws, or treaties of the United States." MMWA, 15 U.S.C. § 2310(d), provides that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection." 15 U.S.C. § 2310 (d). Section (3) provides:

No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection --

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

### III. VENUE

64. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

65. This action is not an action described in 28 U.S.C. § 1445.

66. All Defendants have consented in writing to the filing of this Removal.

67. Pursuant to 28 U.S.C. § 1446(d), a true and accurate copy of this Notice of Removal and exhibits is being served on counsel for the Plaintiffs and is being filed with the clerk of the courts for the Common Pleas Court of Hamilton County, Ohio.

WHEREFORE, Defendants respectfully remove this action from the Court of Common Pleas of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio as provided by law.

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15 U.S.C. § 2310 (d). The Plaintiffs' claims meet the amount in controversy requirements set forth in the statute.

Plaintiffs' Complaint specifically alleges that Defendants breached written and implied warranties owed to Plaintiffs. While the MMWA is not explicitly referenced in the Complaint, the allegations give rise to a claim under the MMWA. This Court should exercise jurisdiction over the pendent state law claims because: (1) the federal MMWA claim is sufficient to confer subject matter jurisdiction on the court; (2) the state and federal claims derive from a common nucleus of operative fact; and (3) Plaintiffs' claims are such that they would ordinarily be expected to be tried all in one judicial proceeding. *See Aschinger v. Columbus Showcase Co.*, 934 F.2d 1402, 1412 (6<sup>th</sup> Cir. 1991). Therefore, removal of the entire action is appropriate pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

/s/ Gregory A. Harrison

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**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

# **EXHIBIT 1**



# Patricia M. Clancy Clerk of Courts



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Cincinnati, OH 45202

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### Case Summary

**Case Number:** A 1000992  
**Case Caption:** HUGH W COX vs. TOYOTA MOTOR SALES USA INC  
**Judge:** ROBERT P RUEHLMAN  
**Filed Date:** 2/2/2010  
**Case Type:** H775 - CLASS ACTION & JURY DEMAND- OC  
**Total Deposits:** \$ 637.00 Credit  
**Total Costs:** \$ 354.00











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### Case History

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Doc Image#	Date	Description	Amount
	2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA LEASE TRUST ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6521]	
	2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF THIRD PARTY COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6514]	
	2/10/2010	NOTIFICATION FORM FILED.	
	2/10/2010	JUDGE ASSIGNED CASE ASSIGNED TO RUEHLMAN/ROBERT/P PRIMARY	
	2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO BEECHMONT TOYOTA INC ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6569]	
	2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO CLYDE DYSON ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6552]	
	2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6545]	
	2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA ON 02/04/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6538]	
	2/5/2010	FIRST AMENDED REQUEST FOR TEMPORARY RESTRAINING ORDER AND CLASS ACTION COMPLAINT AND JURY DEMAND	
	2/3/2010	CERTIFICATION REGARDING NOTICE FOR TEMPORARY RESTRAINING ORDER	
	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6545]	
	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO BEECHMONT TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6569]	
	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA LEASE TRUST [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6521]	

	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO CLYDE DYSON [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6552]	
	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6514]	
	2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6538]	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA LEASE TRUST	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO BEECHMONT TOYOTA INC	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO CLYDE DYSON	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER	
	2/3/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA	
	2/2/2010	TEMPORARY RESTRAINING ORDER TO PRESERVE EVIDENCE AND RECORDS	
	2/2/2010	CLASSIFICATION FORM FILED.	
	2/2/2010	COMPLAINT & JURY DEMAND FILED	
	2/2/2010	CASE DEPOSIT & JURY DEMAND BY STANLEY M CHESLEY	637.00-

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D86913721

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN  
Court of Common Pleas  
Hamilton County, Ohio

A1000992

ENTERED  
FEB 02 2010

HUGH W. COX AND  
PAMELA M. COX,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, et al.

Defendants.

CIVIL CASE NO.:

JUDGE:

TEMPORARY  
RESTRAINING ORDER  
TO PRESERVE EVIDENCE  
AND RECORDS

Plaintiffs filed a Verified Complaint on behalf of themselves and a class of similarly situated persons seeking, among other things, a Temporary Restraining Order requiring Defendants to preserve all documents of any kind, electronic and otherwise, related to the allegations in this case, including all representations of reliability and suitability of the subject vehicles for their designed purpose. Based upon the Verified Complaint and the certification of counsel, the Court is persuaded that Plaintiffs and the proposed class members will suffer irreparable injury if the Court does not issue a Temporary Restraining Order requiring Defendants to preserve such documents and records. The Court finds that, if Defendants fail to retain such documents and records, Plaintiffs and the proposed class members will suffer irreparable injury because their ability to prove their case at trial may be jeopardized. The Court further finds that Plaintiffs' Rule 65 certification supports Plaintiffs position that it was urgent that Plaintiffs seek the Temporary Restraining Order before Plaintiffs could provide, and the Court finds that Defendants will not suffer prejudice from the Order requiring them to preserve their own records.



**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendants shall preserve, until further notice, all documents of any kind, electronic and otherwise, hardcopy, audio and video, related to the allegations in this case, including all public representations of reliability and suitability of the subject vehicles for their designed purpose.

**IT IS FURTHER ORDERED AND ADJUDGED** that the nature of the case is such a that bond is unnecessary.

Dated this \_\_\_\_ day of February, 2010

---

Judge Court of Common Pleas  
Hamilton County, Ohio

Submitted By:

Stanley M. Chesley (0000852)  
Robert A. Steinberg (0032932)  
Joseph T. Deters (0012084)  
Waite, Schneider, Bayless & Chesley Co., L.P.A.  
1513 Fourth & Vine Tower  
Cincinnati, OH 45202  
(513) 621-0267

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX,  
PAMELA M. COX,

Plaintiffs,

v.

TOYOTA MOTOR  
CORPORATION, et al.

Defendants.

: CIVIL CASE NO.: A1000992

: JUDGE:

CERTIFICATION  
REGARDING NOTICE FOR  
TEMPORARY RESTRAINING ORDER

FILED

PATRICIA M. CLANCY  
CLERK OF COURTS  
HAMILTON COUNTY, OH  
FEB - 2 P 3:45

1. The undersigned make this certification pursuant to Ohio Rule of Civil Procedure 65.

2. Prior to seeking a Temporary Restraining Order, Plaintiffs did not give notice to Defendants of the Temporary Restraining Motion hearing.

3. Plaintiffs did not provide notice due to the urgency of the situation and the fact that Defendants would not suffer any prejudice from an order requiring them to preserve their own records. Defendants have the right to apply to the Court to modify the order if they can establish prejudice.

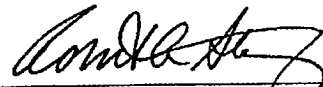
4. Plaintiffs, on behalf of themselves and the proposed class members, seek an Order requiring Defendants to maintain and preserve all documents of any kind, electronic and otherwise, related to the allegations in this case, including all public representations of reliability and suitability of the subject vehicles for their designed purpose.



D86979253

5. Plaintiffs' counsel are aware that, according to Toyota's Internet website, Toyota's former in-house counsel states that Toyota illegally withheld evidence in a number of cases concerning vehicle rollovers involving injuries and deaths. Plaintiffs' counsel are also aware that the National Highway Traffic Safety Administration found that Toyota's statements about the sudden acceleration problem involved in the allegations in this case were "misleading and inaccurate." Plaintiffs' counsel, therefore, are concerned that Defendants will hide or destroy information related to this case, unless ordered not to do so by this Court. Thus, it is urgent that Defendants be ordered to preserve all information related to this case at the earliest possible time.

Respectfully submitted,



---

Stanley M. Chesley (No. 0000852)

Robert A. Steinberg (0032932)

Joseph T. Deters (0012084)

WAITE, SCHNEIDER, BAYLESS

& CHESLEY CO., L.P.A.

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Patricia M. Clancy, Clerk of Courts  
Court of Common Pleas, Hamilton County, Ohio  
www.courtclerk.org



**NOTIFICATION FORM**

**CASE INFORMATION**

Date: February 10, 2010

Case No.: A1000992

Caption: Hugh W. Cox, et.al. vs. Tovota Motor Sales, USA, Inc., et.al.

\*\*\*\*\*

**ATTORNEY INFORMATION**

Attorney Name: Cari Dawson

Attorney Information: Alston & Bird LLP

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Phone Number  
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Fax Number

E-mail Address

8507

Ohio Attorney Supreme Court No.: \_\_\_\_\_

Address Change Only

Request Case Notification / Not a Party Defendant

\*\*\*\*\*

**COURT PARTY INFORMATION**

Name of Client: Toyota Motor Sales U.S.A., Inc.

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Substituted for: \_\_\_\_\_



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(if applicable)

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PT# 58866  
Sundries

2

Rebecca Prem Groppa  
Hamilton County Recorders Office  
Doc #: 06-0071762 Type: CMSS  
Filed: 05/09/06 10:45:51 AM \$28.00  
Off.Rec.: 10238 01797 F F38 2 511

RECORDED & INDEXED BY THE RECORDER FOR THE COUNTY OF HAMILTON COUNTY  
#1023801797Fb

### State of California Secretary of State



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of  2  page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR 29 2006



BRUCE McPHERSON  
Secretary of State



10238 1797

TOTAL PAGES 72

A466512

FILED  
In the office of the Secretary of State  
of the State of California

REV

0346014 sum

SEP 30 1995

**CERTIFICATE OF OWNERSHIP  
MERGING  
TOYOTA MOTOR DISTRIBUTORS, INC.  
into  
TOYOTA MOTOR SALES, U.S.A., INC.**

*Bill Jones*  
Secretary of State

Shinji Sakai and John McGovern certify that:

1. They are the President and Secretary, respectively, of Toyota Motor Sales, U.S.A., Inc., a California corporation ("TMS").

2. TMS owns all of the outstanding shares of Toyota Motor Distributors, Inc., a California corporation ("TMD").

3. The following resolutions were duly adopted by the Board of Directors of TMS:

WHEREAS, this corporation owns all of the outstanding shares of stock of Toyota Motor Distributors, Inc. ("TMD"); and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge TMD into itself and assume all its obligations;

NOW THEREFORE BE IT RESOLVED, that this corporation merge TMD into itself (with this corporation as the surviving corporation) and assume all the obligations of TMD pursuant to Section 1110 of the California Corporations Code;

RESOLVED FURTHER, that the President or any Vice President and the Secretary or Assistant Secretary of this corporation are hereby directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

We further certify under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

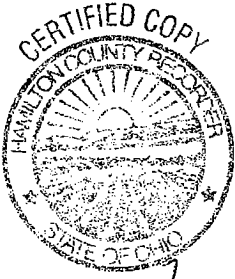
Dated September 13, 1995

*Shinji Sakai*  
Shinji Sakai

*John McGovern*  
John McGovern



10238 1798



TOTAL PAGES 2

CERTIFIED BY

Bob Ritter

DATE 2-23-10

Wayne Coates  
Hamilton County Recorders Office  
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Filed: 05/09/2006 10:45:51 AM \$5.00  
ATTEST: Wayne Coates

Bob Ritter  
BY: BOB RITTER

COURT OF COMMON PLEAS

FILED

HAMILTON COUNTY, OHIO 2010 FEB 22 P 6:02

HUGH W. COX, et al.

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.

Defendants.

CLERK OF COURTS  
GENERAL TRAFFIC DIV  
HAMILTON COUNTY OHIO  
Case No. A1000992

Judge Robert P. Ruehlman

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, pursuant to Ohio Rule of Civil Procedure 65(B) and Ohio Revised Code § 2727.02 move for a Preliminary Injunction that: 1) prevents Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota" or "Toyota Defendants") from collecting lease and loan payments from Ohio residents who are fearful of driving their cars due to Toyota defects, 2) requires Defendants to provide, without cost, alternate vehicles free from defects to Ohio residents who are fearful of driving their cars due to Toyota defects; orders Defendants to ensure that no Toyota dealer performs service on the 2009 Camry, Toyota Camry VIN 4T4BE46K19R079017, formerly owned by Thomas and Connie Kamphaus, proposed class members in this case, until Plaintiffs' counsel have the opportunity to have an expert examine the vehicle.

Plaintiffs are entitled to the requested relief because:

- (1) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (2) Plaintiffs will suffer irreparable harm if the injunction is not granted;

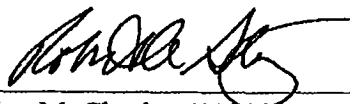


- (3) There is a substantial likelihood that pedestrians and/or drivers within the State of Ohio will be injured as a result of a defective Toyota-manufactured vehicle being driven on the roads of this state;
- (4) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>1</sup>

The purpose of this injunction is to preserve the status quo, to protect Ohio residents from the threat of Sudden Unintended Acceleration ("SUA") and other known Toyota-manufactured automobile defects, and to preserve evidence until more information is obtained about how to avoid and prevent the dangers these vehicles present.

The extent of the problem is only beginning to come to light. Currently, a federal criminal investigation of Toyota is commencing in New York and an SEC investigation of Toyota is commencing in California. Plaintiffs provide additional support in the attached memorandum in support of their motion for Preliminary Injunction.

Respectfully submitted,



---

Stanley M. Chesley (11810)  
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---

<sup>1</sup> *Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

Defendants have placed profit over safety and have sought to limit and to stifle governmental investigations into the safety of Toyota Vehicles. Evidence in recent news accounts revealed that Toyota has known for years that its vehicles were unsafe. However, instead of working with the government to protect Ohio residents, Defendants engaged in a mercenary campaign to save money by avoiding recalls.

In an internal presentation in July 2009 at its Washington office, a Toyota official said it saved \$100 million or more by negotiating an "equipment recall" of floor mats involving 55,000 Toyota Camry and Lexus ES350 vehicles in September 2007. The savings are listed under the title, "Wins for Toyota -- Safety Group." The document cites millions of dollars in other savings by delaying safety regulations, avoiding defect investigations and slowing down other industry requirements.<sup>2</sup>

Toyota's most recent current campaign to "fix" "sticky accelerators" similarly appears to be another scheme to save money and avoid taking appropriate measures to protect the public. Prospective class members who have had this recall repair in February 2010 have continued to experience sudden unintended acceleration (SUA) incidents. (*See* Affidavit of Connie Kamphaus attached as Exhibit 1). Vehicles with a dangerous defect remain on the highways. A Preliminary Injunction is necessary to protect Ohio pedestrians and drivers from further injury by unsafe Toyota-made vehicles.

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<sup>2</sup> <http://finance.yahoo.com/news/Documents-Toyota-boasted-apf-3066044297.html?x=0>.

## BACKGROUND

Plaintiffs Hugh W. Cox, Pamela M. Cox and Ernestine Montgomery currently own or lease Toyota vehicles. Prospective class members Thomas and Connie Kamphaus recently brought their 2009 Toyota Camry, VIN 4T4BE46K19R079017, in for a recall repair to correct SUA. After completing the repair at a Toyota dealer in January 2010, their vehicle experienced several SUA incidents. They feared for their safety and the safety of others, and stopped driving the vehicle. They could not afford to rent or buy a second vehicle. In February 2010, due to their fear of driving the 2009 Camry, Toyota convinced them to trade the vehicle in on a 2010 Camry at a higher payment rate. Plaintiffs Hugh W. Cox and Pamela M. Cox currently are making monthly payments to Toyota.<sup>3</sup> Plaintiffs and many proposed class members have paid and are paying Toyota for the “privilege” of driving admittedly unsafe vehicles. As a last resort, some continue to drive the cars on Ohio roads.

Toyota-manufactured vehicles are subject to an unprecedented recall. The reason for the recall particularly is disturbing. Defendants, from 1999 to January 19, 2010, had knowledge of at least two thousand reports of SUA. The reports included 2,262 total incidents, 819 crashes, 341 injuries and 26 deaths.<sup>4</sup>

Since 1999, at least 2,262 Toyota and Lexus owners have reported to the National Highway Traffic Safety Administration, the media, the courts and to Safety Research & Strategies that their vehicles have accelerated suddenly and unexpectedly in a variety of scenarios. These incidents have resulted in 815 crashes, 341 injuries, and 19 deaths potentially related to sudden unintended acceleration.<sup>5</sup>

The extent of the problem is wide-ranging. Toyota Drivers have reported vehicle surges and unintended acceleration under a variety of conditions including:

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<sup>3</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>4</sup> Safety Research & Engineering Strategies, Inc., Toyota Sudden Unintended Acceleration, February 5, 2010 at p. 6.

<sup>5</sup> *Id.* at 1.

- The vehicle was at idle
- The vehicle was in reverse at low speed
- The operator's foot was on the brake
- The vehicle was traveling at a constant highway speed
- The vehicle contained no all-weather accessory floor mats
- The accelerator pedal was not "sticking"<sup>6</sup>

Toyota's response to these incidents was to blame the drivers. When federal officials began to doubt Toyota's explanation, it then blamed the incidents on floor mats that they claimed interfered with the acceleration pedal and called a small number of vehicles for a floor mat repair. When it became obvious to consumers and officials that floor mats were not the cause of SUA, Toyota claimed that its vehicles had sticky accelerator pedals, and made a larger recall, which consisted of shortening the accelerator pedal and installing a shim. Despite substantial evidence to the contrary, Defendants never publicly acknowledged that its vehicles suffered from serious design and engineering defects. However, Defendants have known for years that their vehicles were defective in that they suffered from a defect that can cause them to suddenly accelerate uncontrollably.

In 2004, Defendants met with National Highway Transportation Safety officials in an effort to minimize the investigation of SUA incidents, to minimize the publicity given to them, and to avoid substantial costly recalls of millions of their automobiles. As part of the scheme to defraud consumers, Defendants replaced experienced automobile workers with less expensive temporary workers at Toyota Motor Engineering and Manufacturing North America, Inc., causing manufacturing quality to suffer, at the same time as they publicly represented to consumers the excellent engineering and reliability of their vehicles. The experienced workers signed a protest petition in November 2009, objecting to this conduct. (Exhibit 3). During this time period, Defendants quietly repaired vehicles brought by customers who experienced SUA,

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<sup>6</sup> *Id.* at 9.

but intentionally and recklessly failed to warn customers driving similar vehicles. Instead, they intentionally misrepresented to customers, including Plaintiffs and the proposed class, that their vehicles were suited for their intended purpose, were well-engineered, were safe to drive, and were reliable.

Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. Toyota omitted the back-up safety systems to save money and increase profits. As a result of the lack of safety systems, there is no adequate mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the acceleration systems malfunction and engage in uncontrolled acceleration.

Defendants, additionally, have attempted the “repair” of modifying the accelerator pedal to attempt to fix the SUA defect since at least 2006, when they modified the accelerator pedal of a 2005 Toyota Camry owned by Plaintiff Montgomery at a dealership in Cincinnati, Ohio.<sup>7</sup> At that time, they intentionally and recklessly failed to recall similarly-affected vehicles.

On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the alleged reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, **mechanically** stick in a partially depressed position or return slowly to the idle position.” (Emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were caused by floor mats and by accelerator pedals that were the wrong size.

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<sup>7</sup> See Affidavit of Ernestine Montgomery, attached as Exhibit 4.

On January 26, 2010, Toyota stopped selling eight recalled models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was necessary to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers. Nor did Toyota recall other models and makes of Toyota-manufactured vehicles, in which class members have experienced SUA.

Ohio Consumers attempted to schedule repairs but were told they could not get their vehicle fixed until they received a letter. When they informed Toyota agents that they were afraid to drive their vehicles, they received no assistance. The repairs currently being performed do not adequately address the dangerous defect. Ohio consumers have not received substitute vehicles and are left to drive admittedly dangerous vehicles. Defendants expect Ohio owners and lessees of Toyota cars and trucks to continue to make car and lease payments.<sup>8</sup>

**TOYOTA IS SACRIFICING THE SAFETY OF ITS CURRENT OWNERS AND LESSEES OF ITS VEHICLES TO MAKE SALES OF NEW CARS**

The Toyota Defendants recently announced that Toyota would install brake override systems in response to recent incidents of runaway cars. Toyota North America president Yoshi Inaba told *Automotive News* that the system will force the engine into idle if it senses the driver is trying to apply the brakes unsuccessfully.<sup>9</sup>

The Toyota Camry and Lexus ES350 originally were the first models scheduled to receive the new system. Toyota made this announcement on the heels of a massive 3.8 million vehicle recall to reshape and replace accelerator pedals. On February 17, 2010, Toyota announced that it was expanding the use of the system and would install the brake override

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<sup>8</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>9</sup> <http://www.autoblog.com/tag/yoshi+inaba/>.

safety feature on all new vehicles that Toyota sells in North America.<sup>10</sup> Despite this announcement, the National Highway Traffic Safety Administration reportedly remains suspicious of other contributing factors.<sup>11</sup>

Plaintiffs do not acknowledge that the brake override system will prevent SUA. However, Plaintiffs do note that Toyota vehicles currently on the road in Ohio do not have the system, and therefore, by Toyota's own admission, lack an important safety feature to prevent SUA.

On February 3, 2010, Ray La Hood, Director of the National Highway Safety Transportation Administration, told United States drivers that his "advice is if anybody owns one of these vehicles is to stop driving it and take it to a Toyota dealer because they believe they have the fix for it."<sup>12</sup> Mr. La Hood subsequently modified this sage advice. However, his point remains clear. Toyota vehicles are unsafe and Toyota is more concerned about future sales as opposed to protecting the interests of current owners and lessees of Toyota cars and trucks.

## ARGUMENT

### I. OHIO RESIDENTS ARE ENTITLED TO A PRELIMINARY INJUNCTION THAT WILL PROTECT THEIR RIGHTS AND PRESERVE THE STATUS QUO

#### A. Plaintiffs Satisfy the Requirements for a Preliminary Injunction

Ohio Rule of Procedure 65 (B) provides that parties may obtain a provisional remedy of a preliminary injunction. Additionally, Ohio Revised Code § 2727.02 provides that a preliminary

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<sup>10</sup> See <http://www.asiaone.com/Motoring/News/Story/A1Story20100218-199346.html> ("The new brake over-ride system to be introduced worldwide would cut engine power when the accelerator and brake pedal are depressed at the same time. Accidents blamed on unintended acceleration have been linked to more than 30 deaths in the United States").

<sup>11</sup> <http://www.autoblog.com/2010/01/12/breaking-toyota-said-to-install-brake-override-systems-in-all-c/>.

<sup>12</sup> <http://www.theautochannel.com/news/2010/02/03/464423.html>.

injunction during pending litigation is appropriate if Defendants' acts violate Plaintiffs' rights concerning the subject matter of the litigation.<sup>13</sup>

Plaintiffs are entitled to a Preliminary Injunction if they can establish that:

- (4) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (5) That Plaintiffs will suffer irreparable harm if the injunction is not granted;
- (3) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>14</sup>

Here, the uncontested facts certainly establish that Plaintiffs are entitled to a preliminary injunction. First, a substantial likelihood exists that Plaintiffs will prevail on the merits. The current record, even without discovery, establishes that Toyota has recalled millions of cars and trucks due to SUA. The undisputed evidence further establishes that SUA is dangerous and causes accidents, injuries, and deaths.

Consumer reaction to the recalls demonstrates that Ohio consumers, similar to consumers throughout the United States, believe that Toyota vehicles are dangerous and that Ohio consumers do not want to drive the cars and trucks. The recalls also demonstrate that Toyota cars and trucks are, in fact, unsafe. Toyota's continuing changing representations and statements

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<sup>13</sup> Ohio Revised Code Section 2727.02 provides:

A temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

<sup>14</sup> *Convergys Corp. v. Tackman* (Ohio App. 1 Dist. 2006), 169 Ohio App.3d 665 C-060440; *See Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.



concerning the cause of SUA, the fixes and repairs, and its changes to unsold new cars demonstrate that Plaintiffs have a substantial likelihood of prevailing on the merits.

The denial of the injunction will cause Plaintiffs and proposed class members who own or lease Toyota vehicles to suffer irreparable harm during severe economic times. Plaintiffs and proposed class members are forced to either drive an unsafe car or find alternative means of transportation at costs they cannot afford. Plaintiffs require immediate assistance, in the form of safe and dependable alternative transportation. The absence of alternative vehicles, moreover, not only is endangering Ohio drivers and their passengers but is endangering other motorists and pedestrians.

Plaintiffs and other Ohio residents also are suffering injury because the Toyota Defendants are requiring Ohio residents to make payments on vehicles that they are not using as intended. Fundamental fairness dictates that payments for vehicles that admittedly are unsafe is unfair and causes irreparable injury.

Finally, due to fear and several occurrences of SUA, Mr. and Mrs. Kamphaus were recently convinced by Toyota to trade their 2009 Toyota Camry for a new vehicle. Before Toyota takes actions that might alter or modify this vehicle and thus cause irreparable injury by limiting Plaintiffs' ability to pursue litigation, a court order is necessary to prevent its modification or alteration.

A preliminary injunction will not injury third parties. To the contrary, it will prevent injury to third parties and will promote the public interest in highway safety by keeping dangerous cars and trucks off of Ohio's roads.

**B. The Requested Preliminary Injunction is Reasonable**

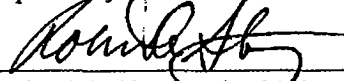
Under the circumstances of this case, the requested injunction is reasonable. Why should Defendants force Ohio residents to pay for cars and trucks that are unsafe and that Ohio residents are afraid to use? Defendants should be made to take immediate steps to provide safe alternative transportation. This is both logical and fair. Finally, Defendants, consistent with this Court's earlier order to preserve evidence, should be required to preserve and protect the car that Plaintiffs recently traded in until Plaintiffs have the opportunity to have an expert review and examine the car.

**CONCLUSION**

For the reasons contained in this motion and memorandum, this Court should grant Plaintiffs Motion for a Preliminary Injunction and Order that:

- (1.) Defendants, until further notice, may not collect car payments from Ohio residents;
- (2.) Defendants may not modify or alter the car formerly owned by Mr. and Mrs. Kamphaus until Plaintiffs have the opportunity to have an expert review and examine the car ; and,
- (3.) Defendants immediately must provide alternative vehicles for all Ohio residents who currently own or lease Toyota vehicles.

Respectfully submitted

  
\_\_\_\_\_  
Stanley M. Chesley (11810)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Telephone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: [bobsteinberg@wsbclaw.com](mailto:bobsteinberg@wsbclaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this

23<sup>rd</sup> day of February, 2010 upon the following:

Toyota Motor Sales, U.S.A., Inc.  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Lease Trust  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Motor Engineering & Manufacturing  
North America, Inc.  
Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, KY 40207

Toyota North American Technical Training  
Center  
4550 Creek Road  
Cincinnati, OH 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, OH 45242

Beechmont Toyota, Inc.  
8639 Beechmont Avenue  
Cincinnati, OH 45255

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Robert A. Steinberg

# **EXHIBIT 1**

**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert F. Ruchlman**

**AFFIDAVIT OF CONNIE A. KAMPHAUS**

Now comes the Affiant, Connie A. Kamphaus, and after first being duly sworn and cautioned, states as follows:

1. Until Friday, February 19, 2010, I was the owner of a 2009 Toyota Camry which I leased new at Performance Toyota in Fairfield, Ohio on or about June 22, 2008.
2. At the time I leased my Toyota Camry in 2008, I made a down payment of approximately \$2200.00 on a 3 year lease with payments of approximately \$247.00 a month.
3. On or about January 15, 2010, my husband Tom was driving my car in a Kroger parking lot in Westchester, Ohio when the car suddenly accelerated. Tom was forced to brake as hard as he could and threw the gear into "Park" after which the engine idled down. He then turned off the ignition.

4. Tom called Performance Toyota about this incident on January 15, or January 16, 2010. Performance Toyota told us to bring the car in and we took the car to Performance on or about January 16<sup>th</sup>. We were given a loaner car for one evening and we picked up the car the next day, having been told that Toyota "fixed" the problem by installing a new gas pedal. It appeared the entire gas pedal assembly had been replaced. We thought the problem was solved.

5. On February 9, 2010, Tom was driving my car out of the Fairfield Hospital parking lot and braking as he approached a red traffic light when the brake froze and the engine revved. Tom had to brake as hard as he could while throwing the car into "Park" in order to stop the car.

6. On February 10, 2010, Tom was driving my car on our street and came to a stop sign. Again, the brake froze and the engine revved. Tom had to brake as hard as possible and throw the car into "Park" to stop the car.

7. On February 13, 2010, we contacted Performance Toyota to tell them about the sudden acceleration incidents after the gas pedal was "fixed." We told Performance Toyota we wanted out of the lease agreement. Toyota wanted us to come in and sign some sort of "arbitration agreement" but due to inclement weather and our health, we did not immediately go to Performance Toyota to discuss this.

8. From February 10 until February 19, we grew more and more fearful of driving our Toyota Camry. Because of the dangerousness of the Toyota, we avoided driving it. This created a real hardship for us. The Toyota was our only car to drive, as our son uses our other vehicle to travel to and from work. We contacted Toyota about loaning us a car until this matter was resolved, but Toyota told us they could not loan us a car.. We then looked into obtaining a

rental car until the problem was resolved, but could not afford to pay for a rental car due to our financial situation.

9. We became very upset and desperate due to the hardship the lack of a vehicle created for us. My husband and I both have serious health issues requiring frequent doctor visits. We have no one to transport us to our respective appointments.

10. Due to our desperate financial situation and tremendous need for a safe and reliable vehicle, on Friday, February 19, 2010 Tom and I returned our 2009 Toyota Camry to Performance Toyota and demanded another non-Toyota vehicle. We did not want to make any more payments on this vehicle as we felt it was unfair and unreasonable to be paying for an unsafe vehicle we were terrified to drive. Toyota would not agree to a non-Toyota vehicle, but provided us with a 2010 Camry which Toyota represented was already fixed. Toyota would not credit us for 15 months of payments of \$247.00/month, nor for the approximate \$2200.00 we put down on the 2009 Camry. Moreover, Toyota made us start a new 3 year lease for approximately \$347.00/month. Due to our desperate situation, we had no choice but to accept this "deal." Of course, what we now have is a newer car for more money and with the same repair as the suddenly accelerating 2009 Camry.

FURTHER AFFIANT SAITH NAUGHT.

*Connie A. Kamphaus*  
\_\_\_\_\_  
Connie A. Kamphaus

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Butler )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

*Jessica Bright*

Notary Public

My Commission Expires:

Aug 3, 2011



JESSICA BRIGHT  
Notary Public, State of Ohio  
My Commission Expires  
August 3, 2011



# EXHIBIT 2

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Case No. A1000992**

**Plaintiffs,**

**Judge Robert P. Ruchlman**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al**

**Defendants.**

**AFFIDAVIT OF PAMELA M. COX AND HUGH W. COX**

Now comes the Affiants, Pamela M. Cox and Hugh W. Cox, and after first being duly sworn and cautioned, state as follows:

1. We are the lessees of a 2010 Toyota Camry LE leased on November 30, 2009 from Beechmont Toyota in Cincinnati, Ohio. We currently make a monthly payment.
2. Our 2010 Camry is part of Toyota's recall for gas pedals relating to sudden acceleration.
3. We are afraid to drive our Toyota. We avoid driving the Toyota unless we have no choice, and, while we have another vehicle, we really need this 2<sup>nd</sup> car as a means of transport. Not having this car to use has created a hardship on us.
4. In addition to the fact that not driving our Toyota creates an inconvenience for us and makes our lives more difficult, we believe it is unfair that we are making payments on a car

a car that is not the safe and reliable vehicle represented to us. It is not reasonable for us to have to continue making payments on a car that we do not wish to drive and that has a dangerous defect with no as yet proven "fix".

FURTHER AFFIANTS SAITH NAUGHT.

Pamela M Cox

Pamela M. Cox

STATE OF OHIO )

COUNTY OF Cernat ) S.S.

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

[Signature]  
Notary Public

Beverly L. Glancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

My Commission Expires:

April 7 2012

and

[Signature]  
Hugh W. Cox

STATE OF OHIO )

COUNTY OF Champaign ) S.S.

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

*[Handwritten Signature]*  
Notary Public



My Commission Expires:

April 7, 2012

Beverly L. Giancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

# EXHIBIT 3



We CARE about OUR Company, Our Future and Our Co-Workers. We did a sample poll to see if they agreed with our concerns. We gave the letter below and a copy of the poll to Mr. St. Angelo, respectfully asking for resolution to these matters.

Toyota Workers for a Better Toyota

107 Frazier Ct.

Georgetown, Ky. 40324

November 17th, 2009

Dear Mr. St. Angelo,

We are a group of concerned employees who CARE about our company, our future and the well being of co-workers. We understand today's economic situation and how it has affected Toyota and consequently us; but we feel strongly that even during these tough times doing what's right should still be the priority. We recognize and appreciate how our management has in the past shown an interest in maintaining a good relationship with the workers by understanding our concerns. In this spirit, we have over the last couple of weeks conducted a "sample poll" of our co-workers asking them to share their concerns with us. The attached signed petition represents a small sampling of how a great number of workers feel about our workplace. In the few areas where we conducted this activity there were a great many more Team Members who agreed with everything the petition states but were afraid to add their name for fear of retaliation. Those of us who have signed it strongly believe that you will understand it as an opportunity to make improvements for all without any retaliation to any of us.

The consensus among us is that it is time to reinstate TIE payments, bonuses, and annual wage increases. Toyota North America is again running profitably, our plant and several others have returned to full production, with line speed-ups, overtime and the addition of hundreds of lower paid temporaries. This is surely a sign of recovery!

As hard working employees, we do our best to ensure Toyota Georgetown succeeds but we deserve to be treated with honesty, respect and fairness. We want to also be a part of Toyota's success but we also have a responsibility to provide for our families in the best way possible. We are now seeing the rapid elimination of full time jobs from our grasp, as they are being contracted out to cheap-labor suppliers or temp agencies. This really concerns us since we believe this is happening at the expense of many loyal TMs. Many of us long-service full time TMs are now being forced back to the same assembly jobs where we began our Toyota career. Still others are suffering the effects of having to work second shift without getting an opportunity to fill the hundreds of vacancies which exist on first shift. This is a betrayal of the hard working fulltime Toyota employee who wants to do the best they can in their job to help Toyota be successful..

As workers we feel we are doing our part and as Kentucky taxpayers, we gave Toyota over \$420-million to locate and operate here. In exchange, Toyota promised to establish good paying fulltime jobs, not thousands of lower paid temporary jobs or unsafe jobs. Toyota should stand behind its promise to the Commonwealth and citizens of Kentucky, as well as to all Team Members and do their part too!

We respectfully request Toyota management address and correct these very serious problems.

Sincerely,

Concerned Team Members  
as shown on Petition.



Over the past several months we have listened to the most common concerns of our fellow Team Members. Like you, we share the same concerns about the many substantial changes and the current situations occurring at our workplace. These changes all fit with Toyota's "5-year plan" to reduce wage levels to the state average manufacturing rate and reduce the wage and benefit standards for auto workers and our communities.

The response has been very positive, including the unity of our collective position that we all should expect Toyota to address these valid concerns now. We have included a copy of these petitions for those Team Members who did not have an opportunity to review or sign them, so you can understand what is being referenced. The petition shown on the opposite page has a combination of petition signatures from many different pages.

## News You Can Use

**October 16, 2009-** Toyota in Canada recently eliminated five paid holidays annually and added an hour of daily overtime, scheduled extra production for three Saturdays, plus a pending speed-up of the assembly line for its workers in Cambridge and Woodstock. People are very upset about this," said Lee Sperduti, a veteran assembly-line Team Member. "Overtime is good security and everybody enjoys the money, but when it steadily takes more time away from your family, it hurts."

[www.financialpost.com/story-printer.html?id=2109035](http://www.financialpost.com/story-printer.html?id=2109035)  
[www.torontostar.com](http://www.torontostar.com)

**November 6, 2009-** Toyota workers in Buffalo, WV filed a grievance with the National Labor Relations Board. "We are standing up for our rights....." Tim Smith, a Toyota employee for 10-1/2 years said. Richard Snyder, who has worked for Toyota for nearly 11 years, said he wants "to continue to see Toyota succeed. But I also want to exercise my rights to talk with my coworkers and hand out union literature on our breaks."

[www.wvgazette.com/News/200911060878](http://www.wvgazette.com/News/200911060878)

**November 9, 2009-** The Georgetown, Ky., Toyota plant is running at "full capacity" working overtime on Saturdays and temporary workers laid off last year have been brought back, said Steve St. Angelo, president of the plant.....

For a total plant work force of 7,300. About 1,000 of them are temporary workers.  
[www.freep.com/article/20091109/BUSINESS01/91109036](http://www.freep.com/article/20091109/BUSINESS01/91109036)

**November 12, 2009-** Toyota motor Company and its labor union agreed Wednesday to make no changes to an average winter bonus set earlier in the year 930,000 yen.....

[www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus](http://www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus)



# Did We Really Do That?

Remember not too long ago? As newly hired TMs we were denied our promised wage progression. Then we returned to full production, laid off temporary workers were re-hired and the overtime is back. Some started to complain. Soon almost all complained loudly. Then when the older TMs joined in, it got even louder!! *Then in October our voices were heard and Management reinstated the deserved wage progression.*

Coincidence? We think NOT!

## Yes We Did!!

Toyota has returned to a profit situation in North America. But did we get our TIE payment back? No! Did we get even a slight increase in base wage? No! But we were told 4 weeks ago that things are still very tough for Toyota and we needed to do more – our healthcare costs increased by 50% in premiums. The hotline complaints are more frequent and more direct. Some started to complain. Soon almost all complained loudly. Recently, it has gotten even louder!! *Did Management feel pressured again? Were our voices heard? We are, after all, getting an \$800 “gift”.*

Coincidence? We think NOT!

## Yes They Did!!

Our coworkers at the engine plant in Buffalo, West Virginia are starting to let their voices heard too. They too have returned to full production with massive amounts of overtime and like us have lost a lot while making Toyota #1 in the world. Toyota is so concerned about their collective voices that they are trying to interfere with their rights to communicate during non work hours, in non work areas, which violates their federal rights. So on Friday Nov. 6<sup>th</sup>, West Virginia TMs filed charges with the NLRB defending their right to communicate freely. *Did Management feel pressured again? Will their voices be heard? They too were told about they would be receiving the \$800 “gift right, after the charge was filed.*

Coincidence? We think NOT!

## Yes We Really Can!!

Imagine what we could achieve by all standing together to form Our Union and negotiate a Legal Binding Contract! To Our West Virginia Co-Workers...WE Support You!

*Toyota Workers for a Better Toyota!*

# **EXHIBIT 4**

**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

vs.

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

Case No. A1000992

Judge Robert P. Ruehlman

**AFFIDAVIT OF ERNESTINE MONTGOMERY**

Now comes the Affiant, Ernestine Montgomery, and after first being duly sworn and cautioned, states as follows:

1. I am the owner of a 2005 Camry XLE purchased December 22, 2004 at Joseph Toyota in Cincinnati, Ohio. My car is paid in full.
2. On September 3, 2006, my Toyota suddenly accelerated in a Kroger parking lot, going up over the sidewalk and crashing into a brick wall. The car was towed to Joseph Toyota for repair and picked up 21 days later.
3. When I picked up the car, the gas pedal had been replaced. The pedal was approximately 4 inches shorter than before and the resistance was different.

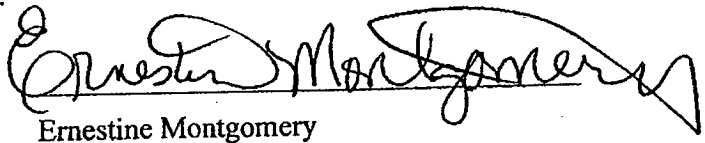
4. On November 25, 2009 I saw my "fixed" pedal on the news as part of a story about the Toyota gas pedal recall.

5. In December 2009 I took my car into Joseph Toyota for a service appointment and mentioned to the Service Manager that my Toyota already had the gas pedal "fix". The Service Manager responded that I could not have it, as the dealerships and service centers did not yet have the replacement part. I showed the Service Manager, who acknowledged I indeed had the "fixed" gas pedal.

6. I am afraid to drive my Toyota. I avoid driving it unless I absolutely have to. This has created a hardship for me.

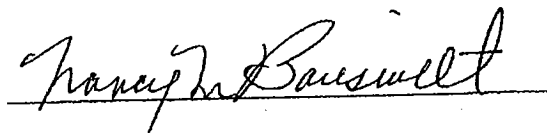
7. I believe it is unfair and unreasonable for Toyota to expect me to continue to drive my vehicle with an as yet unproven "fix" for the problem of sudden acceleration. I don't believe that Toyota is doing enough to ensure that the problem has been accurately diagnosed and that the "fix" is in fact going to resolve the problem.

FURTHER AFFIANT SAITH NAUGHT.

  
Ernestine Montgomery

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Hamilton )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22nd day of February, 2010.

  
Nancy R. Bauswell

Notary Public

My Commission Expires:



Nancy M. Bareswit  
Notary Public, State of Ohio  
My Commission Expires 05-05-2014

# **EXHIBIT 2**

333814

459089

QUIT CLAIM DEED

FOR THE CITY OF CINCINNATI  
BY J. E. P. GRIFFIN

This Deed, made this 6th day of August, 1979 from  
COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, an  
Ohio nonprofit corporation (hereinafter called "Grantor"),  
acting through its duly authorized officers and on behalf of  
and as Agent for the City of Cincinnati, a municipal corpora-  
tion organized and existing under the laws of the State of  
Ohio (hereinafter called "City"), to TOYOTA MOTOR DISTRIBUTORS,  
INC., a California Corporation (hereinafter called "Grantee"),  
the tax mailing address of which is 2055 West 190th Street,  
Torrance, California 90504.

WITNESSETH:

WHEREAS, Grantor, pursuant to Ohio Revised Code  
Section 1724.10, Cincinnati Ordinance No. 86-1966, Cincinnati  
Ordinance No. 450-1976, Cincinnati Ordinance No. 407-1977,  
and a certain agreement, as amended, between Grantor and  
City effective April 1, 1976, which agreement and amendment  
(hereinafter the "Agreement") are recorded, respectively, in  
Miscellaneous Book 28, page 447, and Miscellaneous Book 28,  
page 1079, in the Hamilton County, Ohio Recorder's Office,  
is authorized on behalf of and as agent for City to develop  
for industrial, commercial, distribution and research purposes  
certain real estate known as Tracts 2, 3, 3A and 6 located  
within the municipal boundaries of Blue Ash, Ohio, which  
Tracts are more fully described in the said Agreement; and,

WHEREAS, Grantor, pursuant to Ohio Revised  
Section 1724.10, Cincinnati Ordinance No. 86-1966,  
Ordinance No. 450-1976, Cincinnati Ordinance No. 407-



4169-1164

TOTAL PAGES 2/4/12

10.00

and the said Agreement, acting by and through its duly authorized officers and on behalf of and as agent for City, is authorized to transfer the title of City to any part or parts of said Tracts 2, 3, 3A and 6 to interested purchasers such as Grantee; and,

WHEREAS, Grantor and Grantee entered into a Contract to Purchase dated July 24, 1979, wherein Grantee agreed to purchase a portion of said Tracts 2, 3, 3A and 6, which portion is more fully described in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration to it paid by Grantee, the receipt of which is hereby acknowledged, Grantor, acting through its duly authorized officers and on behalf of and as agent for the City, does hereby GRANT to Grantee, its successors and assigns forever, subject to the terms and conditions set forth below, the real estate situated in the City of Blue Ash, County of Hamilton, State of Ohio, which is described in Exhibit A attached hereto and made a part hereof (hereinafter called the "Premises"), and all of the estate, right, title and interest of City and Grantor in and to the Premises, together with all privileges and appurtenances to the same belonging.

TO HAVE AND TO HOLD the Premises with appurtenances thereto and unto the said Grantee, its successors and assigns forever, subject to the following covenants and conditions:

1. No buildings, structures or other improvements shall be erected or constructed on the Premises until a site plan (showing building location, elevations, signage



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parking areas, utility plans, general landscape areas, grading plans and general development), and a preliminary rendering or design of the exterior buildings and structures (as shown on elevation drawings) to be constructed thereon is approved in writing by the Executive Committee of the Board of Trustees of Grantor, or by Grantor's successors and assigns, and Grantee, for itself, its successors and assigns, covenants that no amendments to the above-described plans or any additional development of the Premises shall be made without the prior written approval of the Executive Committee of the Board of Trustees of Grantor, its successors and assigns. The basis for approval of such plans shall be the Planning Standards attached to and incorporated into the Contract to Purchase, provided, however, that CIC may approve or require plans which provide for reasonable deviations from such standards when such deviations are necessary or desirable because of special conditions of development. All construction shall be done in accordance with said approved plans. This covenant is for the benefit of Grantor and of all owners of any part or parts of said Tracts 2, 3, 3A and 6; provided that any owner who seeks to enforce such Planning Standards against Grantee, its successors or assigns shall then be bound by similar planning standards. This covenant shall be a covenant running with the land (and not a condition of reverter) and shall be in effect until City is no longer the owner of any portion or portions of said Tracts 2, 3, 3A and 6, and the Grantor is no longer the agent of the City for the purposes set forth in the said Agreement, until January 1, 2020, whichever shall last occur; provided, however, that Grantor reserves to itself the right to terminate this covenant at an earlier termination date in a recorded instrument filed with the Hamilton County Recorder.



by Grantor pursuant to its right to amend the Planning Standards as set forth in the Contract to Purchase.

2. Grantee, its successors and assigns shall commence and complete the initial industrial, commercial, distribution and research development of the Premises as contemplated in plans approved pursuant to paragraph 1, above, and if Grantee, its successors or assigns shall fail to commence the same within twenty-four (24) months from the first of the month following the date of delivery of this deed or, having commenced the same, shall fail to complete substantially the same within a reasonable time after the first of the month after the commencement of such work, then CIC shall have the right to give written notice to Grantee or its successors or assigns of such failure and thereupon Grantee or its successors or assigns shall commence or resume construction within six (6) months and complete the same within twelve (12) months after receipt of such written notice. If Grantee its successors or assigns shall not so commence or resume construction and complete the same within the times so provided subsequent to receipt of such written notice, then within thirty (30) days of receipt of written demand served by Grantor or its successors and assigns on Grantee its successors or assigns, within six months of such default for failure to commence or resume construction and to complete, Grantee, its successors or assigns, shall reconvey the Premises, free and clear of all liens except a lien for assessments, if any, not yet due and payable to the City or to the Grantor, as may be directed by the Grantor, its successors or assigns shall refund to Grantor, its successors or assigns the purchase price paid therefor.



3. Grantee shall not, prior to the completion of the initial industrial, commercial, distribution and research development of the Premises as contemplated by the Contract to Purchase, convey or attempt to convey the Premises or any part thereof without the prior written approval of Grantor, its successors or assigns; provided, however, that Grantee may, without prior approval of Grantor but subject to all covenants and conditions provided in this deed:

- (i) convey the Premises to any entity controlling, controlled by, or under common control with Grantee,
- (ii) convey the Premises as required for economic development or industrial revenue bond financing, or
- (iii) encumber the Premises with a first mortgage or security interest for the purposes of obtaining financing for the acquisition and/or development thereof.

4. Prior to the completion of the initial development contemplated by the Contract to Purchase, Grantee, its successors and assigns shall pay the real estate taxes and any assessments required of it pursuant to the Contract to Purchase on or before the time that the same become due, and shall not place or permit any lien or other encumbrance upon the Premises, except a first mortgage or security interest incurred for the purpose of obtaining financing to complete the development thereof, and shall not suffer any levy or attachment to on the Premises or to be or remain a charge or encumbrance or against the Premises; provided, however, that Grantee



DEED 4169pc1168

successors or assigns shall not be deemed to be in default under this covenant if the total amount of such unpermitted encumbrances shall not exceed the purchase price, or if Grantee, its successors or assigns shall actively be engaged in contesting in good faith any mechanics lien filed against the Premises. If Grantee, its successors or assigns defaults in compliance with the terms and conditions of this paragraph and fails to cure such default within thirty (30) days after written demand by Grantor, its successors or assigns so to do, Grantor, its successors or assigns shall have the right to tender to Grantee the amount of the purchase price paid for the Premises, less an amount sufficient to discharge all liens and encumbrances then subsisting on the Premises, excepting only installments of assessments not yet due and payable, and thereupon Grantee, its successors or assigns shall reconvey the Premises to the City or to Grantor, as may be directed by Grantor its successors or assigns. If the amount of the purchase price is insufficient to discharge all such liens, Grantor, its successors or assigns shall have the right to pay the total amount of the purchase price to such lienholders in accordance with their priority and upon payment of such total sum, all such liens shall be deemed discharged and Grantor, its successors or assigns shall be entitled a decree ordering all such liens cancelled of record. The rights of all lienholders in the premises are expressly made subject to this paragraph.

5. The restrictions set forth in the above paragraphs 2, 3 and 4, including the rights to repurchase and to discharge liens in paragraphs 2 and 4, shall terminate upon the issuance by Grantor, its successors or assigns of a certificate of completion as contemplated by the Contract to Purchase, with



TOTAL PAGES 6712

certificate shall be suitable for recording in the Hamilton County, Ohio Land Records, or at such earlier time as may be expressly provided for in the Contract to Purchase or this deed. None of the covenants, terms or conditions of any agreement between the Grantor and the Grantee insofar as they relate to the Premises shall be deemed merged into this deed.

IN WITNESS WHEREOF, Grantor, acting by and through CHARLES E. SCRIPPS, its President, and WILLIAM E. LISTERMAN, its General Manager, has caused this deed to be executed as of the date first set forth above.

WITNESS:

COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, on behalf of and As Agent for the City of Cincinnati.

Jean Ripberger  
As to CES

Jean Ripberger  
As to CES

Legal Phelps  
As to WEL

Jean Ripberger  
As to WEL

By Charles E. Scripps  
Charles E. Scripps  
President

and

By William E. Listerman  
William E. Listerman  
General Manager

STATE OF OHIO )  
COUNTY OF HAMILTON )

BE IT REMEMBERED That on this 8th day of August, 1979, before me, the undersigned, a Notary Public in and for said county, appeared COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, acting on behalf of and as Agent for the City of Cincinnati by CHARLES E. SCRIPPS, its President, thereunto duly authorized, and acknowledged as his voluntary act and deed the execution of the foregoing Deed of said COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI on behalf of and as Agent for the City of Cincinnati for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Jean Ripberger  
Notary Public



DEED BOOK 4169 PG 1170

JEAN RIPBERGER  
Notary Public, State of Ohio  
My Commission Expires Oct. 15, 1981 TOTAL PAGES 712

STATE OF OHIO )  
 )  
COUNTY OF HAMILTON )

BE IT REMEMBERED That on this 6th day of August, 1979, before me, the undersigned, a Notary Public in and for said county, appeared COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, acting on behalf of and as Agent for the City of Cincinnati by WILLIAM E. LISTERMAN, its General Manager, thereunto duly authorized, and acknowledged as his voluntary act and deed the execution of the foregoing Deed of said COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI on behalf of and as Agent for the City of Cincinnati for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Jean Ripberger  
Notary Public

JEAN RIPBERGER  
Notary Public, State of OHIO  
My Commission Expires Oct. 16, 1982

CERTIFICATION

The City of Cincinnati does hereby certify as of this 20 day of August, 1979, there is no default as to any of the terms or conditions of the Agreement dated as of April 1, 1976, as amended, by and between the City of Cincinnati and Community Improvement Corporation of Greater Cincinnati. The City of Cincinnati further states that as provided in Section V, paragraph 2c(6) of said Agreement as of April 1, 1976 as amended, the form of the above Deed has been approved by the City Manager and Solicitor of the City of Cincinnati.

CITY OF CINCINNATI

By [Signature]  
ACTING City Manager

By [Signature]  
City Solicitor

This instrument prepared by:

Richard S. Roberts, Esq.  
600 Dixie Terminal Building  
Cincinnati, Ohio 45202  
381-2838



TOTAL PAGES 8/12

DEED 4169-1174

CITY OF CINCINNATI -- DEPARTMENT OF PUBLIC WORKS  
DIVISION OF ENGINEERING; GENERAL ENGINEERING SECTION

LOT 2 OF TRACT 2; C.I.C. INDUSTRIAL PARK IN THE CITY OF BLUE ASH

Situate in Section 17, Town 4, Entire Range 1, Sycamore Township, Hamilton County, Ohio, and being more particularly described as follows:

From the northeast corner of Section 17, measure on the North line of Section 17, North 79°17'07" West, 1690.18 feet to the westerly Limited Access, Right-of-Way line of the Reed Hartman Highway, as recorded in Plat Book 167, Pages 35 thru 46, and Deed Book 3782, Pages 897 thru 900, Hamilton County Recorder's Office, thence along said westerly line of a curve deflecting to the left with a radius of 1185.92 feet a distance of 412.52 feet (chord of said curve has a bearing of South 15°33'19" West and a length of 410.45 feet); thence continuing on said westerly line South 5°35'25" West, 695.00 feet to an iron bar and the POINT OF BEGINNING; thence North 84°24'35" West, 374.18 feet to an iron bar; thence North 5°35'25" East, 93.46 feet to an iron bar; thence North 36°51'12" West, 314.53 feet to an iron bar; thence North 36°08'57" West, 336.24 feet to an iron bar; thence South 85°32'43" West, 61.11 feet to an iron bar; thence South 5°49'10" West, 2027.45 feet to a spike and the centerline of Creek Road; thence along said centerline South 79°21'18" East, 622.13 feet to the westerly Limited Access Right-of-Way line of the Reed Hartman Highway; thence continuing along said Limited Access, Right-of-Way line the following courses and distances: North 10°38'42" East, 30.00 feet; thence South 79°21'18" East, 213.53 feet; thence along a curve deflecting to the left with a radius of 40.00 feet for a distance of 66.36 feet to an iron bar (the chord of said curve has a bearing of North 53°06'57" East and a length of 59.01 feet); thence North 5°35'25" East, 1465.53 feet to an iron bar and to the POINT OF BEGINNING and containing 34.1204 acres, more or less, subject to all legal highways.

Being part of the same premises conveyed to the City of Cincinnati, Ohio, recorded in Deed Book 2768, Page 39, Deed Book 2354, Page 295, Deed Book 2495, Page 576 and Deed Book 2495, Page 345 of the Hamilton County Recorder's Office.

Subject to an easement conveyed to the Board of County Commissioners, Hamilton County, Ohio, recorded in Deed Book 2495, Page 345 of the Hamilton County Recorder's Office.



Exhibit A to Quit Claim Deed Dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.  
612-10-1  
334  
576.5

DEED 4169-1172

Exhibit A to Quit Claim Deed Dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

County, Ohio by the City of Cincinnati for installation, operation and maintenance of a storm drainage facility and/or slopes over part of the above described tract, being more particularly described as follows:

From the same POINT OF BEGINNING as the above described premises measure North 84°24'35" West, 39.67 feet; thence South 13°11'06" West, 93.36 feet; thence South 2°10'02" West, 535.96 feet; thence North 84°24'35" West, 30.00 feet; thence South 5°35'25" West, 40.00 feet; thence South 84°24'35" East, 35.00 feet; thence South 13°05'10" West, 383.28 feet; thence South 5°35'25" West, 45.00 feet; thence South 36°23'49" East, 67.27 feet; thence South 5°35'25" West, 322.98 feet; thence South 36°08'39" West, 46.27 feet to a point in the westerly Limited Access, Right-of-Way line of the Reed Hartman Highway and the northerly Right-of-Way line of Creek Road; thence along said westerly Limited Access, Right-of-Way line on a curve deflecting to the left with a radius of 40.00 feet for a distance of 66.36 feet to an iron bar (chord of said curve has a bearing of North 53°06'57" East and a length of 59.01 feet); thence continuing on said westerly line North 5°35'25" East, 1465.53 feet to an iron bar and the POINT OF BEGINNING and containing 1.2201 acres, more or less. Said easement was conveyed by deed recorded in Deed Book 4011, page 1210.

Reserving to the Board of County Commissioners, Hamilton County, Ohio, its successors and assigns a permanent 15 foot easement with the right of entry and re-entry for the perpetual maintenance, reconstruction, repair and operation of a SANITARY SEWER. Said easement being 7.5 feet on each side of the following described centerline;

From the same POINT OF BEGINNING as the above described premises measure North 84°25'35" West, 206.56 feet to the POINT OF BEGINNING of the centerline of said 15 foot SANITARY SEWER EASEMENT; thence along the centerline of said South 3°24'00" East, 202.12 feet to a point; thence South 3°46'48" feet to a point; thence South 11°28'12" East, 303.72 feet to a point; thence South 22°45'48" East 66.89 feet to a point in the westerly Limited Right-of-Way line of the Reed Hartman Highway and being the easterly the centerline of said easement.



TOTAL PAGES 10712



Exhibit A to Quit Claim Deed dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

Said easement has the following restrictions:

No improvements of any kind, which will interfere with access to the sewer, shall be made on said easement, and the County of Hamilton shall not be responsible to any present or future owners of said property for any damage done on said easement to sod, shrubbery, trees or any other improvements, either natural or artificial, by reason of entering for the purpose of constructing, maintaining replacing or repairing the sewer.

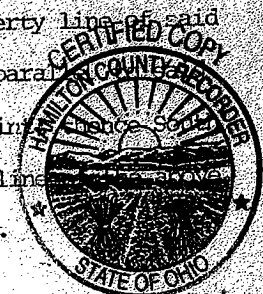
Any building or structure to be constructed on the above described parcel shall be kept not less than three (3) feet from the easement line nearest the site of the proposed structure.

The Metropolitan Sewer District reserves the right to approve any such building or structure plans before construction shall be started within the limits of the above described parcel.

Also reserving to the Board of County Commissioners, Hamilton County, Ohio, its successors and assigns a permanent 15 foot easement with the right of entry and re-entry for the perpetual maintenance, reconstruction, repair and operation of a SANITARY SEWER. Said easement being 7.5 feet on each side of the following described centerline;

From the same point of beginning as the above described premises measure North 84°25'35" West, 374.18 feet to an iron bar; thence North 5°35'25" East, 82.35 feet to a point in the easterly line of said premises and the point of beginning of the centerline of said easement; thence North 36°51'12" West along said centerline parallel to and 7.5 feet from the northeasterly property line of said premises, 322.78 feet to a point; continuing 7.5 feet from and parallel to said property line; thence North 36°08'57" West, 332.10 feet to a point; thence North 85°32'43" West, 61.11 feet to a point in the westerly property line of said premises and the westerly terminus of said centerline.

DEED BOOK 4169-1174



Said easement has the following restrictions: No improvements of any kind, which will interfere with access to the sewer, shall be made on said easement and the

TOTAL PAGES 11/7/12

Exhibit A to Quit Claim Deed dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

County of Hamilton shall not be responsible to any present or future owners of said property for any damage done on said easement to sod, shrubbery, trees or any other improvements, either natural or artificial, by reason of entering for the purpose of constructing, maintaining, replacing or repairing the sewer.

Any building or structure to be constructed on the above described parcel shall be kept not less than three (3) feet from the easement line nearest the site of the proposed structure.

The Metropolitan Sewer District reserves the right to approve any such building or structure plans before the construction shall be started within the limits of the above described parcel.

This description is based on a survey made by the City of Cincinnati under the direction of Thomas J. Howard.

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COUNTY OF OHIO

DEED BOOK 4169-1175



TOTAL PAGES 12712

Wayne Coates  
Hamilton County Recorders Office  
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Filed: 08/31/1979 11:30:00 AM \$25.00  
ATTEST: Wayne Coates  
*Wayne Coates*  
BY: FORMAN, TIMOTHY A



TOTAL PAGES 12

CERTIFIED BY  
*[Signature]*

DATE 2-24-10

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)**

HUGH W. COX,  
PAMELA M. COX,  
ERNESTINE MONTGOMERY,

and

others similarly situated,

**Plaintiffs,**

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
TOYOTA LEASE TRUST,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC.,

TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
CLYDE DYSON,

and

BEECHMONT TOYOTA, INC.

**Defendants.**

Civil Action No. 10-127

JUDGE \_\_\_\_\_

**NOTICE OF REMOVAL  
BY DEFENDANTS  
TOYOTA MOTOR SALES, U.S.A.,  
INC., TOYOTA LEASE TRUST,  
AND TOYOTA MOTOR  
ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.**

Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter the "Toyota Defendants") hereby jointly petition this Court for removal of this action from the Common Pleas Court of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446 and 1453, and in support thereof state the following:

## I. BACKGROUND

1. On or about February 2, 2010, Plaintiffs Hugh W. Cox and Pamela M. Cox commenced this putative class action by filing their Class Action Complaint ("Complaint") in the Common Pleas Court of Hamilton County, Ohio, Case No. A 1000992. Plaintiffs demanded a jury trial.

2. On or about February 5, 2010, Plaintiffs filed an amended complaint ("Amended Complaint") adding an additional plaintiff, Ernestine Montgomery.

3. Plaintiffs allege in their Amended Complaint that they are bringing "this action on behalf of a class consisting of: All residents of the State of Ohio who purchased or leased Toyota manufactured vehicles that share common design and engineering defects that allow the Toyota manufactured vehicles to experience sudden acceleration." (Amended Complaint ¶ 21).

4. This action is just one of several recent putative class actions filed against some or all of the Toyota Defendants based on allegations regarding the recall of certain models of Toyota automobiles due to alleged accelerator defects.

5. As of the date of the filing of this notice of removal, there are more than seventy (70) class actions pending against some or all of the Toyota Defendants in various federal district courts bringing claims relating to these same allegations, including the United States District Court for the Southern District of Ohio, Western Division (Dayton), *Shumaker, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, Case No. 3:10-cv-00061-WHR.

6. On February 1, 2010, a petition was filed with the Judicial Panel on Multidistrict Litigation seeking pretrial coordination of all pending federal cases before one United States District Court judge. *See MDL 2151: In Re: Toyota Motor Corp.*

*Defective Gas Pedal Products Liability Litigation.* If the Judicial Panel decides to create multidistrict litigation proceedings for these cases, Defendants will seek to transfer this case to those proceedings.

7. Service of the Summons and the original Complaint was made on Toyota Motor Sales, U.S.A., Inc. ("TMS") via certified mail on February 8, 2010. (Ex. 1, Hamilton Co. Court Docket).

8. Service of the Summons and the original Complaint was made on Toyota Lease Trust ("TLT") via certified mail on February 8, 2010. *Id.*

9. Service of the Summons and the original Complaint was made on Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") via certified mail on February 4, 2010. *Id.*

10. Service of the Summons and the original Complaint was made on Beechmont Toyota, Inc. via certified mail on February 5, 2010. *Id.*

11. Service of the Summons and the original Complaint was made on Clyde Dyson via certified mail on February 5, 2010. *Id.*

12. The Summons and original Complaint were sent via certified mail to the Toyota North American Technical Training Center and received at that building on February 5, 2010, but the Center is simply a building, and is not a person or entity subject to suit or upon whom service is permissible as explained in more detail below. *Id.*

13. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b).

14. Pursuant to 28, U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Defendants in Case No. A 1000992 are attached as Exhibit 1.

Exhibit 1 also includes the state court docket and the contents of the state court case file, including the Amended Complaint and Plaintiffs' Motion for Preliminary Injunction.

15. No further proceedings have occurred in this action.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332(d), 1441 AND 1453**

16. This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA") as codified at 28 U.S.C. § 1332(d).

17. CAFA provides that a federal district court shall have original jurisdiction of any civil class action in which: (A) there are 100 or more members in the plaintiffs' proposed class; (B) any member of the proposed class is a citizen of a state different from any defendant; and (C) the amount placed in controversy by the claims of the class members exceeds the sum or value of \$5,000,000 in the aggregate (exclusive of interest and costs). 28 U.S.C. § 1332(d). As demonstrated herein, all of these criteria are met.

**A. CLASS ACTION CONSISTING OF 100 OR MORE MEMBERS**

18. CAFA defines the term "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This action has been filed as a state court class action pursuant to Ohio Civil Rule 23 which is similar to Federal Civil Rule 23. (Amended Complaint ¶¶ 21-31). Plaintiffs' case falls within the definition of class action as contained in CAFA.



19. Plaintiffs allege that "[t]he Class consists of several thousand Ohio residents." (Amended Complaint ¶ 25).

20. Filed with this Petition is the declaration of George T. Morino, National Quality Compliance Manager for Toyota Motor Sales, U.S.A., Inc. His declaration establishes that based upon records maintained by Toyota Motor Sales, U.S.A., Inc., approximately 52,159 recall notices will be sent to Ohio residents for Toyota motor vehicles that are the subject of the voluntary recall initiated by TMS in cooperation with the National Highway Safety Transportation Administration ("NHSTA") on January 21, 2010, to address isolated reports of sticking accelerator pedal mechanisms. (Morino Dec. at ¶ 8).

21. Therefore, CAFA's requirement of a minimum putative class size of 100 or more persons is satisfied.

**B. DIVERSITY OF CITIZENSHIP UNDER CAFA**

22. Defendant TMS is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMS is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

23. Defendant TLT is a business trust. TLT is and was at the time this suit was commenced a business trust organized and existing under the laws of the state of Delaware with its principal place of business in Delaware. TLT is not now, nor was it at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

24. TMTT, Inc. is not a named defendant. TMTT, Inc. is the sole trustee of TLT. TMTT, Inc. is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Illinois.<sup>1</sup> TMTT, Inc. is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

25. Defendant TEMA is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Kentucky with its principal place of business in Kentucky. Defendant TEMA is not now, and was not at the time the original Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

26. Plaintiff has attempted to name "Toyota North American Technical Training Center" as a defendant, but this is not a corporate entity. It is a building located in Hamilton County, OH, owned by Defendant TMS.<sup>2</sup> (Ex. 2, certified copy of Deed).

27. Defendant Beechmont Toyota, Inc. is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Ohio with its principal place of business in Ohio.

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<sup>1</sup> R.C. 1746.02 provides that a business trust is an unincorporated legal entity. For purposes of CAFA, in determining the citizenship of an unincorporated association such as a business trust, the court must look to the trust's principal place of business and the state under whose laws it is organized. 28 U.S.C. § 1332(d)(10). In addition, outside the context of a class action, the Sixth Circuit has noted that for purposes of determining the citizenship of a trust, the court looks to the citizenship of the trustee of the trust. See, e.g., *Homfeld II, LLC v. Comair Holdings, Inc.*, 53 Fed. Appx. 731 (6th Cir. 2002) ("a business trust has the citizenship of its trustees"); *Smith v. Nelson*, 86 F. Supp. 2d 787 (N.D. Ohio 2000) (citizenship of trustee determines diversity analysis).

<sup>2</sup> The Deed identifies Toyota Motor Distributors ("TMD") as the owner of the building. TMD was merged into TMS in 1995. A certified copy of the certificate of merger is attached as Ex. 3.

28. Defendant Clyde Dyson is and was at the time this suit was commenced an employee of TMS and a resident of the state of Ohio.

29. Defendants are informed and believe that all the named Plaintiffs are and were at the time this suit was commenced, residents and citizens of the State of Ohio. (Amended Complaint ¶¶ 16-17).

30. The diversity of citizenship between Plaintiffs and the Toyota Defendants satisfies the minimal diversity requirements of CAFA as set forth in 28 U.S.C. § 1332(d)(2), which provides that the Court shall have jurisdiction if any member of a class of plaintiffs is a citizen of a State different from any defendant.

**C. AMOUNT IN CONTROVERSY UNDER CAFA**<sup>3</sup>

31. CAFA provides that a federal district court shall have original jurisdiction over a putative class action where the claims of the individual class members, when aggregated, exceed the sum of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

32. Other litigants recently have sued one of some of these same Toyota Defendants asserting that their putative class action claims exceed the sum of \$5,000,000 under CAFA.<sup>4</sup>

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<sup>3</sup> Though the Toyota Defendants dispute that Plaintiffs are entitled to bring this action, vehemently deny liability, and contend that Plaintiffs can recover nothing under the claims in the Complaint and the Amended Complaint, for purposes of removal only, Plaintiffs' allegations and the relief sought by Plaintiffs are to be considered in determining the value of the claims as pled and the amount in controversy.

<sup>4</sup> See, e.g., Complaint (¶ 6) in *Troy Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, N.D. Ohio, Case No. 1:10-cv-00260 ("This Court also has jurisdiction pursuant to 28 U.S.C. 1332 in that the amount in controversy exceeds the sum or value of \$5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants." see also Complaint (¶ 2) *Daniel Lee v. Toyota Motor North America, Inc., et al.*, N.D. Ohio, Case No. 3:10-cv-00280, ("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."); see also Complaint (¶ 4) in *Rebecca S. Shumaker v. Toyota Motor Sales, U.S.A., Inc., et al.*, S.D. Ohio, Case No.

33. The legislative history makes it clear that § 1332(d)(6) is to be interpreted expansively. The Senate Committee states: ". . . if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the case. By the same token, the Committee intends that a matter be subject to federal court jurisdiction under this provision if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." 109<sup>th</sup> Congress, 1<sup>st</sup> Session, Senate Rep. 109-14, at p. 43 (February 28, 2005).

34. Plaintiffs' Amended Complaint contains the following causes of action: (I) Fraudulent Concealment and Fraud by Omission; (II) Fraud; (III) Violation of the Ohio Consumer Sales Practices Act; (IV) Violation of the Ohio Deceptive Trade Practices Act; (V) Breach of Lease/Contract; (VI) Breach of Express Warranties; (VII) Unjust Enrichment; (VIII) Breach of Implied Warranty of Merchantability; (IX) Breach of Implied Warranty of Fitness for a Particular Purpose; (X) Negligence; (XI) Strict Product Liability. Plaintiffs also seek punitive damages, attorneys' fees and injunctive relief. (Amended Complaint, *passim*).

35. Although Plaintiffs' Amended Complaint does not specifically set forth the amount in controversy, Plaintiffs assert that as a result of their reliance on Toyota's alleged fraudulent concealment of defects in the automobiles at issue, Plaintiffs and

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3:10-cv-00061 ("This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) which, under the provisions of the Class Action Fairness Act (CAFA), explicitly provides for original jurisdiction in the Federal Courts of any class action where the amount in controversy exceeds the sum or value in the aggregate of \$5,000,000, exclusive of interest and costs." There are dozens of other similar cases recently filed in federal district courts across the country based on CAFA diversity jurisdiction that are currently pending against Toyota.

Class members have been injured in an amount including but not limited to “the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota’s refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.” (Amended Complaint ¶ 35).

36. They also claim that they have been subjected to the “very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds. . . .” (Amended Complaint ¶ 62).

37. Further, Plaintiffs allege they have incurred “the financial loss of owning or leasing vehicles that are unsafe as well as being subjected to the potential risk of injury.” (Amended Complaint ¶ 81).

38. Plaintiffs also claim that they **“have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles.”** (Amended Complaint ¶ 62) (emphasis added).

39. Plaintiffs assert that the defendants “have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs and Class members” such that “Defendants should be required to make restitution of all amounts by which they were enriched. . . .” (Amended Complaint ¶ 66).

40. Plaintiffs specifically pray for an Order “[r]equiring Defendants **to provide, or reimburse Plaintiffs and all members of the class, for the cost of obtaining, non-defective, replacement vehicles until the vehicles owned or leased by Class members have been repaired or have been replaced** with vehicles that do not have defects in the accelerator or any other system.” (Amended Complaint, ¶ 99A) (emphasis added).

41. Plaintiffs also seek an Order “[r]equiring Defendants **to provide counseling services to all Class members who have suffered emotional distress** as a result of being forced to drive defective, dangerous vehicles. . . .” (Amended Complaint, ¶ 99C) (emphasis added).

42. Plaintiffs further seek an Order “[r]equiring Defendants to **reform their lease and finance contracts with class members and cease collecting lease payments or car payments** from all Class members who leased or purchased Toyota vehicles with defects alleged in this Complaint.” (Amended Complaint, ¶ 99D) (emphasis added).

43. In addition, Plaintiffs ask for “an award of compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered. . . .” (Amended Complaint, ¶ 100).

44. Plaintiffs further pray for “[a]n award of punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct. . . .” (Amended Complaint, ¶ 101).

45. Finally, Plaintiffs ask for “[a]n award that causes the disgorgement of all amounts by which Defendants have been unjustly enriched; . . . an award of **attorneys’ fees** and prejudgment interest; . . . and for such other and further relief as the Court or Jury may deem appropriate.” (Amended Complaint, ¶¶ 102-104) (emphasis added).

46. It is well settled law that “[i]n calculating the amount in controversy, the court may consider compensatory damages, punitive damages, statutorily authorized attorneys fees, and economic value of the rights the plaintiff seeks to protect through injunctive relief.” *Curry v. Applebee’s International Inc.*, 2009 U.S. Dist. Lexis 114143, at \*14-15 (S.D. Ohio 2009) citing *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376

(6th Cir. 2007) (“As a general rule, attorneys’ fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees.”); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 407 (6th Cir. 2007) (value of injunctive relief based on economic value of rights the plaintiff seeks to protect); *Buckeye Recyclers v. CHEP USA*, 228 F. Supp. 2d 818, 822 (S.D. Ohio 2002) (injunctive relief); *Brown v. Jackson Hewitt, Inc.*, No. 1:06-cv-2632, 2007 U.S. Dist. LEXIS 13328, 2007 WL 642011, at \*3 (N.D. Ohio Feb. 27, 2007) (citing *Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (punitive damages); *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (attorneys’ fees); *Pennsylvania R.R. Co. v. Girard*, 210 F.2d 437, 439 (6th Cir. 1954) (injunctive relief).

47. Plaintiffs offer no explanation as to how they intend to calculate the damages they seek, and while Defendants dispute that Plaintiffs are entitled to any of the damages sought in their complaint, for purposes of determining the aggregate amount placed in controversy under CAFA, Defendants provide the court with the following facts.

48. The total number of notices that will be sent to Ohio residents in connection with the January 21, 2010 recall referenced in the Amended Complaint (“January Recall”) is approximately 52,159. (Morino Dec. ¶ 8).

49. In connection with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue. The Company has agreed to reimburse authorized dealerships seven tenths of one

hour of labor for the repair. The average hourly rate for this repair in the state of Ohio is \$80.05 per hour. (Morino Dec. ¶ 11).

50. Multiplying the labor cost of seven tenths of one hour times the average hourly rate in Ohio of \$80.05 per hour means the labor cost per vehicle equals \$56.04. If that amount is taken times the total number of recall notices sent for the state of Ohio the total amount of the labor repair cost is \$2,922,990.36.

51. Plaintiffs also seek the cost of a loaner car for the period of time during which their cars are awaiting repairs. In the past, under certain circumstances, the Company has reimbursed its independent dealerships \$35.00 a day for the use of a loaner vehicle by a customer during a repair. (Morino Dec. ¶ 12).

52. Plaintiffs' filed suit on February 2, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent to Ohio residents. (Morino Dec. ¶ 9. That means approximately 47,159 recall notices have not yet been sent to Ohio residents. The total number of days from the date of the filing of the plaintiffs' initial Complaint to February 22, 2010, is 20 days. For at least 20 days, 47,159 vehicles have not undergone repairs pursuant to the January Recall program. Multiplying the 20 days times 47,159 recall notices times \$35.00 per day equals \$33,011,300 as the amount placed in controversy by the loaner car relief sought in the Amended Complaint. Even if the cost of a rental car were just \$5.35 per day, that would exceed the \$5,000,000 aggregate amount in controversy necessary for purposes of determining jurisdiction under CAFA.

53. Plaintiffs also seek to reform their lease and purchase contracts so as to cease making payments for their vehicles. In that regard, they have sought a preliminary injunction from the state court granting that relief.



54. For plaintiff Cox, his lease payment is \$234.95 per month for a lease term of 36 months. (Amended Complaint Ex. A). He leased his vehicle on November 29, 2009. *Id.* If he were to cease making all payments starting with his March 2010 payment, the 32 monthly payments he would not be making would equal \$7,518.40. If this amount is typical of all class members, the amount placed in controversy on the contract reformation claim alone is \$7,518.40 times 52,159 which equals \$392,152,225.60.

55. But Plaintiffs' prayer for relief does not stop there. Plaintiffs also assert causes of action under both the Ohio Consumer Sales Practices Act ("OCSPA"), R.C. § 1345.01, *et seq.*, and the Ohio Deceptive Trade Practices Act ("ODTPA"), R.C. § 4165.01, *et seq.*, both of which provide for injunctive relief and the statutory award of attorneys' fees. R.C. §§ 1345.09; 4165.03. Since these statutes authorize awards for attorneys' fees, Plaintiffs' claim for attorneys' fees also may be considered for purposes of calculating the \$5,000,000 amount placed in controversy under CAFA.

56. As a reference point for awards of attorneys' fees in class actions, the Federal Judicial Center conducted a study in 1994-95 entitled "Empirical Study of Class Actions in Four Federal District Courts." The study found that the median rates for attorneys' fees ranged from 27% to 30% of the recovery for all class actions resolved or settled over a four year period in the four selected district courts. FJC-R-96-2.

57. In addition to attorneys fees, Plaintiffs seek counseling for emotional distress, punitive damages, disgorgement, and the loss in value of their vehicles due to the recall. When all of these claims for relief are viewed in the context of the number of recall notices to be issued to Ohio residents, the amount placed in controversy by plaintiffs' claims clearly is in excess of \$5,000,000.

58. Defendants contend that the named Plaintiffs and the putative class are not entitled to any relief, however, given the size of the proposed class and the breadth of the relief sought, the amount placed in controversy by this litigation far exceeds the \$5,000,000 requirement for CAFA jurisdiction.

**D. NO CAFA EXCEPTIONS APPLY**

59. Although CAFA has provisions under which the District Court may or shall decline jurisdiction, no statutory exception to CAFA jurisdiction applies in this case.<sup>5</sup> 28 U.S.C. § 1332(d)(3) and (4).

60. Section 1332(d)(3), (the "interest of justice" exception) does not apply because, among other reasons, the primary defendants, TMS, TLT and TEMA are not citizens of the state where this action was originally filed.

61. Section 1332(d)(4)(A), (the "local controversy exception"), does not apply because, among other reasons, neither Clyde Dyson nor Beechmont Toyota, Inc. — the only two named defendants alleged to be Ohio residents, — is a defendant from whom significant relief is sought or whose conduct forms a significant basis for the claims asserted by the class, and because during the three year period preceding the filing of this class action complaint other class actions have been filed against one or some of the Defendants asserting same or similar allegations on behalf of other persons.<sup>6</sup>

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<sup>5</sup> Plaintiffs bear the burden of proving that an exception to CAFA jurisdiction applies. *See Kendrick v. Standard Fire Ins. Co.*, 2007 U.S. Dist. LEXIS 28461 at \*4, (E.D. Ky. 2007).

<sup>6</sup> In the legislative history for this section of CAFA, the Committee stated its intent that cases such as the one at issue should be removable. Specifically, the Committee provided the following example of a case that would be exempted from the provisions of § 1332(d)(4):

A class action is brought in Florida against an out-of-state automobile manufacturer and a few in-state dealers, alleging that a certain vehicle model is unsafe because of an allegedly defective transmission. The vehicle model was sold in all fifty states but the class action is only brought on behalf of Floridians. This case would not fall within the Local Controversy Exception for two reasons. First, the automobile dealers are not defendants whose alleged conduct forms a significant basis of the claims or from whom significant

62. Section 1332(d)(4)(B) (the "home state exception") does not apply because, among other reasons, the primary defendants, TMS, TLT and TEMA are not citizens of the state where this action was originally filed.

63. This action is not one described in 28 U.S.C. § 1332 or § 1453 as being non-removable.<sup>7</sup>

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relief is sought by the class. Even if the plaintiffs are truly seeking relief from the dealers, that relief is just small change compared to what they are seeking from the manufacturer. Moreover, the main allegation is that the vehicles were defective. In product liability cases, the conduct of a retailer such as an automobile dealer does not form a significant basis for the claims of the class members. Second, the case falls outside the Local Controversy Exception because the "principal injuries resulting from the alleged conduct,"— i.e., selling a vehicle with a defective transmission — were incurred in all fifty states. The fact that the suit was brought as a single-state class action does not mean that the principal injuries were local. In other words, this provision looks at where the principal injuries were suffered by everyone who was affected by the alleged conduct—not just where the proposed class members were injured. Thus, any defendant could remove this case to federal court.

<sup>7</sup> In addition to jurisdiction based upon CAFA, this court also has diversity jurisdiction based upon 28 U.S.C. §§ 1332(a) and 1441 because there is complete diversity of citizenship among all properly joined parties, and the amount in controversy exceeds \$75,000 exclusive of interest and costs. The non-diverse defendants, Clyde Dyson and Beechmont Toyota, Inc. have been fraudulently joined in order to defeat diversity jurisdiction. Accordingly, their citizenship should be ignored for purposes of determining diversity. *Rose v. Giamatti*, 721 F.Supp. 906, 917 (S.D. Ohio 1989). Their joinder is fraudulent because there exists no reasonable basis in fact or in law supporting a claim against them. Specifically, there is no reasonable basis for predicting that the state law might impose liability on the facts involved." *Alexander v. Elec. Data Sys. Corp.*, 13 F.3d 940, 949 (6th Cir. 1994) (internal citations omitted). See also *Ludwig v. Learjet, Inc.*, 830 F.Supp. 995 (E.D. Mich. 1993).

In addition, pursuant to 28 U.S.C. § 1331, this court also has jurisdiction based on Plaintiffs' claims under the Magnuson-Moss Warranty Act ("MMWA"), because such claims arise under the "Constitution, laws, or treaties of the United States." MMWA, 15 U.S.C. § 2310(d), provides that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection." 15 U.S.C. § 2310 (d). Section (3) provides:

No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection --

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

### III. VENUE

64. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

65. This action is not an action described in 28 U.S.C. § 1445.

66. All Defendants have consented in writing to the filing of this Removal.

67. Pursuant to 28 U.S.C. § 1446(d), a true and accurate copy of this Notice of Removal and exhibits is being served on counsel for the Plaintiffs and is being filed with the clerk of the courts for the Common Pleas Court of Hamilton County, Ohio.

WHEREFORE, Defendants respectfully remove this action from the Court of Common Pleas of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio as provided by law.

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15 U.S.C. § 2310 (d). The Plaintiffs' claims meet the amount in controversy requirements set forth in the statute.

Plaintiffs' Complaint specifically alleges that Defendants breached written and implied warranties owed to Plaintiffs. While the MMWA is not explicitly referenced in the Complaint, the allegations give rise to a claim under the MMWA. This Court should exercise jurisdiction over the pendent state law claims because: (1) the federal MMWA claim is sufficient to confer subject matter jurisdiction on the court; (2) the state and federal claims derive from a common nucleus of operative fact; and (3) Plaintiffs' claims are such that they would ordinarily be expected to be tried all in one judicial proceeding. *See Aschinger v. Columbus Showcase Co.*, 934 F.2d 1402, 1412 (6<sup>th</sup> Cir. 1991). Therefore, removal of the entire action is appropriate pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

/s/ Gregory A. Harrison

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**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: wsbclaw@aol.com**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

# **EXHIBIT 1**



# Patricia M. Clancy Clerk of Courts



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Hamilton County Courthouse  
 1000 Main Street  
 Cincinnati, OH 45202



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- Court Records
- Court Date
- Forms
- Services
- Division :

### Case Summary

**Case Number:** A 1000992  
**Case Caption:** HUGH W COX vs. TOYOTA MOTOR SALES USA INC  
**Judge:** ROBERT P RUEHLMAN  
**Filed Date:** 2/2/2010  
**Case Type:** H775 - CLASS ACTION & JURY DEMAND- OC  
**Total Deposits:** \$ 637.00 Credit  
**Total Costs:** \$ 354.00

### Case Options










- Case History
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- Certified Mail Service
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- New Name Search
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### Case History

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Doc	Image#	Date	Description	Amount
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA LEASE TRUST ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6521]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF THIRD PARTY COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6514]	
		2/10/2010	NOTIFICATION FORM FILED.	
		2/10/2010	JUDGE ASSIGNED CASE ASSIGNED TO RUEHLMAN/ROBERT/P PRIMARY	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO BEECHMONT TOYOTA INC ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6569]	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO CLYDE DYSON ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6552]	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER ON 02/05/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6545]	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA ON 02/04/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6538]	
		2/5/2010	FIRST AMENDED REQUEST FOR TEMPORARY RESTRAINING ORDER AND CLASS ACTION COMPLAINT AND JURY DEMAND	
		2/3/2010	CERTIFICATION REGARDING NOTICE FOR TEMPORARY RESTRAINING ORDER	
		2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6545]	
		2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO BEECHMONT TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6569]	
		2/3/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA LEASE TRUST [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6521]	



- 2/3/2010 CERTIFIED MAIL SERVICE ISSUED TO CLYDE DYSON [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6552]
- 2/3/2010 CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6514]
- 2/3/2010 CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA [CERTIFIED MAIL NBR.: 7194 5168 6310 0490 6538]
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA LEASE TRUST
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO BEECHMONT TOYOTA INC
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO CLYDE DYSON
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA NORTH AMERICAN TECHNICAL TRAINING CENTER
-  2/3/2010 SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA
-  2/2/2010 TEMPORARY RESTRAINING ORDER TO PRESERVE EVIDENCE AND RECORDS
-  2/2/2010 CLASSIFICATION FORM FILED.
-  2/2/2010 COMPLAINT & JURY DEMAND FILED
- 2/2/2010 CASE DEPOSIT & JURY DEMAND BY STANLEY M CHESLEY 637.00-

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IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

HUGH W. COX,  
PAMELA M. COX,

Plaintiffs,

v.

TOYOTA MOTOR  
CORPORATION, et al.

Defendants.

: CIVIL CASE NO.: A1000992  
:  
: JUDGE:  
:

CERTIFICATION  
REGARDING NOTICE FOR  
TEMPORARY RESTRAINING ORDER

FILED  
FEB - 2 P 3:45  
HAMILTON COUNTY, OH  
PATRICIA M. CLANCY  
CLERK OF COURTS

1. The undersigned make this certification pursuant to Ohio Rule of Civil Procedure 65.

2. Prior to seeking a Temporary Restraining Order, Plaintiffs did not give notice to Defendants of the Temporary Restraining Motion hearing.

3. Plaintiffs did not provide notice due to the urgency of the situation and the fact that Defendants would not suffer any prejudice from an order requiring them to preserve their own records. Defendants have the right to apply to the Court to modify the order if they can establish prejudice.

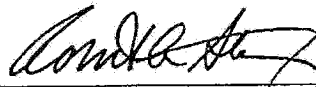
4. Plaintiffs, on behalf of themselves and the proposed class members, seek an Order requiring Defendants to maintain and preserve all documents of any kind, electronic and otherwise, related to the allegations in this case, including all public representations of reliability and suitability of the subject vehicles for their designed purpose.



D86979253

5. Plaintiffs' counsel are aware that, according to Toyota's Internet website, Toyota's former in-house counsel states that Toyota illegally withheld evidence in a number of cases concerning vehicle rollovers involving injuries and deaths. Plaintiffs' counsel are also aware that the National Highway Traffic Safety Administration found that Toyota's statements about the sudden acceleration problem involved in the allegations in this case were "misleading and inaccurate." Plaintiffs' counsel, therefore, are concerned that Defendants will hide or destroy information related to this case, unless ordered not to do so by this Court. Thus, it is urgent that Defendants be ordered to preserve all information related to this case at the earliest possible time.

Respectfully submitted,



Stanley M. Chesley (No. 0000852)

Robert A. Steinberg (0032932)

Joseph T. Deters (0012084)

WAITE, SCHNEIDER, BAYLESS

& CHESLEY CO., L.P.A.

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Patricia M. Clancy, Clerk of Courts  
Court of Common Pleas, Hamilton County, Ohio  
www.courtclerk.org



**NOTIFICATION FORM**

**CASE INFORMATION**

Date: February 10, 2010

Case No.: A1000992

Caption: Hugh W. Cox, et.al. vs. Tovota Motor Sales, USA, Inc., et.al.

\*\*\*\*\*

**ATTORNEY INFORMATION**

Attorney Name: Cari Dawson

Attorney Information: Alston & Bird LLP

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Ohio Attorney Supreme Court No.: 8507

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Request Case Notification / Not a Party Defendant

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**COURT PARTY INFORMATION**

Name of Client: Toyota Motor Sales U.S.A., Inc.

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

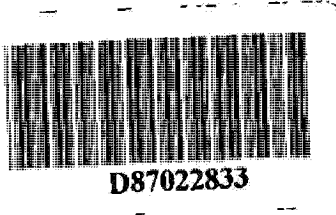
Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Name of Client: \_\_\_\_\_

Plaintiff  Defendant

Substituted for: \_\_\_\_\_



(if applicable)

COURT OF COMMON PLEAS

FILED

HAMILTON COUNTY, OHIO 2010 FEB 22 P 6: 02

HUGH W. COX , et al.

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.

Defendants.

Case No. A1000992

Judge Robert P. Ruchlman

CLERK OF COURTS  
GENERAL TRAFFIC DIV  
HAMILTON COUNTY OHIO

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, pursuant to Ohio Rule of Civil Procedure 65(B) and Ohio Revised Code § 2727.02 move for a Preliminary Injunction that: 1) prevents Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota" or "Toyota Defendants") from collecting lease and loan payments from Ohio residents who are fearful of driving their cars due to Toyota defects, 2) requires Defendants to provide, without cost, alternate vehicles free from defects to Ohio residents who are fearful of driving their cars due to Toyota defects; orders Defendants to ensure that no Toyota dealer performs service on the 2009 Camry, Toyota Camry VIN 4T4BE46K19R079017, formerly owned by Thomas and Connie Kamphaus, proposed class members in this case, until Plaintiffs' counsel have the opportunity to have an expert examine the vehicle.

Plaintiffs are entitled to the requested relief because:

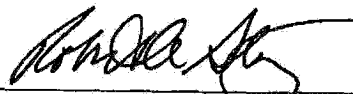
- (1) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (2) Plaintiffs will suffer irreparable harm if the injunction is not granted;

- (3) There is a substantial likelihood that pedestrians and/or drivers within the State of Ohio will be injured as a result of a defective Toyota-manufactured vehicle being driven on the roads of this state;
- (4) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>1</sup>

The purpose of this injunction is to preserve the status quo, to protect Ohio residents from the threat of Sudden Unintended Acceleration (“SUA”) and other known Toyota-manufactured automobile defects, and to preserve evidence until more information is obtained about how to avoid and prevent the dangers these vehicles present.

The extent of the problem is only beginning to come to light. Currently, a federal criminal investigation of Toyota is commencing in New York and an SEC investigation of Toyota is commencing in California. Plaintiffs provide additional support in the attached memorandum in support of their motion for Preliminary Injunction.

Respectfully submitted,



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Stanley M. Chesley (11810)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Telephone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: [bobsteinberg@wsbclaw.com](mailto:bobsteinberg@wsbclaw.com)

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<sup>1</sup> *Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

Defendants have placed profit over safety and have sought to limit and to stifle governmental investigations into the safety of Toyota Vehicles. Evidence in recent news accounts revealed that Toyota has known for years that its vehicles were unsafe. However, instead of working with the government to protect Ohio residents, Defendants engaged in a mercenary campaign to save money by avoiding recalls.

In an internal presentation in July 2009 at its Washington office, a Toyota official said it saved \$100 million or more by negotiating an "equipment recall" of floor mats involving 55,000 Toyota Camry and Lexus ES350 vehicles in September 2007. The savings are listed under the title, "Wins for Toyota -- Safety Group." The document cites millions of dollars in other savings by delaying safety regulations, avoiding defect investigations and slowing down other industry requirements.<sup>2</sup>

Toyota's most recent current campaign to "fix" "sticky accelerators" similarly appears to be another scheme to save money and avoid taking appropriate measures to protect the public. Prospective class members who have had this recall repair in February 2010 have continued to experience sudden unintended acceleration (SUA) incidents. (See Affidavit of Connie Kamphaus attached as Exhibit 1). Vehicles with a dangerous defect remain on the highways. A Preliminary Injunction is necessary to protect Ohio pedestrians and drivers from further injury by unsafe Toyota-made vehicles.

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<sup>2</sup> <http://finance.yahoo.com/news/Documents-Toyota-boasted-apf-3066044297.html?x=0>.

## BACKGROUND

Plaintiffs Hugh W. Cox, Pamela M. Cox and Ernestine Montgomery currently own or lease Toyota vehicles. Prospective class members Thomas and Connie Kamphaus recently brought their 2009 Toyota Camry, VIN 4T4BE46K19R079017, in for a recall repair to correct SUA. After completing the repair at a Toyota dealer in January 2010, their vehicle experienced several SUA incidents. They feared for their safety and the safety of others, and stopped driving the vehicle. They could not afford to rent or buy a second vehicle. In February 2010, due to their fear of driving the 2009 Camry, Toyota convinced them to trade the vehicle in on a 2010 Camry at a higher payment rate. Plaintiffs Hugh W. Cox and Pamela M. Cox currently are making monthly payments to Toyota.<sup>3</sup> Plaintiffs and many proposed class members have paid and are paying Toyota for the “privilege” of driving admittedly unsafe vehicles. As a last resort, some continue to drive the cars on Ohio roads.

Toyota-manufactured vehicles are subject to an unprecedented recall. The reason for the recall particularly is disturbing. Defendants, from 1999 to January 19, 2010, had knowledge of at least two thousand reports of SUA. The reports included 2,262 total incidents, 819 crashes, 341 injuries and 26 deaths.<sup>4</sup>

Since 1999, at least 2,262 Toyota and Lexus owners have reported to the National Highway Traffic Safety Administration, the media, the courts and to Safety Research & Strategies that their vehicles have accelerated suddenly and unexpectedly in a variety of scenarios. These incidents have resulted in 815 crashes, 341 injuries, and 19 deaths potentially related to sudden unintended acceleration.<sup>5</sup>

The extent of the problem is wide-ranging. Toyota Drivers have reported vehicle surges and unintended acceleration under a variety of conditions including:

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<sup>3</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>4</sup> Safety Research & Engineering Strategies, Inc., Toyota Sudden Unintended Acceleration, February 5, 2010 at p. 6.

<sup>5</sup> *Id.* at 1.



- The vehicle was at idle
- The vehicle was in reverse at low speed
- The operator's foot was on the brake
- The vehicle was traveling at a constant highway speed
- The vehicle contained no all-weather accessory floor mats
- The accelerator pedal was not "sticking"<sup>6</sup>

Toyota's response to these incidents was to blame the drivers. When federal officials began to doubt Toyota's explanation, it then blamed the incidents on floor mats that they claimed interfered with the acceleration pedal and called a small number of vehicles for a floor mat repair. When it became obvious to consumers and officials that floor mats were not the cause of SUA, Toyota claimed that its vehicles had sticky accelerator pedals, and made a larger recall, which consisted of shortening the accelerator pedal and installing a shim. Despite substantial evidence to the contrary, Defendants never publicly acknowledged that its vehicles suffered from serious design and engineering defects. However, Defendants have known for years that their vehicles were defective in that they suffered from a defect that can cause them to suddenly accelerate uncontrollably.

In 2004, Defendants met with National Highway Transportation Safety officials in an effort to minimize the investigation of SUA incidents, to minimize the publicity given to them, and to avoid substantial costly recalls of millions of their automobiles. As part of the scheme to defraud consumers, Defendants replaced experienced automobile workers with less expensive temporary workers at Toyota Motor Engineering and Manufacturing North America, Inc., causing manufacturing quality to suffer, at the same time as they publicly represented to consumers the excellent engineering and reliability of their vehicles. The experienced workers signed a protest petition in November 2009, objecting to this conduct. (Exhibit 3). During this time period, Defendants quietly repaired vehicles brought by customers who experienced SUA,

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<sup>6</sup> *Id.* at 9.

but intentionally and recklessly failed to warn customers driving similar vehicles. Instead, they intentionally misrepresented to customers, including Plaintiffs and the proposed class, that their vehicles were suited for their intended purpose, were well-engineered, were safe to drive, and were reliable.

Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. Toyota omitted the back-up safety systems to save money and increase profits. As a result of the lack of safety systems, there is no adequate mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the acceleration systems malfunction and engage in uncontrolled acceleration.

Defendants, additionally, have attempted the “repair” of modifying the accelerator pedal to attempt to fix the SUA defect since at least 2006, when they modified the accelerator pedal of a 2005 Toyota Camry owned by Plaintiff Montgomery at a dealership in Cincinnati, Ohio.<sup>7</sup> At that time, they intentionally and recklessly failed to recall similarly-affected vehicles.

On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the alleged reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, **mechanically** stick in a partially depressed position or return slowly to the idle position.” (Emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were caused by floor mats and by accelerator pedals that were the wrong size.

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<sup>7</sup> See Affidavit of Ernestine Montgomery, attached as Exhibit 4.

On January 26, 2010, Toyota stopped selling eight recalled models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was necessary to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers. Nor did Toyota recall other models and makes of Toyota-manufactured vehicles, in which class members have experienced SUA.

Ohio Consumers attempted to schedule repairs but were told they could not get their vehicle fixed until they received a letter. When they informed Toyota agents that they were afraid to drive their vehicles, they received no assistance. The repairs currently being performed do not adequately address the dangerous defect. Ohio consumers have not received substitute vehicles and are left to drive admittedly dangerous vehicles. Defendants expect Ohio owners and lessees of Toyota cars and trucks to continue to make car and lease payments.<sup>8</sup>

**TOYOTA IS SACRIFICING THE SAFETY OF ITS CURRENT OWNERS AND  
LESSEES OF ITS VEHICLES TO MAKE SALES OF NEW CARS**

The Toyota Defendants recently announced that Toyota would install brake override systems in response to recent incidents of runaway cars. Toyota North America president Yoshi Inaba told *Automotive News* that the system will force the engine into idle if it senses the driver is trying to apply the brakes unsuccessfully.<sup>9</sup>

The Toyota Camry and Lexus ES350 originally were the first models scheduled to receive the new system. Toyota made this announcement on the heels of a massive 3.8 million vehicle recall to reshape and replace accelerator pedals. On February 17, 2010, Toyota announced that it was expanding the use of the system and would install the brake override

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<sup>8</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>9</sup> <http://www.autoblog.com/tag/yoshi+inaba/>.

safety feature on all new vehicles that Toyota sells in North America.<sup>10</sup> Despite this announcement, the National Highway Traffic Safety Administration reportedly remains suspicious of other contributing factors.<sup>11</sup>

Plaintiffs do not acknowledge that the brake override system will prevent SUA. However, Plaintiffs do note that Toyota vehicles currently on the road in Ohio do not have the system, and therefore, by Toyota's own admission, lack an important safety feature to prevent SUA.

On February 3, 2010, Ray La Hood, Director of the National Highway Safety Transportation Administration, told United States drivers that his "advice is if anybody owns one of these vehicles is to stop driving it and take it to a Toyota dealer because they believe they have the fix for it."<sup>12</sup> Mr. La Hood subsequently modified this sage advice. However, his point remains clear. Toyota vehicles are unsafe and Toyota is more concerned about future sales as opposed to protecting the interests of current owners and lessees of Toyota cars and trucks.

## ARGUMENT

### **I. OHIO RESIDENTS ARE ENTITLED TO A PRELIMINARY INJUNCTION THAT WILL PROTECT THEIR RIGHTS AND PRESERVE THE STATUS QUO**

#### **A. Plaintiffs Satisfy the Requirements for a Preliminary Injunction**

Ohio Rule of Procedure 65 (B) provides that parties may obtain a provisional remedy of a preliminary injunction. Additionally, Ohio Revised Code § 2727.02 provides that a preliminary

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<sup>10</sup> See <http://www.asiaone.com/Motoring/News/Story/A1Story20100218-199346.html> ("The new brake over-ride system to be introduced worldwide would cut engine power when the accelerator and brake pedal are depressed at the same time. Accidents blamed on unintended acceleration have been linked to more than 30 deaths in the United States").

<sup>11</sup> <http://www.autoblog.com/2010/01/12/breaking-toyota-said-to-install-brake-override-systems-in-all-c/>.

<sup>12</sup> <http://www.theautochannel.com/news/2010/02/03/464423.html>.

injunction during pending litigation is appropriate if Defendants' acts violate Plaintiffs' rights concerning the subject matter of the litigation.<sup>13</sup>

Plaintiffs are entitled to a Preliminary Injunction if they can establish that:

- (4) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (5) That Plaintiffs will suffer irreparable harm if the injunction is not granted;
- (3) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>14</sup>

Here, the uncontested facts certainly establish that Plaintiffs are entitled to a preliminary injunction. First, a substantial likelihood exists that Plaintiffs will prevail on the merits. The current record, even without discovery, establishes that Toyota has recalled millions of cars and trucks due to SUA. The undisputed evidence further establishes that SUA is dangerous and causes accidents, injuries, and deaths.

Consumer reaction to the recalls demonstrates that Ohio consumers, similar to consumers throughout the United States, believe that Toyota vehicles are dangerous and that Ohio consumers do not want to drive the cars and trucks. The recalls also demonstrate that Toyota cars and trucks are, in fact, unsafe. Toyota's continuing changing representations and statements

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<sup>13</sup> Ohio Revised Code Section 2727.02 provides:

A temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

<sup>14</sup> *Convergys Corp. v. Tackman* (Ohio App. 1 Dist. 2006), 169 Ohio App.3d 665 C-060440; See *Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.

concerning the cause of SUA, the fixes and repairs, and its changes to unsold new cars demonstrate that Plaintiffs have a substantial likelihood of prevailing on the merits.

The denial of the injunction will cause Plaintiffs and proposed class members who own or lease Toyota vehicles to suffer irreparable harm during severe economic times. Plaintiffs and proposed class members are forced to either drive an unsafe car or find alternative means of transportation at costs they cannot afford. Plaintiffs require immediate assistance, in the form of safe and dependable alternative transportation. The absence of alternative vehicles, moreover, not only is endangering Ohio drivers and their passengers but is endangering other motorists and pedestrians.

Plaintiffs and other Ohio residents also are suffering injury because the Toyota Defendants are requiring Ohio residents to make payments on vehicles that they are not using as intended. Fundamental fairness dictates that payments for vehicles that admittedly are unsafe is unfair and causes irreparable injury.

Finally, due to fear and several occurrences of SUA, Mr. and Mrs. Kamphaus were recently convinced by Toyota to trade their 2009 Toyota Camry for a new vehicle. Before Toyota takes actions that might alter or modify this vehicle and thus cause irreparable injury by limiting Plaintiffs' ability to pursue litigation, a court order is necessary to prevent its modification or alteration.

A preliminary injunction will not injury third parties. To the contrary, it will prevent injury to third parties and will promote the public interest in highway safety by keeping dangerous cars and trucks off of Ohio's roads.

**B. The Requested Preliminary Injunction is Reasonable**

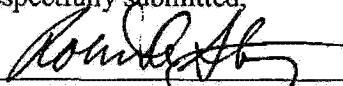
Under the circumstances of this case, the requested injunction is reasonable. Why should Defendants force Ohio residents to pay for cars and trucks that are unsafe and that Ohio residents are afraid to use? Defendants should be made to take immediate steps to provide safe alternative transportation. This is both logical and fair. Finally, Defendants, consistent with this Court's earlier order to preserve evidence, should be required to preserve and protect the car that Plaintiffs recently traded in until Plaintiffs have the opportunity to have an expert review and examine the car.

**CONCLUSION**

For the reasons contained in this motion and memorandum, this Court should grant Plaintiffs Motion for a Preliminary Injunction and Order that:

- (1) Defendants, until further notice, may not collect car payments from Ohio residents;
- (2) Defendants may not modify or alter the car formerly owned by Mr. and Mrs. Kamphaus until Plaintiffs have the opportunity to have an expert review and examine the car ; and,
- (3) Defendants immediately must provide alternative vehicles for all Ohio residents who currently own or lease Toyota vehicles.

Respectfully submitted,



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Stanley M. Chesley (11810)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Telephone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: [bobsteinberg@wsbclaw.com](mailto:bobsteinberg@wsbclaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this  
23<sup>rd</sup> day of February, 2010 upon the following:

Toyota Motor Sales, U.S.A., Inc.  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Lease Trust  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Motor Engineering & Manufacturing  
North America, Inc.  
Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, KY 40207

Toyota North American Technical Training  
Center  
4550 Creek Road  
Cincinnati, OH 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, OH 45242

Beechmont Toyota, Inc.  
8639 Beechmont Avenue  
Cincinnati, OH 45255

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Robert A. Steinberg



# **EXHIBIT 1**

**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruehlman**

**AFFIDAVIT OF CONNIE A. KAMPHAUS**

Now comes the Affiant, Connie A. Kamphaus, and after first being duly sworn and cautioned, states as follows:

1. Until Friday, February 19, 2010, I was the owner of a 2009 Toyota Camry which I leased new at Performance Toyota in Fairfield, Ohio on or about June 22, 2008.
2. At the time I leased my Toyota Camry in 2008, I made a down payment of approximately \$2200.00 on a 3 year lease with payments of approximately \$247.00 a month.
3. On or about January 15, 2010, my husband Tom was driving my car in a Kroger parking lot in Westchester, Ohio when the car suddenly accelerated. Tom was forced to brake as hard as he could and threw the gear into "Park" after which the engine idled down. He then turned off the ignition.

4. Tom called Performance Toyota about this incident on January 15, or January 16, 2010. Performance Toyota told us to bring the car in and we took the car to Performance on or about January 16<sup>th</sup>. We were given a loaner car for one evening and we picked up the car the next day, having been told that Toyota "fixed" the problem by installing a new gas pedal. It appeared the entire gas pedal assembly had been replaced. We thought the problem was solved.

5. On February 9, 2010, Tom was driving my car out of the Fairfield Hospital parking lot and braking as he approached a red traffic light when the brake froze and the engine revved. Tom had to brake as hard as he could while throwing the car into "Park" in order to stop the car.

6. On February 10, 2010, Tom was driving my car on our street and came to a stop sign. Again, the brake froze and the engine revved. Tom had to brake as hard as possible and throw the car into "Park" to stop the car.

7. On February 13, 2010, we contacted Performance Toyota to tell them about the sudden acceleration incidents after the gas pedal was "fixed." We told Performance Toyota we wanted out of the lease agreement. Toyota wanted us to come in and sign some sort of "arbitration agreement" but due to inclement weather and our health, we did not immediately go to Performance Toyota to discuss this.

8. From February 10 until February 19, we grew more and more fearful of driving our Toyota Camry. Because of the dangerousness of the Toyota, we avoided driving it. This created a real hardship for us. The Toyota was our only car to drive, as our son uses our other vehicle to travel to and from work. We contacted Toyota about loaning us a car until this matter was resolved, but Toyota told us they could not loan us a car.. We then looked into obtaining a

rental car until the problem was resolved, but could not afford to pay for a rental car due to our financial situation.

9. We became very upset and desperate due to the hardship the lack of a vehicle created for us. My husband and I both have serious health issues requiring frequent doctor visits. We have no one to transport us to our respective appointments.

10. Due to our desperate financial situation and tremendous need for a safe and reliable vehicle, on Friday, February 19, 2010 Tom and I returned our 2009 Toyota Camry to Performance Toyota and demanded another non-Toyota vehicle. We did not want to make any more payments on this vehicle as we felt it was unfair and unreasonable to be paying for an unsafe vehicle we were terrified to drive. Toyota would not agree to a non-Toyota vehicle, but provided us with a 2010 Camry which Toyota represented was already fixed. Toyota would not credit us for 15 months of payments of \$247.00/month, nor for the approximate \$2200.00 we put down on the 2009 Camry. Moreover, Toyota made us start a new 3 year lease for approximately \$347.00/month. Due to our desperate situation, we had no choice but to accept this "deal." Of course, what we now have is a newer car for more money and with the same repair as the suddenly accelerating 2009 Camry.

FURTHER AFFIANT SAITH NAUGHT.

Connie A. Kamphaus  
Connie A. Kamphaus

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Butler )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

Jessica Bright  
Notary Public

My Commission Expires:

Aug 3, 2011



JESSICA BRIGHT  
Notary Public, State of Ohio  
My Commission Expires  
August 3, 2011

# **EXHIBIT 2**

**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruchlman**

**AFFIDAVIT OF PAMELA M. COX AND HUGH W. COX**

Now comes the Affiants, Pamela M. Cox and Hugh W. Cox, and after first being duly sworn and cautioned, state as follows:

1. We are the lessees of a 2010 Toyota Camry LE leased on November 30, 2009 from Beechmont Toyota in Cincinnati, Ohio. We currently make a monthly payment.
2. Our 2010 Camry is part of Toyota's recall for gas pedals relating to sudden acceleration.
3. We are afraid to drive our Toyota. We avoid driving the Toyota unless we have no choice, and, while we have another vehicle, we really need this 2<sup>nd</sup> car as a means of transport. Not having this car to use has created a hardship on us.
4. In addition to the fact that not driving our Toyota creates an inconvenience for us and makes our lives more difficult, we believe it is unfair that we are making payments on a car

a car that is not the safe and reliable vehicle represented to us. It is not reasonable for us to have to continue making payments on a car that we do not wish to drive and that has a dangerous defect with no as yet proven "fix".

FURTHER AFFIANTS SAITH NAUGHT.

Pamela M Cox

Pamela M. Cox

STATE OF OHIO )  
COUNTY OF Clermont ) S.S.

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

[Signature]  
Notary Public

Beverly L. Glancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

My Commission Expires:

April 7 2012

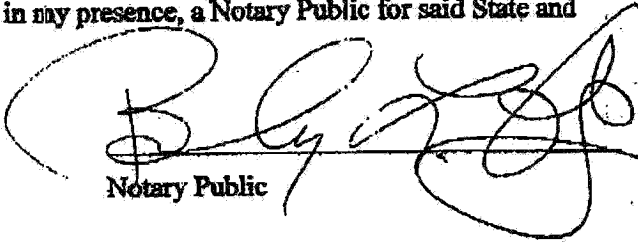
and

[Signature]  
Hugh W. Cox



STATE OF OHIO )  
 ) S.S.  
COUNTY OF Columb )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

  
Notary Public



My Commission Expires:

April 7, 2012

Beverly L. Giancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

# EXHIBIT 3



We CARE about OUR Company, Our Future and Our Co-Workers. We did a sample poll to see if they agreed with our concerns. We gave the letter below and a copy of the poll to Mr. St. Angelo, respectfully asking for resolution to these matters.

Toyota Workers for a Better Toyota

107 Frazier Ct.

Georgetown, Ky. 40324

November 17th, 2009

Dear Mr. St. Angelo,

We are a group of concerned employees who CARE about our company, our future and the well being of co-workers. We understand today's economic situation and how it has affected Toyota and consequently us; but we feel strongly that even during these tough times doing what's right should still be the priority. We recognize and appreciate how our management has in the past shown an interest in maintaining a good relationship with the workers by understanding our concerns. In this spirit, we have over the last couple of weeks conducted a "sample poll" of our co-workers asking them to share their concerns with us. The attached signed petition represents a small sampling of how a great number of workers feel about our workplace. In the few areas where we conducted this activity there were a great many more Team Members who agreed with everything the petition states but were afraid to add their name for fear of retaliation. Those of us who have signed it strongly believe that you will understand it as an opportunity to make improvements for all without any retaliation to any of us.

The consensus among us is that it is time to reinstate TIE payments, bonuses, and annual wage increases. Toyota North America is again running profitably, our plant and several others have returned to full production, with line speed-ups, overtime and the addition of hundreds of lower paid temporaries. This is surely a sign of recovery!

As hard working employees, we do our best to ensure Toyota Georgetown succeeds but we deserve to be treated with honesty, respect and fairness. We want to also be a part of Toyota's success but we also have a responsibility to provide for our families in the best way possible. We are now seeing the rapid elimination of full time jobs from our grasp, as they are being contracted out to cheap-labor suppliers or temp agencies. This really concerns us since we believe this is happening at the expense of many loyal TMs. Many of us long-service full time TMs are now being forced back to the same assembly jobs where we began our Toyota career. Still others are suffering the effects of having to work second shift without getting an opportunity to fill the hundreds of vacancies which exist on first shift. This is a betrayal of the hard working fulltime Toyota employee who wants to do the best they can in their job to help Toyota be successful..

As workers we feel we are doing our part and as Kentucky taxpayers, we gave Toyota over \$420-million to locate and operate here. In exchange, Toyota promised to establish good paying fulltime jobs, not thousands of lower paid temporary jobs or unsafe jobs. Toyota should stand behind its promise to the Commonwealth and citizens of Kentucky, as well as to all Team Members and do their part too!

We respectfully request Toyota management address and correct these very serious problems.

Sincerely,

Concerned Team Members  
as shown on Petition.



Over the past several months we have listened to the most common concerns of our fellow Team Members. Like you, we share the same concerns about the many substantial changes and the current situations occurring at our workplace. These changes all fit with Toyota's "5-year plan" to reduce wage levels to the state average manufacturing rate and reduce the wage and benefit standards for auto workers and our communities.

The response has been very positive, including the unity of our collective position that we all should expect Toyota to address these valid concerns now. We have included a copy of these petitions for those Team Members who did not have an opportunity to review or sign them, so you can understand what is being referenced. The petition shown on the opposite page has a combination of petition signatures from many different pages.

## News You Can Use

**October 16, 2009-** Toyota in Canada recently eliminated five paid holidays annually and added an hour of daily overtime, scheduled extra production for three Saturdays, plus a pending speed-up of the assembly line for its workers in Cambridge and Woodstock. People are very upset about this," said Lee Sperduti, a veteran assembly line Team Member. "Overtime is good security and everybody enjoys the money, but when it steadily takes more time away from your family, it hurts."

[www.financialpost.com/story-printer.html?id=2109035](http://www.financialpost.com/story-printer.html?id=2109035)  
[www.torontostar.com](http://www.torontostar.com)

**November 6, 2009-** Toyota workers in Buffalo, WV filed a grievance with the National Labor Relations Board. "We are standing up for our rights....." Tim Smith, a Toyota employee for 10-1/2 years said. Richard Snyder, who has worked for Toyota for nearly 11 years, said he wants "to continue to see Toyota succeed. But I also want to exercise my rights to talk with my coworkers and hand out union literature on our breaks."

[www.wvgazette.com/News/200911060878](http://www.wvgazette.com/News/200911060878)

**November 9, 2009-** The Georgetown, Ky., Toyota plant is running at "full capacity" working overtime on Saturdays and temporary workers laid off last year have been brought back, said Steve St. Angelo, president of the plant.....

For a total plant work force of 7,300. About 1,000 of them are temporary workers.  
[www.freep.com/article/20091109/BUSINESS01/91109036](http://www.freep.com/article/20091109/BUSINESS01/91109036)

**November 12, 2009-** Toyota motor Company and its labor union agreed Wednesday to make no changes to an average winter bonus set earlier in the year 930,000 yen.....

[www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus](http://www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus)

# Did We Really Do That?

Remember not too long ago? As newly hired TMs we were denied our promised wage progression. Then we returned to full production, laid off temporary workers were re-hired and the overtime is back. Some started to complain. Soon almost all complained loudly. Then when the older TMs joined in, it got even louder!! *Then in October our voices were heard and Management reinstated the deserved wage progression.*

Coincidence? We think NOT!

## Yes We Did!!

Toyota has returned to a profit situation in North America. But did we get our TIE payment back? No! Did we get even a slight increase in base wage? No! But we were told 4 weeks ago that things are still very tough for Toyota and we needed to do more – our healthcare costs increased by 50% in premiums. The hotline complaints are more frequent and more direct. Some started to complain. Soon almost all complained loudly. Recently, it has gotten even louder!! *Did Management feel pressured again? Were our voices heard? We are, after all, getting an \$800 “gift”.*

Coincidence? We think NOT!

## Yes They Did!!

Our coworkers at the engine plant in Buffalo, West Virginia are starting to let their voices heard too. They too have returned to full production with massive amounts of overtime and like us have lost a lot while making Toyota #1 in the world. Toyota is so concerned about their collective voices that they are trying to interfere with their rights to communicate during non work hours, in non work areas, which violates their federal rights. So on Friday Nov. 6<sup>th</sup>, West Virginia TMs filed charges with the NLRB defending their right to communicate freely. *Did Management feel pressured again? Will their voices be heard? They too were told about they would be receiving the \$800 “gift right, after the charge was filed.*

Coincidence? We think NOT!

## Yes We Really Can!!

**Imagine what we could achieve by all standing together to form Our Union and negotiate a Legal Binding Contract! To Our West Virginia Co-Workers...WE Support You!**

*Toyota Workers for a Better Toyota!*

# **EXHIBIT 4**

**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruehlman**

**AFFIDAVIT OF ERNESTINE MONTGOMERY**

Now comes the Affiant, Ernestine Montgomery, and after first being duly sworn and cautioned, states as follows:

1. I am the owner of a 2005 Camry XLE purchased December 22, 2004 at Joseph Toyota in Cincinnati, Ohio. My car is paid in full.

2. On September 3, 2006, my Toyota suddenly accelerated in a Kroger parking lot, going up over the sidewalk and crashing into a brick wall. The car was towed to Joseph Toyota for repair and picked up 21 days later.

3. When I picked up the car, the gas pedal had been replaced. The pedal was approximately 4 inches shorter than before and the resistance was different.



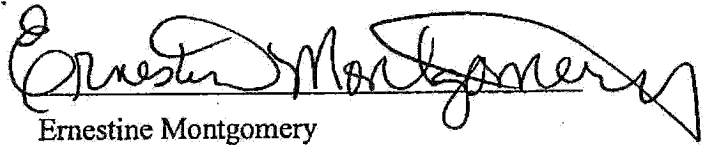
4. On November 25, 2009 I saw my "fixed" pedal on the news as part of a story about the Toyota gas pedal recall.

5. In December 2009 I took my car into Joseph Toyota for a service appointment and mentioned to the Service Manager that my Toyota already had the gas pedal "fix". The Service Manager responded that I could not have it, as the dealerships and service centers did not yet have the replacement part. I showed the Service Manager, who acknowledged I indeed had the "fixed" gas pedal.

6. I am afraid to drive my Toyota. I avoid driving it unless I absolutely have to. This has created a hardship for me.

7. I believe it is unfair and unreasonable for Toyota to expect me to continue to drive my vehicle with an as yet unproven "fix" for the problem of sudden acceleration. I don't believe that Toyota is doing enough to ensure that the problem has been accurately diagnosed and that the "fix" is in fact going to resolve the problem.

FURTHER AFFIANT SAITH NAUGHT.

  
Ernestine Montgomery

STATE OF OHIO )  
) S.S.  
COUNTY OF Hamilton )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22nd day of February, 2010.



Notary Public

My Commission Expires:



Nancy M. Bareswit  
Notary Public, State of Ohio  
My Commission Expires 05-05-2014

## **EXHIBIT 2**

338841

759089

QUIT CLAIM DEED

307. Ind. 2th Ser. St. 9-E P. 52-E

This Deed, made this 6th day of August, 1979 from COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, an Ohio nonprofit corporation (hereinafter called "Grantor"), acting through its duly authorized officers and on behalf of and as Agent for the City of Cincinnati, a municipal corporation organized and existing under the laws of the State of Ohio (hereinafter called "City"), to TOYOTA MOTOR DISTRIBUTORS, INC., a California Corporation (hereinafter called "Grantee"), the tax mailing address of which is 2055 West 190th Street, Torrance, California 90504.

WITNESSETH:

WHEREAS, Grantor, pursuant to Ohio Revised Code Section 1724.10, Cincinnati Ordinance No. 86-1966, Cincinnati Ordinance No. 450-1976, Cincinnati Ordinance No. 407-1977, and a certain agreement, as amended, between Grantor and City effective April 1, 1976, which agreement and amendment (hereinafter the "Agreement") are recorded, respectively, in Miscellaneous Book 28, page 447, and Miscellaneous Book 28, page 1079, in the Hamilton County, Ohio Recorder's Office, is authorized on behalf of and as agent for City to develop for industrial, commercial, distribution and research purposes certain real estate known as Tracts 2, 3, 3A and 6 located within the municipal boundaries of Blue Ash, Ohio, which Tracts are more fully described in the said Agreement; and,

WHEREAS, Grantor, pursuant to Ohio Revised Code Section 1724.10, Cincinnati Ordinance No. 86-1966, Ordinance No. 450-1976, Cincinnati Ordinance No. 407



Witness & Clerk of the Court are the same person except from the usual fees, Article 12

TOTAL PAGES 7412

W. L. DE COURCEY, JR., AUDITOR HAMILTON COUNTY, OHIO

4168-1164

and the said Agreement, acting by and through its duly authorized officers and on behalf of and as agent for City, is authorized to transfer the title of City to any part or parts of said Tracts 2, 3, 3A and 6 to interested purchasers such as Grantee; and,

WHEREAS, Grantor and Grantee entered into a Contract to Purchase dated July 24, 1979, wherein Grantee agreed to purchase a portion of said Tracts 2, 3, 3A and 6, which portion is more fully described in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration to it paid by Grantee, the receipt of which is hereby acknowledged, Grantor, acting through its duly authorized officers and on behalf of and as agent for the City, does hereby GRANT to Grantee, its successors and assigns forever, subject to the terms and conditions set forth below, the real estate situated in the City of Blue Ash, County of Hamilton, State of Ohio, which is described in Exhibit A attached hereto and made a part hereof (hereinafter called the "Premises"), and all of the estate, right, title and interest of City and Grantor in and to the Premises, together with all privileges and appurtenances to the same belonging.

TO HAVE AND TO HOLD the Premises with appurtenances thereto and unto the said Grantee, its successors and assigns forever, subject to the following covenants and conditions:

1. No buildings, structures or other improvements shall be erected or constructed on the Premises until a site plan (showing building location, elevations, signage



DEED 4169 PC 1165

TOTAL PAGES 2712

parking areas, utility plans, general landscape areas, grading plans and general development), and a preliminary rendering or design of the exterior buildings and structures (as shown on elevation drawings) to be constructed thereon is approved in writing by the Executive Committee of the Board of Trustees of Grantor, or by Grantor's successors and assigns, and Grantee, for itself, its successors and assigns, covenants that no amendments to the above-described plans or any additional development of the Premises shall be made without the prior written approval of the Executive Committee of the Board of Trustees of Grantor, its successors and assigns. The basis for approval of such plans shall be the Planning Standards attached to and incorporated into the Contract to Purchase, provided, however, that CIC may approve or require plans which provide for reasonable deviations from such standards when such deviations are necessary or desirable because of special conditions of development. All construction shall be done in accordance with said approved plans. This covenant is for the benefit of Grantor and of all owners of any part or parts of said Tracts 2, 3, 3A and 6; provided that any owner who seeks to enforce such Planning Standards against Grantee, its successors or assigns shall then be bound by similar planning standards. This covenant shall be a covenant running with the land (and not a condition of reverter) and shall be in effect until City is no longer the owner of any portion or portions of said Tracts 2, 3, 3A and 6, and the Grantor is no longer the agent of the City for the purposes set forth in the said Agreement, until January 1, 2020, whichever shall last occur; provided, however, that Grantor reserves to itself the right to terminate an earlier termination date in a recorded instrument if



DEED 4169-1166

TOTAL PAGES 3412

by Grantor pursuant to its right to amend the Planning Standards as set forth in the Contract to Purchase.

2. Grantee, its successors and assigns shall commence and complete the initial industrial, commercial, distribution and research development of the Premises as contemplated in plans approved pursuant to paragraph 1, above, and if Grantee, its successors or assigns shall fail to commence the same within twenty-four (24) months from the first of the month following the date of delivery of this deed or, having commenced the same, shall fail to complete substantially the same within a reasonable time after the first of the month after the commencement of such work, then CIC shall have the right to give written notice to Grantee or its successors or assigns of such failure and thereupon Grantee or its successors or assigns shall commence or resume construction within six (6) months and complete the same within twelve (12) months after receipt of such written notice. If Grantee its successors or assigns shall not so commence or resume construction and complete the same within the times so provided subsequent to receipt of such written notice, then within thirty (30) days of receipt of written demand served by Grantor or its successors and assigns on Grantee its successors or assigns, within six months of such default for failure to commence or resume construction and to complete, Grantee, its successors or assigns, shall reconvey the Premises, free and clear of all liens except a lien for assessments, if any, not yet due and payable to City or to the Grantor, as may be directed by the Grantor, its successors or assigns shall refund to Grantor, its successors or assigns the purchase price paid therefor.



TOTAL PAGES

412

- 4 -

DEED 4169pc1167

3. Grantee shall not, prior to the completion of the initial industrial, commercial, distribution and research development of the Premises as contemplated by the Contract to Purchase, convey or attempt to convey the Premises or any part thereof without the prior written approval of Grantor, its successors or assigns; provided, however, that Grantee may, without prior approval of Grantor but subject to all covenants and conditions provided in this deed:

- (i) convey the Premises to any entity controlling, controlled by, or under common control with Grantee,
- (ii) convey the Premises as required for economic development or industrial revenue bond financing, or
- (iii) encumber the Premises with a first mortgage or security interest for the purposes of obtaining financing for the acquisition and/or development thereof.

4. Prior to the completion of the initial development contemplated by the Contract to Purchase, Grantee, its successors and assigns shall pay the real estate taxes and any assessments required of it pursuant to the Contract to Purchase on or before the time that the same become due, and shall not place or permit any lien or other encumbrance upon the Premises, except a first mortgage or security interest incurred for the purpose of obtaining financing to complete the development thereof, and shall not suffer any levy or attachment to on the Premises or to be or remain a charge or encumbrance or against the Premises; provided, however, that Grantee

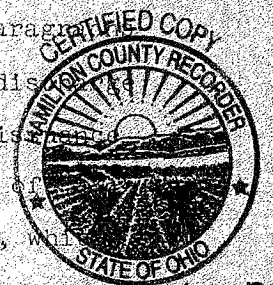


CONF 4169pc1168



successors or assigns shall not be deemed to be in default under this covenant if the total amount of such unpermitted encumbrances shall not exceed the purchase price, or if Grantee, its successors or assigns shall actively be engaged in contesting in good faith any mechanics lien filed against the Premises. If Grantee, its successors or assigns defaults in compliance with the terms and conditions of this paragraph and fails to cure such default within thirty (30) days after written demand by Grantor, its successors or assigns so to do, Grantor, its successors or assigns shall have the right to tender to Grantee the amount of the purchase price paid for the Premises, less an amount sufficient to discharge all liens and encumbrances then subsisting on the Premises, excepting only installments of assessments not yet due and payable, and thereupon Grantee, its successors or assigns shall reconvey the Premises to the City or to Grantor, as may be directed by Grantor its successors or assigns. If the amount of the purchase price is insufficient to discharge all such liens, Grantor, its successors or assigns shall have the right to pay the total amount of the purchase price to such lienholders in accordance with their priority and upon payment of such total sum, all such liens shall be deemed discharged and Grantor, its successors or assigns shall be entitled a decree ordering all such liens cancelled of record. The rights of all lienholders in the premises are expressly made subject to this paragraph.

5. The restrictions set forth in the above paragraphs 2, 3 and 4, including the rights to repurchase and to discharge liens in paragraphs 2 and 4, shall terminate upon the issuance by Grantor, its successors or assigns of a certificate of completion as contemplated by the Contract to Purchase, with



TOTAL PAGES 6712

certificate shall be suitable for recording in the Hamilton County, Ohio Land Records, or at such earlier time as may be expressly provided for in the Contract to Purchase or this deed. None of the covenants, terms or conditions of any agreement between the Grantor and the Grantee insofar as they relate to the Premises shall be deemed merged into this deed.

IN WITNESS WHEREOF, Grantor, acting by and through CHARLES E. SCRIPPS, its President, and WILLIAM E. LISTERMAN, its General Manager, has caused this deed to be executed as of the date first set forth above.

WITNESS:

COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, on behalf of and As Agent for the City of Cincinnati.

Jean Ripberger  
As to CES

By Charles E. Scripps  
Charles E. Scripps  
President

Jean Ripberger  
As to CES

William E. Listerman  
As to WEL

and

Jean Ripberger  
As to WEL

By William E. Listerman  
William E. Listerman  
General Manager

STATE OF OHIO )  
COUNTY OF HAMILTON )

BE IT REMEMBERED That on this 8th day of August, 1979, before me, the undersigned, a Notary Public in and for said county, appeared COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, acting on behalf of and as Agent for the City of Cincinnati by CHARLES E. SCRIPPS, its President, thereunto duly authorized, and acknowledged as his voluntary act and deed the execution of the foregoing Deed of said COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI on behalf of and as Agent for the City of Cincinnati for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Jean Ripberger  
Notary Public



JEAN RIPBERGER  
Notary Public, State of Ohio  
My Commission Expires Oct. 16, 1981

DEED BOOK 4169 p. 1170

STATE OF OHIO )  
 )  
COUNTY OF HAMILTON )

BE IT REMEMBERED That on this 6th day of August, 1979, before me, the undersigned, a Notary Public in and for said county, appeared COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI, acting on behalf of and as Agent for the City of Cincinnati by WILLIAM E. LISTERMAN, its General Manager, thereunto duly authorized, and acknowledged as his voluntary act and deed the execution of the foregoing Deed of said COMMUNITY IMPROVEMENT CORPORATION OF GREATER CINCINNATI on behalf of and as Agent for the City of Cincinnati for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Jean Ripberger  
Notary Public

JEAN RIPBERGER  
Notary Public, State of Ohio  
My Commission Expires Oct. 16, 1982

CERTIFICATION

The City of Cincinnati does hereby certify as of this 20 day of August, 1979, there is no default as to any of the terms or conditions of the Agreement dated as of April 1, 1976, as amended, by and between the City of Cincinnati and Community Improvement Corporation of Greater Cincinnati. The City of Cincinnati further states that as provided in Section V, paragraph 2c(6) of said Agreement as of April 1, 1976 as amended, the form of the above Deed has been approved by the City Manager and Solicitor of the City of Cincinnati.

CITY OF CINCINNATI

By [Signature]  
Acting City Manager

By [Signature]  
City Solicitor

This instrument prepared by:

Richard S. Roberts, Esq.  
600 Dixie Terminal Building  
Cincinnati, Ohio 45202  
381-2838



TOTAL PAGES 8712

DEED 4169-1171

CITY OF CINCINNATI - DEPARTMENT OF PUBLIC WORKS  
DIVISION OF ENGINEERING; GENERAL ENGINEERING SECTION

LOT 2 OF TRACT 2; C.I.C. INDUSTRIAL PARK IN THE CITY OF BLUE ASH

Situate in Section 17, Town 4, Entire Range 1, Sycamore Township, Hamilton County, Ohio, and being more particularly described as follows:

From the northeast corner of Section 17, measure on the North line of Section 17, North 79°17'07" West, 1690.18 feet to the westerly Limited Access, Right-of-Way line of the Reed Hartman Highway, as recorded in Plat Book 167, Pages 35 thru 46, and Deed Book 3782, Pages 897 thru 900, Hamilton County Recorder's Office, thence along said westerly line of a curve deflecting to the left with a radius of 1185.92 feet a distance of 412.52 feet (chord of said curve has a bearing of South 15°33'19" West and a length of 410.45 feet); thence continuing on said westerly line South 5°35'25" West, 695.00 feet to an iron bar and the POINT OF BEGINNING; thence North 84°24'35" West, 374.18 feet to an iron bar; thence North 5°35'25" East, 93.46 feet to an iron bar; thence North 36°51'12" West, 314.53 feet to an iron bar; thence North 36°08'57" West, 336.24 feet to an iron bar; thence South 85°32'43" West, 61.11 feet to an iron bar; thence South 5°49'10" West, 2027.45 feet to a spike and the centerline of Creek Road; thence along said centerline South 79°21'18" East, 622.13 feet to the westerly Limited Access Right-of-Way line of the Reed Hartman Highway; thence continuing along said Limited Access, Right-of-Way line the following courses and distances: North 10°38'42" East, 30.00 feet; thence South 79°21'18" East, 213.53 feet; thence along a curve deflecting to the left with a radius of 40.00 feet for a distance of 66.36 feet to an iron bar (the chord of said curve has a bearing of North 53°06'57" East and a length of 59.01 feet); thence North 5°35'25" East, 1465.53 feet to an iron bar and to the POINT OF BEGINNING and containing 34.1204 acres, more or less, subject to all legal highways.

Exhibit A to Quit Claim Deed Dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

612- No - 9  
300  
576.5

Being part of the same premises conveyed to the City of Cincinnati recorded in Deed Book 2768, Page 39, Deed Book 2354, Page 295, Deed Book 2495, Page 576 and Deed Book 2495, Page 345 of the Hamilton County Recorder's Office.

Subject to an easement conveyed to the Board of County Commissioners of Hamilton County, Ohio.



DEED 4169 PC 1172

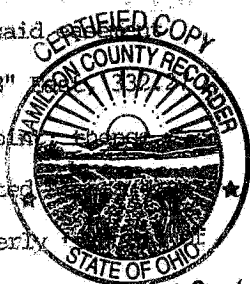
Exhibit A to Quit Claim Deed Dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

County, Ohio by the City of Cincinnati for installation, operation and maintenance of a storm drainage facility and/or slopes over part of the above described tract, being more particularly described as follows:

From the same POINT OF BEGINNING as the above described premises measure North 84°24'35" West, 39.67 feet; thence South 13°11'06" West, 93.36 feet; thence South 2°10'02" West, 535.96 feet; thence North 84°24'35" West, 30.00 feet; thence South 5°35'25" West, 40.00 feet; thence South 84°24'35" East, 35.00 feet; thence South 13°05'10" West, 383.28 feet; thence South 5°35'25" West, 45.00 feet; thence South 36°23'49" East, 67.27 feet; thence South 5°35'25" West, 322.98 feet; thence South 36°08'39" West, 46.27 feet to a point in the westerly Limited Access, Right-of-Way line of the Reed Hartman Highway and the northerly Right-of-Way line of Creek Road; thence along said westerly Limited Access, Right-of-Way line on a curve deflecting to the left with a radius of 40.00 feet for a distance of 66.36 feet to an iron bar (chord of said curve has a bearing of North 53°06'57" East and a length of 59.01 feet); thence continuing on said westerly line North 5°35'25" East, 1465.53 feet to an iron bar and the POINT OF BEGINNING and containing 1.2201 acres, more or less. Said easement was conveyed by deed recorded in Deed Book 4011, page 1210.

Reserving to the Board of County Commissioners, Hamilton County, Ohio, its successors and assigns a permanent 15 foot easement with the right of entry and re-entry for the perpetual maintenance, reconstruction, repair and operation of a SANITARY SEWER. Said easement being 7.5 feet on each side of the following described centerline;

From the same POINT OF BEGINNING as the above described premises measure North 84°25'35" West, 206.56 feet to the POINT OF BEGINNING of the centerline of said 15 foot SANITARY SEWER EASEMENT; thence along the centerline of said South 3°24'00" East, 202.12 feet to a point; thence South 3°46'48" feet to a point; thence South 11°28'12" East, 303.72 feet to a point; thence South 22°45'48" East 66.89 feet to a point in the westerly Limited Right-of-Way line of the Reed Hartman Highway and being the easterly the centerline of said easement.



TOTAL PAGES 10712

DEED 4169-1173

Exhibit A to Quit Claim Deed dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

Said easement has the following restrictions:

No improvements of any kind, which will interfere with access to the sewer, shall be made on said easement, and the County of Hamilton shall not be responsible to any present or future owners of said property for any damage done on said easement to sod, shrubbery, trees or any other improvements, either natural or artificial, by reason of entering for the purpose of constructing, maintaining replacing or repairing the sewer.

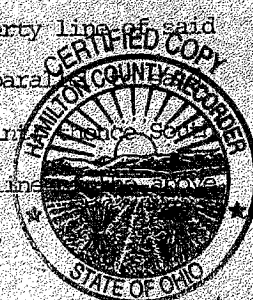
Any building or structure to be constructed on the above described parcel shall be kept not less than three (3) feet from the easement line nearest the site of the proposed structure.

The Metropolitan Sewer District reserves the right to approve any such building or structure plans before construction shall be started within the limits of the above described parcel.

Also reserving to the Board of County Commissioners, Hamilton County, Ohio, its successors and assigns a permanent 15 foot easement with the right of entry and re-entry for the perpetual maintenance, reconstruction, repair and operation of a SANITARY SEWER. Said easement being 7.5 feet on each side of the following described centerline;

From the same point of beginning as the above described premises measure North 84°25'35" West, 374.18 feet to an iron bar; thence North 5°35'25" East, 82.35 feet to a point in the easterly line of said premises and the point of beginning of the centerline of said easement; thence North 36°51'12" West along said centerline parallel to and 7.5 feet from the northeasterly property line of said premises, 322.78 feet to a point; continuing 7.5 feet from and parallel to said property line; thence North 36°08'57" West, 332.10 feet to a point; thence South 85°32'43" West, 61.11 feet to a point in the westerly property line of said premises and the westerly terminus of said centerline.

DEED BOOK 4169:1174



Said easement has the following restrictions: No improvements of any kind, which will interfere with access to the sewer, shall be made on said easement and the TOTAL PAGES 117-12

Exhibit A to Quit Claim Deed dated August 6, 1979 From C.I.C., Agent for The City of Cincinnati, to Toyota Motor Distributors, Inc.

County of Hamilton shall not be responsible to any present or future owners of said property for any damage done on said easement to sod, shrubbery, trees or any other improvements, either natural or artificial, by reason of entering for the purpose of constructing, maintaining, replacing or repairing the sewer.

Any building or structure to be constructed on the above described parcel shall be kept not less than three (3) feet from the easement line nearest the site of the proposed structure.

The Metropolitan Sewer District reserves the right to approve any such building or structure plans before the construction shall be started within the limits of the above described parcel.

This description is based on a survey made by the City of Cincinnati under the direction of Thomas J. Howard.

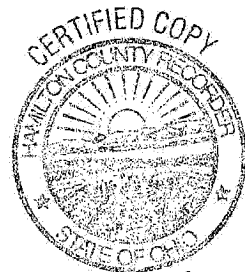
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STATE OF OHIO

DEED 4169-1175



TOTAL PAGES 12712

Wayne Coates  
Hamilton County Recorders Office  
Document Type:  
CERTIFIED COPY  
Dept/Bk/Page: F/4169/1164  
Filed: 08/21/1979 11:30:00 AM \$25.00  
ATTEST: Wayne Coates  
*Wayne Coates*  
BY: FORTRAN, TIMOTHY A



TOTAL PAGES 12

CERTIFIED BY  
*[Signature]*  
DATE 2-24-10



# **EXHIBIT 3**

A466512

FILED  
In the office of the Secretary of State  
of the State of California

SEP 30 1995

0346014 SWW

**CERTIFICATE OF OWNERSHIP  
MERGING  
TOYOTA MOTOR DISTRIBUTORS, INC.  
into  
TOYOTA MOTOR SALES, U.S.A., INC.**

*Bill Jones*  
Secretary of State

Shinji Sakai and John McGovern certify that:

1. They are the President and Secretary, respectively, of Toyota Motor Sales, U.S.A., Inc., a California corporation ("TMS").
2. TMS owns all of the outstanding shares of Toyota Motor Distributors, Inc., a California corporation ("TMD").
3. The following resolutions were duly adopted by the Board of Directors of TMS:

WHEREAS, this corporation owns all of the outstanding shares of stock of Toyota Motor Distributors, Inc. ("TMD"); and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge TMD into itself and assume all its obligations;

NOW THEREFORE BE IT RESOLVED, that this corporation merge TMD into itself (with this corporation as the surviving corporation) and assume all the obligations of TMD pursuant to Section 1110 of the California Corporations Code;

RESOLVED FURTHER, that the President or any Vice President and the Secretary or Assistant Secretary of this corporation are hereby directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

We further certify under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

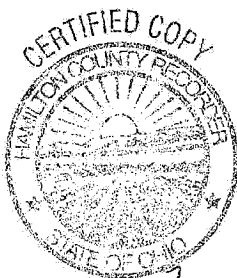
Dated September 13, 1995

*Shinji Sakai*  
Shinji Sakai

*John McGovern*  
John McGovern



10238 1798



Wayne Coates  
Hamilton County Recorders Office  
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Bob Ritter  
BY: BOB RITTER

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Bob Ritter

DATE 2-23-10

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Rebecca Prem Groppa  
Hamilton County Recorders Office  
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RECORDED & INDEXED BY THE COUNTY OF HAMILTON  
b1023801797fb

**State of California**  
Secretary of State



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of  2  page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

APR 29 2006



BRUCE McPHERSON  
Secretary of State



10238 1797

TOTAL PAGES  2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)**

HUGH W. COX,  
PAMELA M. COX,  
and  
others similarly situated,  
**Plaintiffs,**

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
TOYOTA LEASE TRUST,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.,  
TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
CLYDE DYSON,  
and  
BEECHMONT TOYOTA, INC.,  
**Defendants.**

Civil Action No.10-127  
JUDGE MICHAEL R. BARRETT

**DEFENDANT CLYDE DYSON'S  
CONSENT TO REMOVAL TO  
THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT OF OHIO, WESTERN  
DIVISION**

Defendant, Clyde Dyson, by counsel, hereby consents to the removal of *Hugh W. Cox v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1000992, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Clyde Dyson does not waive, and fully reserves, any rights or defenses to which he is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441, and 1453.

Respectfully submitted,

/s/ **Gregory A. Harrison**

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***Attorney for Defendants Toyota  
Motor Sales, U.S.A., Inc., Toyota  
Lease Trust, Toyota Motor  
Engineering & Manufacturing  
North America, Inc., Beechmont  
Toyota, Inc., and Clyde Dyson***

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[glenn.morris@alston.com](mailto:glenn.morris@alston.com)

**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Consent to Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, 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 REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Hugh W. Cox, Pamela M. Cox, Ernestine Montgomery, and others similarly situated

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

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

Stanley M. Chesley, Waite, Schneider, Bayless & Chesley LPA,  
One West 4th St., Ste. 1513, Cincinnati, OH 45202, 513-621-0267

**DEFENDANTS**

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

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

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

Attorneys (If Known)

Gregory A. Harrison, Dinsmore & Shohl LLP, 255 E. 5th St., Ste. 1900, Cincinnati, OH 45202, 513-977-8200

**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 - CAFA  
(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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**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. Secs. 1331, 1332, 1441, and 1453

Brief description of cause:  
Toyota Recall Litigation

**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

02/24/2010

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gregory A. Harrison

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



**SUPPLEMENTAL CIVIL COVER SHEET  
FOR CASES REMOVED FROM STATE COURT**

*This form must be attached to the Civil Cover Sheet at the time  
the case is filed in the United States District Court*

State Court County: <u>Hamilton</u>		
Case number and caption:		
<u>A1000992</u>	<u>Hugh W. Cox, et al.</u>	<u>Toyota Motor Sales, US</u>
Case Number	Plaintiff(s)	Defendant(s)

Jury Demand Made in State Court:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If "Yes," by which party and on what Date:		
<u>Plaintiffs</u>	<u>February 2, 2010</u>	
Party	Date	

Were there parties not served prior to removal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Were there parties dismissed/terminated prior to removal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Were there answers filed in State Court?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is there a pending TRO in State Court?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

*If you have answered "yes" to any of the above please list parties not served, the parties dismissed/terminated and the parties that filed their answers on the reverse of this page.*

*On the reverse of this page please list all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address and phone number, including area code.*

Are copies of all state case pleadings attached to your removal?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If your answer is "No", when will they be filed: _____		
List the parties that are removing the case:		
<u>Toyota Motor Sales USA, Inc.</u>	<u>Toyota Motor Engineering &amp; Manufacturing</u>	
<u>Toyota Lease Trust</u>	<u>North America, Inc.</u>	

Parties Not Served	Parties Dismissed	Answers Filed
<p><i>I.E. Defendant John Doe</i></p> <p>None</p>	<p><i>I.E. Defendant John Doe</i></p> <p>None</p>	<p><i>I.E. Defendant John Doe</i></p> <p>None</p>

Party and Type	Attorney(s)
<p><i>I.E. Plaintiff John Doe</i></p> <p>PLAINTIFFS                      Hugh W. Cox                      Pamela M. Cox                      Ernestine Montgomery                      Others Similarly Situated</p> <p>DEFENDANTS                      Toyota Motor Sales, U.S.A., Inc.                      Toyota Lease Trust                      Toyota Motor Engineering &amp; Manufacturing North America, Inc.                      Clyde Dyson                      Beechmont Toyota, Inc.</p>	<p><i>I.E. Attorney(s) Name</i></p> <p><i>Firm</i></p> <p><i>Address</i></p> <p><i>City, State, Zip</i></p> <p><i>Telephone and Fax Number</i></p> <p><i>Supreme Court Number</i></p> <p>Stanley M. Chesley (0000852)                      Waite, Schneider, Bayless &amp; Chesley, LPA                      1513 Fourth &amp; Vine Tower                      One West Fourth Street                      Cincinnati, OH 45202                      Phone: 513-621-0267                      Fax: 513-381-2375                      Counsel for Plaintiffs</p> <p>Gregory A. Harrison, Esq. (0029814)                      Dinsmore &amp; Shohl LLP                      1900 Chemed Center                      255 East Fifth Street                      Cincinnati, OH 45202                      Phone: 513-977-8200                      Fax: 513-977-8141                      Attorney for Defendants</p>

USE A SEPARATE SHEET OF PAPER IF NECESSARY

COURT OF COMMON PLEAS **FILED**

HAMILTON COUNTY, OHIO 2010 FEB 22 P 6: 02

**HUGH W. COX , et al.**

**Plaintiffs,**

vs.

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

CLERK OF COURTS  
GENERAL TRAFFIC DIV  
HAMILTON COUNTY OHIO  
Case No. A1000992

Judge Robert P. Ruchlman

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, pursuant to Ohio Rule of Civil Procedure 65(B) and Ohio Revised Code § 2727.02 move for a Preliminary Injunction that: 1) prevents Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota North American Technical Training Center (collectively, "Toyota" or "Toyota Defendants") from collecting lease and loan payments from Ohio residents who are fearful of driving their cars due to Toyota defects, 2) requires Defendants to provide, without cost, alternate vehicles free from defects to Ohio residents who are fearful of driving their cars due to Toyota defects; orders Defendants to ensure that no Toyota dealer performs service on the 2009 Camry, Toyota Camry VIN 4T4BE46K19R079017, formerly owned by Thomas and Connie Kamphaus, proposed class members in this case, until Plaintiffs' counsel have the opportunity to have an expert examine the vehicle.

Plaintiffs are entitled to the requested relief because:

- (1) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (2) Plaintiffs will suffer irreparable harm if the injunction is not granted;

- (3) There is a substantial likelihood that pedestrians and/or drivers within the State of Ohio will be injured as a result of a defective Toyota-manufactured vehicle being driven on the roads of this state;
- (4) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>1</sup>

The purpose of this injunction is to preserve the status quo, to protect Ohio residents from the threat of Sudden Unintended Acceleration (“SUA”) and other known Toyota-manufactured automobile defects, and to preserve evidence until more information is obtained about how to avoid and prevent the dangers these vehicles present.

The extent of the problem is only beginning to come to light. Currently, a federal criminal investigation of Toyota is commencing in New York and an SEC investigation of Toyota is commencing in California. Plaintiffs provide additional support in the attached memorandum in support of their motion for Preliminary Injunction.

Respectfully submitted,



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*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
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<sup>1</sup> *Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

Defendants have placed profit over safety and have sought to limit and to stifle governmental investigations into the safety of Toyota Vehicles. Evidence in recent news accounts revealed that Toyota has known for years that its vehicles were unsafe. However, instead of working with the government to protect Ohio residents, Defendants engaged in a mercenary campaign to save money by avoiding recalls.

In an internal presentation in July 2009 at its Washington office, a Toyota official said it saved \$100 million or more by negotiating an "equipment recall" of floor mats involving 55,000 Toyota Camry and Lexus ES350 vehicles in September 2007. The savings are listed under the title, "Wins for Toyota -- Safety Group." The document cites millions of dollars in other savings by delaying safety regulations, avoiding defect investigations and slowing down other industry requirements.<sup>2</sup>

Toyota's most recent current campaign to "fix" "sticky accelerators" similarly appears to be another scheme to save money and avoid taking appropriate measures to protect the public. Prospective class members who have had this recall repair in February 2010 have continued to experience sudden unintended acceleration (SUA) incidents. (See Affidavit of Connie Kamphaus attached as Exhibit 1). Vehicles with a dangerous defect remain on the highways. A Preliminary Injunction is necessary to protect Ohio pedestrians and drivers from further injury by unsafe Toyota-made vehicles.

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<sup>2</sup> <http://finance.yahoo.com/news/Documents-Toyota-boasted-apf-3066044297.html?x=0>.

## BACKGROUND

Plaintiffs Hugh W. Cox, Pamela M. Cox and Ernestine Montgomery currently own or lease Toyota vehicles. Prospective class members Thomas and Connie Kamphaus recently brought their 2009 Toyota Camry, VIN 4T4BE46K19R079017, in for a recall repair to correct SUA. After completing the repair at a Toyota dealer in January 2010, their vehicle experienced several SUA incidents. They feared for their safety and the safety of others, and stopped driving the vehicle. They could not afford to rent or buy a second vehicle. In February 2010, due to their fear of driving the 2009 Camry, Toyota convinced them to trade the vehicle in on a 2010 Camry at a higher payment rate. Plaintiffs Hugh W. Cox and Pamela M. Cox currently are making monthly payments to Toyota.<sup>3</sup> Plaintiffs and many proposed class members have paid and are paying Toyota for the “privilege” of driving admittedly unsafe vehicles. As a last resort, some continue to drive the cars on Ohio roads.

Toyota-manufactured vehicles are subject to an unprecedented recall. The reason for the recall particularly is disturbing. Defendants, from 1999 to January 19, 2010, had knowledge of at least two thousand reports of SUA. The reports included 2,262 total incidents, 819 crashes, 341 injuries and 26 deaths.<sup>4</sup>

Since 1999, at least 2,262 Toyota and Lexus owners have reported to the National Highway Traffic Safety Administration, the media, the courts and to Safety Research & Strategies that their vehicles have accelerated suddenly and unexpectedly in a variety of scenarios. These incidents have resulted in 815 crashes, 341 injuries, and 19 deaths potentially related to sudden unintended acceleration.<sup>5</sup>

The extent of the problem is wide-ranging. Toyota Drivers have reported vehicle surges and unintended acceleration under a variety of conditions including:

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<sup>3</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>4</sup> Safety Research & Engineering Strategies, Inc., Toyota Sudden Unintended Acceleration, February 5, 2010 at p. 6.

<sup>5</sup> *Id.* at 1.

- The vehicle was at idle
- The vehicle was in reverse at low speed
- The operator's foot was on the brake
- The vehicle was traveling at a constant highway speed
- The vehicle contained no all-weather accessory floor mats
- The accelerator pedal was not "sticking"<sup>6</sup>

Toyota's response to these incidents was to blame the drivers. When federal officials began to doubt Toyota's explanation, it then blamed the incidents on floor mats that they claimed interfered with the acceleration pedal and called a small number of vehicles for a floor mat repair. When it became obvious to consumers and officials that floor mats were not the cause of SUA, Toyota claimed that its vehicles had sticky accelerator pedals, and made a larger recall, which consisted of shortening the accelerator pedal and installing a shim. Despite substantial evidence to the contrary, Defendants never publicly acknowledged that its vehicles suffered from serious design and engineering defects. However, Defendants have known for years that their vehicles were defective in that they suffered from a defect that can cause them to suddenly accelerate uncontrollably.

In 2004, Defendants met with National Highway Transportation Safety officials in an effort to minimize the investigation of SUA incidents, to minimize the publicity given to them, and to avoid substantial costly recalls of millions of their automobiles. As part of the scheme to defraud consumers, Defendants replaced experienced automobile workers with less expensive temporary workers at Toyota Motor Engineering and Manufacturing North America, Inc., causing manufacturing quality to suffer, at the same time as they publicly represented to consumers the excellent engineering and reliability of their vehicles. The experienced workers signed a protest petition in November 2009, objecting to this conduct. (Exhibit 3). During this time period, Defendants quietly repaired vehicles brought by customers who experienced SUA,

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<sup>6</sup> *Id.* at 9.

but intentionally and recklessly failed to warn customers driving similar vehicles. Instead, they intentionally misrepresented to customers, including Plaintiffs and the proposed class, that their vehicles were suited for their intended purpose, were well-engineered, were safe to drive, and were reliable.

Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. Toyota omitted the back-up safety systems to save money and increase profits. As a result of the lack of safety systems, there is no adequate mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the acceleration systems malfunction and engage in uncontrolled acceleration.

Defendants, additionally, have attempted the “repair” of modifying the accelerator pedal to attempt to fix the SUA defect since at least 2006, when they modified the accelerator pedal of a 2005 Toyota Camry owned by Plaintiff Montgomery at a dealership in Cincinnati, Ohio.<sup>7</sup> At that time, they intentionally and recklessly failed to recall similarly-affected vehicles.

On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the alleged reason of “sticking accelerator pedals.” Toyota stated that its investigation, which it said it had only conducted “in recent months,” “indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, **mechanically** stick in a partially depressed position or return slowly to the idle position.” (Emphasis added) The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay the problems by saying they were caused by floor mats and by accelerator pedals that were the wrong size.

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<sup>7</sup> See Affidavit of Ernestine Montgomery, attached as Exhibit 4.



On January 26, 2010, Toyota stopped selling eight recalled models, stating that preventing the sale of the vehicles was “necessary until a remedy is finalized.” Despite believing that the problem was serious enough that it was necessary to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers. Nor did Toyota recall other models and makes of Toyota-manufactured vehicles, in which class members have experienced SUA.

Ohio Consumers attempted to schedule repairs but were told they could not get their vehicle fixed until they received a letter. When they informed Toyota agents that they were afraid to drive their vehicles, they received no assistance. The repairs currently being performed do not adequately address the dangerous defect. Ohio consumers have not received substitute vehicles and are left to drive admittedly dangerous vehicles. Defendants expect Ohio owners and lessees of Toyota cars and trucks to continue to make car and lease payments.<sup>8</sup>

**TOYOTA IS SACRIFICING THE SAFETY OF ITS CURRENT OWNERS AND  
LESSEES OF ITS VEHICLES TO MAKE SALES OF NEW CARS**

The Toyota Defendants recently announced that Toyota would install brake override systems in response to recent incidents of runaway cars. Toyota North America president Yoshi Inaba told *Automotive News* that the system will force the engine into idle if it senses the driver is trying to apply the brakes unsuccessfully.<sup>9</sup>

The Toyota Camry and Lexus ES350 originally were the first models scheduled to receive the new system. Toyota made this announcement on the heels of a massive 3.8 million vehicle recall to reshape and replace accelerator pedals. On February 17, 2010, Toyota announced that it was expanding the use of the system and would install the brake override

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<sup>8</sup> See Affidavit of Hugh and Pamela Cox, attached as Exhibit 2.

<sup>9</sup> <http://www.autoblog.com/tag/yoshi+inaba/>.

safety feature on all new vehicles that Toyota sells in North America.<sup>10</sup> Despite this announcement, the National Highway Traffic Safety Administration reportedly remains suspicious of other contributing factors.<sup>11</sup>

Plaintiffs do not acknowledge that the brake override system will prevent SUA. However, Plaintiffs do note that Toyota vehicles currently on the road in Ohio do not have the system, and therefore, by Toyota's own admission, lack an important safety feature to prevent SUA.

On February 3, 2010, Ray La Hood, Director of the National Highway Safety Transportation Administration, told United States drivers that his "advice is if anybody owns one of these vehicles is to stop driving it and take it to a Toyota dealer because they believe they have the fix for it."<sup>12</sup> Mr. La Hood subsequently modified this sage advice. However, his point remains clear. Toyota vehicles are unsafe and Toyota is more concerned about future sales as opposed to protecting the interests of current owners and lessees of Toyota cars and trucks.

## ARGUMENT

### **I. OHIO RESIDENTS ARE ENTITLED TO A PRELIMINARY INJUNCTION THAT WILL PROTECT THEIR RIGHTS AND PRESERVE THE STATUS QUO**

#### **A. Plaintiffs Satisfy the Requirements for a Preliminary Injunction**

Ohio Rule of Procedure 65 (B) provides that parties may obtain a provisional remedy of a preliminary injunction. Additionally, Ohio Revised Code § 2727.02 provides that a preliminary

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<sup>10</sup> See <http://www.asiaone.com/Motoring/News/Story/A1Story20100218-199346.html> ("The new brake over-ride system to be introduced worldwide would cut engine power when the accelerator and brake pedal are depressed at the same time. Accidents blamed on unintended acceleration have been linked to more than 30 deaths in the United States").

<sup>11</sup> <http://www.autoblog.com/2010/01/12/breaking-toyota-said-to-install-brake-override-systems-in-all-c/>.

<sup>12</sup> <http://www.theautochannel.com/news/2010/02/03/464423.html>.

injunction during pending litigation is appropriate if Defendants' acts violate Plaintiffs' rights concerning the subject matter of the litigation.<sup>13</sup>

Plaintiffs are entitled to a Preliminary Injunction if they can establish that:

- (4) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (5) That Plaintiffs will suffer irreparable harm if the injunction is not granted;
- (3) The issuance of the injunction will not harm third parties; and
- (4) The public interest would be served by issuing the preliminary injunction.<sup>14</sup>

Here, the uncontested facts certainly establish that Plaintiffs are entitled to a preliminary injunction. First, a substantial likelihood exists that Plaintiffs will prevail on the merits. The current record, even without discovery, establishes that Toyota has recalled millions of cars and trucks due to SUA. The undisputed evidence further establishes that SUA is dangerous and causes accidents, injuries, and deaths.

Consumer reaction to the recalls demonstrates that Ohio consumers, similar to consumers throughout the United States, believe that Toyota vehicles are dangerous and that Ohio consumers do not want to drive the cars and trucks. The recalls also demonstrate that Toyota cars and trucks are, in fact, unsafe. Toyota's continuing changing representations and statements

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<sup>13</sup> Ohio Revised Code Section 2727.02 provides:

A temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

<sup>14</sup> *Convergys Corp. v. Tackman* (Ohio App. 1 Dist. 2006), 169 Ohio App.3d 665 C-060440; See *Crestmont Cadillac Corp. v. Gen. Motors Corp.*, 2004-Ohio-573.

concerning the cause of SUA, the fixes and repairs, and its changes to unsold new cars demonstrate that Plaintiffs have a substantial likelihood of prevailing on the merits.

The denial of the injunction will cause Plaintiffs and proposed class members who own or lease Toyota vehicles to suffer irreparable harm during severe economic times. Plaintiffs and proposed class members are forced to either drive an unsafe car or find alternative means of transportation at costs they cannot afford. Plaintiffs require immediate assistance, in the form of safe and dependable alternative transportation. The absence of alternative vehicles, moreover, not only is endangering Ohio drivers and their passengers but is endangering other motorists and pedestrians.

Plaintiffs and other Ohio residents also are suffering injury because the Toyota Defendants are requiring Ohio residents to make payments on vehicles that they are not using as intended. Fundamental fairness dictates that payments for vehicles that admittedly are unsafe is unfair and causes irreparable injury.

Finally, due to fear and several occurrences of SUA, Mr. and Mrs. Kamphaus were recently convinced by Toyota to trade their 2009 Toyota Camry for a new vehicle. Before Toyota takes actions that might alter or modify this vehicle and thus cause irreparable injury by limiting Plaintiffs' ability to pursue litigation, a court order is necessary to prevent its modification or alteration.

A preliminary injunction will not injury third parties. To the contrary, it will prevent injury to third parties and will promote the public interest in highway safety by keeping dangerous cars and trucks off of Ohio's roads.

**B. The Requested Preliminary Injunction is Reasonable**

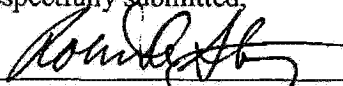
Under the circumstances of this case, the requested injunction is reasonable. Why should Defendants force Ohio residents to pay for cars and trucks that are unsafe and that Ohio residents are afraid to use? Defendants should be made to take immediate steps to provide safe alternative transportation. This is both logical and fair. Finally, Defendants, consistent with this Court's earlier order to preserve evidence, should be required to preserve and protect the car that Plaintiffs recently traded in until Plaintiffs have the opportunity to have an expert review and examine the car.

**CONCLUSION**

For the reasons contained in this motion and memorandum, this Court should grant Plaintiffs Motion for a Preliminary Injunction and Order that:

- (1) Defendants, until further notice, may not collect car payments from Ohio residents;
- (2) Defendants may not modify or alter the car formerly owned by Mr. and Mrs. Kamphaus until Plaintiffs have the opportunity to have an expert review and examine the car ; and,
- (3) Defendants immediately must provide alternative vehicles for all Ohio residents who currently own or lease Toyota vehicles.

Respectfully submitted,



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Stanley M. Chesley (11810)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Telephone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: [bobsteinberg@wsbclaw.com](mailto:bobsteinberg@wsbclaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by regular U.S. mail this  
23<sup>rd</sup> day of February, 2010 upon the following:

Toyota Motor Sales, U.S.A., Inc.  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Lease Trust  
Agent for Service of Process:  
CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Toyota Motor Engineering & Manufacturing  
North America, Inc.  
Agent for Service of Process:  
CT Corporation System  
4169 Westport Road  
Louisville, KY 40207

Toyota North American Technical Training  
Center  
4550 Creek Road  
Cincinnati, OH 45242

Clyde Dyson  
4550 Creek Road  
Cincinnati, OH 45242

Beechmont Toyota, Inc.  
8639 Beechmont Avenue  
Cincinnati, OH 45255

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Robert A. Steinberg

# **EXHIBIT 1**

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruehlman**

**AFFIDAVIT OF CONNIE A. KAMPHAUS**

Now comes the Affiant, Connie A. Kamphaus, and after first being duly sworn and cautioned, states as follows:

1. Until Friday, February 19, 2010, I was the owner of a 2009 Toyota Camry which I leased new at Performance Toyota in Fairfield, Ohio on or about June 22, 2008.
2. At the time I leased my Toyota Camry in 2008, I made a down payment of approximately \$2200.00 on a 3 year lease with payments of approximately \$247.00 a month.
3. On or about January 15, 2010, my husband Tom was driving my car in a Kroger parking lot in Westchester, Ohio when the car suddenly accelerated. Tom was forced to brake as hard as he could and threw the gear into "Park" after which the engine idled down. He then turned off the ignition.



4. Tom called Performance Toyota about this incident on January 15, or January 16, 2010. Performance Toyota told us to bring the car in and we took the car to Performance on or about January 16<sup>th</sup>. We were given a loaner car for one evening and we picked up the car the next day, having been told that Toyota "fixed" the problem by installing a new gas pedal. It appeared the entire gas pedal assembly had been replaced. We thought the problem was solved.

5. On February 9, 2010, Tom was driving my car out of the Fairfield Hospital parking lot and braking as he approached a red traffic light when the brake froze and the engine revved. Tom had to brake as hard as he could while throwing the car into "Park" in order to stop the car.

6. On February 10, 2010, Tom was driving my car on our street and came to a stop sign. Again, the brake froze and the engine revved. Tom had to brake as hard as possible and throw the car into "Park" to stop the car.

7. On February 13, 2010, we contacted Performance Toyota to tell them about the sudden acceleration incidents after the gas pedal was "fixed." We told Performance Toyota we wanted out of the lease agreement. Toyota wanted us to come in and sign some sort of "arbitration agreement" but due to inclement weather and our health, we did not immediately go to Performance Toyota to discuss this.

8. From February 10 until February 19, we grew more and more fearful of driving our Toyota Camry. Because of the dangerousness of the Toyota, we avoided driving it. This created a real hardship for us. The Toyota was our only car to drive, as our son uses our other vehicle to travel to and from work. We contacted Toyota about loaning us a car until this matter was resolved, but Toyota told us they could not loan us a car.. We then looked into obtaining a

rental car until the problem was resolved, but could not afford to pay for a rental car due to our financial situation.

9. We became very upset and desperate due to the hardship the lack of a vehicle created for us. My husband and I both have serious health issues requiring frequent doctor visits. We have no one to transport us to our respective appointments.

10. Due to our desperate financial situation and tremendous need for a safe and reliable vehicle, on Friday, February 19, 2010 Tom and I returned our 2009 Toyota Camry to Performance Toyota and demanded another non-Toyota vehicle. We did not want to make any more payments on this vehicle as we felt it was unfair and unreasonable to be paying for an unsafe vehicle we were terrified to drive. Toyota would not agree to a non-Toyota vehicle, but provided us with a 2010 Camry which Toyota represented was already fixed. Toyota would not credit us for 15 months of payments of \$247.00/month, nor for the approximate \$2200.00 we put down on the 2009 Camry. Moreover, Toyota made us start a new 3 year lease for approximately \$347.00/month. Due to our desperate situation, we had no choice but to accept this "deal." Of course, what we now have is a newer car for more money and with the same repair as the suddenly accelerating 2009 Camry.

FURTHER AFFIANT SAITH NAUGHT.

Connie A. Kamphaus  
Connie A. Kamphaus

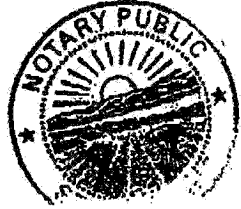
STATE OF OHIO )  
 ) S.S.  
COUNTY OF Butler )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

*Jessica Bright*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Aug 3, 2011



JESSICA BRIGHT  
Notary Public, State of Ohio  
My Commission Expires  
August 3, 2011

# **EXHIBIT 2**

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruchlman**

**AFFIDAVIT OF PAMELA M. COX AND HUGH W. COX**

Now comes the Affiants, Pamela M. Cox and Hugh W. Cox, and after first being duly sworn and cautioned, state as follows:

1. We are the lessees of a 2010 Toyota Camry LE leased on November 30, 2009 from Beechmont Toyota in Cincinnati, Ohio. We currently make a monthly payment.
2. Our 2010 Camry is part of Toyota's recall for gas pedals relating to sudden acceleration.
3. We are afraid to drive our Toyota. We avoid driving the Toyota unless we have no choice, and, while we have another vehicle, we really need this 2<sup>nd</sup> car as a means of transport. Not having this car to use has created a hardship on us.
4. In addition to the fact that not driving our Toyota creates an inconvenience for us and makes our lives more difficult, we believe it is unfair that we are making payments on a car

a car that is not the safe and reliable vehicle represented to us. It is not reasonable for us to have to continue making payments on a car that we do not wish to drive and that has a dangerous defect with no as yet proven "fix".

FURTHER AFFIANTS SAITH NAUGHT.

Pamela M Cox

Pamela M. Cox

STATE OF OHIO )  
COUNTY OF Clermont ) S.S.

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

Beverly L. Glancy  
Notary Public

Beverly L. Glancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

My Commission Expires:

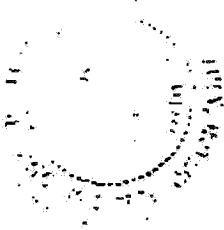
April 7 2012

and

Hugh W. Cox  
Hugh W. Cox

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Columb )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.



*Beverly L. Giancy*  
Notary Public

My Commission Expires:

April 7, 2012

Beverly L. Giancy  
Notary Public State of Ohio  
My Commission Expires April 7, 2012

# **EXHIBIT 3**





We CARE about OUR Company, Our Future and Our Co-Workers. We did a sample poll to see if they agreed with our concerns. We gave the letter below and a copy of the poll to Mr. St. Angelo, respectfully asking for resolution to these matters.

Toyota Workers for a Better Toyota

107 Frazier Ct.

Georgetown, Ky. 40324

November 17th, 2009

Dear Mr. St. Angelo,

We are a group of concerned employees who CARE about our company, our future and the well being of co-workers. We understand today's economic situation and how it has affected Toyota and consequently us; but we feel strongly that even during these tough times doing what's right should still be the priority. We recognize and appreciate how our management has in the past shown an interest in maintaining a good relationship with the workers by understanding our concerns. In this spirit, we have over the last couple of weeks conducted a "sample poll" of our co-workers asking them to share their concerns with us. The attached signed petition represents a small sampling of how a great number of workers feel about our workplace. In the few areas where we conducted this activity there were a great many more Team Members who agreed with everything the petition states but were afraid to add their name for fear of retaliation. Those of us who have signed it strongly believe that you will understand it as an opportunity to make improvements for all without any retaliation to any of us.

The consensus among us is that it is time to reinstate TIE payments, bonuses, and annual wage increases. Toyota North America is again running profitably, our plant and several others have returned to full production, with line speed-ups, overtime and the addition of hundreds of lower paid temporaries. This is surely a sign of recovery!

As hard working employees, we do our best to ensure Toyota Georgetown succeeds but we deserve to be treated with honesty, respect and fairness. We want to also be a part of Toyota's success but we also have a responsibility to provide for our families in the best way possible. We are now seeing the rapid elimination of full time jobs from our grasp, as they are being contracted out to cheap-labor suppliers or temp agencies. This really concerns us since we believe this is happening at the expense of many loyal TMs. Many of us long-service full time TMs are now being forced back to the same assembly jobs where we began our Toyota career. Still others are suffering the effects of having to work second shift without getting an opportunity to fill the hundreds of vacancies which exist on first shift. This is a betrayal of the hard working fulltime Toyota employee who wants to do the best they can in their job to help Toyota be successful..

As workers we feel we are doing our part and as Kentucky taxpayers, we gave Toyota over \$420-million to locate and operate here. In exchange, Toyota promised to establish good paying fulltime jobs, not thousands of lower paid temporary jobs or unsafe jobs. Toyota should stand behind its promise to the Commonwealth and citizens of Kentucky, as well as to all Team Members and do their part too!

We respectfully request Toyota management address and correct these very serious problems.

Sincerely,

Concerned Team Members  
as shown on Petition.



Over the past several months we have listened to the most common concerns of our fellow Team Members. Like you, we share the same concerns about the many substantial changes and the current situations occurring at our workplace. These changes all fit with Toyota's "5-year plan" to reduce wage levels to the state average manufacturing rate and reduce the wage and benefit standards for auto workers and our communities.

The response has been very positive, including the unity of our collective position that we all should expect Toyota to address these valid concerns now. We have included a copy of these petitions for those Team Members who did not have an opportunity to review or sign them, so you can understand what is being referenced. The petition shown on the opposite page has a combination of petition signatures from many different pages.

## News You Can Use

**October 16, 2009-** Toyota in Canada recently eliminated five paid holidays annually and added an hour of daily overtime, scheduled extra production for three Saturdays, plus a pending speed-up of the assembly line for its workers in Cambridge and Woodstock. People are very upset about this," said Lee Sperduti, a veteran assembly line Team Member. "Overtime is good security and everybody enjoys the money, but when it steadily takes more time away from your family, it hurts."

[www.financialpost.com/story-printer.html?id=2109035](http://www.financialpost.com/story-printer.html?id=2109035)  
[www.torontostar.com](http://www.torontostar.com)

**November 6, 2009-** Toyota workers in Buffalo, WV filed a grievance with the National Labor Relations Board. "We are standing up for our rights....." Tim Smith, a Toyota employee for 10-1/2 years said. Richard Snyder, who has worked for Toyota for nearly 11 years, said he wants "to continue to see Toyota succeed. But I also want to exercise my rights to talk with my coworkers and hand out union literature on our breaks."

[www.wvgazette.com/News/200911060878](http://www.wvgazette.com/News/200911060878)

**November 9, 2009-** The Georgetown, Ky., Toyota plant is running at "full capacity" working overtime on Saturdays and temporary workers laid off last year have been brought back, said Steve St. Angelo, president of the plant.....

For a total plant work force of 7,300. About 1,000 of them are temporary workers.  
[www.freep.com/article/20091109/BUSINESS01/91109036](http://www.freep.com/article/20091109/BUSINESS01/91109036)

**November 12, 2009-** Toyota motor Company and its labor union agreed Wednesday to make no changes to an average winter bonus set earlier in the year 930,000 yen.....

[www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus](http://www.japantoday.com/category/business/view/toyota-to-pay-winter-bonus)

# Did We Really Do That?

Remember not too long ago? As newly hired TMs we were denied our promised wage progression. Then we returned to full production, laid off temporary workers were re-hired and the overtime is back. Some started to complain. Soon almost all complained loudly. Then when the older TMs joined in, it got even louder!! *Then in October our voices were heard and Management reinstated the deserved wage progression.*

Coincidence? We think NOT!

## Yes We Did!!

Toyota has returned to a profit situation in North America. But did we get our TIE payment back? No! Did we get even a slight increase in base wage? No! But we were told 4 weeks ago that things are still very tough for Toyota and we needed to do more – our healthcare costs increased by 50% in premiums. The hotline complaints are more frequent and more direct. Some started to complain. Soon almost all complained loudly. Recently, it has gotten even louder!! *Did Management feel pressured again? Were our voices heard? We are, after all, getting an \$800 “gift”.*

Coincidence? We think NOT!

## Yes They Did!!

Our coworkers at the engine plant in Buffalo, West Virginia are starting to let their voices heard too. They too have returned to full production with massive amounts of overtime and like us have lost a lot while making Toyota #1 in the world. Toyota is so concerned about their collective voices that they are trying to interfere with their rights to communicate during non work hours, in non work areas, which violates their federal rights. So on Friday Nov. 6<sup>th</sup>, West Virginia TMs filed charges with the NLRB defending their right to communicate freely. *Did Management feel pressured again? Will their voices be heard? They too were told about they would be receiving the \$800 “gift right, after the charge was filed.*

Coincidence? We think NOT!

## Yes We Really Can!!

Imagine what we could achieve by all standing together to form Our Union and negotiate a Legal Binding Contract! To Our West Virginia Co-Workers...WE Support You!

*Toyota Workers for a Better Toyota!*

# **EXHIBIT 4**

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruehlman**

**AFFIDAVIT OF ERNESTINE MONTGOMERY**

Now comes the Affiant, Ernestine Montgomery, and after first being duly sworn and cautioned, states as follows:

1. I am the owner of a 2005 Camry XLE purchased December 22, 2004 at Joseph Toyota in Cincinnati, Ohio. My car is paid in full.

2. On September 3, 2006, my Toyota suddenly accelerated in a Kroger parking lot, going up over the sidewalk and crashing into a brick wall. The car was towed to Joseph Toyota for repair and picked up 21 days later.

3. When I picked up the car, the gas pedal had been replaced. The pedal was approximately 4 inches shorter than before and the resistance was different.

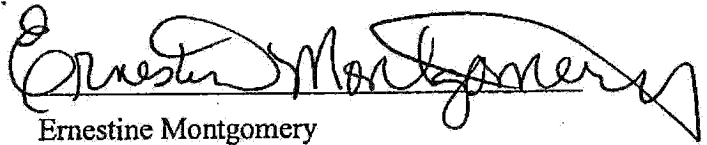
4. On November 25, 2009 I saw my "fixed" pedal on the news as part of a story about the Toyota gas pedal recall.

5. In December 2009 I took my car into Joseph Toyota for a service appointment and mentioned to the Service Manager that my Toyota already had the gas pedal "fix". The Service Manager responded that I could not have it, as the dealerships and service centers did not yet have the replacement part. I showed the Service Manager, who acknowledged I indeed had the "fixed" gas pedal.

6. I am afraid to drive my Toyota. I avoid driving it unless I absolutely have to. This has created a hardship for me.

7. I believe it is unfair and unreasonable for Toyota to expect me to continue to drive my vehicle with an as yet unproven "fix" for the problem of sudden acceleration. I don't believe that Toyota is doing enough to ensure that the problem has been accurately diagnosed and that the "fix" is in fact going to resolve the problem.

FURTHER AFFIANT SAITH NAUGHT.

  
Ernestine Montgomery

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Hamilton )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22nd day of February, 2010.



Notary Public

My Commission Expires:



Nancy M. Bareswit  
Notary Public, State of Ohio  
My Commission Expires 05-05-2014



JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, 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 REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Hugh W. Cox, Pamela M. Cox, Ernestine Montgomery, and others similarly situated

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

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

Stanley M. Chesley, Waite, Schneider, Bayless & Chesley LPA, One West 4th St., Ste. 1513, Cincinnati, OH 45202, 513-621-0267

**DEFENDANTS**

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

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

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

Attorneys (If Known)

Gregory A. Harrison, Dinsmore & Shohl LLP, 255 E. 5th St., Ste. 1900, Cincinnati, OH 45202, 513-977-8200

**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 - CAFA  
(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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**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. Secs. 1331, 1332, 1441, and 1453

Brief description of cause:  
Toyota Recall Litigation

**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 Walter H. Rice

DOCKET NUMBER 3:10-cv-00061

DATE  
02/24/2010

SIGNATURE OF ATTORNEY OF RECORD  
/s/ Gregory A. Harrison

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**SUPPLEMENTAL CIVIL COVER SHEET  
FOR CASES REMOVED FROM STATE COURT**

*This form must be attached to the Civil Cover Sheet at the time  
the case is filed in the United States District Court*

State Court County: <u>Hamilton</u>		
Case number and caption:		
<u>A1000992</u>	<u>Hugh W. Cox, et al.</u>	<u>Toyota Motor Sales, US</u>
Case Number	Plaintiff(s)	Defendant(s)

Jury Demand Made in State Court:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If "Yes," by which party and on what Date:		
<u>Plaintiffs</u>	<u>February 2, 2010</u>	
Party	Date	

Were there parties not served prior to removal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Were there parties dismissed/terminated prior to removal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Were there answers filed in State Court?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is there a pending TRO in State Court?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>The TRO expired and, to the best of our knowledge, was not extended by the Court</b>		

*If you have answered "yes" to any of the above please list parties not served, the parties dismissed/terminated and the parties that filed their answers on the reverse of this page.*

*On the reverse of this page please list all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address and phone number, including area code.*

Are copies of all state case pleadings attached to your removal?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If your answer is "No", when will they be filed: _____		
List the parties that are removing the case:		
<u>Toyota Motor Sales USA, Inc.</u>	<u>Toyota Motor Engineering &amp; Manufacturing</u>	
<u>Toyota Lease Trust</u>	<u>North America, Inc.</u>	

Parties Not Served	Parties Dismissed	Answers Filed
<p><i>I.E. Defendant John Doe</i></p> <p>None</p>	<p><i>I.E. Defendant John Doe</i></p> <p>None</p>	<p><i>I.E. Defendant John Doe</i></p> <p>None</p>

Party and Type	Attorney(s)
<p><i>I.E. Plaintiff John Doe</i></p> <p>PLAINTIFFS                      Hugh W. Cox                      Pamela M. Cox                      Ernestine Montgomery                      Others Similarly Situated</p> <p>DEFENDANTS                      Toyota Motor Sales, U.S.A., Inc.                      Toyota Lease Trust                      Toyota Motor Engineering &amp; Manufacturing North America, Inc.                      Clyde Dyson                      Beechmont Toyota, Inc.</p>	<p><i>I.E. Attorney(s) Name</i>  <i>Firm</i>  <i>Address</i>  <i>City, State, Zip</i>  <i>Telephone and Fax Number</i>  <i>Supreme Court Number</i></p> <p>Stanley M. Chesley (0000852)                      Waite, Schneider, Bayless &amp; Chesley, LPA                      1513 Fourth &amp; Vine Tower                      One West Fourth Street                      Cincinnati, OH 45202                      Phone: 513-621-0267                      Fax: 513-381-2375                      Counsel for Plaintiffs</p> <p>Gregory A. Harrison, Esq. (0029814)                      Dinsmore &amp; Shohl LLP                      1900 Chemed Center                      255 East Fifth Street                      Cincinnati, OH 45202                      Phone: 513-977-8200                      Fax: 513-977-8141                      Attorney for Defendants</p>

USE A SEPARATE SHEET OF PAPER IF NECESSARY

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)

HUGH W. COX, et al.

Plaintiffs,

v.

TOYOTA MOTOR SALES U.S.A., INC., et  
al.

Defendants.

: CIVIL ACTION NO. 10-127

: JUDGE Michael K. BARNETT

: **DECLARATION OF**  
: **GEORGE T. MORINO**  
: **IN SUPPORT OF**  
: **NOTICE OF REMOVAL**

DECLARATION OF GEORGE T. MORINO

George T. Morino, an employee of Toyota Motor Sales, U.S.A., Inc. states:

1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the National Quality Compliance Manager of Toyota Motor Sales, U.S.A., Inc. (the "Company"). I have been employed by the Company since 1990.

3. In my role as National Quality Compliance Manager, I have personal knowledge of and/or access to the information the Company supplies to the National Highway Safety Transportation Administration ("NHTSA") with respect to product recalls involving Toyota automobiles, as well as the information provided to Toyota customers and authorized Toyota dealerships regarding product recalls.

4. On January 21, 2010, in cooperation with the NHTSA, the Company announced the voluntary recall of the following vehicles: certain 2009-2010 RAV 4, certain 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, certain 2007-2010 Camry, certain 2010 Highlander, 2007-

2010 Tundra, and 2008-2010 Sequoia ("January Recall").

5. To the best of my understanding, the January Recall was announced in order to address isolated reports of sticking accelerator pedal mechanisms in certain vehicles.

6. In connection with the January Recall, the Company compiled information in order to notify owners of recalled automobiles that their vehicles were the subject of the January Recall.

7. The total number of vehicles in the United States subject to the January Recall is approximately 2,300,000. The January Recall letters are being sent to owners in stages based upon model type. The mailing of the first January Recall letters commenced on February 5, 2010, and it is anticipated that the last letters will be sent no later than March 11, 2010.

8. With respect to the State of Ohio, the total number of January Recall notices that will be sent to Ohio residents is approximately 52,159.

9. The first January recall notices were sent to Ohio residents on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent Ohio residents.

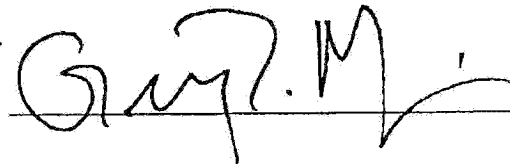
10. In conjunction with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue.

11. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in Ohio is \$80.05 per hour.

12. In the past, under certain circumstances, the Company has reimbursed its independent dealerships \$35.00 a day for the use of a loaner vehicle by a customer during a repair.

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

Executed on this 24<sup>th</sup> day of February, 2010.

A handwritten signature in black ink, appearing to read "Gary M. [unclear]", written over a horizontal line.

Respectfully submitted,

/s/ **Gregory A. Harrison**

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Trial Attorney for Defendants  
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***Attorney for Defendants Toyota  
Motor Sales, U.S.A., Inc., Toyota  
Lease Trust, Toyota Motor  
Engineering & Manufacturing  
North America, Inc., Beechmont  
Toyota, Inc., and Clyde Dyson***

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#### **CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/ Gregory A. Harrison

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)**

HUGH W. COX,  
PAMELA M. COX,  
and  
others similarly situated,  
**Plaintiffs,**

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
TOYOTA LEASE TRUST,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.,  
TOYOTA NORTH AMERICAN  
TECHNICAL TRAINING CENTER,  
CLYDE DYSON,  
and  
BEECHMONT TOYOTA, INC.,  
**Defendants.**

Civil Action No. 10-127  
JUDGE MICHAEL R. BARRETT

**DEFENDANT BEECHMONT  
TOYOTA, INC.'S CONSENT TO  
REMOVAL TO THE UNITED  
STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION**

Defendant, Beechmont Toyota, Inc., by counsel, hereby consents to the removal of *Hugh W. Cox v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1000992, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Beechmont Toyota, Inc. does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441 and 1453.



Respectfully submitted,

/s/ **Gregory A. Harrison**

Gregory A. Harrison, Esq.  
Trial Attorney for Defendants  
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***Attorney for Defendants Toyota  
Motor Sales, U.S.A., Inc., Toyota  
Lease Trust, Toyota Motor  
Engineering & Manufacturing  
North America, Inc., Beechmont  
Toyota, Inc., and Clyde Dyson***

***Of counsel:***

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Sarah V. Lewis, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 24<sup>th</sup> day of February, 2010, upon the following counsel at the e-mail address listed below:

**E-mail address: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)**

Stanley M. Chesley  
Robert A Steinberg  
Joseph T. Deters  
**WAITE SCHNEIDER, BAYLESS, & CHESLEY, L.P.A.**  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
***Counsel for Plaintiffs***

and that a copy also will be mailed via ordinary mail postage prepaid on the 25<sup>th</sup> day of February, 2010 upon the same counsel.

\_\_\_\_\_  
/s/Gregory A. Harrison

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Hugh W. Cox, *et al.*,

Plaintiffs,

v.

Case No. 1:10cv127

Toyota Motor Sales U.S.A., Inc., *et al.*,

Judge Michael R. Barrett

Defendants.

ORDER

On February 24, 2010, the above captioned matter was assigned to the undersigned. Upon consideration, this matter is **TRANSFERRED** from the docket of the Honorable Michael R. Barrett to the Clerk for reassignment.

**IT IS SO ORDERED.**

S/Michael R. Barrett

Michael R. Barrett  
United States District Judge

bacFebruary 26, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Hugh W. Cox, *et al.*,

Plaintiffs,

v.

Case. No. 1:10cv127

Toyota Motor Sales U.S.A., Inc., *et al.*,

Judge Michael R. Barrett

Defendants.

ORDER

On February 24, 2010, the above captioned matter was assigned to the undersigned. Upon consideration, this matter is **TRANSFERRED** from the docket of the Honorable Michael R. Barrett to the docket of the Honorable Chief Judge Susan J. Dlott for reassignment in the Southern District of Ohio.

**IT IS SO ORDERED.**

S/Michael R. Barrett

Michael R. Barrett  
United States District Judge

bacFebruary 26, 2010



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

HUGH W. COX, et al.,	:	CIVIL ACTION NO. 2:10-cv-00181-MHW-
	:	MRA
Plaintiffs,	:	
	:	JUDGE WATSON
v.	:	
	:	
TOYOTA MOTOR SALES U.S.A., INC., et	:	
al.,	:	
	:	
Defendants.	:	

**STIPULATION FOR EXTENSION OF TIME  
TO RESPOND TO PLAINTIFFS' COMPLAINT**

Pursuant to Southern District of Ohio Local Rule 6.1(a), Plaintiffs Hugh W. Cox and Pamela M. Cox ("Plaintiffs") and Defendants Toyota Motor Sales U.S.A., Inc., Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota North American Technical Center Training Center, Clyde Dyson and Beechmont Toyota, Inc. ("Defendants"), agree and stipulate that Defendants shall have an additional seven days, up to and including Wednesday, March 10, 2010, within which to answer, plead or otherwise move in response to Plaintiffs' Complaint.

No prior extensions have been sought or granted.

**STIPULATED AND AGREED TO:**

/s/ Robert A. Steinberg per e-mail authorization  
 Robert A. Steinberg (0032932)  
 WAITE, SCHNEIDER, BAYLESS & CHESLEY  
 CO., L.P.A.  
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Attorney for Plaintiffs

/s/ Gregory A. Harrison  
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[greg.harrison@dinslaw.com](mailto:greg.harrison@dinslaw.com)

Attorney for Defendants

## **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing pleading was filed with the Court's ECF System this 26th day of February, 2010.

/s/ Gregory A. Harrison

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.

Defendants.

Case No. 2:10-cv-00181 – MHW - MRA

PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION  
AND REQUEST FOR HEARING

Plaintiffs, pursuant to Federal Rule of Civil Procedure 65, move alternatively for a Temporary Restraining Order or a Preliminary Injunction. This Motion incorporates by reference the Preliminary Injunction Motion and Memorandum in Support Plaintiffs filed in the Hamilton County, Ohio Court of Common Pleas prior to Defendants' removal of the action to this Court.

The instant Motion seeks an Order that requires Defendants to take immediate steps to install a brake override systems in all Toyota-manufactured vehicles currently in use that have electronic throttle controls, including those vehicles currently subject to recall campaigns to fix floor mats and accelerators, in order to remove potentially dangerous vehicles from the highways and prevent further accidents, injuries, and deaths. In addition, Plaintiffs continue to seek the relief requested in their original preliminary injunction motion, which consists of an Order that: 1) prevents Defendants from collecting lease and loan payments from Ohio residents who are fearful of driving their cars due to Toyota defects; 2) requires Defendants to provide, without cost, alternate vehicles free from defects to Ohio residents who are fearful of driving their cars



due to Toyota defects; 3) orders Defendants to ensure that no Toyota dealer performs service on the 2009 Camry, Toyota Camry VIN 4T4BE46K19R079017, formerly owned by Thomas and Connie Kamphaus, proposed class members in this case, until Plaintiffs' counsel have the opportunity to have an expert examine the vehicle.

Plaintiffs are entitled to the requested relief because:

- (1) There is a substantial likelihood that Plaintiffs will prevail on the merits of the underlying substantive claim;
- (2) Plaintiffs will suffer irreparable harm if the injunction is not granted;
- (3) There is a substantial likelihood that pedestrians and/or drivers within the State of Ohio will be injured as a result of a defective Toyota-manufactured vehicle being driven on the roads of this state;
- (4) The issuance of the injunction will not harm third parties; and
- (5) The public interest would be served by issuing the preliminary injunction.

The purpose of this injunction is to preserve the status quo, to protect Ohio residents from the threat of Sudden Unintended Acceleration ("SUA") and other known Toyota-manufactured automobile defects, and to preserve evidence until more information is obtained about how to avoid and prevent the dangers these vehicles present. Admissions by Toyota officials in testimony before the United States Congress and in documents published by these officials support the issuance of the injunctive relief requested.

The extent of the problem is only beginning to come to light. Currently, a federal criminal investigation of Toyota is commencing in New York and an SEC investigation of Toyota is commencing in California. Plaintiffs provide additional support in the attached memorandum in support of their motion for Preliminary Injunction.

Respectfully submitted,

/s/ Stanley M. Chesley  
Stanley M. Chesley (11810)  
Lead Counsel and Trial Attorney  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
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### MEMORANDUM IN SUPPORT

#### I. The Absence Of The Brake Override System Promised By Defendants In The Fall Of 2009 Creates An Imminent Danger

Since Plaintiffs filed their original preliminary injunction motion, evidence has become available that further demonstrates that Defendants are unnecessarily subjecting motorists and pedestrians to inevitable injury and possibly death by failing to perform an installation of their promised brake override system instructions during their current recall campaigns. Congressional testimony on February 23 and 24 and March 2, 2010, revealed that:

1. Defendants, through James Lentz, President of Defendant Toyota Sales USA, admitted that their current recall will not entirely solve the dangerous SUA defect in their vehicles;<sup>1</sup> and,
2. Defendants are violating their November and December 2009 promises to install a brake override system that would add protection against the SUA defect, thus making yet additional misrepresentations.

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<sup>1</sup> February 23, 2010, Afternoon, House Energy Subcommittee Hearing on Toyota Recalls, testimony of James Lentz:

Waxman: Do you believe that the recall on the carpet changes and the recall on the sticky pedal will solve the problem of sudden unintended acceleration?

Lentz: **Not totally.** (Emphasis added.) (14:31-14:43)

During the Senate Commerce Committee hearing on March 2, 2010, U.S. Transportation Secretary Ray LaHood testified that a “brake override system would prevent sudden unintended acceleration.” He stated that other vehicle manufacturers adopted the brake override system “years ago.” In addition, he declared that the brake override repair “is not a costly mechanical fix;” it involves simply changing the instructions in the vehicle's computer. Secretary La Hood’s statement is supported by the attached affidavit of automotive expert consultant Gerald Rosenbluth (Ex. 1). Automotive Consultant Rosenbluth verified, through analysis and testing of Toyota-manufactured vehicles, that the installation of a brake override system on recalled vehicles consists of consist of “flashing” or sending an appropriate instruction to the engine computer and that the cost is very minimal. Senator Mark Pryor of Arkansas introduced evidence at the March 2, 2010 Hearing that State Farm Insurance statistics reflect that in 2002, the year Toyota installed electronic throttle control on its vehicles, complaints of sudden acceleration tripled.

Defendants’ reneged on their promise to install a brake override on dangerously defective recalled vehicles, despite the admission of President Lentz that the current recalls will not entirely solve the problem is particularly troubling. In November and December 2009, Toyota of North America advised NHTSA, all of its regional offices, and all of its dealers that Toyota intended to add a supplemental function to the software for the Camry, Avalon and Lexus ES 350, IS 350, and IS 250 models being recalled. It stated, “These models will have a brake override system installed, which will cut engine power in the case of simultaneous application of both the accelerator and brake pedals.” (Ex. 2, p.1; see also Ex. 3, p.1, Ex. 4, p.2, Ex. 5, p.1, Ex. 6, p.1, Ex. 7, p. 1). During his Congressional Testimony, President Lentz repeated the representation that Toyota would install a brake override system on existing Toyota Vehicles.

Lentz: And we will install advance brake override systems in all of our new models making us one of the first full-line manufacturers to offer this customer confidence feature as standard equipment. Additionally, we are announcing that we will install this item on an expanded range of vehicles, including Tacoma, Venza, and Sequoia models that are capable of accepting this new software. **We had previously announced this system would be installed in Camry, Avalon, Lexus ES and IS models.** These actions underscore that Toyota's going above and beyond what's necessary in terms of vehicle modification and repairs to ensure that our customers can be completely confident in the safety and reliability of their cars and trucks. (7:30-8:16) (Emphasis added).

Lentz: "There are seven of those vehicles that are currently on the road that we are retrofitting" with the brake override system. (10:00-10:03).

This were additional misrepresentations; **Defendants did not install and are not installing a brake override system on their recalled vehicles**, as documented by their February 2010 publications to their dealers, service managers, and customers. (Exs. 8, 9, 10, 11). Instead, they merely modified accelerator pedals. *Id.*

## **II. The Need To Install A Brake Override System Is Urgent In Order To Prevent Imminent Harm**

As anticipated by President Lentz's congressional testimony, the recall accelerator repair did not fix the SUA defect. In February 2010, Toyota Camry lessee Connie Kamphaus and her husband experienced two serious incidents of SUA *after* their car was "repaired" under recall in earlier that month. They refused to drive the dangerous vehicle. (Ex. 12, Affidavit of Connie Kamphaus). Clarence Ditlow, Executive Director for the Center For Automotive Safety, testified on March 2, 2010, before the Senate Commerce Committee that it is imperative that Toyota install the brake override system on all vehicles that have electronic throttle controls.

Defendants are willing to spend the money to install the brake override protection on new cars, because they will make a profit on the sale of these vehicles. On February 24, 2010, Yoshimi Inaba, President and Chief Executive Officer of Toyota Motors, USA, testified before the House Oversight and Government Reform Committee that by the end of 2010, the brake

override system will be installed on all new Toyota-manufactured vehicles. But despite their earlier promises to install brake override systems on recalled vehicles, Defendants simply are unwilling to make the necessary recall changes to protect the public from Toyota-manufactured vehicles currently on the road. The reason is obvious; they cannot profit from such an endeavor.

Defendants' attitude is consistent with their previous actions that have endangered Ohio residents, resulting in serious injuries and deaths. In an internal presentation in July 2009 at its Washington office, a Toyota official bragged that he saved more than \$100 million by negotiating an "equipment recall" of floor mats involving 55,000 Toyota Camry and Lexus ES350 vehicles in September 2007 with a "no defect" finding. (Ex. 13). The savings are listed under the title, "Wins for Toyota -- Safety Group." The document cites millions of dollars in other savings by delaying safety regulations, avoiding defect investigations, and slowing down other industry requirements. *Id.*

Toyota's most recent current campaign to "fix" "sticky accelerators" appears to be yet another scheme to mislead consumers and save money by avoiding the installation of an appropriate brake override system.<sup>2</sup> As a result, millions of vehicles with a potentially dangerous defect remain on the highways. Accordingly, a mandatory Temporary Restraining Order or a mandatory Preliminary Injunction requiring the installation of brake override systems on all Toyota-manufactured vehicles with electronic throttle control is necessary to protect Ohio pedestrians and drivers from imminent harm.

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<sup>2</sup> This accelerator repair was made as long ago as 2006 on the vehicle of Ernestine Montgomery after a SUA incident and crash in September 2006. She similarly is afraid to drive her car. (Ex. 14, Affidavit of Ernestine Montgomery).

## ARGUMENT

### **I. Plaintiffs Are Entitled To A Temporary Restraining Order Or Preliminary Injunction To Prevent Imminent Harm**

#### **A. Plaintiffs Satisfy the Requirements for a Temporary Restraining Order Or A Preliminary Injunction**

Pursuant to F.R.C.P. 65, the factors considered in granting a temporary restraining order or a preliminary injunction are similar:

- (1) Whether the movant has shown a strong or substantial likelihood or probability of success on the merits;
- (2) Whether the movant has shown irreparable injury;
- (3) Whether the issuance of a preliminary injunction [TRO] would cause substantial harm to others; and
- (4) Whether the public interest would be served by granting the injunctive relief.

*Kingsley v. Brundige*, Case No. C2-1090, 2009 WL 459745 (S.D. Ohio Dec. 3, 2009)

Here, the uncontested facts (as a result of Defendants' admissions and promises) establish that Plaintiffs are entitled to a injunctive relief. First, a substantial likelihood exists that Plaintiffs will prevail on the merits. The current record, even without discovery, establishes that Toyota has recalled millions of cars and trucks due their SUA defect, which causes accidents, injuries, and deaths. Consumer reaction to the recalls demonstrates that Ohio consumers, similar to consumers throughout the United States, believe that Toyota vehicles are dangerous and that Ohio consumers do not want to drive the cars and trucks. The recalls also demonstrate that Toyota cars and trucks are, in fact, unsafe. Toyota's continuing misrepresentations and concerning the cause of and "fix" for SUA, and its admitted brake override modifications to unsold new cars demonstrate that Plaintiffs have a substantial likelihood of prevailing on the merits.

Perhaps more important is the uncontested fact that the Toyota Defendants are refusing to provide an inexpensive “fix” that they are providing on new cars. The evidence establishes that the lack of a brake override system is inherently dangerous.

The denial of the injunction will cause Plaintiffs and proposed class members who own or lease Toyota vehicles to suffer irreparable harm during severe economic times. Plaintiffs and proposed class members are forced to either drive an unsafe car or find alternative means of transportation at costs they cannot afford. Plaintiffs require immediate assistance, in the form of safe and dependable alternative transportation. The presence of Toyota vehicles subject to SUA on Ohio’s highways and streets not only is endangering Ohio drivers and their passengers but also is endangering other motorists and pedestrians.

Finally, due to fear and several occurrences of SUA, Mr. and Mrs. Kamphaus were recently convinced by Toyota to trade their 2009 Toyota Camry for a new vehicle. Before Toyota takes actions that might alter or modify this vehicle, erase information stored in its computer memory, and thus cause irreparable injury by limiting Plaintiffs’ ability to pursue litigation, a court order is necessary to prevent its modification or alteration.

Injunctive relief will not injure any third parties. To the contrary, it will prevent injury to third parties and will promote the public interest in highway safety by keeping dangerous cars and trucks off of Ohio’s roads.

**B. The Requested Relief Is Reasonable**

Under the circumstances of this case, the requested injunctive relief is reasonable. Defendants should perform the brake override modification immediately on all cars with electronic throttle control to avoid the obvious danger. Until this is done, Defendants should be made to take immediate steps to provide safe alternative transportation. This is both logical and

fair. Finally, Defendants, consistent with this Court's earlier order to preserve evidence, should be required to preserve and protect the vehicle that Plaintiffs recently traded in until Plaintiffs have the opportunity to have an expert review and examine the car.

The procedural posture of this case does not prevent this Court from taking action. Plaintiffs are aware that a petition is pending before the Judicial Panel on Multidistrict Litigation seeking to consolidate cases involving similar claims. However, even if a party should request a stay pending action by the Judicial Panel on Multidistrict Litigation, this Court is not compelled to refrain from proceeding with the case. *See Burton v. William Beaumont Hospital*, 347 F.Supp.2d 486, 490 (E.D Mich. 2004) (denying motion to stay pending outcome of hearing before Judicial Panel on Multidistrict Litigation).

The urgency for this court to proceed with the injunctive relief is enormous. Plaintiffs have demonstrated that Defendants are creating a clear and present danger. Absent immediate action by this Court, Ohio residents not only will continue to suffer economic loss; they will suffer a real likelihood of further injuries and possibly death.

### CONCLUSION

For the reasons contained in this motion and memorandum, this Court should grant Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction and Order that:

- (1) Defendants immediately begin to install brake over ride systems for all Ohio residents with Toyota Vehicles with Electronic Throttle Control;
- (2) Defendants may not modify or alter the car formerly owned by Mr. and Mrs. Kamphaus until Plaintiffs have the opportunity to have an expert examine the car;
- (3) Defendants immediately must provide alternative vehicles for all Ohio residents who currently own or lease Toyota vehicles; and
- (4) Defendants, until further notice, may not collect car payments from Ohio residents.



Respectfully submitted,

/s/ Stanley M. Chesley  
Stanley M. Chesley (11810)  
*Lead Counsel and Trial Attorney*  
Robert A. Steinberg (91300)  
WAITE, SCHNEIDER, BAYLESS,  
& CHESLEY CO., L.P.A.  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
Telephone: (513) 621-0267  
Facsimile: (513) 621-0262  
Email: [bobsteinberg@wsbclaw.com](mailto:bobsteinberg@wsbclaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2010, I filed Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction and Request for Hearing through the ECF system. It was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies were sent to those indicated as non-registered participants on March 3, 2010.

/s/ Robert A. Steinberg  
Robert A. Steinberg

*Cox, et al. v. Toyota Motor Sales, U.S.A., et al.*  
USDC, S. Dist. of Ohio, Eastern Division at Columbus  
Case No. Case No. 2:10-cv-00181 – MHW - MRA

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION AND REQUEST FOR HEARING**

**Exhibit List**

1. Affidavit of Gerald Rosenbluth, March 2, 2010
2. Correspondence from Toyota Customer Service to All Toyota Dealers re Safety Campaign (Special Service Campaign) – 90L, December 1, 2008
3. Correspondence from Toyota Customer Services to All Region/Private Distributor General Managers/Vice Presidents re Toyota Consumer Safety Advisory Safety Campaign (Special Service Campaign) – 90L, November 25, 2009
4. Correspondence from Chris Santucci, Asst. Manager of Technical & Regulatory Affairs of Toyota to Daniel C. Smith, Associate Administrator for Enforcement for NHTSA re Recall 09V-388 (9LG/90L), November 25, 2009
5. Correspondence from Lexus Customer Service to all Lexus Dealers re Safety Campaign (Special Service Campaign) – 9LG, December 1, 2009
6. Correspondence from Lexus Division, Toyota Motor Sales, U.S.A. to Dealer Principal re Safety Campaign (Special Service Campaign) – 9LG, December 21, 2009
7. Correspondence from Jerry Marcotti, Lexus Service and Parts Field Operations Manager to Lexus Area Managers re Safety Campaign (Special Service Campaign) – 9LG, December 21, 2009
8. Correspondence from Toyota Motor Sales, U.S.A. to All Toyota Dealer Principals, Service Managers, Parts Managers re Safety Recall (Special Service Campaign) – A0A, February, 2010
9. Toyota Technical Instructions for Safety Recall A0A, CTS Accelerator Pedal Reinforcement Bar Installation, February, 2010
10. Toyota Dealer Stock Vehicle Inspection Guide, February 8, 2010
11. Toyota Safety Recall A0A Letter – Camry Vehicles, March 1, 2010
12. Affidavit of Connie A. Kamphaus, February 22, 2010

13. Toyota Washington, D.C. Report to Yoshi Inaba, July 6, 2009
14. Affidavit of Ernestine Montgomery, February 22, 2010

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.

Defendants.

Case No. 2:10-cv-00181 – MHW - MRA

AFFIDAVIT OF GERALD ROSENBLUTH

Now comes the Affiant, Gerald Rosenbluth, and after first being duly sworn and cautioned,  
states as follows:

I. I have a combination of over 50 years experience in the various facets of the automotive industry ranging from the practice of auto mechanics to post-graduate study as well as instructing in the field. I have studied automotive issues at universities and at industry technical schools. I have been an automotive expert consultant since 1978. I have been qualified to testify in both Federal and State Courts as an expert witness in numerous cases dealing with automotive systems product liability. I have consulted and/or testified on behalf of both plaintiffs and defendants. My clients have included insurance companies, automobile dealerships, automobile manufacturers, private attorneys, federal and state agencies such as the National Highway Transportation Safety Administration, the Federal Trade Commission, the

Arizona Attorney General's Office, and the Arizona Department of Public Safety. I am currently President of Automotive Consulting Services, Inc. located in Tempe, Arizona.

2. I am aware that Toyota has announced it will install an appropriate brake override feature on its new vehicles being held for sale. I am also aware that Toyota is not installing the brake override feature as part of its current recall campaigns, which are limited to floor mat repairs and accelerator pedal repairs. Toyota's plans for the brake override electronic feature inclusion roll out known at this time from Toyota documents are as follows:

November 25, 2009 [Toyota North America -- C. Santucci -- Assistant Manager -- Technical & Regulatory Affairs]

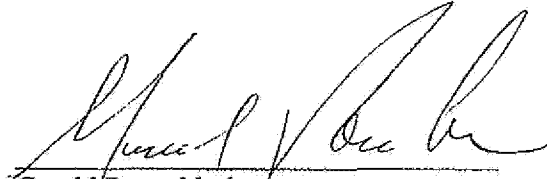
Finally, although not part of the remedy for addressing the defect identified in Toyota's Part 573 report, Toyota intends to add a supplemental function to the software for owners of ES, Camry, Avalon, and IS models that will ensure that the brake overrides the accelerator in the event that both pedals are being applied at the same time. This software supplement will reduce the consequences of pedal entrapment, should it occur. It is Toyotas intent to introduce similar software in all new models in the future, as the development work is completed.

December 21, 2009 [Lexus Safety Campaign 9LG Letter to Local Area Managers]

Independent of the vehicle-based recall remedy, a newly designed override system will be installed onto the vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. It is critical that your dealership fully explains this override system feature to customers so that they understand this extra measure of safety and its operation.

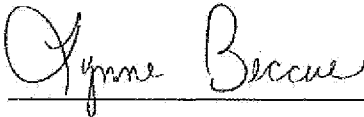
3. I have performed appropriate technical investigation on various Toyota manufactured vehicle sub-components that are currently the subject of Toyota's recall campaigns. One of the tests I performed is the feasibility of installing a brake override device during the recall repair process. I actually designed and installed such a device on Toyota manufactured vehicle sub-components and observed that it functioned properly to immediately decelerate or close the throttle body butterfly valve to an idle mode on application of the brake pedal. Such a modification can be made by Toyota to the recalled vehicles at a very minimal cost either through the incorporation of a modified wiring harness circuit or the modification to the

computer programming [re-flashing] of the on board computer module with a software supplement which would enable the appropriate instruction to the engine computer to cancel the acceleration mode anytime the brake pedal is applied similar to that of a cruise control cancellation functionality.

  
Gerald Rosenbluth

STATE OF ARIZONA                    )  
  ) S.S.  
COUNTY OF MARICOPA            )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 2nd day of March, 2010.

  
\_\_\_\_\_



Notary Public

My Commission Expires:

8/19/13

# **EXHIBIT 2**



Mark Kubota / TMS Toyota Customer Services  
Quality Compliance  
December 1, 2009  
Approved By: Bob Waltz

To: All Toyota Dealers  
From: Toyota Customer Services

**Safety Campaign (Special Service Campaign) – 90L  
Dealer Notification on Potential Floor Mat Interference with Accelerator Pedal  
(Updated: December 1, 2009)**

In early October, Toyota announced it will initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Toyota issued a consumer safety advisory on September 29 on this issue and has, as an interim measure, commenced mailing safety notices to certain Toyota and Lexus owners on October 30. **Today, Toyota has announced the details of the vehicle-based remedy to address this issue.**

**Remedy:**

- **The specific measures of the vehicle-based remedy are as follows:**
  - The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES 350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
  - Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver-side and front passenger-side all-weather floor mats.
- Toyota is in the process of completing development of these actions and will begin notifying ES 350, Camry, and Avalon owners via first-class mail. Technical and reimbursement instructions will be distributed shortly before the notification begins, also at this time specific VINs will be loaded into TIS for inquiry purposes. The remaining five models will launch on a rolling schedule during 2010.

**Extra Measure of Confidence:**

In addition to the vehicle-based remedy, Toyota intends to add a supplemental function to the software for the Camry and Avalon and Lexus ES 350, IS 350, and IS 250 models. These models will have a brake override system installed, which will cut engine power in the case of simultaneous application of both the accelerator and brake pedals.

**Involved Vehicles:**

<b>Toyota</b>	<b>Lexus</b>
2005 – 2010 Avalon	2007 – 2010 ES
2007 – 2010 Camry	2006 – 2010 IS
2004 – 2009 Prius	
2005 – 2010 Tacoma	
2007 – 2010 Tundra	

**Notification Schedule**

- Toyota will begin sending dealer notifications in mid-December, 2009.
- Owner letters will be mailed approximately one week after dealer notification.

**Customer and Media Contacts**

- A Q&A has been attached for your use in the event you receive a customer contact. If a customer has further questions, please direct the inquiry to the Toyota Customer Experience Center at 1-800-331-4331.
- If you are a dealership associate and have any questions, please contact your District Service/Parts Manager.
- **In the event you are contacted by the News media**, it is imperative that all media contacts (local and national) receive a consistent message. Please direct all media contacts to Brian Lyons (310) 468-2552 or John Hanson (310) 468-4718, in Toyota Corporate Communications. (Please do not provide these numbers to customers or call if you are a dealer associate.)

Thank you for your cooperation.



**Special Service Campaign  
Potential Floor Mat Interference with Accelerator Pedal**

**Q1: Which vehicles are involved?**

**Toyota**

2005 – 2010 Avalon  
2007 – 2010 Camry  
2004 – 2009 Prius  
2005 – 2010 Tacoma  
2007 – 2010 Tundra

**Lexus**

2007 – 2010 ES  
2006 – 2010 IS

**Q2: What is the condition?**

A2: There is a risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models when an unsecured or incompatible driver's floor mat is used

**Q3: When will the campaign remedy be launched?**

A3: Toyota will notify dealers of this remedy campaign in mid-December 2009. Toyota intends to begin owner notification in late December, on a rolling schedule, beginning with ES, Camry and Avalon. The IS, Prius, Tacoma and Tundra will follow, beginning around the end of March 2010. In the interim, Toyota recommends that owners remove **any** driver-side floor mat from the specific models identified and **NOT** replace it with any other floor mat. Toyota will contact owners when the campaign remedy for there specific vehicle is available.

**Q4: How will Toyota remedy the vehicles? What is the campaign remedy?**

A4: Toyota's remedy plan is to modify or replace the accelerator pedals on the subject vehicles to address the risk of floor mat entrapment. In the Lexus ES, Camry and Avalon models, additional modifications to the floor surface are included to help improve the pedal clearance. In addition, Toyota will replace any Toyota or Lexus all-weather floor mat in a subject vehicle with a newly designed mat. For those customers who have the previous design all-weather floor mat but do not want the newly designed all-weather floor mat, Toyota will recover the previous design all-weather floor mat and reimburse its price.

In addition to the campaign remedy, Toyota will add a supplemental function to the software for owners of ES, Camry, Avalon and IS models that will ensure that the brake overrides the accelerator in the event that both pedals are being applied at the same time. This software supplement will reduce the consequences of pedal entrapment, should it occur.

**Q5: What should customers do?**

A5: Toyota is committed to finding the right solution for this condition. Until the campaign remedy is developed and customers receive notice from Toyota, we request that customers take out any removable driver's floor mat and **NOT** replace it with any other floor mat.

**Q5a: What if a customer chooses not to remove their floor mat?**

A5a: In the event a customer chooses not to remove their floor mat, Toyota strongly recommends that they ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation can be found on <http://www.toyota.com> and <http://www.lexus.com>.

**Q5b: What if a customer requires assistance in checking the floor mat?**

A5b: If a customer chooses not to remove their floor mat and requires assistance, they may check with any local Lexus or Toyota dealership's Parts or Service Department to verify the application. Dealers will re-install only those floor mats designed specifically for that model and model year.

**Q5c: What if a customer needs retaining hooks (clips)?**

A5c: Replacement retaining hooks (clips) for Lexus and Toyota carpeted and all-weather floor mats are available at any Lexus or Toyota dealership. Please check with the dealer for details.

**Q6: What if a customer would like to verify the installation and applicability of the floor mats currently installed in their vehicle?**

A6: Please direct the customer to their local Toyota dealership's Parts or Service Department to verify whether the Toyota floor mat is designed specifically for their vehicle and correctly installed. The floor mat should be removed before driving to the dealership.

**Q7: What if a floor mat is an aftermarket rubberized floor mat?**

A7: Driver's floor mat interference is possible in any make or model vehicle with any combination of floor mats. Therefore, consumers need to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat -- aftermarket or not -- on top of another driver's floor mat. Floor mats should also not be flipped over with the bottom-side up.

**Q8: What if a driver experiences accelerator pedal interference. What should they do?**

A8: Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends the driver take the following actions:

First, if it is possible and safe to do so, pull-back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do not pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

**Q9: What if an owner has additional questions or concerns?**

A9: Owners with questions or concerns, are asked to please contact the Toyota Customer Experience Center (1 800 331-4331) or Lexus Customer Assistance Center (1 800 255-3987), or consult the information posted at <http://www.toyota.com/floormats> and <http://www.lexus.com/floormats>

# **EXHIBIT 3**

**TOYOTA CUSTOMER SERVICES**

Volume: XVI  
 Number: TC09-041  
 Date: 11/25/2009  
 Action  
 Retain  
 Information

To: All Region/Private Distributor General Managers/Vice Presidents

From: Bob Waltz, Vice President, Product Quality and Service Support

Subject: Toyota Consumer Safety Advisory  
 Safety Campaign (Special Service Campaign) – 90L  
 Dealer Notification on Potential Floor Mat Interference with Accelerator Pedal

In early October, Toyota announced it will initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Toyota issued a consumer safety advisory on September 29 on this issue and has, as an interim measure, commenced mailing safety notices to certain Toyota and Lexus owners on October 30. **Today, Toyota has announced the details of the vehicle-based remedy to address this issue.**

**Remedy:**

- **The specific measures of the vehicle-based remedy are as follows:**
  - The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES 350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
  - Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver-side and front passenger-side all-weather floor mats.
- Toyota is in the process of completing development of these actions and will begin notifying ES 350, Camry, and Avalon owners via first-class mail. Technical and reimbursement instructions will be distributed shortly before the notification begins, also at this time specific VINs will be loaded into TIS for inquiry purposes. The remaining five models will launch on a rolling schedule during 2010.

**Extra Measure of Confidence:**

In addition to the vehicle-based remedy, Toyota intends to add a supplemental function to the software for the Camry and Avalon and Lexus ES 350, IS 350, and IS 250 models. These models will have a brake override system installed, which will cut engine power in the case of simultaneous application of both the accelerator and brake pedals.

**Involved Vehicles:**

<b>Toyota</b>	<b>Lexus</b>
2005 – 2010 Avalon	2007 – 2010 ES
2007 – 2010 Camry	2006 – 2010 IS
2004 – 2009 Prius	
2005 – 2010 Tacoma	
2007 – 2010 Tundra	

**1. Dealer Daily Posting Dates**

- The attached Dealer Daily Message will be posted on November 25, 2009.
- Dealers will be provided with operation codes and technical/repair information in the near future.

**2. Owner Notification Mailing Date**

The owner notification will commence in mid-December, 2009.

3. Media Contacts

It is imperative that all media contacts (local and national) receive a consistent message. In this regard, **all media contacts** must be directed to Brian Lyons (310) 468-2552 or John Hanson (310) 468-4718, in Toyota Corporate Communications. (Please do not provide these numbers to customers.)

We appreciate your full and immediate cooperation in assuring the completion of all verification and training tasks.

Please review this letter with your staff and familiarize them with the content to help maximize our combined customer satisfaction efforts.

Thank you for your cooperation.

Enclosures

- cc: Region Assistant General Managers
- Region Customer Service Operations Managers
- Region Service Managers/Directors/VPs
- Region Parts Managers/Directors/VPs
- Region Customer Services Field Managers
- Region Technical Services and Training Managers
- Region District Service and/or Parts Managers
- Region Customer Relations Managers
- Region PDC Managers
- Region Field Technical Specialists
- Region Service Training Specialists
- Region Vehicle Operations Managers
- All NAPC General Managers
- All TMS Sales Administration Managers
- All TMS Product Quality & Service Support Managers
- All Field Product Engineers

- |              |               |               |                |
|--------------|---------------|---------------|----------------|
| K. Aoki      | T. Doi        | E. Matsuda    | G. Smith       |
| J. Beseda    | D. Esmond     | K. Kusakawa   | R. Specht      |
| G. Borst     | W. Fay        | M. Michels    | J. Stempkowski |
| R. Broughman | N. Fein       | I. Miller     | S. Sugawara    |
| G. Bryan     | F. Fontanella | T. Morrison   | M. Templin     |
| W. Burns     | Y. Funo       | T. Nakagami   | J. Tetherow    |
| D. Camden    | S. Haag       | D. Pettitt    | P. Uribe       |
| B. Carter    | J. Hanson     | R. Pflughaupt | A. Vaish       |
| G. Christoff | K. Higgins    | C. Reynolds   | S. Yamaguchi   |
| J. Colon     | M. Hosoe      | C. Roberts    | M. Yamanami    |
| B. Cooper    | R. Ito        | R. Sakai      | N. Yamamoto    |
| R. Daly      | M. King       | D. Sakakibara | H. Yoshihashi  |
| D. Danzer    | J. Lang       | M. Setta      | D. Zellers     |
| F. Davidson  | J. Lentz      | A. Smith      |                |

Mark Kubota / TMS Toyota Customer Services  
Quality Compliance  
November 25, 2009  
Approved By: Bob Waltz

To: All Toyota Dealers  
From: Toyota Customer Services

**Safety Campaign (Special Service Campaign) – 90L  
Dealer Notification on Potential Floor Mat Interference with Accelerator Pedal**

In early October, Toyota announced it will initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Toyota issued a consumer safety advisory on September 29 on this issue and has, as an interim measure, commenced mailing safety notices to certain Toyota and Lexus owners on October 30. **Today, Toyota has announced the details of the vehicle-based remedy to address this issue.**

**Remedy:**

- **The specific measures of the vehicle-based remedy are as follows:**
  - The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES 350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
  - Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver-side and front passenger-side all-weather floor mats.
- Toyota is in the process of completing development of these actions and will begin notifying ES 350, Camry, and Avalon owners via first-class mail. Technical and reimbursement instructions will be distributed shortly before the notification begins, also at this time specific VINs will be loaded into TIS for inquiry purposes. The remaining five models will launch on a rolling schedule during 2010.

**Extra Measure of Confidence:**

In addition to the vehicle-based remedy, Toyota intends to add a supplemental function to the software for the Camry and Avalon and Lexus ES 350, IS 350, and IS 250 models. These models will have a brake override system installed, which will cut engine power in the case of simultaneous application of both the accelerator and brake pedals.

**Involved Vehicles:**

<b>Toyota</b>	<b>Lexus</b>
2005 – 2010 Avalon	2007 – 2010 ES
2007 – 2010 Camry	2006 – 2010 IS
2004 – 2009 Prius	
2005 – 2010 Tacoma	
2007 – 2010 Tundra	

**Notification Schedule**

- Toyota will begin sending dealer notifications in mid-December, 2009.
- Owner letters will be mailed approximately one week after dealer notification.

**Customer and Media Contacts**

- A Q&A has been attached for your use in the event you receive a customer contact. If a customer has further questions, please direct the inquiry to the Toyota Customer Experience Center at 1-800-331-4331.
- If you are a dealership associate and have any questions, please contact your District Service/Parts Manager.
- **In the event you are contacted by the News media**, it is imperative that all media contacts (local and national) receive a consistent message. Please direct all media contacts to Brian Lyons (310) 468-2552 or John Hanson (310) 468-4718, in Toyota Corporate Communications. (Please do not provide these numbers to customers or call if you are a dealer associate.)

Thank you for your cooperation.



**Special Service Campaign  
Potential Floor Mat Interference with Accelerator Pedal**

**Q1: Which vehicles are involved?**

**Toyota**

2005 – 2010 Avalon  
2007 – 2010 Camry  
2004 – 2009 Prius  
2005 – 2010 Tacoma  
2007 – 2010 Tundra

**Lexus**

2007 – 2010 ES  
2006 – 2010 IS

**Q2: What is the condition?**

A2: There is a risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models when an unsecured or incompatible driver's floor mat is used

**Q3: When will the campaign remedy be launched?**

A3: Toyota will notify dealers of this remedy campaign in mid-December 2009. Toyota intends to begin owner notification in late December, on a rolling schedule, beginning with ES, Camry and Avalon. The IS, Prius, Tacoma and Tundra will follow, beginning around the end of March 2010. In the interim, Toyota recommends that owners remove **any** driver-side floor mat from the specific models identified and **NOT** replace it with any other floor mat. Toyota will contact owners when the campaign remedy for these specific vehicle is available.

**Q4: How will Toyota remedy the vehicles? What is the campaign remedy?**

A4: Toyota's remedy plan is to modify or replace the accelerator pedals on the subject vehicles to address the risk of floor mat entrapment. In the Lexus ES, Camry and Avalon models, additional modifications to the floor surface are included to help improve the pedal clearance. In addition, Toyota will replace any Toyota or Lexus all-weather floor mat in a subject vehicle with a newly designed mat. For those customers who have the previous design all-weather floor mat but do not want the newly designed all-weather floor mat, Toyota will recover the previous design all-weather floor mat and reimburse its price.

In addition to the campaign remedy, Toyota will add a supplemental function to the software for owners of ES, Camry, Avalon and IS models that will ensure that the brake overrides the accelerator in the event that both pedals are being applied at the same time. This software supplement will reduce the consequences of pedal entrapment, should it occur.

**Q5: What should customers do?**

A5: Until customers receive notification from Toyota for their specific vehicle remedy, we request that customers take out any **removable** driver's floor mat and **NOT** replace it with any other floor mat.

**Q6: What if a customer would like to verify the installation and applicability of the floor mats currently installed in their vehicle?**

A6: Please direct the customer to their local Toyota dealership's Parts or Service Department to verify whether the Toyota floor mat is designed specifically for their vehicle and correctly installed. The floor mat should be removed before driving to the dealership.



**Q7: What if a floor mat is an aftermarket rubberized floor mat?**

A7: Driver's floor mat interference is possible in any make or model vehicle with any combination of floor mats. Therefore, consumers need to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat – aftermarket or not – on top of another driver's floor mat. Floor mats should also not be flipped over with the bottom-side up.

**Q8: What if a driver experiences accelerator pedal interference. What should they do?**

A8: Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends the driver take the following actions:

First, if it is possible and safe to do so, pull-back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do not pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

**Q9: What if an owner has additional questions or concerns?**

A9: Owners with questions or concerns, are asked to please contact the Toyota Customer Experience Center (1 800 331-4331) or Lexus Customer Assistance Center (1 800 255-3987), or consult the information posted at <http://www.toyota.com/floormats> and <http://www.lexus.com/floormats>

# **EXHIBIT 4**

**TOYOTA****TOYOTA MOTOR NORTH AMERICA, INC.**

WASHINGTON OFFICE

TEL: (202) 775-1700

601 THIRTEENTH STREET, NW, SUITE 910 SOUTH, WASHINGTON, DC 20005

FAX: (202) 463-8513

November 25, 2009

Mr. Daniel C. Smith  
 Associate Administrator for Enforcement  
 National Highway Traffic Safety Administration  
 1200 New Jersey Avenue, S.E.  
 Washington, D.C. 20590

RE: Recall 09V-388 (9LG/90L)  
 Certain Toyota and Lexus Vehicles  
 Potential Floor Mat Interference with Accelerator Pedal

Dear Mr. Smith:

This letter supplements Toyota's Defect Information Report of October 5, 2009 regarding Toyota's plans to undertake a safety campaign to provide a vehicle-based remedy to reduce the risk of floor mat interference with the accelerator pedals on the subject vehicles. The purpose of this letter is to provide you with specific production information for the subject vehicles and to describe the remedy plan and schedule for the campaign, including dealer and customer notification. Specifically, this letter supplements items 2 and 7 in our October 5, 2009 Defect Information Report.

Based on production records, we have determined the affected vehicle population to be the population described in the table below:

Make/ Car Line	Model Year	Manufac- turer	VIN*		Production Period*
			VDS	VIS	
Camry	2007- 2010	TMC TMMK SIA	B###K	73000053 - A3004600 7U001011 - AU607331 7R001003 - AR068777	Oct. 1, 2005 - Nov. 14, 2009
Avalon	2005- 2010	TMMK	BK3#B	5U001003 - AU362567	Sept. 17, 2004 - Nov. 14, 2009
Prius	2004- 2009	TMC	KB2#U	40001009 - 93546425 57000002 - 97894047	May 30, 2003 - Mar. 30, 2009
Tacoma	2005- 2010	NUMMI TMMBC	####N	5Z001003 - AZ708166 5M001025 - AM024964	Sept. 14, 2004 - Nov. 14, 2009
Tundra	2007- 2010	TMMI TMMTX	####1	7S449764 - 8S524289 7X001009 - AX120446	Oct. 26, 2006 - Nov. 14, 2009
Lexus ES 350	2007- 2010	TMC	B###G	72000052 - A2362500	Nov. 24, 2005 - Nov. 14, 2009
Lexus IS 250/350	2006- 2010	TMC	####2	60001001 - A5039247	May 27, 2005 - Nov. 14, 2009

\* Above ranges will be updated once production modifications have been implemented.

As of November 15, 2009 the total vehicle population is 4,260,319 vehicles. Toyota's remedy plan is to modify or replace the accelerator pedals on the subject vehicles to address the risk of floor mat entrapment, even when an older-design all weather floor mat or other inappropriate mat is improperly attached, or is placed on top of another floor mat. In the Lexus ES, Camry, and Avalon models additional modifications to the floor surface are included in the remedy plan to improve the pedal clearance. Initially, dealers will be instructed on how to reshape the accelerator pedal for the repair. As replacement parts with the same shape as the modified pedal become available, they will be made available to the dealers for the repair. Replacement pedals will be offered beginning around April 2010, and customers who have had the remedy completed will have the opportunity to receive a new pedal if they desire.

In addition, Toyota will replace any Toyota or Lexus all-weather floor mat in a subject vehicle with a newly designed mat, free of charge. For those customers who have the previous design all-weather floor mat but do not need or want the newly designed all-weather floor mat, Toyota will recover the previous design all-weather floor mat and reimburse its price.

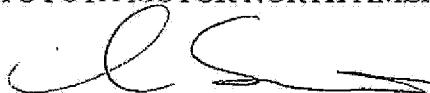
Finally, although not part of the remedy for addressing the defect identified in Toyota's Part 573 report, Toyota intends to add a supplemental function to the software for owners of ES, Camry, Avalon, and IS models that will ensure that the brake overrides the accelerator in the event that both pedals are being applied at the same time. This software supplement will reduce the consequences of pedal entrapment, should it occur. It is Toyota's intent to introduce similar software in all new models in the future, as the development work is completed.

Toyota will notify dealers of this remedy campaign in mid-December 2009. Toyota intends to begin customer notification in late December, on a rolling schedule beginning with ES, Camry, and Avalon. The IS, Prius, Tacoma, and Tundra will follow, beginning around the end of March 2010. Toyota currently estimates that it will complete the customer notification around June 2010. A copy of the draft customer notification will be submitted under separate cover shortly for review by your staff. A copy of the dealer instructions will be provided as soon as it is available.

Toyota appreciates this opportunity to cooperate with NHTSA. Should you have any questions about this information, please contact me at (202) 775-1707.

Sincerely,

TOYOTA MOTOR NORTH AMERICA, INC.



Chris Santucci  
Assistant Manager  
Technical & Regulatory Affairs

# **EXHIBIT 5**

Kathy Wachs / Lexus Customer Services  
Service and Parts Operations  
December 1, 2009  
Approved By: Al Smith

To: All Lexus Dealers  
From: Lexus Customer Services

**Safety Campaign (Special Service Campaign) - 9LG  
Dealer Notification on Potential Floor Mat Interference with Accelerator Pedal  
(Updated December 1, 2009)**

In early October, Lexus announced it will initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Lexus issued a consumer safety advisory on September 29 on this issue and has, as an interim measure, commenced mailing safety notices to certain Lexus owners on October 30. *Today, Lexus has announced the details of the vehicle-based remedy to address this issue.*

**Remedy:**

- *The specific measures of the vehicle-based remedy are as follows:*
  - The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES 350 the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
  - Vehicles with any genuine Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver-side and front passenger-side all-weather floor mats.
- Lexus is in the process of completing development of these actions and will begin notifying ES 350 owners via first-class mail. Technical and reimbursement instructions will be distributed shortly before the notification begins, also at this time specific VINs will be loaded into TIS for inquiry purposes. The remaining models will launch on a rolling schedule during 2010.

**Extra Measure of Confidence:**

In addition to the vehicle-based remedy, Lexus intends to add a supplemental function to the software for the ES 350, IS 350, and IS 250 models. These models will have a brake override system installed, which will cut engine power in the case of simultaneous application of both the accelerator and brake pedals.

**Involved Vehicles:**

Lexus  
2007 - 2010 ES  
2006 - 2010 IS

**Notification Schedule**

- Lexus will begin sending dealer notifications in mid-December, 2009.
- Owner letters will be mailed approximately one week after dealer notification.

**Customer and Media Contacts**

- A Q&A has been attached for your use in the event you receive a customer contact. If a customer has further questions, please direct the inquiry to the Lexus Customer Assistance Center at 1-800-255-3987.
- If you are a dealership associate and have any questions, please contact your District Service and Parts Manager.
- *In the event you are contacted by the News media*, it is imperative that all media contacts (local and national) receive a consistent message. Please direct all media contacts to Brian Lyons (310) 468-2552 or John Hanson (310) 468-4718, in Corporate Communications. (Please do not provide these numbers to customers or call if you are a dealer associate.)

Thank you for your cooperation.



Special Service Campaign  
Potential Floor Mat Interference with Accelerator Pedal

Q1: Which vehicles are involved?

Toyota  
2005 - 2010 Avalon  
2007 - 2010 Camry  
2004 - 2009 Prius  
2005 - 2010 Tacoma  
2007 - 2010 Tundra

Lexus  
2007 - 2010 ES  
2006 - 2010 IS

Q2: What is the condition?

A2: There is a risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models when an unsecured or incompatible driver's floor mat is used

Q3: When will the campaign remedy be launched?

A3: Lexus will notify dealers of this remedy campaign in mid-December 2009. Toyota intends to begin owner notification in late December, on a rolling schedule, beginning with ES, Camry and Avalon. The IS, Prius, Tacoma and Tundra will follow, beginning around the end of March 2010. In the interim, Toyota recommends that owners remove *any* driver-side floor mat from the specific models identified and NOT replace it with any other floor mat. Toyota will contact owners when the campaign remedy for there specific vehicle is available.

Q4: How will Toyota remedy the vehicles? What is the campaign remedy?

A4: Toyota's remedy plan is to modify or replace the accelerator pedals on the subject vehicles to address the risk of floor mat entrapment. In the Lexus ES, Camry and Avalon models, additional modifications to the floor surface are included to help improve the pedal clearance. In addition, Toyota will replace any Toyota or Lexus all-weather floor mat in a subject vehicle with a newly designed mat. For those customers who have the previous design all-weather floor mat but do not want the newly designed all-weather floor mat, Toyota will recover the previous design all-weather floor mat and reimburse its price.

In addition to the campaign remedy, Toyota will add a supplemental function to the software for owners of ES, Camry, Avalon and IS models that will ensure that the brake overrides the accelerator in the event that both pedals are being applied at the same time. This software supplement will reduce the consequences of pedal entrapment, should it occur.

Q5: What should customers do?

A5: Until customers receive notification from Toyota for their specific vehicle remedy, we request that customers take out any *removable* driver's floor mat and NOT replace it with any other floor mat.

Q5a: What if a customer chooses not to remove their floor mat?

A5a: In the event a customer chooses not to remove their floor mat, Toyota strongly recommends that they ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation can be found on <http://www.toyota.com> and <http://www.lexus.com>.

Q5b: What if a customer requires assistance in checking the floor mat?

A5b: If a customer chooses not to remove their floor mat and requires assistance, they may check with any local Lexus or Toyota dealership's Parts or Service Department to verify the application. Dealers will re-install only those floor mats designed specifically for that model and model year.

Q5c: What if a customer needs retaining hooks (clips)?

A5c: Replacement retaining hooks (clips) for Lexus and Toyota carpeted and all-weather floor mats are available at any Lexus or Toyota dealership. Please check with the dealer for details.

Q6: What if a customer would like to verify the installation and applicability of the floor mats currently installed in their vehicle?

A6: Please direct the customer to their local Lexus dealership's Parts or Service Department to verify whether the Lexus floor mat is designed specifically for their vehicle and correctly installed. The floor mat should be removed before driving to the dealership.

Q7: What if a floor mat is an aftermarket rubberized floor mat?

A7: Driver's floor mat interference is possible in any make or model vehicle with any combination of floor mats. Therefore, consumers need to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat - aftermarket or not -- on top of another driver's floor mat. Floor mats should also not be flipped over with the bottom-side up.

Q8: What if a driver experiences accelerator pedal interference. What should they do?

A8: Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends the driver take the following actions:

First, if it is possible and safe to do so, pull-back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do not pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

Q9: What if an owner has additional questions or concerns?

A9: Owners with questions or concerns, are asked to please contact the Toyota Customer Experience Center (1 800 331-4331) or Lexus Customer Assistance Center (1 800 255-3987), or consult the information posted at <http://www.toyota.com/floormats> and <http://www.lexus.com/floormats>



# **EXHIBIT 6**



December 21, 2009

Subject: Safety Campaign (Special Service Campaign) - 9LG  
Certain 2007 - 2010 Model Year ES 350 Vehicles  
Potential Floor Mat Interference with Accelerator Pedal

Dear Dealer Principal:

In early October, Lexus announced it would initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. *Lexus has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.*

Lexus has developed a campaign remedy for ES 350 vehicles. The remedy for affected IS vehicles is still being developed. Please continue to use the previously communicated instructions and guidelines for floor mat installation in ES vehicles and IS vehicles until customers are notified with regard to the campaign remedy for their vehicles. Please familiarize your associates so they may assist customers in addressing any questions they may have.

The following vital information is provided to inform you and your staff of the owner notification and your degree of involvement.

#### Campaign Remedy

To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal on the affected vehicles, both the accelerator pedal and the floor surface in the driver's foot-well will be modified.

If the vehicle is equipped with a set of optional genuine Lexus All Weather Floor Mats (AWFM), an inspection will be made to determine if the AWFM set is of an older design. If it is, the driver and the front seat passenger floor mat will be replaced with a newly designed product.

Independent of the vehicle-based recall remedy, a newly designed override system will be installed onto the vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. It is critical that your dealership fully explains this override system feature to customers so that they understand this extra measure of safety and its operation.

#### Owner Notification Mailing Date

In late December, 2009, Lexus will begin sending the owner notification. Owner mailings will be sent in phases. A sample of the owner letter is attached for your reference.

#### Owner Lists

No owner lists will be provided for this campaign at this time.

#### Dealer Operations in Support of this Safety Campaign

We recommend each dealership continue to designate two associates with complementary schedules to become intimately familiar with all aspects of the remedy and Q&A, as well as other enclosed materials. These two associates should coordinate all

operations related to this activity.

#### Identification of Involved Vehicles

Model	WMI	Year	VIN Range	
			VDS	Range
ES 350	JTH	2007	BJ46G	2000052 - 2154865
		2008	BJ46G	2124795 - 2274244
		2009	BJ46G	2272246 - 2342372
		2010	BK1EG	2321902 - TBD

Note: Not all vehicles in the VIN range may be affected. Dealers should always consult Dealer Daily or TIS to confirm VIN eligibility and to assure that the SSC is applicable. This will verify the vehicle is involved and has not already been completed by another dealer. TMS warranty will not reimburse dealers for repairs conducted on vehicles that are not affected or were completed by another dealer.

Lexus will advise you of the full 2010 model year VIN range in late January.

#### Implementation at Dealerships

This SSC package contains the repair instructions, warranty claim procedures, and parts information. All associates who have a part in this campaign should be familiar with its contents.

#### Parts Availability and Ordering

Lexus will place orders for these parts for your dealership as required. Please do not schedule any appointments unless you have parts on-hand to make the repairs.

Part Description	Part Number	Quantity per Vehicle
Upper Tibia Pad	58571-33010	1
Rubber Pad	78118-41010	1
ES 350 AWFM Black (2 pc)	PT908-3310W-02	1
ES 350 AWFM Gray (2 pc)	PT908-3310W-11	1
ES 350 AWFM Brown (2 pc)	PT908-3310W-14	1

#### **IMPORTANT PARTS ORDERING REMINDER**

Effective March 1, 2009, Special Service Campaign (SSC), Limited Service Campaign (LSC) and Customer Satisfaction Program (CSP) parts do not earn obsolescence credits and are not returnable under the Monthly Return Program. Please order parts based only on confirmed appointments and immediate customer needs. Please reference Service and Parts Operations Communication 2009-01 for additional details.

In the event the grommet area requires repair, a new repair part is available:

Part Description	Part Number	Quantity per Vehicle
Retainer, Floor Clamp	58297-50020	Depending upon need.

#### Tools, Equipment and Materials

In a separate shipment scheduled to arrive December 22, your dealership was sent a campaign tool kit. This kit included the required accelerator template and gauge, an orbital sander and a reciprocating saw. The additionally required tools, equipment

and materials are listed on page three of the technical instructions enclosed with this letter.

Warranty Claim Submission

Dealers are required to submit SSC claims using the information described below:

SSC	Opcode	Description	Labor Hours
9LG	9911M1	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Remove the sound deadening material</i> <i>4. Replacement of the AWF</i>	1.8
	9911M2	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Remove the sound deadening material</i>	1.8
	9911M3	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Replacement of the AWF</i>	1.7
	9911M4	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming	1.7

- Above flat rate time(s) include 0.1 hour for campaign administrative cost per unit for the dealership. Lexus warranty will only accept one claim per vehicle under the terms of the SSC. Please ensure that your dealership checks Dealer Daily or TIS to see if the vehicle has been repaired under this SSC prior to servicing a vehicle.
- Additional materials used for repairing each vehicle (i.e., industrial tape, double-stick tape, replacement saw blades (amortized over several repairs), replacement sanding disks (amortized over several repairs), etc.) can be claimed as a sublet type "ZZ" at a rate of \$1.00 per vehicle.
- The collected floor mats will be placed on Warranty Parts Recovery and dealers will be required to return the original floor mats to Lexus. Floor mats that are not returned will result in the claim being debited.
- The above flat rate time includes the necessary time to repair the floor carpet grommets on an as needed basis.

Dealers may submit a separate claim for those vehicles whose owners requested dealer assistance with inspection and repositioning of the driver's floor mat with the zip ties. The following operation code applies to these instances.

SSC	Opcode	Description	Labor Hours
9LG	9915K1	Inspect and reposition driver's floor mat with zip ties	0.1

Warranty operation codes and VIN flagging will be available via your DMS system and TIS on January 18, 2009.

### Customer Handling

Please consider this campaign as a great opportunity to focus on assuring customers that their safety remains Lexus' highest priority, which will go a long way toward preserving their faith in your dealership and the Lexus brand.

In the meantime, customers who receive the owner letter may contact your dealership with questions regarding the letter, and/or campaign remedy. Please welcome them to your dealership and answer any questions that they may have. A Q&A is provided to assure a consistent message is communicated. In addition, please:

- Encourage owners of ES and IS vehicles who have not yet received the campaign remedy letter to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat - aftermarket or not - on top of another driver's floor mat. Mats should also not be flipped over with the bottom-side up.
- Information on proper floor mat installation can be found on <http://www.lexus.com/floormats>.
- Advise owners of affected IS vehicles that Lexus is currently working on a campaign remedy. *Customers should retain the all weather and/or carpeted driver's floor mat until the campaign remedy is available.*
- Assist any customer who asks to verify correct floor mat application and secure installation.
- Owners with additional questions or concerns are asked to please contact the Lexus Customer Assistance Center (1-800-255-3987).

*Some of the ES 350 vehicles subject to SSC 9LG (Potential Floor Mat Interference with Accelerator Pedal) are also subject to LSC 9LH (VVT-i Oil Hose Replacement). Lexus will only accept sublet charges for customer care amenities (car wash, fuel fill, rental, pick up and delivery) on the dealer claim for the SSC 9LG repair. It is important that your dealership perform all applicable SSC/LSC repairs in a single service visit and correctly submit the associated warranty claims.*

If a customer has previously paid for their vehicle's accelerator pedal or floor surface to be modified to address the same condition as described in the owner letter, please instruct them to mail a copy of their repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration.

Toyota Motor Sales, U.S.A., Inc  
Lexus Customer Assistance, L201  
19001 South Western Avenue  
Torrance, CA 90509

### Corrective Actions for Vehicles in Dealer Stock

Dealers should perform this campaign modification to new and pre-owned vehicles immediately prior to owner delivery. LCCS vehicles should receive the campaign only as parts become available, in the meantime, please take out any removable, driver's side floor mat or ensure the correct application is semi-permanently installed. Please ensure that a warranty claim is filed for these vehicles as the work is performed so that they may be correctly identified as completed.

Please review this entire package with your Service and Parts staff to familiarize them with the proper step-by-step procedures required to implement this Special Service Campaign.

Thank you for your understanding and cooperation.

Lexus, A Division of Toyota Motor Sales, USA, Inc.

Attachments

CC: Customer Satisfaction Manager  
General Manager  
Parts Manager  
Pre-owned Manager  
Sales Manager  
Service Manager



Special Service Campaign (SSC) - 9LG (Safety Recall) Q&A  
Certain 2007 - 2010 Model Year Lexus ES Vehicles  
Potential Floor Mat Interference with Accelerator Pedal  
December, 2009

Q1: What is the condition?

A1: As communicated earlier this past fall, the defect is the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. *Lexus has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.*

Q2: What is Lexus going to do?

A2: To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal, any Lexus dealer will remedy the involved vehicle. The remedy will entail modification to both the accelerator pedal and the floor surface in the driver's foot-well.

If the vehicle is equipped with a set of optional genuine Lexus All Weather Floor Mats (AWFM), it will be inspected to determine if the AWFM set is of an older design. If it is, the older design AWFM's for the driver and the front seat passenger will be replaced with a newly designed one.

As an additional measure independent of the vehicle-based recall remedy, Lexus will install a newly designed override system onto the vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions.

Q2a: Will customers receive a loaner vehicle during the vehicle remedy process?

A2a: Lexus will make every effort to minimize customer inconvenience during the customer's appointment. This includes providing a loaner vehicle.

Q2b: What if a customer is not satisfied with the appearance of the modified accelerator pedal?

A2b: The change in appearance to the pedal is not noticeable once it is installed in a vehicle. However, in the event a customer is not satisfied, we will re-notify them once a newly designed accelerator pedal is available.

Q2c: Can I wait to have the accelerator pedal replaced with a newly designed one rather than have my current accelerator pedal modified?

A2c: Customer safety is important to Lexus. We ask that customers have the accelerator pedal modified as soon as possible to make the vehicle more resistant to an unsecured or incompatible driver's floor mat interfering with the accelerator pedal. Once a newly designed accelerator pedal is available, if the customer is not satisfied with the appearance of the modified pedal, they may request the pedal to be replaced.

Q2d: When will the newly designed accelerator pedal become available?

A2d: The newly designed accelerator pedal will become available in a few months.

Q2e: Why will it take so long for the newly designed accelerator pedal to become available?

A2e: Lexus is making every effort to provide the newly designed accelerator pedal as soon as possible. We request your patience and understanding as we make these arrangements.

Q2f: When will newly designed accelerator pedals become incorporated in vehicle production?

A2f: ES 350 vehicle production will begin utilizing the newly designed accelerator pedal in late January, 2009.

Q2g: Why will it take so long for customers to begin receiving newly designed accelerator pedals?

A2g: Lexus is making every effort to provide the newly designed accelerator pedal to customers as soon as possible. We apologize for the delay and request your patience and understanding as we make arrangements to produce additional parts.

Q2h: Will Lexus send another owner letter when the newly designed accelerator pedal becomes available?

A2h: If you are not satisfied with the appearance of the modified accelerator pedal, Lexus or your local Lexus dealer will contact you when the newly designed pedal becomes available.

Q3: Can you provide me with additional information regarding the override system?

A3: As an additional measure independent of the vehicle-based recall remedy, Lexus will install a newly designed override system onto the vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions.

Q4: Are there any warning that this condition exists?

A4: Lexus has determined that the pedal entrapment can only occur in vehicles where the driver side floor mat is not compatible with the vehicle and/or not properly secured.

To help reduce the risk of incorrect floor mat installation and/or application, we request that customers take out any *removable* driver's floor mat and NOT replace it with any other floor mat until the campaign remedy has been completed on the vehicle. After the campaign remedy has been completed only floor mats designed specifically for the vehicle and are properly secured should be installed on the driver's floor.

Q5: What if a customer would like to verify the installation and applicability of the floor mats currently installed in their vehicle?

A5: Please direct the customer to their local Lexus dealership's Parts or Service Department to verify whether the Lexus floor mat is designed specifically for their vehicle and correctly installed. The floor mat should be removed before driving to the dealership.

Q6: What if a floor mat is an aftermarket rubberized floor mat?

A6: Driver's floor mat interference is possible if the mat is incompatible or incorrectly installed. Therefore, consumers need to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat - aftermarket or not on top of another driver's floor mat. Floor mats should also not be flipped over with the bottom-side up.

Q7: What if a driver experiences accelerator pedal interference. What should they do?

A7: Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Lexus recommends the driver take the following actions:

- First, if it is possible and safe to do so, pull-back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.
- If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do not pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.
- Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.
- If unable to put the vehicle in Neutral, turn the engine OFF by firmly and steadily pushing the button for at least three seconds. Do NOT tap the Engine Start/Stop button. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.



Q8: Are there any other Lexus or Toyota vehicle involved?

A8: As outlined in the Consumer Advisory issued by NHTSA and Toyota, the following vehicles are also involved:

Lexus

2006 - 2010 IS

Toyota

2005 - 2010 Avalon

2007 - 2010 Camry

2004 - 2009 Prius

2005 - 2010 Tacoma

2007 - 2010 Tundra

Q8a: Will the other Lexus and Toyota vehicles listed in the Consumer Advisory receive the same campaign remedy?

A8a: We are currently in the process of developing a remedy for the remaining vehicles. We will notify owners as soon as it is available.

Q8b: When will the remedy for the remaining vehicles be completed?

A8b: Lexus is currently in the process of developing the remedy and it is very difficult to determine a specific time. However, we anticipate it will take several months.

Q9: What if an owner has additional questions or concerns?

A9: Owners with questions or concerns, are asked to please contact the Lexus Customer Assistance Center (1 800-255-3987), or consult the information posted at <http://www.lexus.com/floormats>.

**Certain 2007 through 2010 Model Year ES 350  
Potential Floor Mat Interference with Accelerator Pedal  
Safety Recall Campaign**

Please make an appointment with your local Lexus Dealer to have this important remedy completed.

[VIN]

Dear Lexus Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Lexus has decided that a defect which relates to motor vehicle safety exists in certain 2007 through certain 2010 model year ES 350 vehicles.

**What is the Condition?**

- As we notified you earlier this past fall, the defect is the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Lexus has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

**What will Lexus do?**

- To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal on your vehicle, any Lexus dealer will remedy your vehicle at **NO CHARGE** to you. The remedy will entail modification to both the accelerator pedal and the floor surface in the driver's foot-well.
- If your vehicle is equipped with a set of optional genuine Lexus All Weather Floor Mats (AWFM), it will be inspected to determine if the AWFM set is of an older design. If it is, the older design AWFM's for the driver and the front seat passenger will be replaced with newly designed ones at **NO CHARGE** to you.

As an additional measure independent of the vehicle-based recall remedy, Lexus will install a newly designed override system onto your vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. This installation will also be conducted at **NO CHARGE** to you.

**What should you do?**

---

***This is an important Safety Recall***

Please contact your authorized Lexus dealer to make appointment to have these important remedies performed on your vehicle as soon as possible.

The remedy will take approximately two hours. However, depending upon the dealer's work schedule, it may be necessary to make your vehicle available for a longer period of time.

Until these important remedies are completed, we request that you take out **any removable** driver's floor mat, place them in the trunk, and NOT replace it with any other floor mat until the campaign remedy has been implemented on your vehicle. ***if you have an optional genuine Lexus All Weather Floor Mat, please bring it to the dealership at the time of your remedy.***

In the event you choose not to take out your removable floor mat, Lexus strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Please visit <http://www.lexus.com/floormats> for additional information.

---

**What should you do if you experience accelerator pedal interference?**

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Lexus recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF by firmly and steadily pushing the button for at least three seconds. Do NOT tap the Engine Start/Stop button. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

**What if you have other questions?**

*Please visit <http://www.lexus.com/floormats> for further information.* Your local Lexus dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the **Lexus Customer Assistance Center at 1-800-255-3987** Monday through Friday, 5:00 am to 6:00 pm, or Saturday 7:00 am through 4:00 pm Pacific Standard Time. Your satisfaction is extremely important to us. In the event you are not satisfied with the modification of your accelerator pedal after it is completed, a replacement accelerator pedal will be offered beginning around April 2010. Customers who have had the remedy completed will have the opportunity to receive a new pedal at no charge if desired.

If you believe that the dealer or Lexus has failed or is unable to remedy the defect within a reasonable time, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to <http://www.safercar.gov>.

**What if you have previously paid for your vehicle's accelerator pedal or floor surface to be modified to address the same condition described above?**

If you have previously paid for your vehicle's accelerator pedal or floor surface to be modified to address the same condition described above, please mail a copy of your repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration

Toyota Motor Sales, U.S.A., Inc  
Lexus Customer Assistance, L201  
19001 South Western Avenue  
Torrance, CA 90509

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

Thank you for driving a Lexus.

Sincerely,

Lexus Division  
TOYOTA MOTOR SALES, U.S.A., INC.

# **EXHIBIT 7**



December 21, 2009

To: Lexus Area Managers  
From: Jerry Marcotti, Service and Parts Field Operations Manager  
Subject: Safety Campaign (Special Service Campaign) - 9LG  
Certain 2007 - 2010 Model Year ES 350 Vehicles  
Potential Floor Mat Interference with Accelerator Pedal

In early October, Lexus announced it would initiate a Safety Campaign (Special Service Campaign) for potential floor mat interference with the accelerator pedal. The condition involves the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. *Lexus has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.*

Lexus has developed a campaign remedy for ES 350 vehicles. The remedy for affected IS vehicles is still being developed. Please continue to use the previously communicated instructions and guidelines for floor mat installation in ES vehicles and IS vehicles until customers are notified with regard to the campaign remedy for their vehicles. Please familiarize your associates so they may assist customers in addressing any questions they may have.

The following vital information is provided to inform you and your staff of the dealer and owner notification phase of the campaign and your area's degree of involvement. Additional information may be found in the attached dealer letter which contains the Lexus Q&A and customer notification letter.

#### Campaign Remedy

To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal on the affected vehicles, both the accelerator pedal and the floor surface in the driver's foot-well will be modified.

If the vehicle is equipped with a set of optional genuine Lexus All Weather Floor Mats (AWFM), an inspection will be made to determine if the AWFM set is of an older design. If it is, the driver and the front seat passenger floor mat will be replaced with a newly designed product.

Independent of the vehicle-based recall remedy, a newly designed override system will be installed onto the vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. It is critical that your dealerships fully explain this override system feature to customers so that they understand this extra measure of safety and its operation.

#### Dealer and Owner Notification Mailing Date

Dealer packages will be sent via Next Day UPS delivery to the attention of the service manager on December 21, 2009.

In late December, 2009, Lexus will begin sending the owner notification. Owner mailings will be sent in phases. A sample of the owner letter is attached for your reference.

Owner Lists

No owner lists will be provided for this campaign at this time.

Dealer Operations in Support of this Safety Campaign

We recommend each dealership continue to designate two associates with complementary schedules to become intimately familiar with all aspects of the remedy and Q&A, as well as other enclosed materials. These two associates should coordinate all operations related to this activity.

Identification of Involved Vehicles

Model	WMI	Year	VIN Range	
			VDS	Range
ES 350	JTH	2007	BJ46G	2000052 - 2154865
		2008	BJ46G	2124795 - 2274244
		2009	BJ46G	2272246 - 2342372
		2010	BK1EG	2321902 - TBD

Note: Not all vehicles in the VIN range may be affected. Dealers should always consult Dealer Daily or TIS to confirm VIN eligibility and to assure that the SSC is applicable. This will verify the vehicle is involved and has not already been completed by another dealer. TMS warranty will not reimburse dealers for repairs conducted on vehicles that are not affected or were completed by another dealer.

Lexus will advise you and your dealers of the full 2010 model year VIN range in late January.

Implementation at Dealerships

This dealer SSC package contains the repair instructions, warranty claim procedures, and parts information. All associates who have a part in this campaign should be familiar with its contents.

Parts Availability and Ordering

Lexus will place orders for these parts for each dealer as required. It is critical that your dealers do not schedule any appointments unless they have parts on-hand to make the repairs.

Part Name	Part Number	Quantity
Upper Tibia Pad	58571-33010	1
Rubber Pad	78118-41010	1
Retainer, Floor Clamp	58297-50020	2
ES 350 AWFM Black (2 pc)	PT908-3310W-02	1
ES 350 AWFM Gray (2 pc)	PT908-3310W-11	1
ES 350 AWFM Brown (2 pc)	PT908-3310W-14	1

**IMPORTANT PARTS ORDERING REMINDER**

Effective March 1, 2009, Special Service Campaign (SSC), Limited Service Campaign (LSC) and Customer Satisfaction Program (CSP) parts do not earn obsolescence credits and are not returnable under the Monthly Return Program. Please order parts based only on confirmed appointments and immediate customer needs. Please reference Service and Parts Operations Communication 2009-01 for additional details.

In the event the grommet area requires repair, a new repair part is available:

Part Description	Part Number	Quantity per Vehicle
Retainer, Floor Clamp	58297-50020	Depending upon need.

#### Tools, Equipment and Materials

In a separate shipment scheduled to arrive on December 22, your dealers were sent a campaign tool kit. This kit included the required accelerator template and gauge, an orbital sander and a reciprocating saw. The additionally required tools, equipment and materials are listed on page three of the technical instructions enclosed with this letter.

#### Warranty Claim Submission

Dealers are required to submit SSC claims using the information described below:

SSC	Opcode	Description	Labor Hours
9LG	9911M1	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Remove the sound deadening material</i> <i>4. Replacement of the AWFM</i>	1.8
	9911M2	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Remove the sound deadening material</i>	1.8
	9911M3	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming <i>3. Replacement of the AWFM</i>	1.7
	9911M4	1. Accelerator Pedal and Floor Surface Modification 2. ECU Reprogramming	1.7

- Above flat rate time(s) include 0.1 hour for campaign administrative cost per unit for the dealership. Lexus warranty will only accept one claim per vehicle under the terms of the SSC. Please ensure that your dealership checks Dealer Daily or TIS to see if the vehicle has been repaired under this SSC prior to servicing a vehicle.
- Additional materials used for repairing each vehicle (i.e., industrial tape, double-stick tape, replacement saw blades (amortized over several repairs), replacement sanding disks (amortized over several repairs), etc.) can be claimed as a sublet type "ZZ" at a rate of \$1.00 per vehicle.
- The collected floor mats will be placed on Warranty Parts Recovery and dealers will be required to return the original floor mats to Lexus. Floor mats that are not returned will result in the claim being debited.
- The above flat rate time includes the necessary time to repair the floor carpet grommets on an as needed basis.

Dealers may submit a separate claim for those vehicles whose owners requested dealer assistance with inspection and repositioning of the driver's floor mat with the zip ties. The following operation code applies to these instances.

SSC	Opcode	Description	Labor Hours
9LG	9915K1	Inspect and reposition driver's floor mat with zip ties	0.1

Warranty operation codes and VIN flagging will be available via your DMS system and TIS on January 18, 2009.

#### Customer Handling

Please consider this campaign as a great opportunity to focus on assuring customers that their safety remains Lexus' highest priority, which will go a long way toward preserving their faith in your dealers and the Lexus brand.

In the meantime, customers who receive the owner letter may contact your dealers with questions regarding the letter, and/or campaign remedy. Please make sure that your dealers welcome them and answer any questions that they may have. A Q&A is provided to assure a consistent message is communicated. In addition, dealers should continue to do the following please:

- Encourage owners of ES and IS vehicles who have not yet received the campaign remedy letter to make sure the floor mats are compatible for their model and model year. Also, they need to be sure they are properly secured using the appropriate retention device (clips). Driver's floor mats should never be stacked. Consumers should never place any floor mat - aftermarket or not - on top of another driver's floor mat. Mats should also not be flipped over with the bottom-side up.
- Information on proper floor mat installation can be found on <http://www.lexus.com/floormats>.
- Advise owners of affected IS vehicles that Lexus is currently working on a campaign remedy. *Customers should retain the all weather and/or carpeted driver's floor mat until the campaign remedy is available.*
- Assist any customer who asks to verify correct floor mat application and secure installation.
- Owners with additional questions or concerns are asked to please contact the Lexus Customer Assistance Center (1-800-255-3987).

*Some of the ES 350 vehicles subject to SSC 9LG (Potential Floor Mat Interference with Accelerator Pedal) are also subject to LSC 9LH (VVT-i Oil Hose Replacement). Lexus will only accept sublet charges for customer care amenities (car wash, fuel fill, rental, pick up and delivery) on the dealer claim for the SSC 9LG repair. It is important that your dealership perform all applicable SSC/LSC repairs in a single service visit and correctly submit the associated warranty claims.*

If a customer has previously paid for their vehicle's accelerator pedal or floor surface to be modified to address the same condition described above, please instruct them to mail a copy of their repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration.

Toyota Motor Sales, U.S.A., Inc  
Lexus Customer Assistance, L201  
19001 South Western Avenue  
Torrance, CA 90509

#### Corrective Actions for Vehicles in Dealer Stock

Dealers should perform this campaign modification to new and pre-owned vehicles immediately prior to owner delivery. LCCS vehicles should receive the campaign only as parts become available, in the meantime, please take out any removable, driver's side floor mat or ensure the correct application is semi-permanently installed. Please ensure that a warranty claim is



filed for these vehicles as the work is performed so that they may be correctly identified as completed.

Please review this entire package with your Service and Parts staff to familiarize them with the proper step-by-step procedures required to implement this Special Service Campaign.

Thank you for your understanding and cooperation.

Lexus, A Division of Toyota Motor Sales, USA, Inc.

Attachments

CC: Assistant Area General Managers  
Customer Satisfaction Managers  
Customer Services Field Managers  
Customer Services Operations Managers

District Service and Parts Managers  
District Technical Managers  
Field Product Engineers

# **EXHIBIT 8**

# TOYOTA

Toyota Motor Sales, U.S.A., Inc.  
19001 South Western Avenue  
Torrance, CA 90501  
(310) 468-1000

February, 2010

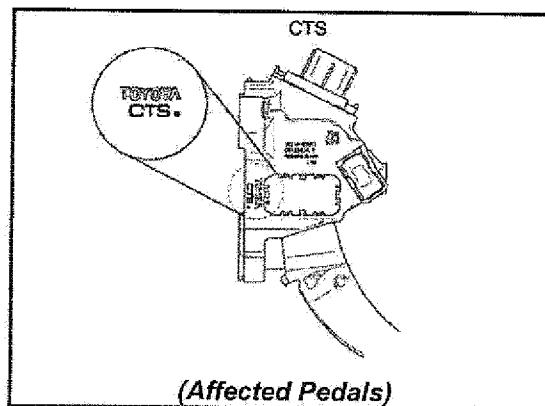
To: All Toyota Dealer Principals, Service Managers, Parts Managers  
Subject: Safety Recall (Special Service Campaign) – A0A  
Accelerator Pedal Modification Campaign  
Vehicles Equipped with Accelerator Pedals Manufactured by CTS Corporation

On January 21, 2010, Toyota filed a Defect Information Report (DIR) with the National Highway Traffic Safety Administration (NHTSA) informing the agency of our intent to conduct a voluntary Safety Recall on vehicles equipped with certain accelerator pedal assemblies manufactured by the CTS Corporation (CTS accelerator pedals). This action is separate from the on-going recall (SSC 90L) of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by incorrect or out of place accessory floor mats.

## Background

There is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position. Over time, the internal mechanisms in the accelerator pedal may become worn. As a result of this wear combined with certain operating and environmental conditions, friction in the mechanism may increase and intermittently result in the accelerator pedal being hard to depress and/or slow to return or, in the worst case, stick in a partially open position, increasing the risk of a crash.

Toyota dealers are requested to install a precision-cut steel reinforcement bar ("reinforcement bar") that will increase the clearance in between the internal mechanisms in the pedal assembly. This increased clearance will reduce the friction caused by wear and environmental conditions and allow the pedal to operate smoothly for the life of the vehicle. The safety recall remedy will be performed at **no charge** to the vehicle owner.



### Note:

- *The name of the manufacturer is printed (Denso) or embossed (CTS) on the upper sensor housing on the brake pedal side.*
- *This safety campaign addresses the potential for a CTS accelerator pedal to mechanically stick in a partially depressed position or return slowly to the idle position.*
- *This condition is separate from the (DIR) filed in early October, 2009, in reference to the potential for an incorrect or improperly installed floor mat to interfere with the accelerator pedal.*

The following vital information is provided to inform you and your staff of the owner notification phase of the campaign and your degree of involvement.

SSC A0A - D - Page 2

**1. Owner Notification Mailing Date**

The owner notification will begin in early February, 2010.

Please note that only owners of the affected vehicles will be notified. If you are contacted by an owner who has not yet received a notification, please **verify eligibility by confirming through Dealer Daily/TIS prior to performing repairs**. Dealers should perform the repair as outlined in the Technical Instructions found on TIS.

**2. Vehicles in Dealer Stock**

As required by Federal law, dealers are not to deliver any new vehicles in their inventory, which are involved in this safety recall. Dealers must perform the safety recall on all new vehicles in stock prior to sale or lease. Vehicle safety recall completion can be verified through TIS.

In order to assure established customers receive priority for the safety recall, we request that this campaign remedy be performed on in-stock vehicles just prior to vehicle delivery where possible.

**A VIN list containing vehicles in dealer stock, has been provided for your reference.**

**3. Dealer Summary Reports**

For your reference, the following summary reports are included for the CSOM and Director of Service:

- **The suggested initial parts order quantities**
- **A VIN list containing vehicles in dealer stock**
- **Dealer Reports will no longer contain a PMA VIN list.** However, they will contain the number of involved vehicles registered in each dealership's primary marketing area and initial suggested parts order quantities, where applicable.

**4. Number of Vehicles Involved**

There are approximately 2.23 million Toyota vehicles equipped with a CTS pedal in the U.S.

MODEL	WMI	MY	VDS	START - FINISH
AVALON	4T1	2005	BK36B	U001003 - U062426
		2006	BK36B	U042154 - U167717
		2007	BK36B	U149048 - U253880
		2008	BK36B	U209130 - U324241
		2009	BK36B	U305357 - U351925
		2010	BK3DB	U351302 - U367444

AVALON UIO: 330,000

MODEL	WMI	MY	VDS	START - FINISH
COROLLA	1NX	2009	BE40E	Z001001 - Z163790
			BU40E	Z001002 - Z165305
		2010	BE4EE	Z165306 - Z333282
			BU4EE	Z165312 - Z337444
	2T1	2009	BE40E	C001043 - C030479
			BU40E	C001054 - C191051
		2010	BE4EE	C030504 - C039875
			BU4EE	C185955 - C348040

COROLLA UIO: 490,000

MODEL	WMI	MY	VDS	START - FINISH
CAMRY*	4T1	2007	BE46K	U001001 - U195222
				U504376 - U729526
			BK46K	U001003 - U054581
		2008	BE46K	U171709 - U263248
				U730123 - U791444
			BK46K	U040415 - U073251
			BE46K	U260017 - U416640
		2009	BK46K	U073252 - U098189
			2010	BF3EK
				BK3EK
	4T4	2007	BE46K	R001003 - R011624
		2008	BE46K	R001816 - R047779
		2009	BE46K	R027105 - R139848
		2010	BF3EK	R001023 - R085180

CAMRY UIO: 786,000

\*Camry Hybrid vehicles are equipped with an accelerator pedal that is of a different design and produced by a different supplier. Therefore, it does not require the installation of an accelerator pedal reinforcement bar.

SSC A0A - D - Page 3

(Number of Vehicles Involved Continued. . .)

MODEL	WMI	MY	VDS	START - FINISH
HIGHLANDER*	5TD	2010	BK3EH	S001052 - S013868
			DK3EH	S001067 - S013863
			EK3EH	S001051 - S008434
			JK3EH	S005002 - S013869
			KK3EH	S003272 - S008683
			XK3EH	S001026 - S005688
			YK3EH	S001030 - S008686
			ZA3EH	S001019 - S003107
			ZK3EH	S001020 - S008685

HIGHLANDER UIO: 20,000

\*Highlander Hybrid vehicles are equipped with an accelerator pedal that is of a different design and produced by a different supplier. Therefore, it does not require the installation of an accelerator pedal reinforcement bar.

MODEL	WMI	MY	VDS	START - FINISH
SEQUOIA	5TD	2008	BT64A	S000014 - S000239
			BY64A	S000047 - S023603
			BY67A	S000042 - S023596
			BY68A	S000034 - S023597
			ZT64A	S000014 - S000384
			ZY64A	S000010 - S015402
			ZY67A	S000012 - S015400
			ZY68A	S000013 - S015401
			2009	BT64A
		BW68A		S023606 - S023606
		BY64A		S023711 - S023868
		BY67A		S023609 - S023857
		BY68A		S023616 - S023856
		ZT64A		S000438 - S000953
		ZY64A		S019566 - S020863
		ZY67A		S015919 - S015919
		ZY68A		S015426 - S021051
		2010	BM5G1	S001002 - S001225
			BW5G1	S023880 - S032694
			BY5G1	S023869 - S032719
			DW5G1	S023878 - S032718
			DY5G1	S023870 - S032709
			JW5G1	S023876 - S032713
			JY5G1	S023871 - S032708
			KM5G1	S001417 - S001458
			KY5G1	S022514 - S027553
			YY5G1	S022511 - S027563
			ZM5G1	S001034 - S002051
			ZY5G1	S022519 - S027561
			ZY67A	S020526 - S020527

SEQUOIA UIO: 50,000

MODEL	WMI	MY	VDS	START - FINISH
MATRIX	2T1	2009	GE40E	C001023 - C005748
			KE40E	C001042 - C030591
			KU40E	C001057 - C191049
			LE40E	C001017 - C011935
		2010	KE4EE	C030606 - C039888
			KU4EE	C191054 - C348047
			LE4EE	C011822 - C016115
			ME4EE	C005690 - C006299

MATRIX UIO: 75,000

MODEL	WMI	MY	VDS	START - FINISH
RAV4	2T3	2009	BF31V	W001119 - W024119
			BF32V	W001207 - W024120
			BF33V	W001117 - W024117
			BF34V	W003775 - W021681
			BF35V	W001421 - W024111
			BK31V	W001143 - W013774
			BK32V	W001142 - W013693
			BK33V	W001162 - W013773
			BK34V	W001688 - W010762
			BK35V	W002139 - W013749
			ZF31V	W001050 - W016880
			ZF32V	W001048 - W016874
			ZF33V	W001049 - W016918
			ZF34V	W003810 - W012950
			ZF35V	W001625 - W016916
			ZK31V	W001081 - W003645
			ZK32V	W001149 - W003642
			ZK33V	W001076 - W003644
		ZK34V	W001670 - W002621	
		ZK35V	W001965 - W003631	
		2010	BF4DV	W022899 - W038726
			BK4DV	W013775 - W020737
			DF4DV	W024130 - W038723
			DK4DV	W013776 - W020732
			EF4DV	W024745 - W035186
			EK4DV	W014634 - W020625
			JF4DV	W024129 - W038700
			JK4DV	W013811 - W020629
			KF4DV	W016950 - W027204
			KK4DV	W003824 - W005660
			RF4DV	W022777 - W038716
			RK4DV	W013813 - W020685
			WF4DV	W016936 - W027202
			WK4DV	W003659 - W005669
			XF4DV	W018112 - W025585
			XK4DV	W003701 - W005572
			YF4DV	W016920 - W027201
			YK4DV	W003435 - W005673
			ZF4DV	W016923 - W027211
			ZK4DV	W003652 - W005662

RAV4 UIO: 53,000

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(Number of Vehicles Involved Continued. . .)

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TB	2007	BT541	S449772 - S458203
			BT581	S449768 - S458119
			BV541	S449818 - S490980
			BV581	S449815 - S490940
			DT541	S452172 - S458112
			DT581	S451402 - S457120
			DV541	S454929 - S490979
			DV581	S454922 - S490970
			ET541	S451522 - S457443
			ET581	S452313 - S457105
			EV541	S453235 - S473183
			EV581	S452114 - S473116
			RT541	S449776 - S457554
			RT581	S449772 - S457346
			RU541	S449764 - S451516
			RV541	S449790 - S473197
			RV581	S449792 - S473167

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TB	2008	BT541	S458128 - S465088
			BT581	S460039 - S463353
			BV541	S489753 - S524241
			BV581	S490994 - S524168
			DT541	S458232 - S465032
			DT581	S458211 - S465038
			DV541	S490988 - S524251
			DV581	S490274 - S524192
			ET541	S457566 - S461702
			ET581	S460063 - S460135
			EV541	S473215 - S483286
			EV581	S472420 - S483281
			RT541	S457555 - S461703
			RT581	S457567 - S459791
			RV541	S473199 - S483282
RV581	S473206 - S483264			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2007	BT541	X001509 - X010233
			BT581	X001504 - X009214
			BV541	X002493 - X032595
			BV581	X002480 - X032589
			CT541	X001009 - X002214
			CV541	X001185 - X005181
			DT541	X009296 - X009985
			DT581	X009401 - X009401
			DV541	X023882 - X032593
			DV581	X022843 - X032590
			ET541	X015154 - X016078
			ET581	X015222 - X015222
			EV541	X025255 - X032800
			EV581	X025031 - X032788
			JT521	X001258 - X002235
			JU521	X001130 - X003335
			JV521	X001122 - X002393
			KT521	X001022 - X002147
			KV521	X001133 - X002462
			LT521	X001572 - X016115
			LU521	X001203 - X006726
			LV521	X003495 - X032768
			MT521	X001506 - X010227
			MV521	X002485 - X032585
			RT541	X001571 - X016317
			RT581	X001570 - X016043
			RU541	X001200 - X006742
			RV541	X003586 - X032799
RV581	X003587 - X032785			
ST541	X001106 - X002069			
SV541	X001063 - X004748			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2008	BT541	X010234 - X014584
			BT581	X010659 - X013869
			BV541	X032597 - X083158
			BV581	X032603 - X083120
			CT541	X002218 - X002439
			CV541	X005183 - X008862
			DT541	X010580 - X013787
			DT581	X012554 - X012753
			DV541	X032596 - X083159
			DV581	X032602 - X083167
			ET541	X016320 - X027282
			ET581	X022981 - X026381
			EV541	X032809 - X069738
			EV581	X032801 - X069597
			JT521	X002236 - X002401
			JU521	X003336 - X004115
			JV521	X002395 - X003232
			KT521	X002148 - X002358
			KV521	X002463 - X003358
			LT521	X016321 - X027335
			LU521	X006748 - X017477
			LV521	X032804 - X069666
			MT521	X010235 - X014590
			MV521	X032626 - X083124
			RT541	X016318 - X027320
			RT581	X017618 - X020071
			RU541	X006743 - X017473
			RV541	X032802 - X069735
RV581	X032846 - X069669			
ST541	X002070 - X002160			
SV541	X004749 - X006281			

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(Number of Vehicles Involved Continued. . .)

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2009	BT541	X014611 - X015672
			BV541	X083229 - X094475
			BV581	X083255 - X092224
			BW541	X083226 - X094474
			BW581	X083224 - X094470
			CT541	X002440 - X002442
			CV541	X008872 - X009340
			CW541	X008870 - X009343
			DT541	X014616 - X015546
			DV541	X083242 - X094456
			DV581	X083244 - X094356
			DW541	X083227 - X094471
			DW581	X083217 - X094450
			ET541	X028344 - X028907
			EV541	X069830 - X073898
			EV581	X069778 - X073903
			JU521	X004131 - X004208
			JV521	X003234 - X003256
			KT521	X002362 - X002376
			KV521	X003364 - X003503
			KW521	X003384 - X003510
			LT521	X027997 - X029309
			LU521	X017497 - X020451
			LV521	X070510 - X073112
			MT521	X014876 - X015419
			MV521	X085497 - X094424
			MW521	X084767 - X094316
			RT541	X027383 - X029316
			RU541	X017498 - X020454
			RV541	X069772 - X073904
RV581	X070033 - X073900			
ST541	X002171 - X002179			
SV541	X006283 - X006375			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2010	BM5F1	X002356 - X008641
			BW5F1	X093050 - X129078
			BY5F1	X093061 - X129101
			CM5F1	X001001 - X001185
			CW5F1	X009335 - X010458
			CY5F1	X009336 - X010456
			DM5F1	X001019 - X009218
			DW5F1	X093128 - X129132
			DY5F1	X094480 - X129135
			EM5F1	X001006 - X012942
			EY5F1	X073303 - X088236
			FM5F1	X001806 - X012029
			FY5F1	X073300 - X088204
			HM5F1	X002336 - X008496
			HW5F1	X093038 - X129151
			HY5F1	X093142 - X129092
			JM5F1	X001002 - X001115
			JU5F1	X004209 - X004491
			JY5F1	X003257 - X003304
			KM5F1	X001001 - X001247
			KW5F1	X003513 - X004076
			KY5F1	X003514 - X004079
			LM5F1	X001026 - X012850
			LU5F1	X020324 - X022890
			LY5F1	X074019 - X087829
			MM5F1	X001020 - X009023
			MW5F1	X094824 - X128358
			MY5F1	X093123 - X127999
			RM5F1	X001008 - X012961
			RU5F1	X020455 - X022894
RY5F1	X073343 - X088224			
SM5F1	X004749 - X012442			
SY5F1	X073306 - X088151			
TM5F1	X001001 - X001152			
TY5F1	X006373 - X006786			
UM5F1	X001021 - X009228			
UW5F1	X093055 - X129131			
UY5F1	X094485 - X129140			

TUNDRA UIC: 426,800

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**5. Parts Ordering**

The necessary parts can be ordered through your dealership's facing PDC. Please refer to the table below and the Technical Instructions (located on TIS) for part number information.

To support the repair of customer vehicles the North American Parts Operation (NAPO) will initially allocate reinforcement bars to all Toyota dealerships from their facing parts distribution centers (PDC) starting February 3, 2010. All part numbers will be on manual allocation until further notice.

The initial quantities were determined based on the following:

- Size estimation required for the repair – Low/Medium/ High.
- Dealership's estimated UIO by affected model.

Each dealership will be sent a minimum of one 10 piece bag for each of the reinforcement bar part numbers.

**Any questions, request or concerns regarding the parameters established above should be directed to your regional representative.**

**Accelerator Pedal Reinforcement Bar**

Model	Part Number	Part Name and Size	Repair Volume Estimate By Size
All Applicable Models	78112-07010*	Accelerator Pedal Reinforcement Bar Size: 1.4 mm	Low
	78112-07020*	Accelerator Pedal Reinforcement Bar Size: 1.6 mm	Low
	78112-07030*	Accelerator Pedal Reinforcement Bar Size: 1.8 mm	High
	78112-07040*	Accelerator Pedal Reinforcement Bar Size: 2.0 mm	High
	78112-07050*	Accelerator Pedal Reinforcement Bar Size: 2.3 mm	High
	78112-07060*	Accelerator Pedal Reinforcement Bar Size: 2.6 mm	Medium
	78112-07070*	Accelerator Pedal Reinforcement Bar Size: 2.9 mm	Medium

\* One unit order = 10 piece bag.

**NOTE: To determine the correct size of accelerator pedal reinforcement bar needed, refer to the Technical Instructions located on TIS.**

To help ensure correct parts distribution, all part numbers listed above will be on manual allocation control (MAC) until further notice.

NAPO will place and release orders for the initial quantities to be allocated to each dealer over the first two weeks of the campaign (subject to change), and will cancel dealer initiated orders during this period.

If there are special circumstances, dealership associates should go through their normal channels for resolution (e.g. PDC, Dealer Parts Call Center for TMS Region Dealers, DSPMs).

The associate should have the following information ready to expedite research of the order status:

1. Dealer Information (Dealer Code, Contact Name, Telephone Number)
2. Order Reference Number
3. Customer Name and Vehicle 17-digit VIN (if applicable)



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(Parts Ordering Continued. . . )

**IMPORTANT PARTS ORDERING REMINDER**

*Effective March 1, 2009, Safety Recall, Service Campaign (SSC/LSC) and Customer Support Program (CSP) parts do not earn Parts Return Credit Accrual and are not returnable under the Monthly Return Program.*

It is recommended that you order these parts based on appointments or immediate customer needs using a "Sell One-Buy One" ordering pattern. Please refer to PANT Bulletin 09-12 for additional details.

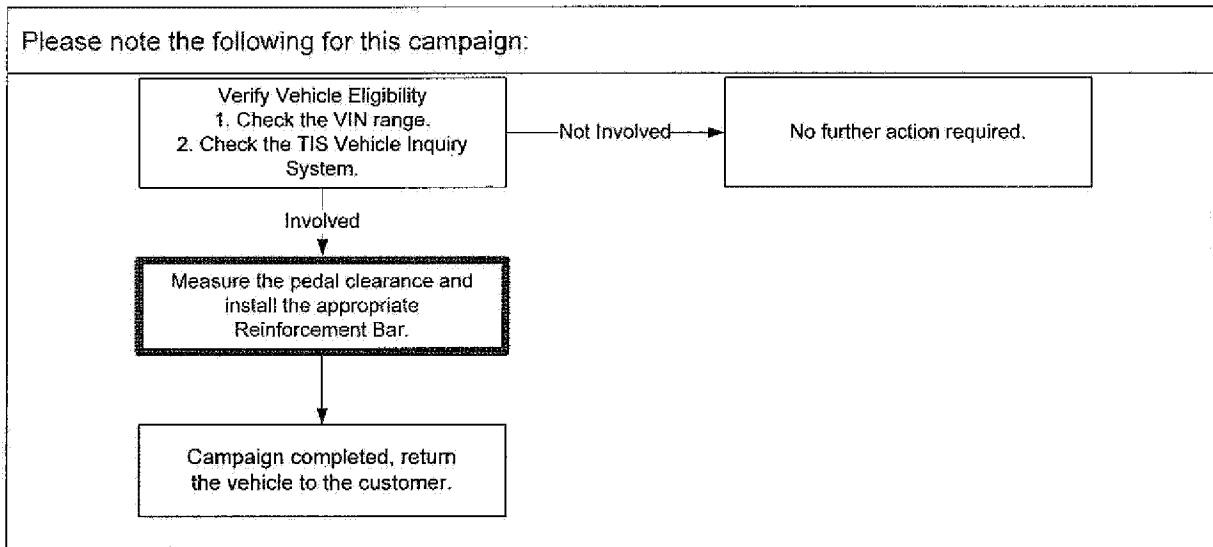
In the event the accelerator link arm support cover (thin metal cover on the back of the accelerator pedal) is damaged during the repair, please utilize the part number listed below.

Model	Part Number	Part Name	Qty/Unit
All Applicable Models	78211-07010	Accelerator Link Arm Support Cover	1

**7. Repair Procedures**

Refer to TIS for the appropriate Technical Instructions. Conduct all applicable, open Special Service Campaigns on the vehicle during the time of appointment.

**8. Warranty Processor Instructions**



The operation codes to be used for this campaign are:

SSC	Op. Code	Description	Flat Rate Hour
A0A	0501B1	Install the Accelerator Pedal Reinforcement Bar	0.7 hr / vehicles
A0A	0501B2	Install the Accelerator Pedal Reinforcement Bar in conjunction with SSC 90L	0.4 hr / vehicles

- The above flat rate time includes 0.1 hour for administrative cost per unit.
- Rental Car: Use "RT" sublet type for Op. Code 0501B1 and 0501B2. Customer rental car through the Toyota-Rent-A-Car (TRAC) Program is available for a maximum of one day at a maximum rate of \$35 per day. Special accommodations, not outlined above require DSPM authorization.
- Claims made for Op Code 0501B1 or 0501B2 must be filled in with accurate part numbers (according to reinforcement bar thickness).

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9. **Customer Handling**

Please consider this campaign a great opportunity to focus on assuring customers that their safety remains Toyota's highest priority. Customers who receive the owner letter may contact your dealership with questions regarding the letter and/or campaign remedy. Please welcome them to your dealership and answer any questions that they may have. A Q&A is provided to assure a consistent message is communicated.

- Customers with additional questions or concerns are asked to please contact the Toyota Customer Experience Center (1-888-270-9371).
- If an owner has previously paid for accelerator pedal repairs to address this specific condition, they are requested to mail a copy of the repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration

Toyota Motor Sales, U.S.A., Inc  
Toyota Customer Experience Center, WC10  
19001 South Western Avenue  
Torrance, CA 90509

7. **Media Contacts**

***For News media inquiries only:***

Due to the nature of this Safety Campaign, it is imperative that all media contacts (local and national) receive a consistent message. In this regard, ***all media contacts*** must be directed to Brian Lyons (310) 468-2552, John Hanson (310) 468-4718, in Corporate Communications. (Please do not provide these numbers to customers or direct dealership associates to call).

***Please review this entire package with your Service and Parts staff to familiarize them with the proper step-by-step procedures required to implement this Special Service Campaign.***

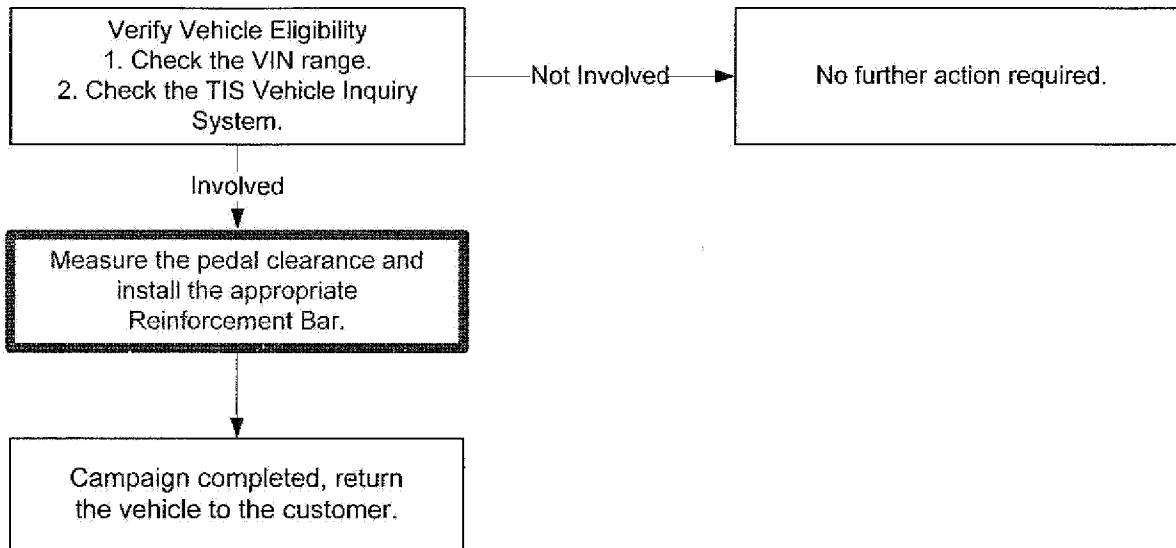
Thank you for your cooperation.  
TOYOTA MOTOR SALES, U.S.A., INC.

# **EXHIBIT 9**

**TECHNICAL INSTRUCTIONS**  
**FOR**  
**SAFETY RECALL A0A**  
**CTS ACCELERATOR PEDAL**  
**REINFORCEMENT BAR INSTALLATION**

**2005 – 2010 Model Year Avalon**  
**2007 – 2010 Model Year Camry**  
**2009 – 2010 Model Year Corolla**  
**2010 Model Year Highlander**  
**2009 – 2010 Model Year Matrix**  
**2009 – 2010 Model Year Rav4**  
**2008 – 2010 Model Year Sequoia**  
**2007 – 2010 Model Year Tundra**

### I. OPERATION FLOW CHART



### II. IDENTIFICATION OF AFFECTED VEHICLES

#### A. AFFECTED VIN RANGE

MODEL	WMI	MY	VDS	START - FINISH
AVALON	4T1	2005	BK36B	U001003 - U062426
		2006	BK36B	U042154 - U167717
		2007	BK36B	U149048 - U253880
		2008	BK36B	U209130 - U324241
		2009	BK36B	U305357 - U351925
		2010	BK3DB	U351302 - U367444

AVALON UIO: 330,000

MODEL	WMI	MY	VDS	START - FINISH
COROLLA	1NX	2009	BE40E	Z001001 - Z163790
			BU40E	Z001002 - Z165305
		2010	BE4EE	Z165306 - Z333282
			BU4EE	Z165312 - Z337444
	2T1	2009	BE40E	C001043 - C030479
			BU40E	C001054 - C191051
		2010	BE4EE	C030504 - C039875
			BU4EE	C185955 - C348040

COROLLA UIO: 490,000

MODEL	WMI	MY	VDS	START - FINISH	
CAMRY*	4T1	2007	BE46K	U001001 - U195222	
			BK46K	U504376 - U729526	
		2008	BE46K	U001003 - U054581	
				U171709 - U263248	
			BK46K	U730123 - U791444	
				U040415 - U073251	
		2009	BE46K	U260017 - U416640	
			BK46K	U073252 - U098189	
		2010	BF3EK	U001002 - U112408	
			BK3EK	U091136 - U116162	
		4T4	2007	BE46K	R001003 - R011624
			2008	BE46K	R001816 - R047779
			2009	BE46K	R027105 - R139846
			2010	BF3EK	R001023 - R085180

CAMRY UIO: 786,000

\*Camry Hybrid vehicles are equipped with an accelerator pedal that is of a different design and produced by a different supplier. Therefore, it does not require the installation of an accelerator pedal reinforcement bar.

MODEL	WMI	MY	VDS	START - FINISH
HIGHLANDER*	5TD	2010	BK3EH	S001052 - S013868
			DK3EH	S001067 - S013863
			EK3EH	S001051 - S008434
			JK3EH	S005002 - S013869
			KK3EH	S003272 - S008683
			XK3EH	S001026 - S005688
			YK3EH	S001030 - S008686
			ZA3EH	S001019 - S003107
ZK3EH	S001020 - S008685			

HIGHLANDER UIO: 20,000

\*Highlander Hybrid vehicles are equipped with an accelerator pedal that is of a different design and produced by a different supplier. Therefore, it does not require the installation of an accelerator pedal reinforcement bar.

MODEL	WMI	MY	VDS	START - FINISH
SEQUOIA	5TD	2008	BT64A	S000014 - S000239
			BY64A	S000047 - S023603
			BY67A	S000042 - S023596
			BY68A	S000034 - S023597
			ZT64A	S000014 - S000384
			ZY64A	S000010 - S015402
			ZY67A	S000012 - S015400
			ZY68A	S000013 - S015401
		2009	BT64A	S000244 - S001152
			BW68A	S023606 - S023606
			BY64A	S023711 - S023868
			BY67A	S023609 - S023857
			BY68A	S023616 - S023856
			ZT64A	S000438 - S000953
			ZY64A	S019566 - S020863
			ZY67A	S015919 - S015919
		ZY68A	S015426 - S021051	
		2010	BM5G1	S001002 - S001225
			BW5G1	S023880 - S032694
			BY5G1	S023869 - S032719
			DW5G1	S023878 - S032718
			DY5G1	S023870 - S032709
			JW5G1	S023876 - S032713
			JY5G1	S023871 - S032708
			KM5G1	S001417 - S001458
			KY5G1	S022514 - S027553
			YY5G1	S022511 - S027563
			ZM5G1	S001034 - S002051
			ZY5G1	S022519 - S027561
			ZY67A	S020526 - S020527

SEQUOIA UIO: 50,000

MODEL	WMI	MY	VDS	START - FINISH
MATRIX	2T1	2009	GE40E	C001023 - C005748
			KE40E	C001042 - C030591
			KU40E	C001057 - C191049
			LE40E	C001017 - C011935
		2010	KE4EE	C030606 - C039888
			KU4EE	C191054 - C348047
			LE4EE	C011822 - C016115
			ME4EE	C005690 - C006299

MATRIX UIO: 75,000

MODEL	WMI	MY	VDS	START - FINISH
RAV4	2T3	2009	BF31V	W001119 - W024119
			BF32V	W001207 - W024120
			BF33V	W001117 - W024117
			BF34V	W003775 - W021681
			BF35V	W001421 - W024111
			BK31V	W001143 - W013774
			BK32V	W001142 - W013693
			BK33V	W001162 - W013773
			BK34V	W001688 - W010762
			BK35V	W002139 - W013749
			ZF31V	W001050 - W016880
			ZF32V	W001048 - W016874
			ZF33V	W001049 - W016918
			ZF34V	W003810 - W012950
			ZF35V	W001625 - W016916
			ZK31V	W001081 - W003645
			ZK32V	W001149 - W003642
			ZK33V	W001076 - W003644
			ZK34V	W001670 - W002621
			ZK35V	W001965 - W003631
		2010	BF4DV	W022899 - W038726
			BK4DV	W013775 - W020737
			DF4DV	W024130 - W038723
			DK4DV	W013776 - W020732
			EF4DV	W024745 - W035186
			EK4DV	W014634 - W020625
			JF4DV	W024129 - W038700
			JK4DV	W013811 - W020629
			KF4DV	W016950 - W027204
			KK4DV	W003824 - W005660
			RF4DV	W022777 - W038716
			RK4DV	W013813 - W020685
			WF4DV	W016936 - W027202
			WK4DV	W003659 - W005669
			XF4DV	W018112 - W025585
			XK4DV	W003701 - W005572
			YF4DV	W016920 - W027201
			YK4DV	W003435 - W005673
			ZF4DV	W016923 - W027211
			ZK4DV	W003652 - W005662

RAV4 UIO: 53,000

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TB	2007	BT541	S449772 - S458203
			BT581	S449768 - S458119
			BV541	S449818 - S490980
			BV581	S449815 - S490940
			DT541	S452172 - S458112
			DT581	S451402 - S457120
			DV541	S454929 - S490979
			DV581	S454922 - S490970
			ET541	S451522 - S457443
			ET581	S452313 - S457105
			EV541	S453235 - S473183
			EV581	S452114 - S473116
			RT541	S449776 - S457554
			RT581	S449772 - S457346
			RU541	S449764 - S451516
			RV541	S449790 - S473197
RV581	S449792 - S473167			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TB	2008	BT541	S458128 - S465088
			BT581	S460039 - S463353
			BV541	S489753 - S524241
			BV581	S490994 - S524168
			DT541	S458232 - S465032
			DT581	S458211 - S465038
			DV541	S490988 - S524251
			DV581	S490274 - S524192
			ET541	S457566 - S461702
			ET581	S460063 - S460135
			EV541	S473215 - S483286
			EV581	S472420 - S483281
			RT541	S457555 - S461703
			RT581	S457567 - S459791
RV541	S473199 - S483282			
RV581	S473206 - S483264			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2007	BT541	X001509 - X010233
			BT581	X001504 - X009214
			BV541	X002493 - X032595
			BV581	X002480 - X032589
			CT541	X001009 - X002214
			CV541	X001185 - X005181
			DT541	X009296 - X009985
			DT581	X009401 - X009401
			DV541	X023882 - X032593
			DV581	X022843 - X032590
			ET541	X015154 - X016078
			ET581	X015222 - X015222
			EV541	X025255 - X032800
			EV581	X025031 - X032788
			JT521	X001258 - X002235
			JU521	X001130 - X003335
			JV521	X001122 - X002393
			KT521	X001022 - X002147
			KV521	X001133 - X002462
			LT521	X001572 - X016115
			LU521	X001203 - X006726
			LV521	X003495 - X032768
			MT521	X001506 - X010227
			MV521	X002485 - X032585
			RT541	X001571 - X016317
			RT581	X001570 - X016043
			RU541	X001200 - X006742
			RV541	X003586 - X032799
			RV581	X003587 - X032785
			ST541	X001106 - X002069
SV541	X001063 - X004748			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2008	BT541	X010234 - X014584
			BT581	X010659 - X013869
			BV541	X032597 - X083158
			BV581	X032603 - X083120
			CT541	X002218 - X002439
			CV541	X005183 - X008862
			DT541	X010580 - X013787
			DT581	X012554 - X012753
			DV541	X032596 - X083159
			DV581	X032602 - X083167
			ET541	X016320 - X027282
			ET581	X022981 - X026381
			EV541	X032809 - X069738
			EV581	X032801 - X069597
			JT521	X002236 - X002401
			JU521	X003336 - X004115
			JV521	X002395 - X003232
			KT521	X002148 - X002358
			KV521	X002463 - X003358
			LT521	X016321 - X027335
			LU521	X006748 - X017477
			LV521	X032804 - X069666
			MT521	X010235 - X014590
			MV521	X032626 - X083124
			RT541	X016318 - X027320
			RT581	X017618 - X020071
			RU541	X006743 - X017473
			RV541	X032802 - X069735
RV581	X032846 - X069669			
ST541	X002070 - X002160			
SV541	X004749 - X006281			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2009	BT541	X014611 - X015672
			BV541	X083229 - X094475
			BV581	X083255 - X092224
			BW541	X083226 - X094474
			BW581	X083224 - X094470
			CT541	X002440 - X002442
			CV541	X008872 - X009340
			CW541	X008870 - X009343
			DT541	X014616 - X015546
			DV541	X083242 - X094456
			DV581	X083244 - X094356
			DW541	X083227 - X094471
			DW581	X083217 - X094450
			ET541	X028344 - X028907
			EV541	X069830 - X073898
			EV581	X069778 - X073903
			JU521	X004131 - X004208
			JV521	X003234 - X003256
			KT521	X002362 - X002376
			KV521	X003364 - X003503
			KW521	X003384 - X003510
			LT521	X027997 - X029309
			LU521	X017497 - X020451
			LV521	X070510 - X073112
			MT521	X014876 - X015419
			MV521	X085497 - X094424
			MW521	X084767 - X094316
			RT541	X027383 - X029316
RU541	X017498 - X020454			
RV541	X069772 - X073904			
RV581	X070033 - X073900			
ST541	X002171 - X002179			
SV541	X006283 - X006375			

MODEL	WMI	MY	VDS	START - FINISH
TUNDRA	5TF	2010	BM5F1	X002356 - X008641
			BW5F1	X093050 - X129078
			BY5F1	X093061 - X129101
			CM5F1	X001001 - X001185
			CW5F1	X009335 - X010458
			CY5F1	X009336 - X010456
			DM5F1	X001019 - X009218
			DW5F1	X093128 - X129132
			DY5F1	X094480 - X129135
			EM5F1	X001006 - X012942
			EY5F1	X073303 - X088236
			FM5F1	X001806 - X012029
			FY5F1	X073300 - X088204
			HM5F1	X002336 - X008496
			HW5F1	X093038 - X129151
			HY5F1	X093142 - X129092
			JM5F1	X001002 - X001115
			JU5F1	X004209 - X004491
			JY5F1	X003257 - X003304
			KM5F1	X001001 - X001247
			KW5F1	X003513 - X004076
			KY5F1	X003514 - X004079
			LM5F1	X001026 - X012850
			LU5F1	X020324 - X022890
			LY5F1	X074019 - X087829
			MM5F1	X001020 - X009023
			MW5F1	X094824 - X128358
			MY5F1	X093123 - X127999
			RM5F1	X001008 - X012961
			RU5F1	X020455 - X022894
			RY5F1	X073343 - X088224
			SM5F1	X004749 - X012442
SY5F1	X073306 - X088151			
TM5F1	X001001 - X001152			
TY5F1	X006373 - X006786			
UM5F1	X001021 - X009228			
UW5F1	X093055 - X129131			
UY5F1	X094485 - X129140			

TUNDRA UIO: 426,000

**NOTE:**

- Check the TIS Vehicle Inquiry System to confirm the VIN is involved in this Safety Recall, and that the campaign has not already been completed prior to dealer shipment or by another dealer.
- TMS warranty will not reimburse dealers for repairs conducted on vehicles that are not affected or were completed by another dealer.



### III. PREPARATION

#### A. PARTS

Reinforcement Bar*			
Part Number	Thickness	Dealer QUP	Estimated Repair Volume
78112-07010	1.4	1 bag (10pcs)	Low
78112-07020	1.6	1 bag (10pcs)	Low
78112-07030	1.8	1 bag (10pcs)	High
78112-07040	2.0	1 bag (10pcs)	High
78112-07050	2.3	1 bag (10pcs)	High
78112-07060	2.6	1 bag (10pcs)	Medium
78112-07070	2.9	1 bag (10pcs)	Medium

\*Dealerships will be sent a minimum of 1 bag of each of the 7 Reinforcement Bar part numbers.

\*\*Only 1 Reinforcement bar is used per vehicle.

#### B. TOOLS & MATERIALS

- Standard hand tools
- Torque wrench
- Tape (electrical, masking)
- Metric Feeler Gauge

### IV. BACKGROUND

There is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.

Over time, some accelerator pedal mechanisms may become worn. As a result of this wear combined with certain operating and environmental conditions, friction in the mechanism may increase and intermittently result in the accelerator pedal being hard to depress, slow to return or, in the worst case, stick in a partially open position.

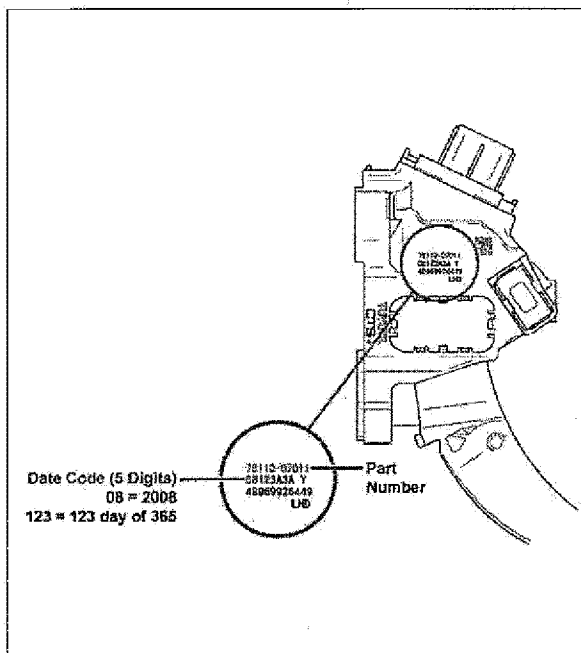
## V. WORK PROCEDURE



### ACCELERATOR PEDAL HANDLING NOTES:

- DO NOT drop: DO NOT reuse an accelerator pedal that has been dropped.
- Avoid vibration and shock.

CLICK HERE TO WATCH THE VIDEO BEFORE BEGINNING THE WORK PROCEDURE



### 1. CONFIRM ACCELERATOR PEDAL PART NUMBER AND MANUFACTURE DATE CODE

- a) Verify the part number and manufacture date code according to the information found on the pedal.

Applicable Part Numbers	OK Date Code
78110-0C011	10018 & Later
78110-0R020	10018 & Later
78110-07011	10016 & Later
78110-08010	10015 & Later
78110-0C010	All NG
78110-07010	All NG

#### For OK Date Code:

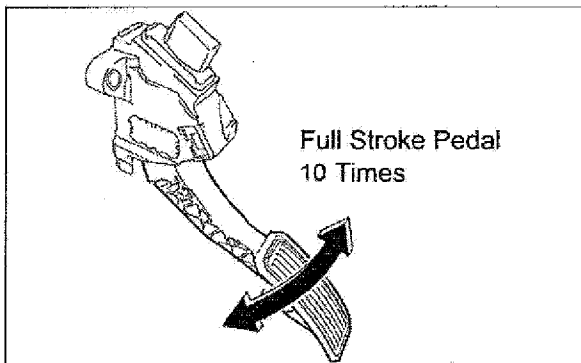
- Vehicle is not involved, no further action required.
- Return vehicle to customer.

#### For NG Date Code:

- If the date code is a - smaller number/earlier date - than what is listed on the table above: Continue with these Technical Instructions.

### 2. DISCONNECT THE NEGATIVE BATTERY CABLE - ALL MODELS

- a) To prevent airbag and seat belt pretensioner activation on the following models, disconnect the negative battery cable and wait 90 seconds.



### 3. PUMP ACCELERATOR PEDAL ASSEMBLY

- a) Pump the accelerator pedal at least 10 times in a full stroke.

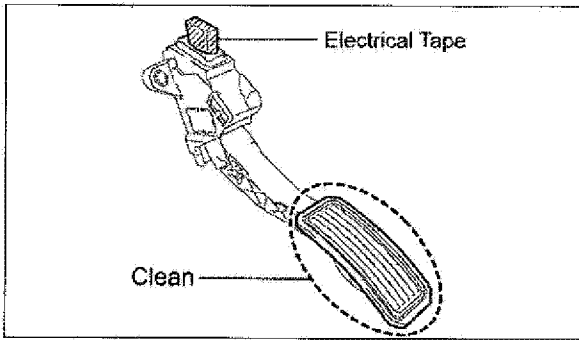
#### NOTE:

This step is to ensure an accurate measurement when checking the clearance between the stopper and the housing.

### 4. REMOVE THE ACCELERATOR PEDAL ASSEMBLY

- a) Disconnect the accelerator pedal electrical connector.  
 b) Remove the 2 bolts OR 2 nuts depending on model.

**NOTE:** For additional information on accelerator pedal removal, please refer to TIS.



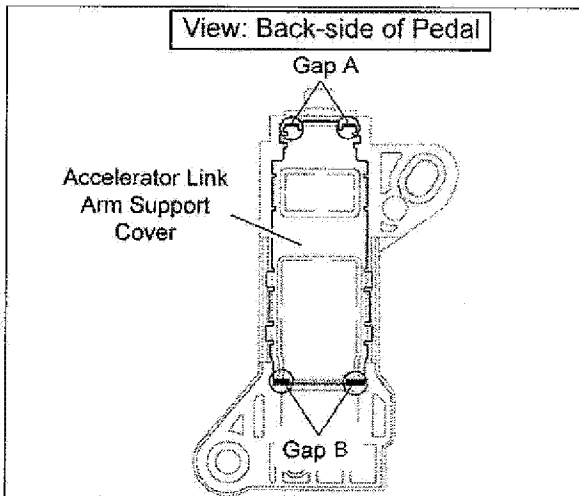
**5. PROTECT CONNECTOR**

Click here to watch the video to supplement steps (5-6)

- a) Tape the electrical connector using UL listed electrical tape.
- b) Clean the area indicated.

**NOTE:**

Do not use compressed air to clean; this may force dirt and debris into the sensor area.



**6. REMOVE THE ACCELERATOR LINK ARM SUPPORT COVER**

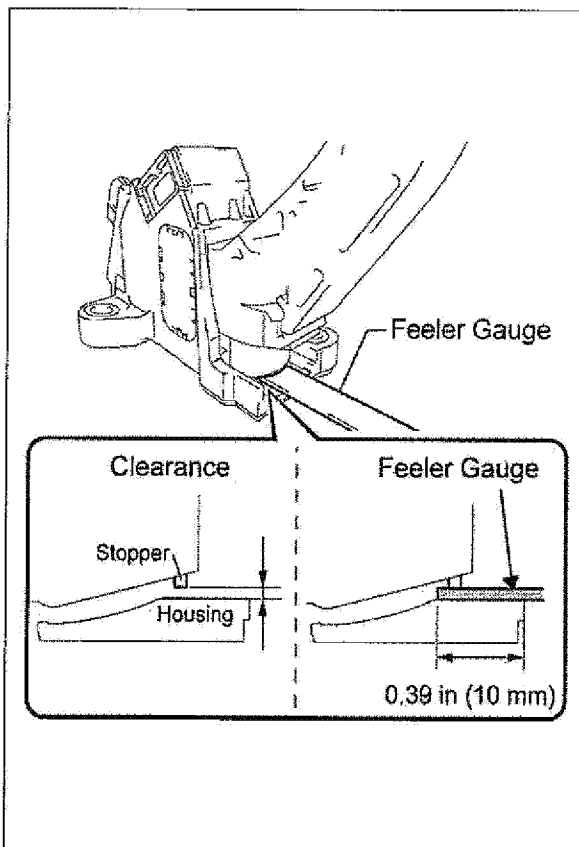
**NOTE:**

Do not twist or bend the cover; it will need to be reinstalled.

- a) Using a pocket screwdriver, evenly and lightly pry up on gaps (A) and then gaps (B) to remove the cover.

**NOTE:**

Do not clean out any debris caused by wear; this may trap debris in the pedal causing future malfunctions.



**7. DETERMINE THE REINFORCEMENT BAR THICKNESS**

Click here to watch the video to supplement steps (7-10)

- a) Using a feeler gauge, measure the clearance between the stopper and the housing.
- b) Only insert the feeler gauge 10mm from the end of the housing as illustrated.

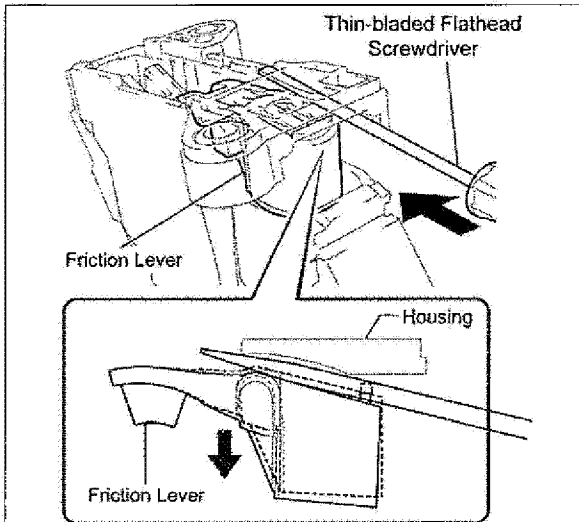
**NOTE:**

Mark the feeler gauge 10mm from the edge to aid in measurement.

- c) Based on the measurement from step a), select the correct Reinforcement Bar using the table below.

Clearance	Reinforcement Bar	
	Thickness	Stamping
0.0 mm – 0.29 mm	1.4 mm	1.4 A
0.3 mm – 0.59 mm	1.6 mm	1.6 B
0.6 mm – 0.79 mm	1.8 mm	1.8 C
0.8 mm – 1.09 mm	2.0 mm	2.0 D
1.1 mm – 1.49 mm	2.3 mm	2.3 E
1.5 mm – 1.89 mm	2.6 mm	2.6 F
1.9 mm – 2.30 mm*	2.9 mm	2.9 G

**\*NOTE:** Dealer in-stock and lower mileage vehicles may have a clearance greater than 2.3 mm and less than 2.7 mm. The 2.9 mm thickness reinforcement bar is specified for these cases.



**8. INSTALL REINFORCEMENT BAR**

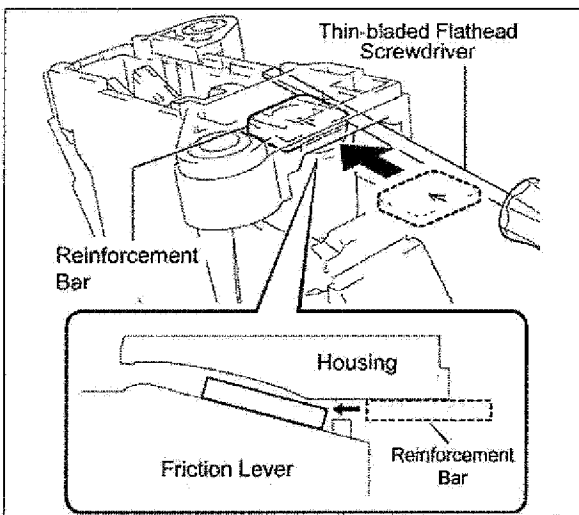
- b) Insert a clean thin-bladed flathead screwdriver between the housing and the friction lever until the friction lever lowers.

**NOTE:**

Do not push more than necessary; it may deform the housing.

**NOTE:**

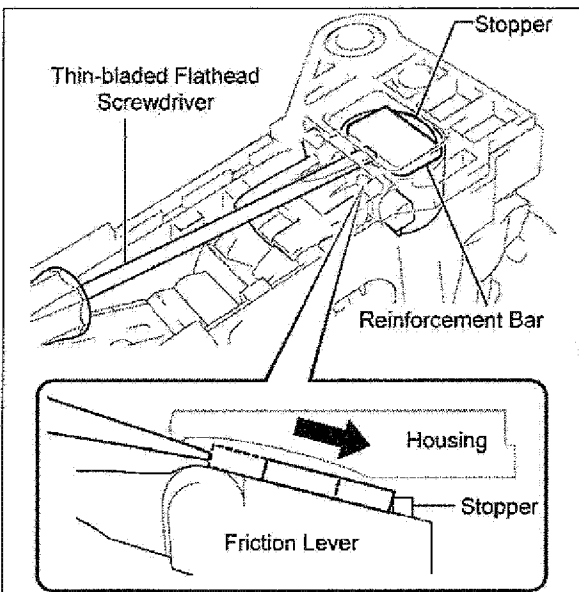
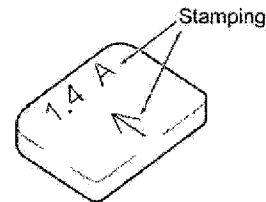
Never stack multiple reinforcement bars inside of the pedal assembly.



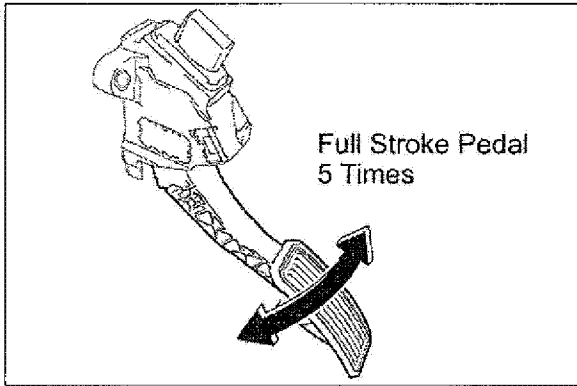
- c) With the increased clearance between the friction lever and the housing, insert the reinforcement bar selected from step 7.

**NOTE:**

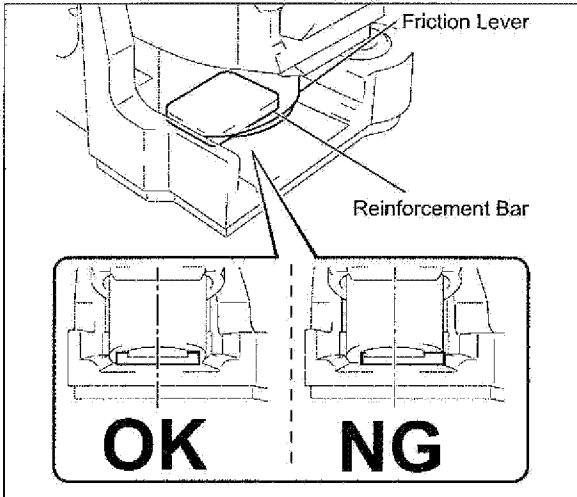
- Do NOT add any lubricants or chemicals to assist with installation!!
- As illustrated, insert the reinforcement bar with its stamped arrow facing up.



- d) From the back of the pedal, firmly push the reinforcement bar until it contacts the stopper.  
 e) Carefully center the reinforcement bar behind the stopper using a pocket screwdriver.

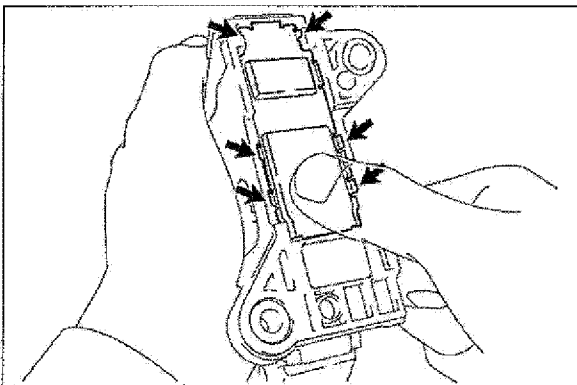


- f) Pump the accelerator pedal 5 times in a full stroke to properly seat the reinforcement bar.



**9. VERIFY REINFORCEMENT BAR INSTALLATION**

- a) Verify that the reinforcement bar is properly centered and flush with the stopper.



**10. INSTALL THE ACCELERATOR LINK ARM SUPPORT COVER**

- a) Repair any bent claws on the accelerator link arm support cover.
- b) With the two protrusions (illustrated in red) facing out, press down on the 6 claws to firmly install the accelerator link arm support cover.

**NOTE:**

If the cover is difficult to reinstall it may be installed upside down.

**11. REINSTALL THE ACCELERATOR PEDAL ASSEMBLY**

Click here to watch the video to supplement steps (11-15)

- a) Remove the tape from the electrical connector.
- b) Reinstall the pedal with the 2 bolts OR 2 nuts depending on model.
- c) Torque to specification.

Model	Torque Specification:	Model	Torque Specification:
Avalon	5.4 Nm (55 kgf cm, 48 in. lbf)	Corolla	5.5 Nm (56 kgf cm, 49 in. lbf)
Camry		Matrix	
RAV4		Sequoia	
Highlander		Tundra	5.0 Nm (51 kgf cm, 44 in. lbf)

- d) Reconnect the accelerator pedal connector.
- e) Reconnect the negative battery cable.

**NOTE: For additional information on accelerator pedal installation, please refer to TIS.**

**12. CONFIRM THE CORRECT FLOOR MAT**

- a) Confirm the correct floor mat for this model is secured with the retaining hooks (clips).
  - If the grommets in the floor for the vehicle are in poor condition, refer to the appropriate TSB and repair the grommets.

**13. CHECK FOR DTC CODES**

- a) Connect the Techstream to the DLC3.
- b) Check for DTC codes.

**NOTE: If DTC(s) are displayed, verify the code(s) and record the freeze frame data, then perform repairs as necessary.**

**14. INSPECT THE ACCELERATOR PEDAL ASSEMBLY OPERATION**

- a) Enter the following menus: Powertrain / Engine and ECT / Data List.

**NOTE:**

There are two sets of the same Accel Sensor Out No. 1 & No. 2 parameters. Select ALL DATA on the pull down menu at the bottom of the screen when searching for the correct parameters.

Parameter	Value	Unit	Parameter	Value	Unit
Vehicle Speed	0	MPH	Throttle Require Position	4.0	V
Engine Speed	0	rpm	Throttle Sensor Position	65.0	%
Calculate Load	0.0	%	Throttle Position No.1	0.000	V
Vehicle Load	0.0	%	Throttle Position No.2	0.000	V
MAF	0.40	gm/sec	Throttle Position No.1	4.0	V
Atmosphere Pressure	-0	psigauge	Throttle Position No.2	4.0	V
Coolant Temp	68	F	Throttle Position Command	4.0	V
Intake Air	82	F	Throttle Sens Open Pos #1	0.9	V
Engine Run Time	0	s	Throttle Sens Open Pos #2	2.0	V
Initial Engine Coolant Temp	88.0	F	Throttle Sens Open #1(AD)	4.0	V
Initial Intake Air Temp	83.7	F	Throttle Motor	OH	
Battery Voltage	11.8	V	Throttle Motor Current	0.8	A
Accel Sens. No.1 Volt %	73.7	%	Throttle Motor DUTY	88.7	%
Accel Sens. No.2 Volt %	89.6	%	Throttle Motor Current	0.300	A
Accel Sensor Out No.1	0.000	V	Throttle Motor Open Duty	0	%
Accel Sensor Out No.2	0.000	V	Throttle Motor Close Duty	0	%
Accel Sensor Out No.1	3.6	V	Throttle Motor Duty (Open)	13	%
Accel Sensor Out No.2	4.4	V	Throttle Motor Duty (Close)	0	%
Accelerator Idle Position	OFF		Throttle Fully Close Learn	0.6	V
Accel Fully Close #1 (AD)	3.6	V	ETCS Actuator Power	OH	
Accel Fully Close Learn #1	10.0	V	+BM Voltage	11.8	V
Accel Fully Close Learn #2	0.000	A	ETCS Actuator Current	OH	
Throttle Sensor Volt %	OFF		Injection Pressure Control	OFF	
Throttle Sensor #2 Volt %	OFF		Injection Pressure Control (PU)	OFF	
ST1	OFF		Injection Port	0.00	ms
System Guard	ON		Injection Volume (Cylinder)	0.000	ml
Open Side Malfunction	OFF		Fuel Pump Speed Status	OFF	
Throttle Idle Position	OFF		Vacuum Pump	OFF	

**15. CONTINUED: INSPECT THE ACCELERATOR PEDAL ASSEMBLY OPERATION**

a) Check the values by referring to the table below.

<b>Techstream Parameter</b>	<b>Measurement: Range (Display)</b>	<b>Normal Condition</b>	<b>Diagnostic Note</b>
Accel Sensor Out No. 1	APP sensor No. 1 voltage	Accelerator Pedal Released: 0.5 to 1.1 V	Read value with ignition switch to ON (Do not start engine)
		Accelerator Pedal Fully Depressed: 2.6 to 4.5 V	
Accel Sensor Out No. 2	APP sensor No. 2 voltage	Accelerator Pedal Released: 1.2 to 2.0 V	Read value with ignition switch to ON (Do not start engine)
		Accelerator Pedal Fully Depressed: 3.4 to 5.0 V	

**-Campaign Complete-**

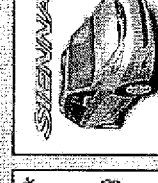
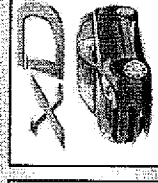
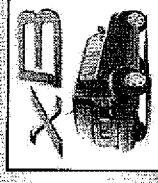
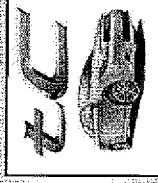
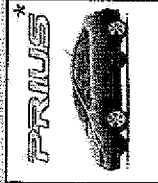
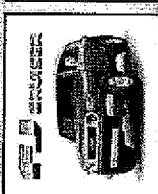
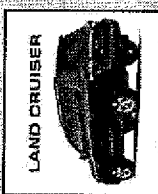
# **EXHIBIT 10**



**DEALER STOCK VEHICLE INSPECTION GUIDE (UPDATED 2/08/2010)**

The following inspection guide will help you determine the status of the vehicles ONLY in dealer stock. Make sure to follow all steps provided for the vehicle you are inspecting. If you have any questions regarding the information provided, please contact your region representative. Please note, a red dashed box (---) indicates updated information.

The following vehicles may be released from dealer stock.



The following vehicles need to be inspected to determine if they can be released or must be held in dealer stock.

**AVALON** \* **CAMRY** \* **COROLLA** \* **HIGHLANDER** \* **MATRIX** \*

Please note, Camry Hybrid vehicles may be released from dealer stock.

**RAV4**

Does the VIN begin with a "JT"?

NO → Verify if the accelerator pedal is a DENSO or CTS as shown.

YES → Perform Safety Recall A04 and all other applicable recalls/campaigns per TIS prior to releasing the vehicle from dealer stock.

NO → DENSO → Verify the driver's floor mat is installed using the Plastic Fasteners (Swiftatch®) installed at the VDC.

YES → CTS → Locate the part number and manufacture date on the CTS accelerator pedal as shown. Was the pedal manufactured before or on / after the date code below?

Part Number: 78110-07011 Date Code: 10016  
 Part Number: 78110-06010 Date Code: 10015  
 Part Number: 78110-0R020 Date Code: 10018

Part Number: 78110-07011 Date Code: 10016  
 Part Number: 78110-07011 Date Code: 10016

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

**TUNDRA** \* **SEQUOIA** \*

Does the VIN begin with a "JT"?

NO → Verify if the accelerator pedal is a DENSO or CTS as shown.

YES → Perform Safety Recall A04 and all other applicable recalls/campaigns per TIS prior to releasing the vehicle from dealer stock.

NO → DENSO → Verify the driver's floor mat is installed using the Plastic Fasteners (Swiftatch®) installed at the VDC.

YES → CTS → Locate the part number and manufacture date on the CTS accelerator pedal as shown. Was the pedal manufactured before or on / after the date code below?

Part Number: 78110-0C011 Date Code: 10016

Part Number: 78110-0C011 Date Code: 10016

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

**COROLLA** \* **HIGHLANDER** \* **MATRIX** \*

Does the VIN begin with a "JT"?

NO → Verify if the accelerator pedal is a DENSO or CTS as shown.

YES → DENSO → Verify the driver's floor mat is installed using the Plastic Fasteners (Swiftatch®) installed at the VDC.

YES → CTS → Locate the part number and manufacture date on the CTS accelerator pedal as shown. Was the pedal manufactured before or on / after the date code below?

Part Number: 78110-07011 Date Code: 10016

Part Number: 78110-07011 Date Code: 10016

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

**TUNDRA** \* **SEQUOIA** \*

Does the VIN begin with a "JT"?

NO → Verify if the accelerator pedal is a DENSO or CTS as shown.

YES → DENSO → Verify the driver's floor mat is installed using the Plastic Fasteners (Swiftatch®) installed at the VDC.

YES → CTS → Verify the driver's floor mat is installed using the Plastic Fasteners (Swiftatch®) installed at the VDC.

Plastic Fasteners Already Installed → Plastic Fasteners not installed → Install Self Locking Nylon Tie-Wraps

Plastic Fasteners Already Installed → Plastic Fasteners not installed → Install Self Locking Nylon Tie-Wraps

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

Vehicle can be released from dealer stock if all applicable recalls/campaigns per TIS are completed.

\* The 05 - '10 Avalon, '07 - '10 Camry, '09 - '10 Corolla, '08 - '10 Highlander, '09 - '10 Matrix, '09 - '10 Tundra and '08 - '10 Venza are included in the Safety Recall for potential floor mat interference with the accelerator pedal. Vehicles may be delivered provided that the driver's floor mat and front passenger floor mat are removed from the cabin of the vehicle (the mats may be placed in the trunk). If the floor mat is placed in the trunk, the customer must be advised of the Consumer Safety Advisory.

- The floor mats are semi-permanently secured to the vehicle using Plastic Fasteners (Swiftatch®) or Self Locking Nylon Tie-Wraps. NOTE: All Weather Floor Mats are on Stop Sale and should not be installed prior to vehicle delivery.

# **EXHIBIT 11**



Toyota Motor Sales, U.S.A., Inc.  
19001 South Western Avenue  
P.O. Box 2991  
Torrance, CA 90509-2991



GDD

**Safety Recall AOA – CAMRY Vehicles  
Accelerator Pedal Reinforcement Bar Installation  
SAFETY RECALL NOTICE**

Dear Toyota Customer:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect, which relates to motor vehicle safety, exists in 2009 model year CAMRY vehicles.

**What is the condition?**

There is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position. Over time, the internal mechanisms in the accelerator pedal may become worn. As a result of this wear combined with certain operating and environmental conditions, friction in the mechanism may increase and intermittently result in the accelerator pedal being hard to depress and/or slow to return or, in the worst case, stick in a partially open position, increasing the risk of a crash.

**What will Toyota do?**

Any authorized Toyota dealer will install a precision-cut steel reinforcement bar into the accelerator pedal assembly, which will increase the clearance in between the internal mechanisms in the accelerator pedal assembly. This increased clearance will reduce the friction caused by wear and environmental conditions and allow the pedal to operate smoothly for the life of the vehicle. The safety recall remedy will be performed at **no charge** to the vehicle owner.

**What should you do?**

***This is an important Safety Recall***

Please contact your authorized Toyota dealer to install the precision-cut steel reinforcement bar into the accelerator pedal assembly as soon as possible. The installation will take approximately 30 minutes. However, depending upon the dealer's work schedule and the inspection results, it may be necessary for you to make your vehicle available for a longer period of time.

**We request that you present this notice to the dealer at the time of your service appointment.**

If you would like to update your vehicle ownership or contact information, please go to [www.toyota.com/ownersupdate](http://www.toyota.com/ownersupdate). You will need your full 17-digit Vehicle Identification Number (VIN) to input the new information.

**What if you have other questions?**

***Your local Toyota dealer will be more than happy to answer any of your questions and set up an appointment to perform this important Safety Recall.*** If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time. Your satisfaction is extremely important to us. If you are not satisfied with the accelerator pedal operation or the feel of the pedal after the reinforcement bar has been installed, a replacement accelerator pedal will be offered at no charge when they become available.

If you believe that the dealer or Toyota has failed or is unable to remedy the defect within a reasonable time, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, DC 20590 or call the toll free Vehicle Safety Hot Line at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.safercar.gov>.

**What if you have previously paid for your vehicle's accelerator pedal to be replaced to address the specific condition described above?**

If you have previously paid for your vehicle's accelerator pedal to be replaced to address the specific condition described above, please mail a copy of your repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration:

Toyota Motor Sales, U.S.A., Inc., Toyota Customer Experience, WC10, 19001 South Western Avenue, Torrance, CA 90509

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products and we sincerely regret any inconvenience this condition may have caused you.

Thank you for driving a Toyota.

Sincerely,

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

007-20292-107179-T422-PE

Spanish translation on back side  
Traducción en español en el reverso

AOA



Toyota Motor Sales, U.S.A., Inc.  
19001 South Western Avenue  
P.O. Box 2991  
Torrance, CA 90509-2991

**Certain 2007 through 2010 Model Year Camry Vehicles  
Potential Floor Mat Interference with Accelerator Pedal  
Safety Recall Campaign**

Please make an appointment with your local Toyota Dealer to have this important remedy completed.

Re: 4T4BE46K19R064758

Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 2007 through certain 2010 model year Camry vehicles.

**What is the Condition?**

- As we notified you earlier this past fall, the defect is the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

**What will Toyota do?**

- To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal on your vehicle, any Toyota dealer will remedy your vehicle at **NO CHARGE** to you. The remedy will entail modification to both the accelerator pedal and the floor surface in the driver's foot-well.
- If your vehicle is equipped with a set of optional genuine Toyota All Weather Floor Mats (AWFM), it will be inspected to determine if the AWFM set is of an older design. If it is, the older design AWFM's for the driver and the front seat passenger will be replaced with newly designed ones at **NO CHARGE** to you.
- Before the vehicle is returned to you, Toyota will inspect the driver's carpet and will clean it if necessary at **NO CHARGE** to you.

As an additional measure independent of the vehicle-based recall remedy, Toyota will install a newly designed override system in your vehicle to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. This installation will also be conducted at **NO CHARGE** to you.

**What should you do?**

***This is an important Safety Recall***

Please contact your authorized Toyota dealer to make an appointment to have these important remedies performed on your vehicle as soon as possible.

The remedy will take approximately two hours. However, depending upon the dealer's work schedule, it may be necessary to make your vehicle available for a longer period of time.

Until these important remedies are completed, we request that you take out any removable driver's floor mat, place it in the trunk, and **NOT** replace it with any other floor mat until the campaign remedy has been implemented on your vehicle. ***If you have an optional genuine Toyota All Weather Floor Mat, please bring it to the dealership at the time of your remedy.***

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Please visit <http://www.toyota.com/floormats> for additional information.

007-20282-107179-T422-P8

Spanish translation on back side  
Traducción en español en el reverso

**What should you do if you experience accelerator pedal interference?**

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

- If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.
- If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

**What if you have other questions?**

Please visit <http://www.toyota.com/floormats> for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the **Toyota Customer Experience Center at 1-888-270-9371** Monday through Friday, 5:00 am to 6:00 pm, or Saturday 7:00 am through 4:00 pm Pacific Standard Time. Your satisfaction is extremely important to us. In the event you are not satisfied with the modification of your accelerator pedal after it is completed, a replacement accelerator pedal will be offered beginning around April 2010. Customers who have had the remedy completed will have the opportunity to receive a new pedal at no charge if desired.

If you believe that the dealer or Toyota has failed or is unable to remedy the defect within a reasonable time, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to <http://www.safercar.gov>.

**What if you have previously paid for your vehicle's accelerator pedal or floor surface to be modified to address the same condition described above?**

If you have previously paid for your vehicle's accelerator pedal or floor surface to be modified to address the same condition described above, please mail a copy of your repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration

Toyota Motor Sales, U.S.A., Inc.  
Toyota Customer Assistance, L201  
19001 South Western Avenue  
Torrance, CA 90509

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days of your receipt of this letter.

We have sent this notice in the interest of your continued satisfaction with our products.

Thank you for driving a Toyota.

Sincerely,

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

007-20292-107179-T422-P8

Spanish translation on back side  
Traducción en español en el reverso

# **EXHIBIT 12**

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruchman**

**AFFIDAVIT OF CONNIE A. KAMPHAUS**

Now comes the Affiant, Connie A. Kamphaus, and after first being duly sworn and cautioned, states as follows:

1. Until Friday, February 19, 2010, I was the owner of a 2009 Toyota Camry which I leased new at Performance Toyota in Fairfield, Ohio on or about June 22, 2008.
2. At the time I leased my Toyota Camry in 2008, I made a down payment of approximately \$2200.00 on a 3 year lease with payments of approximately \$247.00 a month.
3. On or about January 15, 2010, my husband Tom was driving my car in a Kroger parking lot in Westchester, Ohio when the car suddenly accelerated. Tom was forced to brake as hard as he could and threw the gear into "Park" after which the engine idled down. He then turned off the ignition.

4. Tom called Performance Toyota about this incident on January 15, or January 16, 2010. Performance Toyota told us to bring the car in and we took the car to Performance on or about January 16<sup>th</sup>. We were given a loaner car for one evening and we picked up the car the next day, having been told that Toyota "fixed" the problem by installing a new gas pedal. It appeared the entire gas pedal assembly had been replaced. We thought the problem was solved.

5. On February 9, 2010, Tom was driving my car out of the Fairfield Hospital parking lot and braking as he approached a red traffic light when the brake froze and the engine revved. Tom had to brake as hard as he could while throwing the car into "Park" in order to stop the car.

6. On February 10, 2010, Tom was driving my car on our street and came to a stop sign. Again, the brake froze and the engine revved. Tom had to brake as hard as possible and throw the car into "Park" to stop the car.

7. On February 13, 2010, we contacted Performance Toyota to tell them about the sudden acceleration incidents after the gas pedal was "fixed." We told Performance Toyota we wanted out of the lease agreement. Toyota wanted us to come in and sign some sort of "arbitration agreement" but due to inclement weather and our health, we did not immediately go to Performance Toyota to discuss this.

8. From February 10 until February 19, we grew more and more fearful of driving our Toyota Camry. Because of the dangerousness of the Toyota, we avoided driving it. This created a real hardship for us. The Toyota was our only car to drive, as our son uses our other vehicle to travel to and from work. We contacted Toyota about loaning us a car until this matter was resolved, but Toyota told us they could not loan us a car. We then looked into obtaining a



rental car until the problem was resolved, but could not afford to pay for a rental car due to our financial situation.

9. We became very upset and desperate due to the hardship the lack of a vehicle created for us. My husband and I both have serious health issues requiring frequent doctor visits. We have no one to transport us to our respective appointments.

10. Due to our desperate financial situation and tremendous need for a safe and reliable vehicle, on Friday, February 19, 2010 Tom and I returned our 2009 Toyota Camry to Performance Toyota and demanded another non-Toyota vehicle. We did not want to make any more payments on this vehicle as we felt it was unfair and unreasonable to be paying for an unsafe vehicle we were terrified to drive. Toyota would not agree to a non-Toyota vehicle, but provided us with a 2010 Camry which Toyota represented was already fixed. Toyota would not credit us for 15 months of payments of \$247.00/month, nor for the approximate \$2200.00 we put down on the 2009 Camry. Moreover, Toyota made us start a new 3 year lease for approximately \$347.00/month. Due to our desperate situation, we had no choice but to accept this "deal." Of course, what we now have is a newer car for more money and with the same repair as the suddenly accelerating 2009 Camry.

FURTHER AFFIANT SAITH NAUGHT.

Connie A. Kamphaus  
Connie A. Kamphaus

STATE OF OHIO )  
 ) S.S.  
COUNTY OF Butler )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 22 day of February, 2010.

Jessica Bright  
Notary Public

My Commission Expires:

Aug 3, 2011



JESSICA BRIGHT  
Notary Public, State of Ohio  
My Commission Expires  
August 3, 2011

# **EXHIBIT 13**



# Toyota Washington, DC

Yoshi Inaba

July 6, 2009

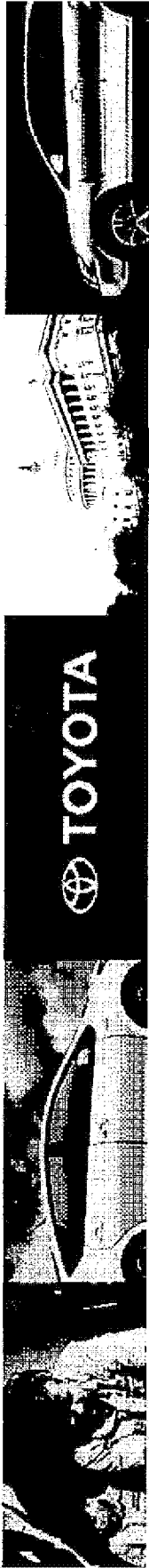


## Washington Office

# Agenda

- Overview
- Key Issues
- Discussion





## Washington Office

### Mission:

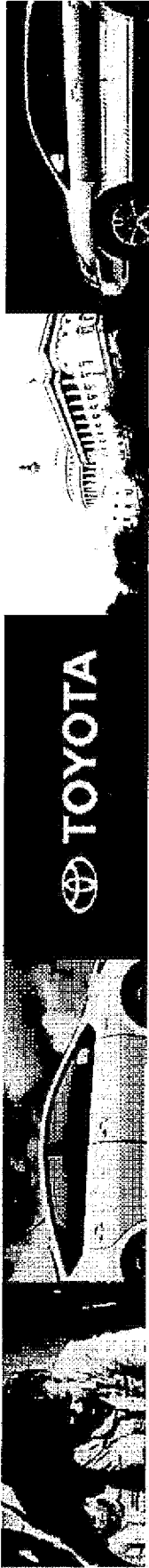
## Support Toyota Business

### Goal

- Promote Toyota's Agenda
- Protect our interests
- Maintain receptive environment to grow our business

### Role

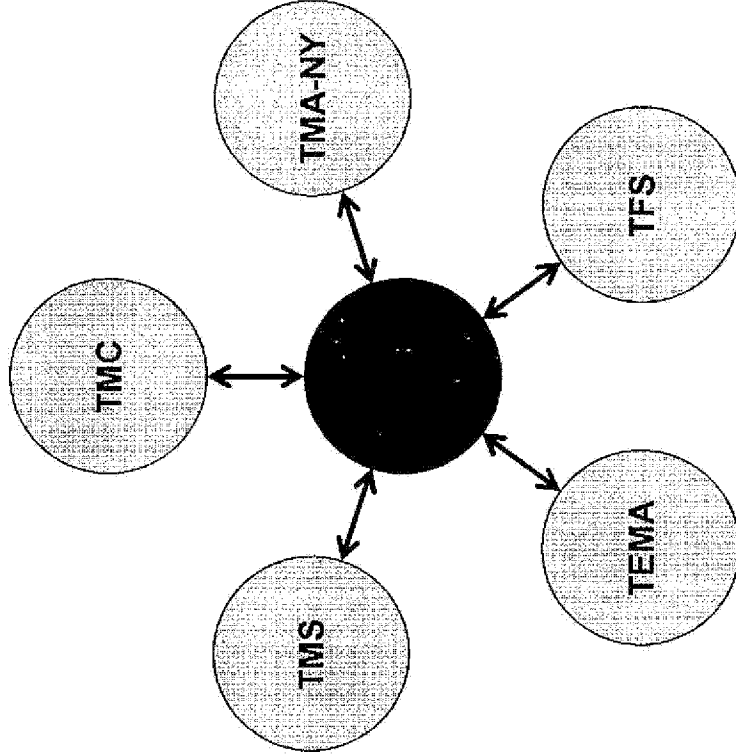
- Provide Information & analysis
- Make recommendations
- Shape policies & regulations for One voice decisions



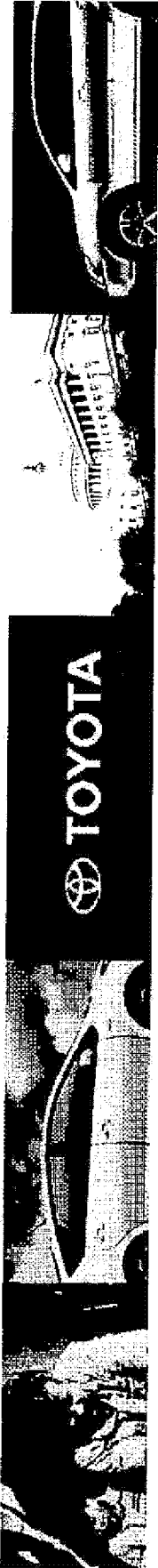
## Washington Office

### Work with TMC and affiliates

- Promote Toyota's interests
- Inform, Advise, Coordinate
- Formulate one voice policy positions







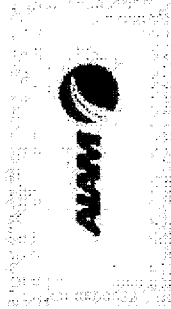
## Washington Office

### External Resources

- trade associations



- think tanks



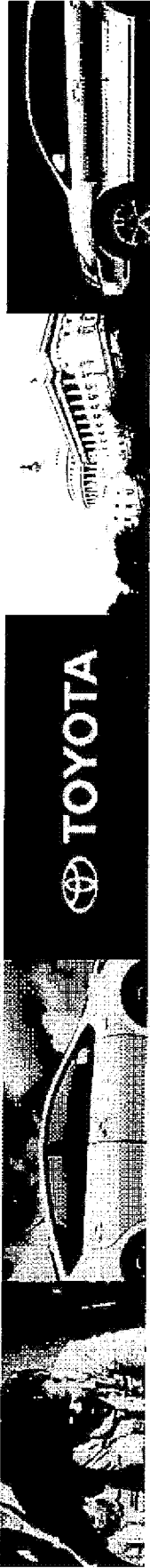
- political organizations

**AUTO ALLIANCE**

DRIVING INNOVATION<sup>®</sup>

- consultants & lawyers

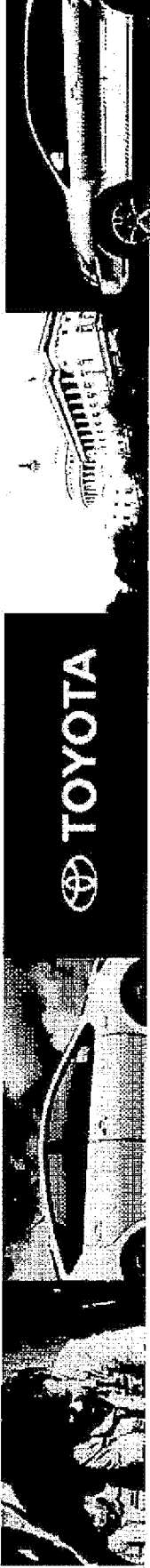




## Washington Office

### Toyota Challenges

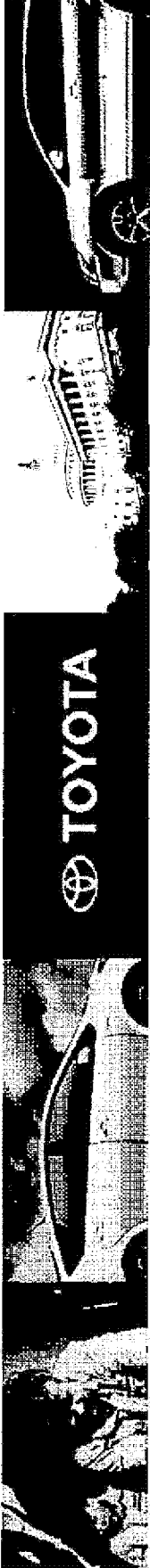
- **Changing political environment**
  - Continuing Economic difficulty
  - Activist Administration & Congress – increasing laws & regulation
  - Massive government support for Detroit automakers
- **Greater expectations for Toyota**
  - Higher profile – industry, government, media
  - Expertise / Opinion sought
  - Expectation to be a leader



## Washington Office

### Wins for Toyota & Industry

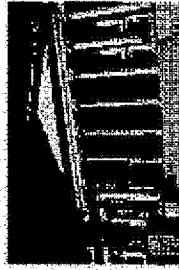
- One National Program
- “Card Check” - legislation delayed
- Scrappage bill passed
- No FFV Mandate (yet)
- Vehicles not in Climate legislation
- Favorable recall outcomes
- Secured safety rulemaking favorable to Toyota

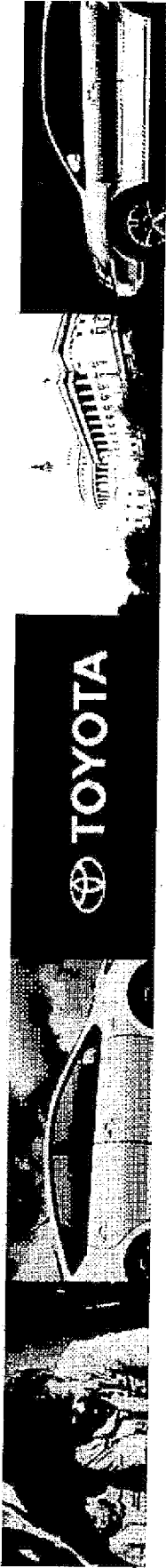


## Washington Office

### Government Affairs Key Issues

- Fuel Economy/GHG regulations
  - One National program
  - Certainty for compliance and product development
  - Increase cost for vehicle production and prices
- Government \$ for GM/Chrysler
  - Not a level playing field
  - \$ 85 billion to date
  - DOE loans \$ 7 billion to Ford, Nissan, Tesla
- Labor issues: "Card Check"
  - Easier union organizing
  - Increased labor costs
  - Mandated contracts





## Washington Office

# Government Affairs Key Issues

- **Financial reform**

Potential elimination of Toyota Bank  
Restrictions on interest rates  
New consumer protection agency



- **Protectionism**

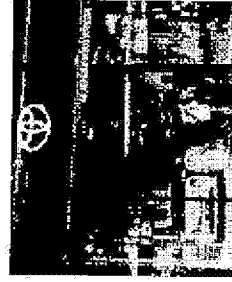
“Buy American” on the rise

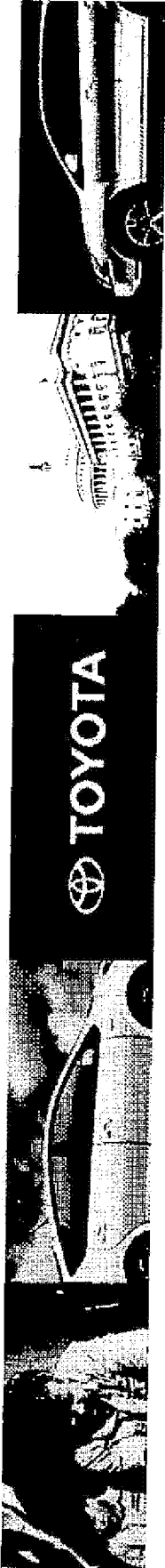
Stimulus, supplier \$, import taxes, border tariff



- **Scrappage**

government program – est. 250k sales; \$ 1bn.  
voucher \$ to replace older vehicles with new ones  
“conquest” bill for Toyota

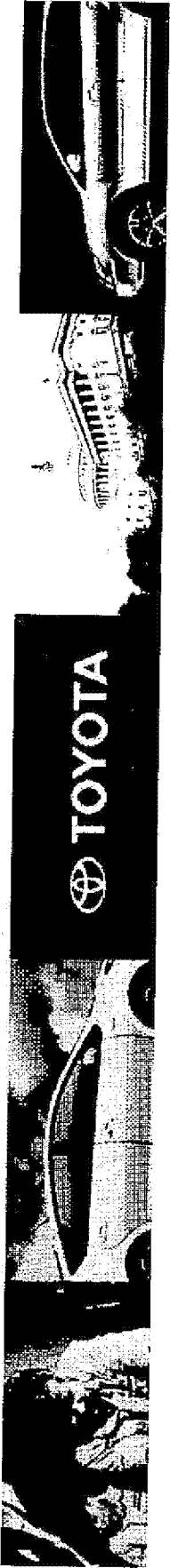




## Washington Office Government Affairs Key Issues

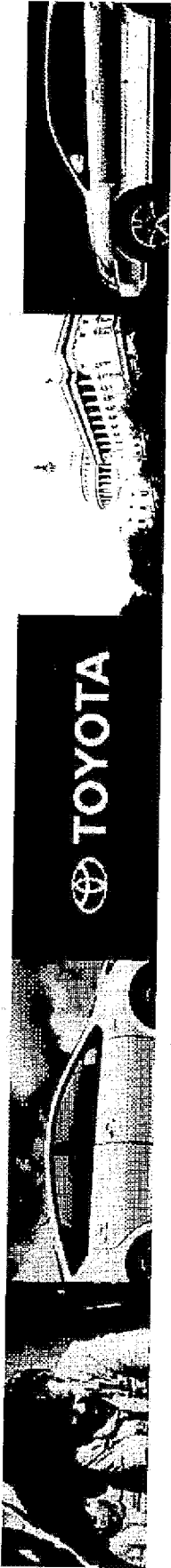
- **Climate Change legislation**  
 "Cap and Trade" – emission credits, excludes vehicles  
 Increased costs for electricity, fuels, raw materials  
 Annual R&D grants - \$ 5bn – North American companies
- **Healthcare reform**  
 New fees on employees and companies  
 Early cost estimates exceed \$ 1 trillion  
 Major effort by US Chamber / trade groups
- **State Franchise Laws**  
 28 state proposals  
 Strengthen dealers at expense of manufacturers;  
 Response to GM/Chrysler dealer terminations





## **TRA Safety - Responsibilities**

- 1. Monitor and Affect Regulation & Legislation**
- 2. Vehicle Defect/Compliance and 3<sup>rd</sup> Party Crash Testing**
- 3. Manage/Coordinate/Expand TMC Safety Research w/Outside Entities**
- 4. ITS/VII activities (Regulatory/legislative implications)**
- 5. Support PR Activity to Enhance Toyota's Image w/ Government/Public**
- 6. Monitor Market Trends Related to Safety**



## Key Safety Issues



- U.S. DOT/NHTSA under Obama Administration not industry-friendly



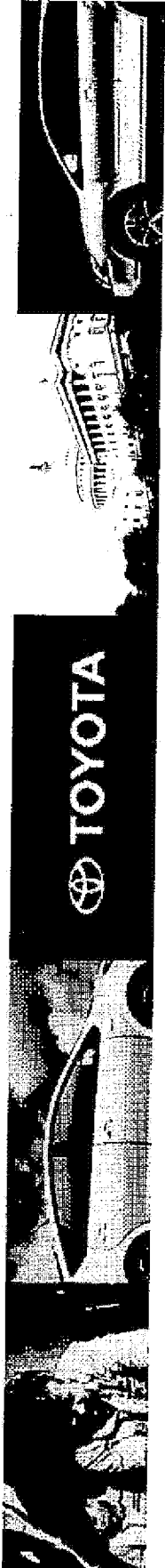
OEMs anticipate a more challenging regulatory and enforcement environment, with potential for revisiting key regulatory proposals

- NHTSA's new, more aggressive management includes more attorneys at the agency, even in the leadership of Rulemaking and Enforcement



The new team has less understanding of engineering issues and are primarily focused on legal issues





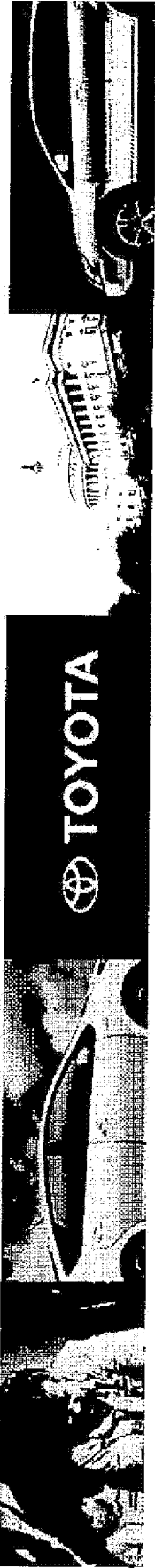
## Key Safety Issues

### Impact on "Quality"

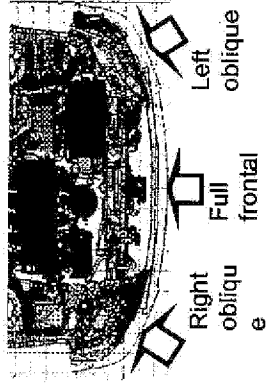
- Number of UIO (units in operation) increasing
- NHTSA is testing more vehicles under NCAP
- Nov 2000 "TREAD Act" requires new, more intensive, and regular reporting
  - A 5-day notification is required when recall determinations are made
  - New strong civil and criminal penalties were implemented
    - e.g. Ford/Firestone/rollover issue
- NHTSA is more sensitive to public/congressional criticism



**Resulting in more Investigations, and more forced recalls**

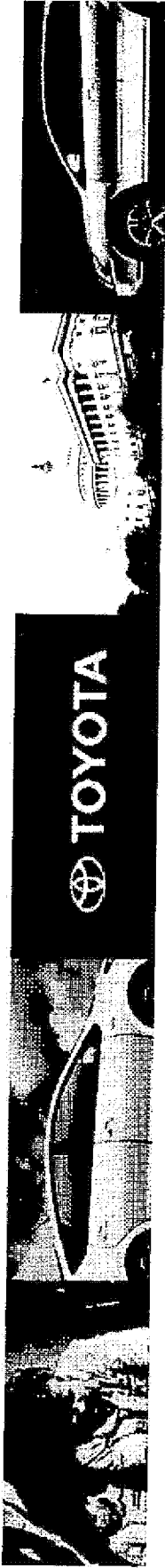


## Key Safety Issues



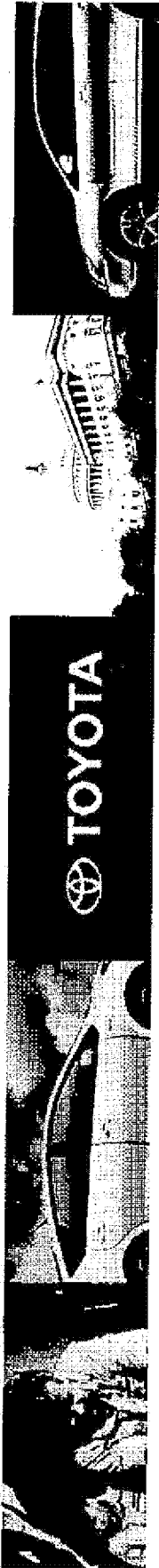
- FMVSS 305 Compliance/Hybrid Sales
- New NCAP Test Protocol
- “Sudden Acceleration” on ES/Camry, Tacoma, LS, etc.
- Cargo Carrying Capacity/FMVSS 110 Compliance
- Prius Headlamps Investigation - Class Action
- “Quiet Cars” (Hybrids, EVs, FCHVs)
- Kids in Cars



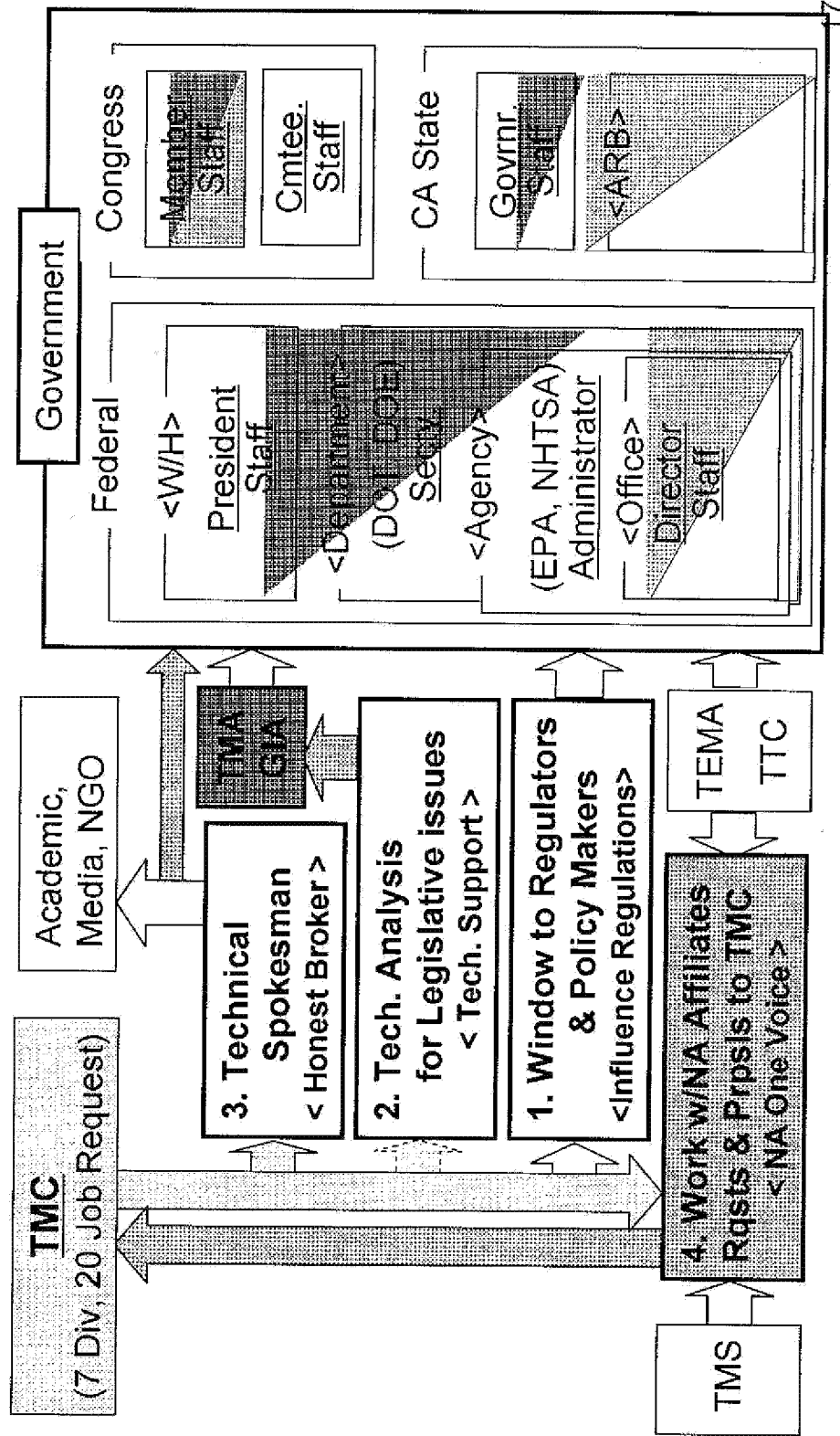


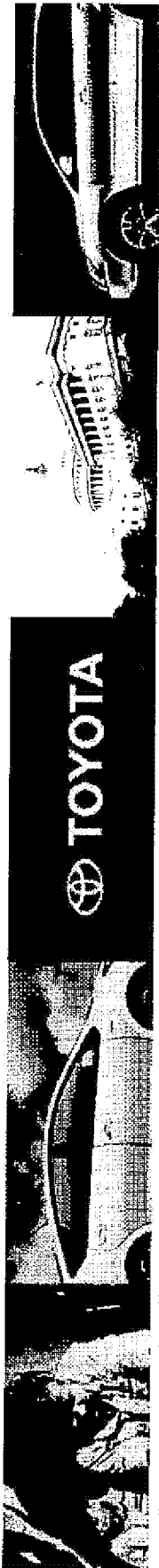
## Wins for Toyota – Safety Group

- Rulemaking
  - FMVSS 216 Roof Crush Rule – reduced PL and design burdens
  - FMVSS 305 Electric Shock Rule – delayed final rule
  - FMVSS 214 Side Impact Rule - Added lead time and phase in; Saved ~\$124M/50,000 man hours
  - FMVSS 206 door locks – delayed rule; saved ~\$11M for Sienna
- Defects
  - Sienna Rear Hatch w/ no "defect"; Closed Tacoma DP issue; Avoided Investigation on Tacoma Rust
  - FMVSS 110 NCIR labeling recall – No civil penalties, Saved \$20M+ in buybacks
  - Negotiated "equipment" recall on Camry/ES re: SA, saved \$100M+, w/ no defect found
- Other
  - Secured Tacoma, Scion XB, Corolla, '10 Prius 'Top Safety Picks' at IIHS
  - Delay of New NCAP program - 1000s of man hours in redesign for 2010 MY

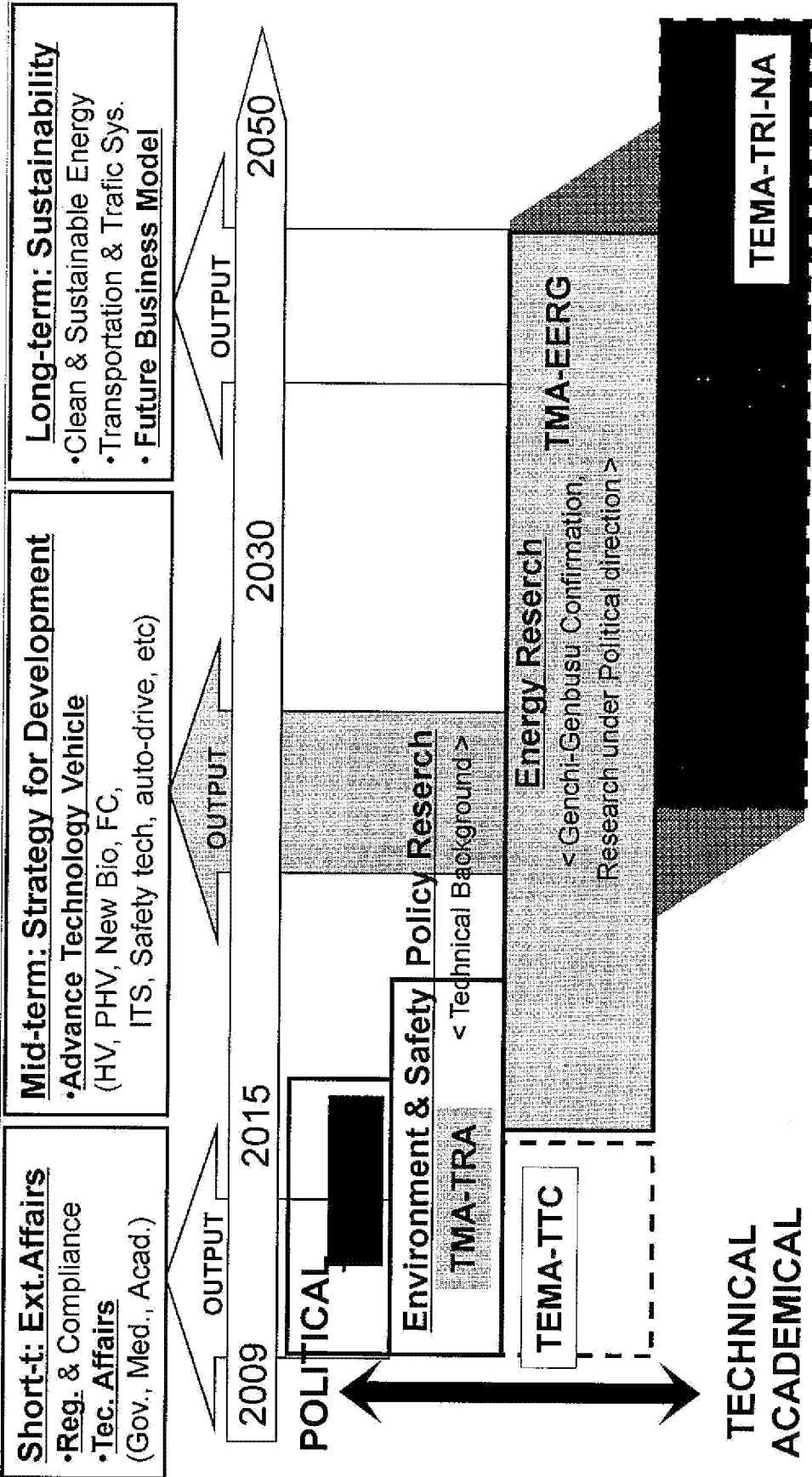


## TRA – Environment: Primary Roles

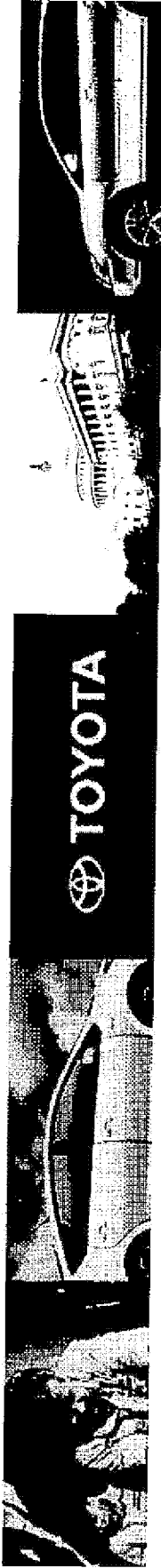




# TRA, EERG Job Scope, Responsibility Map

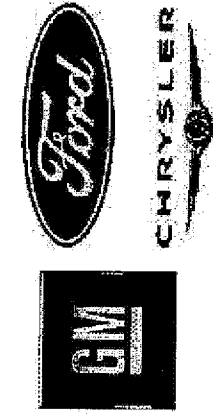






## TRA-Env Issues: Flexible Fuel Vehicle Mandate

- The Issue: Potential congressional mandate to produce flexible-fuel vehicles (FFVs) that can run on ethanol blends up to 85%.



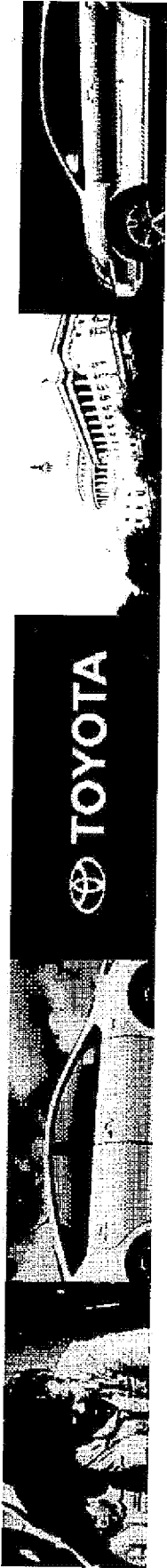
= 50% FFV by 2012



"Barack Obama and Joe Biden will work with Congress and auto companies to ensure that all new vehicles have FFV capability..."







*(from Obama's campaign energy plan)*

- Impact: \$200-\$300 per vehicle (\$400M-\$600M per year). Higher in the future (LEVIII, DI, P-system).
- Status: Avoided a mandate thus far. Waxman-Markey climate bill "allows" DOE to mandate FFVs but does not require it.



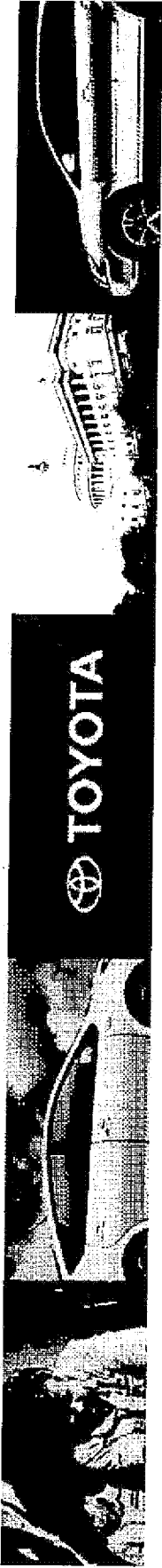
## TRA-Env Issues: CA Zero Emission Vehicle Program

- The Issue: CA mandating OEMs to produce zero-emission vehicles in mandated volumes.

<p>05MY - 08MY</p>  <p>FC=28</p> <p>(\$100M)</p>	<p>09MY - 11MY</p>  <p>FC=104</p> <p>(\$260M)</p>	<p>12MY - 14MY</p>  <p>BEV=2,100/yr</p>  <p>PHV=20,000/yr</p> <p>(\$???)M</p>	<p>15MY - 17MY</p>  <p>FC=2,600</p>  <p>PHV=27,000/yr</p> <p>(\$???)M</p>
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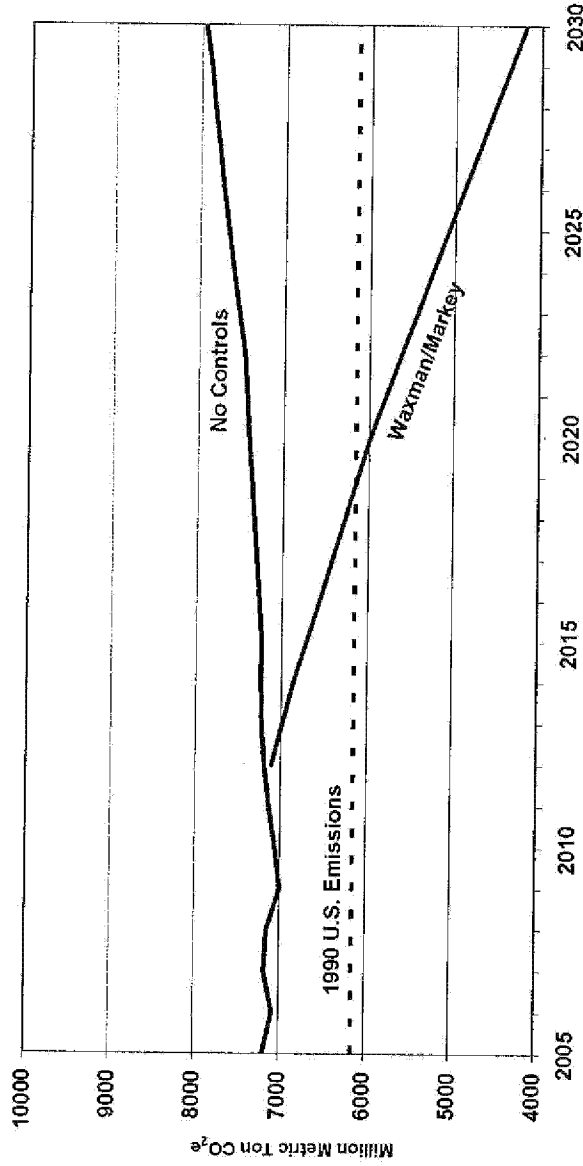
- Status: NA ZEV Team and TMC working on a plan to reduce required volumes and cost.



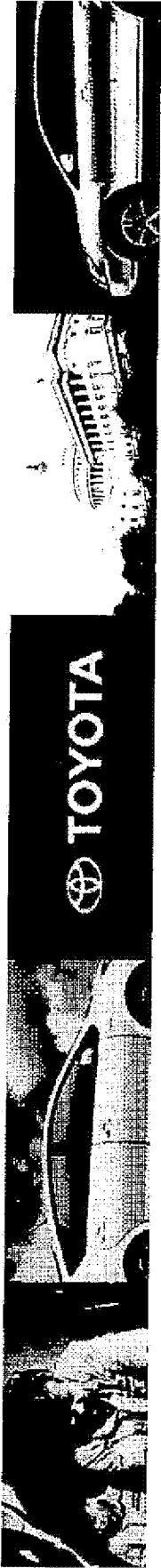


## TRA-Env Issues: Climate Change Legislation

- The Issue: Cap-and-trade legislation aiming to reduce US GHGs 17% by 2020 and 83% by 2050 (2005 base). Does not include vehicle emissions.

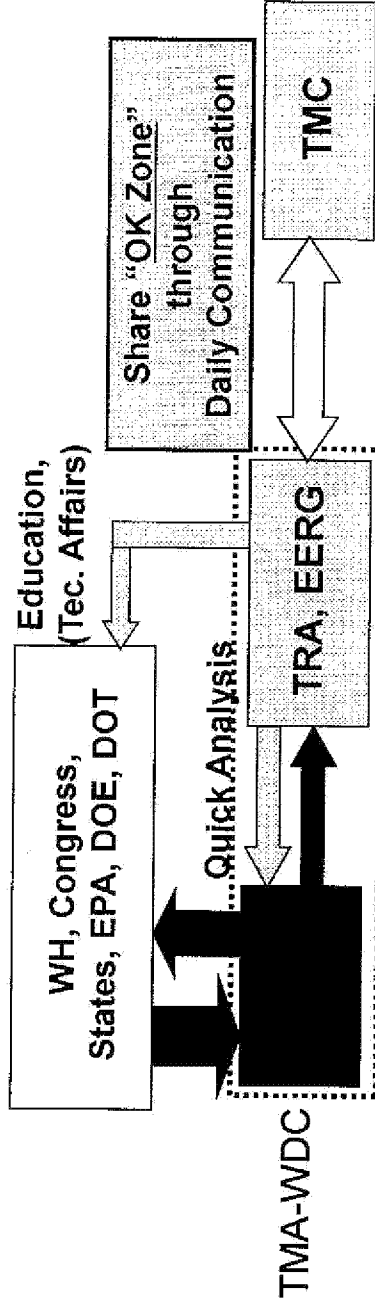


- Impact on Toyota: Increased commodity prices and energy prices in manufacturing. Up to \$14B in funds for green technology development, manufacturing and infrastructure (PHV, EV, etc.).

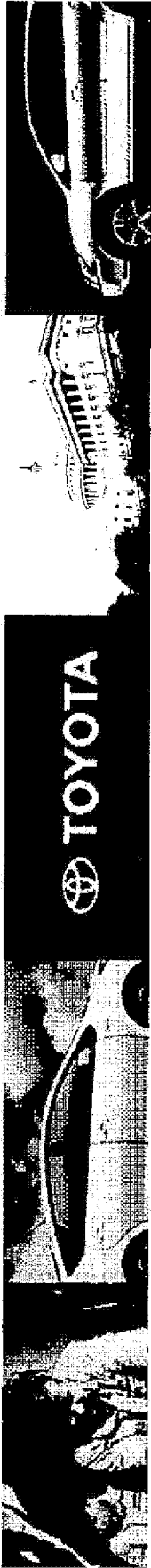


## TRA-Env: The Benefit of Engineers in Washington

- Speed of response
  - Many issues require immediate (or near immediate) response
  - Provide quick response based on daily communication with TMC



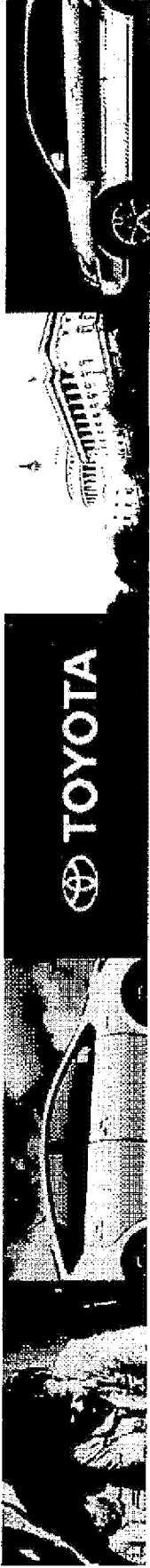
- Educate lawmakers to have reasonable legislation and regulation
- Ability to "propose" strategy to TMC and lawmakers
  - Having engineers working directly with political/policy groups facilitates our ability to propose well-rounded strategies



## Discussion: TMA Washington

### Challenges

- Increased expectations on Toyota
- Activist legislative / regulatory initiatives
- Enhanced influence of labor / environmental groups
- Adverse implications of US support for GM/Chrysler (bailouts, R&D for batteries, adv. tech. vehicles)
- Growing "Buy American" efforts in congress & administration
- One National Program implementation
- CA ZEV mandate



## **Discussion: TMA Washington**

### Recommendations

- “One Voice” decisions are essential
- Establish small senior exec. group in U.S. to make timely decisions
- Secure swift TMC agreement & support – enhance communications
- Initiate & lead on legislative and regulatory issues

## Slide Notes

### Slide 12:

Monitor and Affect Regulatory and Legislative Movement

NHTSA., OMB, Congress, etc.

Act Through Alliance, Toyota independently

Technical Meetings with Automakers

Comments, Private mtgs, Industry

Vehicle Defect/Non Compliance Issues

NCAP consumer information/IIHS/3rd party testing

Attend tests, Provide data and analysis

Negotiation with stakeholders/Gov't/test labs

Manage/Coordination TMC safety research w/ Outside entities

Universities/Labs, etc.

Monitor market trends related to safety

Competitors, media, NGOs

Support PR activity to enhance Toyota's image w/Gov't/public

Work with TMS PR

Improved understanding amongst affiliates/technical briefings

Media interviews/background

### Slide 13:

U.S. DOT/NHTSA under Obama Administration

Not industry friendly

Aligned with the safety advocate community

## Slide Notes

OEMs anticipate a more challenging regulatory and enforcement environment, with potential for revisiting key regulatory proposals

NHTSA's new, more aggressive management includes more attorneys at the agency, even in the leadership of Rulemaking and Enforcement

The new regime has less understanding of engineering issues and are primarily focused on legal issues

### Slide 14:

On "Quality" (i.e. Defects, Compliance, NCAP testing)

Number of UIO (units in operation) is increasing rapidly (i.e. increased exposure for defects/quality issues)

NHTSA is testing more vehicles under NCAP

Nov 2000 "TREAD Act" requires new, more intensive, and regular reporting of warranty, field reports, customer complaints, death and injury claims, etc.

A 5 day notification is required when recall determinations are made

New strong civil and criminal penalties were implemented for knowingly hiding a defect/recall, or less-than-timely reporting

e.g. Ford/Firestone/rollover issue

NHTSA is more sensitive to public/congressional criticism (now that all the tools have been granted to them by Congress)

Resulting in more Investigations, and more forced Recalls - even those that historically were not deemed "safety" in nature

### Slide 15:

## Slide Notes

FMVSS 305 Compliance/Hybrid Sales

Serious Compliance Concerns

Potential Sales Impact

New NCAP Test Protocol

Lower Safety Ratings Potentially Affect Sales

Tundra Case

"Sudden Acceleration" on ES/Camry, Tacoma, LS, etc.

Recurring issue

PL implications/TMC design

Cargo Carrying Capacity/FMVSS 110 Compliance

Flaws in Toyota Regulatory and Defect Process

Prius Headlamps Investigation

Class Action Implications

"Quiet Cars" (Hybrids, EVs, FCHVs)

NFB/Congressional/NHTSA/SAE activity

Roof Crush

Phase-in costly and difficult, Longer model life

Kids in Cars

BTSI, Power Windows, Rear Visibility Standards (cameras)

# **EXHIBIT 14**



**COURT OF COMMON PLEAS**

**HAMILTON COUNTY, OHIO**

**HUGH W. COX and  
PAMELA M. COX, and  
ERNESTINE MONTGOMERY,  
AND OTHERS SIMILARLY  
SITUATED**

**Plaintiffs,**

**vs.**

**TOYOTA MOTOR SALES, U.S.A.,  
INC., et al.**

**Defendants.**

**Case No. A1000992**

**Judge Robert P. Ruehlman**

**AFFIDAVIT OF ERNESTINE MONTGOMERY**

Now comes the Affiant, Ernestine Montgomery, and after first being duly sworn and cautioned, states as follows:

1. I am the owner of a 2005 Camry XLE purchased December 22, 2004 at Joseph Toyota in Cincinnati, Ohio. My car is paid in full.

2. On September 3, 2006, my Toyota suddenly accelerated in a Kroger parking lot, going up over the sidewalk and crashing into a brick wall. The car was towed to Joseph Toyota for repair and picked up 21 days later.

3. When I picked up the car, the gas pedal had been replaced. The pedal was approximately 4 inches shorter than before and the resistance was different.

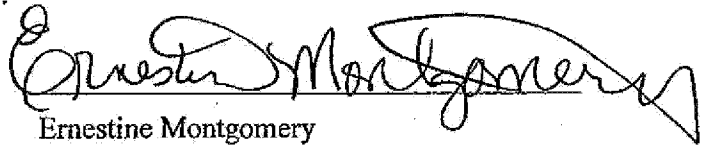
4. On November 25, 2009 I saw my "fixed" pedal on the news as part of a story about the Toyota gas pedal recall.

5. In December 2009 I took my car into Joseph Toyota for a service appointment and mentioned to the Service Manager that my Toyota already had the gas pedal "fix". The Service Manager responded that I could not have it, as the dealerships and service centers did not yet have the replacement part. I showed the Service Manager, who acknowledged I indeed had the "fixed" gas pedal.

6. I am afraid to drive my Toyota. I avoid driving it unless I absolutely have to. This has created a hardship for me.

7. I believe it is unfair and unreasonable for Toyota to expect me to continue to drive my vehicle with an as yet unproven "fix" for the problem of sudden acceleration. I don't believe that Toyota is doing enough to ensure that the problem has been accurately diagnosed and that the "fix" is in fact going to resolve the problem.

FURTHER AFFIANT SAITH NAUGHT.

  
Ernestine Montgomery

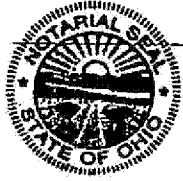
STATE OF OHIO )  
) S.S.  
COUNTY OF Hamilton )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 2nd day of February, 2010.



Notary Public

My Commission Expires:



Nancy M. Bareswift  
Notary Public, State of Ohio  
My Commission Expires 05-05-2014

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION (COLUMBUS)**

HUGH W. COX, et al.,	:	
	:	Civil Action No. 2:10-cv-00181-MHW
	:	
Plaintiffs,	:	
	:	
	:	JUDGE MICHAEL H. WATSON
v.	:	
	:	
	:	
TOYOTA MOTOR SALES, U.S.A., INC.,	:	
et al.	:	
	:	
	:	
Defendants.	:	

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**DEFENDANTS' MOTION  
TO STAY PROCEEDINGS PENDING ACTION BY  
THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION  
AND  
MEMORANDUM IN SUPPORT**

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Defendants respectfully move to stay this matter in its entirety pending a ruling by the Judicial Panel on Multidistrict Litigation (“JPML”) concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. This action is one of more than ninety (90) similar actions, the vast majority of which are duplicative and/or overlapping putative class actions pending in various federal courts around the country. At least two motions and numerous responses seeking consolidation of these actions have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151.

The JPML has scheduled a hearing on consolidation of these actions for March 25, 2010. Because consolidation into Multidistrict Litigation proceedings appears highly likely, Defendants move to stay this action in its entirety pending a ruling by the

JPML concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. As discussed in the attached Brief in Support, a stay will promote the efficient resolution of this litigation, preserve judicial resources, and limit the potential for inconsistent decisions.

Dated March 2<sup>nd</sup>, 2010.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

**INTRODUCTION**

Defendants move to stay this case pending a ruling by the Judicial Panel on Multidistrict Litigation (“JPML”) concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. The JPML’s ruling will, in all likelihood, result in the transfer of this action to a consolidated Multidistrict Litigation (“MDL”) proceeding. This action is one of more than ninety (90) similar actions, the vast majority of which are duplicative and/or overlapping putative class actions pending in various federal courts around the country.<sup>1</sup> The actions, including this case, are premised upon the same basic set of alleged facts and assert similar claims against the defendants. Plaintiffs in these cases claim to be owners or lessees of Toyota automobiles and make claims relating to potential unintended acceleration and the voluntary safety recalls.<sup>2</sup>

To date, at least two motions for coordinated treatment of these cases and numerous responses have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151. Toyota filed its

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<sup>1</sup> To date, actions have been filed in federal and state courts in at least the following states: California, Florida, Louisiana, Texas, South Carolina, Kentucky, Colorado, New Jersey, Puerto Rico, Indiana, Missouri, Ohio, Michigan, Kansas, Pennsylvania, New York, Oklahoma, Alabama, Mississippi, Illinois, West Virginia, Arkansas, Massachusetts, Connecticut, Wyoming, Montana, Alaska, Georgia, New Mexico, and Maryland.

<sup>2</sup> Defendants acknowledges that there are some differences in the theories of liability and claims regarding the alleged defect(s) in the various actions. Although the theories of these lawsuits may differ, all relate to the issue of unintended acceleration. Moreover, the transferee court is vested with discretion to consolidate some complaints, but not others, and to permit multiple consolidated complaints for differing types of claims or plaintiffs. Accordingly, the MDL proceeding can accommodate the various complaints and will eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

response with the JPML on February 26, 2010 and joined in the requests for consolidated treatment. *See* Toyota Defendants' Response in Support of Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, attached hereto as Exhibit A. Toyota requested transfer to the Central District of California because Toyota's U.S. headquarters is in the Central District of California, the most cases had been filed in that district at the time the Response was filed, and the first-filed class action was filed in that district. The JPML has set a hearing to consider consolidation of these cases for March 25, 2010, Exhibit B (Notice to All Involved Counsel), and the matter has been selected for oral argument. *See* Exhibit C (Notice of Hearing Session).

The need for coordination of these actions is compelling: the various proposed classes, as well as the individual actions, are overlapping and involve potentially millions of vehicle owners; the complaints contain similar allegations arising from the same recalls; similar pretrial matters will be presented in each case; and numerous groups of plaintiffs' counsel have requested consolidation. Given the strong likelihood that these cases will be transferred into a MDL, the need for a stay of this action to promote the purposes of coordinated MDL treatment is equally compelling. Any action by this Court prior to such transfer would be wasteful of the Court's valuable judicial resources and would create the possibility of inconsistencies in the adjudication of dozens of overlapping class actions. Defendants therefore, request that this Court stay all proceedings in the present case until the JPML has ruled on the transfer of this case for consolidated or coordinated pretrial proceedings. Indeed, Courts have already entered orders staying at least eight (8) related actions pursuant to a similar request by Toyota, *see* Exhibit D, and consent motions to stay are currently being presented to



several additional federal courts. Defendants respectfully suggest that the same rationale applies here.

### ARGUMENT AND AUTHORITY

The principal purposes of multidistrict coordination are to further judicial economy, minimize duplicative discovery activity, and eliminate the potential for conflicting pretrial rulings. *See, e.g., In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49, 51-52 (2d Cir. 1978). These objectives obviously would not be served, notwithstanding a motion for multidistrict coordination of these cases, if courts allowed the matters to proceed, inviting precisely the sorts of waste and inconsistencies that the multidistrict litigation process is designed to prevent. Not surprisingly, “[a] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.”<sup>3</sup> *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Schering Corp. v. Caraco Pharm. Labs., Ltd.*, No. 06-14386, 2007 WL 1648908, \*2-3 (E.D.Mich. Jun. 6, 2007) (staying litigation pending a JPML ruling); *Beal v. Merck & Co., Inc.*, No. 05-1344, 2005 WL 3279285, \*1-2 (W.D.Tenn. Dec. 1, 2005) (same); *Gordillo v. Bank of Am., N.A.*, No. 1:09-cv-01954, 2010 WL 148699, at \*2 (E.D. Cal. Jan. 14, 2010) (staying litigation pending a JPML ruling); *Dittman v. DJO, LLC*, No. 08-cv-02791, 2010 WL 174555, at \*1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No. 5:09-cv-130, 2009 WL 5217063, at \*1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v. Merck & Co.*, No. 06-1004, 2006 WL

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<sup>3</sup> A district court’s authority to stay proceedings is well-established. It is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

448695, at \*1 (W.D. Tenn. Feb. 19, 2006) (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at \*1 (E.D. Mo. Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427-29 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis. 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La. Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro. Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at \*1 (D.N.J. Feb. 1, 1991) (granting stay because it fosters the purpose of the multidistrict litigation statute to coordinate related litigation).

Where a motion for transfer or notice of tag-along actions has been filed with the JPML, district courts have typically reviewed three factors to decide whether to stay pending proceedings until the JPML can rule. These factors are: (1) potential prejudice to the non-moving party if the stay is granted; (2) hardship to the moving party if the stay is not granted; and (3) the economical use of judicial resources. *See Schering Corp.*, 2007 WL 1648908 at \*2-3; *Beal*, 2005 WL 3279285 at \*1-2; *Jackson*, 2006 WL 448695, at \*1; *Bledsoe*, 2006 WL 335450, at \*1; *The Gator Corp.*, 250 F. Supp. 2d. at 426, 428; *Nekritz v. Canary Capital Partners, LLC*, No. 2:03-cv-05081, 2004 WL 1462035, at \*1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at \*2 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at \*2; *Rivers*, 980 F. Supp. at 1360; *Boudreaux*, 1995 WL

83788, at \*1. Even where a non-moving party claims that a stay will cause delay and prejudice, “there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay.” *Arthur-Magna, Inc.*, 1991 WL 13725, at \*1. See also *Krieger v. Merck & Co.*, 2005 WL 2921640, at \*2 (W.D.N.Y. Nov. 4, 2005) (noting that “the risk of hardship to [the defendant] of engaging in duplicative motion practice and discovery proceedings outweighs any prejudice that could potentially inure to [the plaintiff]”).

In the present case, all three considerations weigh heavily in favor of granting Defendants' motion for a stay. First, a finite, temporary stay of action in this case will not result in harm to Plaintiffs. This lawsuit is in its infancy, and any delay in the preliminary proceedings would be brief. For example, following its last hearing on January 27, 2010, the JPML decided all nine requests for consolidation within sixteen days of the hearing (and decided seven of them within nine days). Accordingly, a finite stay of this action pending the JPML's decision will be brief and will not prejudice Plaintiffs in any respect. Indeed, when a stay is only in effect until the JPML issues a decision on transfer, courts have recognized that “there will be no extended delay in the commencement of discovery” and “[t]he plaintiffs will not be substantially prejudiced.” *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-cv-01086 and 2:92-cv-01030, 1992 WL 102762, at \*1 (E.D. Pa. May 7, 1992). See also *Bledsoe*, 2006 WL 335450, at \*1 (commenting that “any delay [pending JPML action] is likely to be relatively short”); *Falgoust*, 2000 WL 462919, at \*2 (noting that a plaintiff is not typically prejudiced by a “slight delay pending the JPML decision”).

With respect to the second factor, even if Plaintiffs could somehow demonstrate prejudice to their case due to the minimal delay, the very real hardship on Defendants in

the absence of a stay substantially outweighs any alleged prejudice to Plaintiffs. If no stays issue, Toyota will be forced to continue litigating these suits in dozens of separate courts throughout the country, thereby imposing an enormous burden in terms of both time and resources on Toyota. Such effort would be particularly wasteful in a situation such as this one in which eventual consolidated treatment is almost certain. Even if waste of resources were no issue, by simultaneously litigating these cases, Toyota is subject to possibly conflicting substantive rulings on multiple aspects of these cases, including motions to dismiss. In addition, any discovery in which Plaintiffs would engage pending transfer will be duplicative of the discovery engaged in by the plaintiffs in all other cases pending against Toyota. Accordingly, district courts have recognized that the risks and hardships now looming over Toyota are sufficient to warrant issuance of a stay. *See Jackson*, 2006 WL 448695, at \*1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Nekritz*, 2004 WL 1462035, at \*4; *U.S. Bank*, 2002 WL 31114069, at \*2; *Falgoust*, 2000 WL 462919, at \*1.

Third, this Court's interest in judicial economy, not to mention that of the transferee court, militates in favor of a stay. If no stay issues before the JPML rules on coordination of these cases, this Court risks burdening its docket with a case that will require time, energy, and attention, but which ultimately may not remain with this Court's caseload. *See U.S. Bank*, 2002 WL 31114069, at \*2 ("If the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted."). With respect to the impact of this Court's actions on the transferee court, any efforts by this Court at case management will very likely have to be repeated by the judge to whom the multidistrict litigation is assigned. Not surprisingly, courts have often recognized that these concerns of judicial economy

weigh in favor of a stay when a motion for transfer is pending before the JPML. *See Jackson*, 2006 WL 448695, at \*1; *Bledsoe*, 2006 WL 335450, at \*1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725, at \*1.

### **CONCLUSION**

The issuance of a stay of proceedings in this Court pending the JPML's ruling on petitions for coordinated treatment will operate to the benefit of all – the plaintiffs, the defendants, and the respective courts in the more than seventy-five federal actions. Given the likelihood of the transfer of these cases for multidistrict coordination, the lack of prejudice to Plaintiffs, the great risk of harm to Defendants, and the demands of judicial economy, Defendants respectfully urge this Court to stay all proceedings in this matter until the JPML rules on the transfer of this case for consolidated or coordinated pretrial proceedings pursuant 28 U.S.C. § 1407. For the convenience of the Court, a proposed Order is attached hereto.

Dated March 2<sup>nd</sup>, 2010.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of March, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

**Counsel for Plaintiffs**

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\_\_\_\_\_  
/s/Gregory A. Harrison

# **EXHIBIT A**



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JUDICIAL PANEL ON  
MULTIDISTRICT  
LITIGATION

**BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

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IN RE: TOYOTA MOTOR CORP.	:	
DEFECTIVE GAS PEDAL PRODUCTS	:	MDL No. 2151
LIABILITY LITIGATION	:	

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**TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO  
THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL  
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Pursuant to Rule 7.2(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML"), Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corporation, and New United Motor Manufacturing, Inc. (collectively "Toyota" or the "Toyota Defendants") hereby submit their response to the pending Motions to Transfer and Consolidate Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.<sup>1</sup> Toyota agrees that transfer and consolidation of these cases is appropriate

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<sup>1</sup> According to the JPML Docket, as of February 23, 2010, two motions for transfer and eight responses have been filed. On February 4, 2010, Plaintiff Heather A. Lane (*Lane v. Toyota Motor Sales, USA, Inc.*, No. 2:09-cv-09158, C.D. Cal.), filed her Motion for Transfer to the Central District of California. On February 5, 2010, Plaintiffs Daniel

under Section 1407 and respectfully requests that the JPML transfer all cases identified by Toyota on Schedule A (attached hereto as Exhibit 1)<sup>2</sup> to the Central District of California before the Honorable Judge Matz. The Central District of California is the most appropriate transferee court for a number of reasons: (i) the primary defendant in this litigation is headquartered there; (ii) the largest number of cases has been filed in that district; (iii) numerous individual plaintiffs have requested transfer to the Central District of California in separate filings with this Panel; (iv) the first-filed case, *Choi*, was filed in that district, and substantive motion practice is already underway in *Choi*; (v) the judge assigned to *Choi*, Judge Matz, has prior MDL experience, and eleven cases already have been assigned to Judge Matz as related actions; and (vi) the Central

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Weimer, Jr., Colby Wenck, and Ann Cavalier (*Weimer v. Toyota North America, Inc.*, No. 10-219, E.D. La.) filed a "motion" for transfer to the Eastern District of Louisiana, which, pursuant to Panel Rule 7.2(h), is deemed a response to the Lane motion. Plaintiff Jonathan Gellman (*Gellman v. Toyota Motor Sales, USA, Inc.*, No. 1:2010-cv-20006, S.D. Fla.) filed a response on February 18, 2010 seeking transfer to the Southern District of Florida. Plaintiffs Eric Kmetz and Joseph Morris (*Kmetz v. Toyota Motor Sales, USA, Inc.*, No. *Toyota Motor Corp.*, No. 2:09-cv-08478, C.D. Cal.) and Joseph Hauter and Frank Palomares (*Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105, C.D. Cal.) filed their response on February 19, 2010 seeking transfer to the Central District of California. Plaintiff Troy Menssen (*Menssen v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-00260, N.D. Ohio) filed a response on February 19, 2010 seeking consolidation, but did not specify a proposed transferee district. Plaintiff Al Viviano (*Viviano v. Toyota Motor Engineering & Manufacturing North America, Inc.*, No. 2:10-cv-00024, E.D. Ky.) filed a response on February 22, 2010 seeking transfer to the Eastern District of Kentucky. Plaintiffs Zahira Crespo-Bithorn and Milagos Rodriguez Cruz (*Crespo-Bithorn v. Toyota Motor North America, Inc.*, No. 3:10-cv-01083, D.P.R.) also filed a response on February 22, 2010 seeking transfer to the District of Puerto Rico. On February 23, 2010, Plaintiff Fred Sander (*Sander v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-01111, S.D.N.Y.) filed a response requesting transfer to the Southern District of New York; Plaintiff Christine Mitchell (*Mitchell v. Toyota Motor North America, Inc.*, No. 3:10-cv-000104, S.D. Miss.) filed a response requesting transfer to the Southern District of Mississippi; Plaintiff Robyn Horn (*Horn v. Toyota Motor Sales U.S.A., Inc.*, No. 4:10-cv-00090, E.D. Ark.) and Plaintiff Ani Garzaryan (*Garzaryan v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:10-cv-00849, C.D. Cal.) both filed responses seeking transfer, but did not specify a transferee court; and Plaintiffs Michael Graves and Jeff Mullins (*Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247, S.D.W. Va.) filed a response seeking transfer to the Southern District of West Virginia.

In addition to these motions and responses, two motions have been filed and withdrawn. On February 19, 2010, Plaintiff Maureen Colaberdino (*Colaberdino v. Toyota Motor North America, Inc.*, No. 3:10-cv-00672, D.N.J.) filed a response seeking transfer to the District of New Jersey that was later withdrawn. Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker (*Choi v. Toyota Motor Corp.*, No. 2:09-08143, C.D. Cal.) have filed a motion for transfer to the Central District of California that was later withdrawn.

Toyota has also received a service copy of a "motion" that does not appear on the JPML CM-MDL Docket. Specifically, it appears that Plaintiff Dale Roberts (*Roberts v. Toyota Motor Corp.*, No. 7:10-cv-00281, D.S.C.) will seek to have these cases transferred to the District of South Carolina.

Toyota's Response addresses all of these pending transfer requests.

<sup>2</sup> Schedule A includes (1) actions previously identified in the pending transfer motions and (2) additional actions not already before the Panel and for which Toyota has filed a Notice of Related Actions contemporaneously herewith.

District of California is significantly better suited geographically for cases anticipated to involve witnesses and evidence from Japan, the location of Toyota's parent corporation.

**I. Background**<sup>3</sup>

On September 29, 2009, Toyota issued a safety advisory related to the risk of floor mat entrapment of accelerator pedals in certain Toyota models. Toyota determined that an unsecured or incompatible driver's floor mat has the potential to interfere with, or entrap, the accelerator pedal, which may make the vehicle difficult to control or stop. Shortly after issuing the safety advisory, Toyota instituted a voluntary recall of all affected Toyota vehicles (the "Floor Mat Recall"). In January 2010, as part of Toyota's ongoing investigation into possible causes of unintended acceleration, Toyota determined that there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position, and issued a second voluntary recall related to accelerator pedals (the "Pedal Recall").

Numerous cases stemming from these voluntary recalls have been filed against Toyota. Although the specific theories advanced in these lawsuits may differ, all of the cases relate to the issue of unintended acceleration and are appropriate for consolidation. For example, some actions assert that unintended acceleration is caused by alleged defects in Toyota's floor mats or accelerator pedals, while others claim that unintended acceleration is caused by an alleged defect in Toyota's electronic throttle control systems ("ETCS-i"),<sup>4</sup> and many cases assert all three

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<sup>3</sup> J.P.M.L. Rule 7.1(b) requires responses to averments in motions to be made in numbered paragraphs that correspond to the number of paragraphs of the motion to which the responsive paragraph is directed. Plaintiff Lane, however, did not, as required by J.P.M.L. Rule 7.1(a), make averments in numbered paragraphs in her motion or accompanying brief. Therefore, Toyota is unable to comply with J.P.M.L. Rule 7.1(b).

<sup>4</sup> In vehicles with ETCS-i, electrical sensors detect the position of the accelerator pedal and relay this information to a central computer that regulates the engine's functions (the "Engine Control Module" or "ECM"). The ECM uses this information to determine how much to open the throttle, which, in turn, causes the vehicle to accelerate. Some plaintiffs have alleged that electro-magnetic radiation can interfere with ETCS-i causing the vehicle to suddenly

theories.<sup>5</sup> Through February 23, 2010,<sup>6</sup> Toyota had been served with thirty-nine federal lawsuits related to the issue of unintended acceleration. Thirty-eight of these have been brought as class actions; one of these cases was brought by a plaintiff suing in his individual capacity. In addition, Toyota is aware of thirty-eight related federal lawsuits that have been filed but not yet served, as well as at least forty-two similar state court cases, many of which Toyota expects will be removed to federal court (all suits referred to collectively as the “Unintended Acceleration Cases”). Toyota seeks consolidation of all seventy-seven Federal Unintended Acceleration Cases of which Toyota is currently aware and which are listed on the attached Schedule A.<sup>7</sup>

## II. Consolidation and Coordination of Pretrial Proceedings Is Proper.

Pursuant to 28 U.S.C. § 1407, the transfer of actions to a single jurisdiction for coordinated or consolidated pretrial proceedings is proper when the civil actions pending in various districts involve one or more common questions of fact, and transfer and consolidation “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). These statutory requirements are met in this case.

Although there are certain legal and factual differences among the cases that have been filed, all of these cases relate to the issue of unintended acceleration. Accordingly, despite

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accelerate even when the accelerator pedal is not depressed. Toyota denies that its ETCS-i is defective or that it could cause vehicles to accelerate unintentionally.

<sup>5</sup> Compare *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006 (alleging defective floor mats) with *Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219 (alleging defective pedal) with *Choi v. Toyota Motor Corp.*, No. 2:09-08143 (alleging defective ETCS-i) with *Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105 (combination defect theory).

<sup>6</sup> Throughout this Response, references to the number of cases filed or served reflect those that Toyota is aware of through February 23, 2010. The number of cases filed and served, however, changes on a daily basis.

<sup>7</sup> The JPML has held that it has authority to transfer and consolidate cases that have not yet been served on defendants. *In re Multidistrict Private Civil Treble Damage Litigation Involving Library Editions of Children's Books*, 299 F. Supp 1139, 1142 (J.P.M.L. 1969) (“Restricting transfers to those cases in which all defendants have been served would frustrate the salutary purposes of 1407 without meaningfully advancing any other interest.”).

certain differences among these cases, there are common questions of fact<sup>8</sup> relevant to all of the Unintended Acceleration Cases, including the alleged defects in Toyota vehicles subject to the recent recalls and Toyota's handling of the Floor Mat and Pedal Recalls. Consolidation will therefore "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, the vast majority (72 out of 77) of the Unintended Acceleration Cases filed in federal courts are class actions. This Panel has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See, e.g., In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at \*2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the class action issues."); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493

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<sup>8</sup> For example, while some plaintiffs claim to have experienced an episode of unintended acceleration, many of the plaintiffs do not claim to have experienced any manifestation of the alleged defect. The cases also differ in the type of damages sought: some plaintiffs seek damages for personal injury, but many allege only economic harm. Moreover, the governing law and underlying legal theories of these cases differ to varying degrees as well. Accordingly, while these cases are undoubtedly appropriate for coordinated treatment to promote the efficient resolution of this litigation and to minimize the potential for inconsistent rulings, Toyota disputes any contention that these cases are maintainable as class actions under Fed. R. Civ. P. 23, and nothing in this motion should be interpreted as an indication to the contrary or as an admission on Toyota's part that commonality or any criteria under Rule 23 has been satisfied.

(J.P.M.L. 1968) (holding that transfer was necessary to avoid “pretrial chaos in conflicting class action determinations.”).

**III. The Central District of California is the Most Appropriate Venue for the Transfer of These Actions.**

In deciding the appropriate transferee court, this Panel has often considered (i) where the majority of cases are pending; (ii) where the first-filed and most advanced cases are pending; (iii) where a defendant’s headquarters is located; (iv) where relevant documents and witnesses are located; (iv) whether the transferee district is easily accessible to parties and witnesses; and (v) whether the transferee court has the capacity to devote sufficient resources to complex consolidated proceedings. All of these factors decidedly favor the Central District of California.

**A. More Cases Have Been Filed in the Central District of California Than In Any Other District, and The California Actions Are Further Advanced Than Cases In Other Districts.**

This Panel has repeatedly found that the most appropriate transferee court is the district in which the greatest number of actions is pending. *See, e.g., In re WellPoint, Inc., Out-of-Network UCR Rates Litig.*, 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring to district where three actions already pending); *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004) (noting that “a plurality of the actions is pending in the Central District of California”); *In re Phonometrics, Inc.*, 1996 LEXIS 21909 (J.P.M.L. Dec. 11, 1996) (transferring to district where majority of actions were pending); *In re Dow Chemical Co. Sarabond Prods. Liab. Litig.*, 650 F. Supp. 187, 189 (J.P.M.L. 1986) (transferring to district where six of fourteen actions already pending). Here, more than a third of the cases in which Toyota has been served are pending in the Central District of California (14 out of 39). Additionally, looking at the total number of cases filed (including those in which Toyota has yet to be served), nearly one third of the currently pending actions were filed in the Central District

of California (21 out of 77). The rest of the fifty-six cases, by contrast, are fairly evenly distributed across thirty-six other districts, with no other district presiding over more than four related actions. Accordingly, Section 1407's convenience requirement would be well served by transferring these cases to the district where the greatest number of parties is found. *See In re Napster, Inc.*, 2000 LEXIS 15493 (J.P.M.L. Oct. 11, 1996) (transferring to the district with majority of the parties).

Not only are significantly more actions pending in the Central District of California than in any other district, but the California cases were the also the first to be filed. As a result, litigation in several of the California cases has progressed much further than in the other actions. For example, Toyota has already submitted Motions to Dismiss in *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, *Baldiserri v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09386, *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478, and *Lane v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09158. Moreover, in *Choi*, the first-filed case, plaintiffs have already submitted briefing in support of their motion for preliminary injunction and class certification. In addition to briefing, a number of hearings have been scheduled in the California cases. Judge Matz is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Kmetz* case on March 15, 2010, and will hear oral argument on the pending class certification motion and motion to dismiss in the *Choi* action on March 22, 2010. Judge Feess is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Baldiserri* case on March 8, 2010, and Judge Feess will hear oral argument on Toyota's Motion to Dismiss in the *Lane* case on March 29, 2010.

Because the judges presiding over cases in the Central District of California have had the benefit of reviewing the parties' briefs, they are already familiar with both the basic facts of these cases and the legal issues that will be raised during the consolidated pretrial proceedings.

These judges' familiarity with these cases makes the Central District a particularly appropriate transferee district. See *In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("The Central District of California is an appropriate transferee forum because the first-filed and most procedurally advanced actions are pending there."); *In re Pet Food Prods. Liab. Litig.*, 499 F. Supp. 2d 1346, 1347 (J.P.M.L. 2007) (ordering transfer to a particular venue where "[p]retrial proceedings are advancing well there and about one-third of all pending actions are already in this district."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring cases to the district where litigation had become the most advanced and the judge had the opportunity to become familiar with the litigation).

**B. More Relevant Documents and Witnesses Will Likely Be Located in the Central District of California Than in Any Other Proposed Transferee District.**

The presence of a defendant's corporate headquarters or other principal place of business in a forum militates strongly in favor of transfer to that forum because it "implies that relevant witnesses and documents are likely to be found there." *In re UICI "Association-Group" Ins. Litig.*, 305 F. Supp. 1360, 1362 (J.P.M.L. 2004); see also *In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, 598 F. Supp. 2d 1366, 1368 (J.P.M.L. 2009) (transferring to the Central District of California where "several defendants are headquartered within the Central District of California and accordingly pertinent documents and witnesses are likely located there"); *In re DirectTV, Inc. Early Cancellation Fee Marketing and Sales Pracs. Litig.*, 655 F. Supp. 2d 1369, 1370-71 (J.P.M.L. 2009) ("DirecTV, Inc., is headquartered in that district and, therefore, relevant documents and witnesses are likely located there."); *In re European Rail Pass Antitrust Litig.*, MDL No. 1386, 2001 WL 587855 (J.P.M.L. 2001); *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984); *In re California Armored Car Antitrust Litig.*, 476 F. Supp. 452,



454 (J.P.M.L. 1979) (“[S]ince Armored Transport's principal place of business is located in the Central District of California, it is likely that other relevant documents as well as key witnesses will also be located in that district.”).<sup>9</sup>

Toyota Motor Sales, USA, Inc. (“TMS”), the primary defendant in these cases, is a California corporation with its headquarters located in the Central District of California. TMS serves as Toyota’s U.S. sales and marketing headquarters. TMS is also the U.S. entity with primary responsibility for implementing recalls and communicating with customers and dealers concerning recall campaigns.<sup>10</sup> The Corporate Accessory Department of TMS was also a central player in the purchase and procurement of the all weather floor mats that are the subject of the Floor Mat Recall and worked closely with Toyota Motor Corporation on the redesign of the floor mats. Accordingly, TMS is likely to be in possession of a significant number of relevant documents, including but not limited to advertising and marketing materials, warranty data, owner’s manuals, service manuals, technical service bulletins, and field contact reports, as well as information on customer complaints and lawsuits, and guidelines, correspondence, drawings and approvals for the all weather floor mats at issue. In addition to documents, individuals with relevant information regarding engineering, manufacturing, and design issues as well as the safety recalls and remedies are also located at TMS. Indeed, it appears that TMS was named as a defendant in 75 out of 77 of the Federal Unintended Acceleration Cases precisely because relevant witnesses and documents are likely to be located there. In addition to TMS’s location in California, defendants Toyota Motor Manufacturing, California, Inc. and New United Motor Manufacturing, Inc. are also both located in California. The location of Toyota’s U.S.

<sup>9</sup> See also *In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170-71 (J.P.M.L. 1978); *In re Penn Cent. Sec. Litig.*, 322 F. Supp. 1021, 1023 & n.4 (J.P.M.L. 1971).

<sup>10</sup> With respect to recalls, Toyota Motor North America, Inc., which has headquarters in New York and Washington, D.C., acts as the liaison for the Toyota entities with the federal government.

headquarters and the anticipated evidence located in the Central District of California are additional factors strongly favoring transfer to that district. *In re Air Crash off Long Island, New York on July 17, 1996*, 965 F. Supp. 5 (S.D.N.Y. 1997); *In re Caesar's Palace Secs. Litig.*, 385 F. Supp. 1256, 1258 (J.P.M.L. 1974).

**C. The Central District of California Is A Convenient Location For the Parties and Witnesses.**

This Panel has repeatedly recognized the benefits of transferring cases to districts in large metropolitan areas. *See, e.g., In re Trasytol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district that “offers an accessible metropolitan location”). “[A] litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services.” *In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002). Los Angeles is such a city and is easily accessible to parties and witnesses nationwide.

Moreover, although there are a number of major U.S. cities that can be easily and quickly reached by air travel from anywhere within the United States, Los Angeles has the added benefit of facilitating transportation to and from Japan. In the Unintended Acceleration Cases, one of the other defendants is Toyota Motor Corporation (“TMC”), the ultimate parent company of all of the other named Toyota Defendants. TMC is the entity primarily responsible for the development and design of many of the vehicles at issue in the Unintended Acceleration Cases. In addition, TMC conducts much of Toyota’s pre-production development testing and compliance testing for the vehicles involved in the recalls at issue. TMC is also responsible for making recall decisions. As a result, it is likely that relevant design, engineering and testing documents will be located in Japan. Additionally, business persons and engineers from TMC

will likely be witnesses in these cases and will need to travel back and forth to the United States throughout these consolidated pretrial proceedings. TMC employees are accustomed to traveling to Los Angeles because Toyota Motor Sales, USA, Inc. is headquartered there. Furthermore, there are significantly more direct flights between Japan and Los Angeles than between Japan and any of the other proposed transferee districts, and the flights between Japan and Los Angeles are also less expensive. Thus, although it may be equally burdensome for parties in Los Angeles to travel to Miami (or New Orleans or Lexington) as it is for parties in those districts to travel to Los Angeles, the frequency and convenience of flights between Los Angeles and Japan weigh heavily in favor of transfer to the Central District of California.

**D. The Central District of California Can Efficiently Handle Large Consolidated Proceedings.**

In addition to being a convenient transferee district for parties and witnesses and being the district most familiar with the pending cases, the Central District of California also has the capacity to accommodate these proceedings. *See In re Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1383, 1385 (J.P.M.L. 2004) (deciding to “assign the litigation to a district i) in which half of the actions are pending; and ii) that is presently equipped with the resources likely required by the complex docket.”). With a median time from filing to disposition of only 6.9 months, transferring these cases to the Central District of California will ensure that the consolidated pretrial proceedings are resolved in a timely and expeditious manner. *See* <http://www.uscourts.gov/judbus2008/appendices/C05Sep08.pdf>, attached as Exhibit 2.

**E. Judge Matz Is Eminently Qualified to Preside Over These Actions.**

The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See, e.g., In re Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel*

*Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098, 1101 (J.P.M.L. 1992); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F. Supp. 1204, 1208 (J.P.M.L. 1975); *In re Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970). Judge Matz, who is currently presiding over eleven of the Unintended Acceleration Cases, including the first filed action, is eminently qualified to preside over this litigation.

Judge Matz has served the Central District of California as a federal judge for over twelve years. During that time, he has presided over some of the Central District of California's most influential and publicized cases<sup>11</sup> and has handled numerous cases involving complex legal and factual issues,<sup>12</sup> including complex product liability actions. *See, e.g., In re Silicon Gel Breast Implants Products Liability Litigation*, 318 F. Supp. 2d 879 (C.D. Cal. 2004). Moreover, Judge Matz has successfully presided over consolidated litigation pursuant to a Transfer Order of this Panel in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004). Accordingly, Judge Matz has demonstrated the "time and experience to steer this complex litigation on a prudent course." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district "where a constituent action is pending" and "assigning this litigation to a jurist who has the experience to steer this litigation on a prudent course."); *In*

<sup>11</sup> *See, e.g., Bryant v. Oxford Exp. Inc.*, 181 F. Supp. 2d 1045 (C.D. Cal. 2000) (enjoining a licensee from pursuing claim in New Jersey against NBA basketball star Kobe Bryant based on the first-to-file rule), *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076 (C.D. 2000) (enjoining on First Amendment grounds enforcement of a city ordinance making it criminal to display for sale signs), and *Coalition of Clergy v. Bush*, 189 F. Supp. 2d 1036 (C.D. Cal. 2002), *aff'd in part and rev'd in part*, 310 F.3d 1153 (9th Cir. 2002) (dismissing lawsuit brought on behalf of detainees held in Guantanamo Bay due to lack of standing).

<sup>12</sup> *See, e.g., Directors Guild of America v. Harmony Pictures, Inc.*, 32 F. Supp. 2d 1184 (C.D. Cal. 1998) (holding in case of first impression that creditor's endorsement and cashing of check effectuates an accord and satisfaction that discharges debtor from further liability); and *Castaic Lake Water Agency v. Whittake Corp.*, 272 F. Supp. 2d 1053 (C.D. Cal. 2003) (holding that passive migration of a contaminant constitutes a release under CERCLA).

*re Commerical Money Ctr., Inc. Equip. Lease Litig.*, 229 F. Supp. 2d 1379, 1380 (J.P.M.L. 2002) (transferring to an “available transferee judge with prior, successful experience in the management of Section 1407 litigation”).

In addition to Judge Matz’s experience handling complex cases, Judge Matz is perhaps the judge most familiar with these cases. As an initial matter, eleven of the cases filed in the Central District have already been consolidated before Judge Matz and Toyota anticipates that the rest of the California cases will likewise be transferred to Judge Matz. Accordingly, Judge Matz is currently presiding over more Unintended Acceleration Cases than any other judge in the Central District of California or elsewhere. In addition to the number of Unintended Acceleration Cases already before Judge Matz, two of the most procedurally advanced cases are assigned to him: *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, and *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478. Toyota has filed motions to dismiss in both *Choi* and *Kmetz*. Additionally, plaintiffs in the *Choi* case have also filed motions and accompanying briefs for preliminary injunctive relief and for class certification. As noted above, Judge Matz will hear oral argument on all of these pending motions in March. The fact that Judge Matz has had the opportunity to familiarize himself with the factual and legal issues of these cases makes him an ideal transferee judge. See *In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) (“[S]ubstantial benefits arise by assigning the litigation to [a judge] who has gained familiarity with this litigation by presiding over some of the actions.”); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring to the judge that had the opportunity to become familiar with the litigation). Moreover, Judge Matz is not currently handling any MDL actions. See *In re WellPoint, Inc., Out-of-Network UCR Rates*

*Litig.*, 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring cases to “an experienced MDL transferee judge who does not currently have an MDL assignment.”).

**IV. The Central District of California Is a More Appropriate Venue Than the Other Requested Transferee Courts.**

Eleven individual plaintiffs in three separate filings have requested transfer to the Central District of California.<sup>13</sup> Other plaintiffs, however, have requested transfer to the Eastern District of Louisiana, the Southern District of Florida, the Eastern District of Kentucky, and the Southern District of West Virginia.<sup>14</sup> The Central District of California is a better venue for these cases for several reasons.

First, as discussed above, there are significantly more Unintended Acceleration Cases pending in the Central District of California and those cases are procedurally further along. Of the twenty-one cases that have been filed in the Central District of California, Toyota has been served in fourteen cases and has filed dispositive motions in four of them. By contrast, in the Eastern District of Louisiana, three cases have been filed and served (all by the same law firms and all containing nearly identical allegations),<sup>15</sup> but Toyota’s responses to those complaints are not yet due. Toyota is aware of three cases that have been filed in the Southern District of

<sup>13</sup> See *supra* at note 2.

<sup>14</sup> As discussed in note 2 *supra*, Plaintiff Colaberdino filed a motion seeking transfer to the District of New Jersey, but that motion has since been withdrawn. Additionally, Plaintiff Sander filed a response seeking transfer to the Southern District of New York, Plaintiff Mitchell filed a response seeking transfer to Southern District of Mississippi, Plaintiff Bilthorn filed a response seeking transfer to the District of Puerto Rico, and Plaintiff Roberts seeks transfer to the district of South Carolina. Transfer to the Central District of California, however, would be more appropriate than any of these. The Southern District of New York, Southern District of Mississippi, District of Puerto Rico, and District of South Carolina do not have any of the qualities that the Panel typically considers in making a venue decision. Indeed, there are very few cases pending in these jurisdictions (one in the Southern District of Mississippi, one in the District of Puerto Rico, two in the District of South Carolina, and three in the Southern District of New York), and all of the cases pending in these districts are in their infancy (Toyota has only been served in one of these six cases). Additionally, it is highly unlikely that any significant quantity of documents or witnesses would be located in any of these four jurisdictions. Moreover, South Carolina has no connection with the Toyota Defendants’ headquarters or operations, and the lack of direct flights between Los Angeles and Spartanburg will be burdensome for many plaintiffs and defendants in this case, particularly witnesses traveling from Japan. These responses appear merely to be attempts by Plaintiffs’ counsel to secure transfer to a district that will be convenient for them at the expense of the multitude of other parties involved in these cases.

<sup>15</sup> *Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219; *Maillho v. Toyota North America, Inc.*, No. 2:10-cv-00279, and *Brock v. Toyota North America, Inc.*, No. 2:10-cv-00281.

Florida.<sup>16</sup> Only one of those complaints, however, has been served on Toyota,<sup>17</sup> and Toyota's response to that complaint is not yet due. In the Eastern District of Kentucky, Toyota is aware of four cases that have been filed. One of these cases has yet to be served on Toyota.<sup>18</sup> Toyota was not served with the other three eastern District of Kentucky cases until this week.<sup>19</sup> Finally, Toyota is aware of only one case pending in the Southern District of West Virginia, but it is not as far along as some of the California cases.<sup>20</sup> As a result, the judges assigned to Unintended Acceleration Cases in the Central District of California have more familiarity with these cases than the judges proposed by Plaintiffs Weimer, Gellman, Viviano, or Graves.

Second, the Central District of California has a much stronger connection to the underlying cases than any of the other proposed transferee districts. Toyota Motor Sales, USA, Inc. ("TMS"), Toyota Motor Manufacturing, California, Inc., and New United Motor Manufacturing, Inc., all defendants in these cases, are all headquartered in California. With respect to the other proposed transferee districts, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") and Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") are both Kentucky corporations, but TEMA is named as a defendant in just over half of the actions that have been filed, and TMMK has only been named in seven of the currently pending seventy-seven lawsuits. Similarly, Toyota Manufacturing, West Virginia, Inc. ("TMMWV"), which is headquartered in West Virginia, has only been named as a defendant in a single case brought by the plaintiffs seeking transfer to West Virginia. By contrast, TMS has been named in

<sup>16</sup> *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006, *Heilbrunn v. Toyota Motor Corporation*, No. 9:10-cv-80208, and *Rivas-Vigil v. Toyota Motor North America, Inc.*, No. 0:10-cv-60183.

<sup>17</sup> *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006.

<sup>18</sup> *Viviano v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00024.

<sup>19</sup> *Poynter v. Toyota Motor North America Inc.*, No. 2:10-cv-00021; *Miller v. Toyota Motor Sales U.S.A., Inc.*, No. 2:10-cv-00031; and *Leaverton v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00032.

<sup>20</sup> *Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247.

75 out of 77 cases and TMC (the Japanese parent company of all of the Toyota Defendants) has been named in 48 out of 77 cases.

In addition, despite the fact that certain Toyota manufacturing facilities (and therefore certain manufacturing subsidiaries) are located in Kentucky and West Virginia, a majority of the relevant documents and witnesses are likely to be located outside of those states. The Unintended Acceleration Cases generally involve allegations of design defects. Both TMMK and TMMWV, however, are primarily involved with manufacturing (as opposed to design) and will likely have fewer documents relating design and/or testing. In addition, TMMWV manufactures components not directly relevant to these lawsuits. Likewise, many of TEMA's relevant documents are likely to be located outside of Kentucky.

As explained above, TMC is the Toyota entity primarily responsible for the design and testing of many of the vehicles involved in this litigation. Though TEMA has design responsibilities for certain Toyota models, it does not have responsibility for many of the vehicles that are subject to the recalls. And with respect to those models for which TEMA has design responsibility, most of TEMA's design documents are likely to be located outside of Kentucky because TEMA's research and development operations are located outside of Kentucky. Moreover, there is an additional nexus to California, in that TEMA maintains a quality control group in its Los Angeles, California office, where other potentially relevant documents are located. By contrast, TEMA's Erlanger, Kentucky office is primarily responsible for procurement, quality control, and administrative issues. Therefore, although some documents or witnesses may be located in Kentucky, a substantial portion of TEMA's relevant documents, particularly those relating to design and testing, are likely to be found in TEMA offices outside of Kentucky. Accordingly, Toyota anticipates that a significant quantity of the



relevant documents in these cases will be located in Los Angeles, with a considerable number of documents and witnesses also potentially located in Japan. In short, the Central District of California is the district with the most significant connection to this litigation in terms of the location of potential evidence.

The Central District of California is also significantly more convenient than the Eastern District of Kentucky or the Southern District of West Virginia for parties and witnesses, particularly Defendant TMC which is located in Japan. This is particularly true for the Southern District of West Virginia, because there are no direct flights from Charleston, West Virginia to California. Given the number of California-based plaintiffs and defendants, as well TMC's location in Japan, the lack of direct flights between Los Angeles and these districts will be inconvenient for many of the parties involved.

Finally, there are significantly more active judges in the Central District of California than in any of the other proposed transferee districts, which will assist in ensuring that the judge assigned to these cases is able to devote sufficient time to case management. The Central District of California has twenty-five active judges, and only eleven currently pending Section 1407 proceedings. The Eastern District of Louisiana, by contrast, has only twelve active judges, but six pending MDL actions. Although the Southern District of Florida has seventeen active judges, it also has ten pending MDLs. Accordingly, the Central District of California is a more appropriate venue. *See In re Teflon Prods. Liab. Litig.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006) (taking into consideration other MDL dockets already pending in that jurisdiction); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (transferring to a district "that is not currently overtaxed with other multidistrict dockets"); *In re Bayol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001) (same). Additionally, although there are fewer MDL actions

currently pending in the Eastern District of Kentucky or the Southern District of West Virginia, that is not necessarily an indication that this litigation would move more quickly in those districts than in the Central District of California. In fact, the median time from filing to disposition in the Central District of California is only 6.9 months compared to 9.4 months in the Eastern District of Kentucky and 9.2 months in the Southern District of West Virginia. Thus, there is no basis to conclude that an experienced judge in the Central District of California cannot oversee this litigation in an effective and efficient manner.

**V. Conclusion**

Pursuant to Section 1407, centralization of the Unintended Acceleration Cases is appropriate because these cases raise similar factual and legal issues, and because consolidation will result in convenience to the parties and increased judicial efficiency and avoid duplicative discovery and inconsistent pretrial rulings.

The Toyota Defendants join in the request that this Panel transfer these cases to the Central District of California for coordinated pretrial proceedings before the Honorable Judge Matz. On balance, the Central District of California will be the most convenient for all parties and is well equipped to handle litigation of this magnitude. Moreover, the Central District of California is the district where many of the defendants are headquartered and where a significant number of documents and witnesses will likely be located. Furthermore, because significantly more Unintended Acceleration Cases have been filed in the Central District of California than in any other district and because these cases have progressed further than the cases in the other proposed transferee districts, the judges in the Central District of California, and in particular Judge Matz, have had the greatest opportunity to familiarize themselves with these cases.

Respectfully submitted, this 26th day of February.



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**EXHIBIT 1**

## BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION  
MDL DOCKET NO. 2151SCHEDULE A: All Unintended Acceleration Cases<sup>1</sup>

No.	Full Case Name	Civ. Action No.	District	Division	Judge
1.	Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	8:10-cv-00105	C.D. Cal.	Western (Los Angeles)	Matz
2.	T. Leigh Beard, Catherine Nguyen, and Valina Salvador, in their individual capacities, and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	8:10-cv-00183	C.D. Cal.	Southern (Santa Anna)	Selna
3.	Adilia Aviles on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	2:10-cv-00706	C.D. Cal.	Western (Los Angeles)	Matz
4.	Roz Schwartz on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-00710	C.D. Cal.	Western (Los Angeles)	Matz

<sup>1</sup> The Toyota Defendants have not been served in many of the cases identified in this Schedule A. Toyota's identification of these cases for purposes of transfer and consolidation pursuant to 28 U.S.C. § 1407 does not constitute an appearance by Toyota or imply that Toyota has waived service in any of these constituent cases.

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## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
5.	Matthew Marr, Luis Fernandez, Sylvia Fernandez, individually and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corp.	2:10-cv-00799	C.D. Cal.	Western (Los Angeles)	Matz
6.	Ani Gazaryan, an individual; Svetlana Abajyan, an individual; Elza Dzhivalegy, and individual; Tamara Harutyunyan, an individual; Nerses Mazmanyanyan, an individual; Hrayr Okkasian an individual, Christine Aznavour, an individual; Akop Galadzhyan; and individual; Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, v. Toyota Motor sales U.S.A., Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a foreign corporation; and Does 1-10: Inclusive.	2:10-cv-00849	C.D. Cal.	Western (Los Angeles)	Matz
7.	Peter Wisner v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00942	C.D. Cal.	Western (Los Angeles)	Otero
8.	Elaine Byrnes, individually and on behalf of all others similarly situated v. 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; Toyota Motor Corporation, a Japanese corporation	2:10-cv-00947	C.D. Cal.	Western (Los Angeles)	Matz

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
9.	Lacey Laudicina and Kevin Funez, individually and on behalf of all other similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01030	C.D. Cal.	Western (Los Angeles)	Marshall
10.	Rhonda Talbot, on behalf of herself and all other similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01039	C.D. Cal.	Western (Los Angeles)	Matz
11.	Jacquelyn Donoghue, individually and on behalf of the Estate of John Donoghue, deceased, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing California, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10	2:10-cv-01057	C.D. Cal.	Western (Los Angeles)	Otero
12.	Max L. Lieberman, and Phyllis C. Lieberman, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01073	C.D. Cal.	Western (Los Angeles)	Klausner

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
13.	Teresa B. Myers, individually and on behalf of the Estate of Steffan David Myers, deceased, and William C. Myers, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, U.S.A. Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10 inclusive	2:10-cv-01078	C.D. Cal.	Western (Los Angeles)	Matz
14.	Karen Bush Gertz v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01089	C.D. Cal.	Southern (Santa Anna)	Gee
15.	Kerri Madden, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Corporation, and Does 1 through 10	2:10-cv-01094	C.D. Cal.	Western (Los Angeles)	Feess
16.	Katy Boyask, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-01153	C.D. Cal.	Western (Los Angeles)	Wu
17.	Stuart Grant, an individual, v. Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and Does One through Twenty	2:10-cv-01234	C.D. Cal.	Western (Los Angeles)	Matz



## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
18.	Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, as individuals, and on behalf of themselves and all others similarly situated, v. Toyota Motor Corp., Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	2:09-cv-08143	C.D. Cal.	Western (Los Angeles)	Matz
19.	Eric Kmetz, and Joe Morris, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	2:09-cv-08478	C.D. Cal.	Western (Los Angeles)	Matz
20.	Heather A. Lane, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc. a California corporation	2:09-cv-09158	C.D. Cal.	Western (Los Angeles)	Feess
21.	Dale Baldisseri, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Does 1 through 20	2:09-cv-09386	C.D. Cal.	Western (Los Angeles)	Feess

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## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
22.	Ryan Scharrel, Susan Kruschke, and Enrique Moreno, v. 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	1:10-cv-00227	D. Colo.	Denver	Brimmer
23.	Nimishabehn Patel, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors LLC, a foreign corporation.	3:10-cv-00210	D. Conn.	New Haven	Underhill
24.	S. Firgon, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor North America, Inc.	2:10-cv-02075	D. Kan.	Kansas City	Murguia
25.	Darshak Shah, v. Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and General Motors, LLC	1:10-cv-10263	D. Mass.	Boston	Tauro
26.	Don Gureski and Carol Gureski, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00031	D. Wyo.	Casper	Johnson

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
27.	Margaret Gonzalez, on her own behalf and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595	D.N.J.	Trenton	Cooper
28.	Maureen Colaberdino, on behalf of herself and all others similarly situated, v. Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00672	D.N.J.	Trenton	Cooper
29.	Cheryl Abken and Sandra Valdez, individually and on behalf of all persons similarly situated, v. Toyota motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and General Motors LLC	3:10-cv-00763	D.N.J.	Trenton	Cooper
30.	Francine Goukas, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00778	D.N.J.	Trenton	Cooper

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
31.	Zahira Crespo-Bithorn and Milagros Rodriguez Cruz et al., on behalf of themselves and all others similarly situated v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and Toyota De Puerto Rico, Corp	3:10-cv-01083	D.P.R.	San Juan	Besosa
32.	Linda Alford Wooten, v. 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	3:10-cv-00229	D.S.C.	Columbia	Perry, Jr.
33.	Dale Roberts, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and does 1 through 10.	7:10-cv-00281	D.S.C.	Spartanburg	Harwell
34.	Robyn Horn, class representative, on behalf of herself and all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., a California corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., a foreign corporation, Toyota Motor Corporation, a foreign corporation, and Does 1-10.	4:10-cv-00090	E.D. Ark.	Little Rock	Holmes

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
35.	Julie Rainwater, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00116	E.D. Ark.	Western	Wilson
36.	Al and Jo Anna Viviano, Paul Turner, Kyle Briggs, Shalini Ignatenkov, Charles and Karen Gibbens, Lori S. and Thomas A. Trahan, Erica Thomas, Holly Boyd, Connie and Thomas Kamphaus, Brena and Lee Shonfield, and Alan L. Weller, v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing Kentucky, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Lease Trust.	2:10-cv-00024	E.D. Ky	Northern (Covington)	Bertlesman
37.	Debra and Ron Poynter, Tina and Fran Freedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, and Lucero and Mark Davidson, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; and Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation.	2:10-cv-00021	E.D. Ky.	Northern (Covington)	Bertlesman

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
38.	Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward & Joan Skillman, and Melissa Arzen Moeddel, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and Toyota Motor Manufacturing, Northern Kentucky, Inc.	2:10-cv-00031	E.D. Ky.	Northern (Covington)	Bertelsman
39.	Christopher L. Leaverton, individually and on behalf of all others similarly situated, v. Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00032	E.D. Ky.	Northern (Covington)	Bertelsman
40.	Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00219	E.D. La.	New Orleans	Lemelle
41.	Amanda R. Maillho, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00279	E.D. La.	New Orleans	Lemmon

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
42.	Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00281	E.D. La.	New Orleans	Lemelle
43.	Deborah Baumkel, on behalf of herself and all others situated, v. Toyota Motor North America, Inc., a foreign corporation and Toyota Motor Sales, U.S.A., Inc., a foreign corporation.	2:10-cv-10525	E.D. Mich.	Detroit	Edmunds
44.	Diane Gumble, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00521	E.D. Pa.	Allentown	Golden
45.	Frederick Greisiger, individually and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors, LLC, a foreign corporation.	5:10-cv-00554	E.D. Pa.	Allentown	Slomsky
46.	William Fitts and Phyllis Fitts, individually; Billy C. Fitts and Freida Fitts individually v. Toyota Motor Corporation	2:10-cv-00052	E.D. Tex.	Marshall	Ward

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
47.	Frank Whiddon, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-00080	E.D. Tex.	Beaumont	Clark
48.	Kevin P. Fogarty, Barbara Jackson, and Alex Farrugia, individually and on behalf of all others similarly situated v. 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	1:10-cv-00542	E.D.N.Y.	Brooklyn	Gleeson
49.	Peter Phaneuf, on his own behalf and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	2:10-cv-00487	E.D.N.Y.	Central Islip	Bianco
50.	John Harding, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation.	2:10-cv-00100	M.D. Ala.	Montgomery	Fuller
51.	Michelle Lynch on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	8:10-cv-00326	M.D. Fla.	Tampa	Merryday



## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
52.	Renita Cipriani, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a Japanese Corp.; and Toyota Motor Sales, U.S.A., Inc., a CA Corp.	8:10-cv-00427	M.D. Fla.	Tampa	Bucklew
53.	Viviane Stoller, individually and on behalf of a class of similarly situated citizens in Georgia, v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc.	4:10-cv-00024	M.D. Ga.	Columbus	Land
54.	Roshawn Donahue, individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00108	M.D. La.	Baton Rouge	Parker
55.	Justin Johnson, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00026	N.D. Fla.	Panama City	Smoak
56.	Jim Heidenreich, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a foreign corporation	4:10-cv-00035	N.D. Fla.	Tallahassee	Hinkle

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## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
57.	Christina Ochs, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00918	N.D. Ill.	Chicago	Coar
58.	Belva Simmons, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, Toyota Motor Sales, USA, Inc., a California corporation, and Toyota North America, Inc., a California corporation.	3:10-cv-00009	N.D. Miss.	Western	Mills
59.	Troy Messen, on behalf of himself and all other similarly situated individuals v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	1:10-cv-00260	N.D. Ohio	Cleveland	Oliver
60.	Daniel D. Lee, individually and on behalf of others similarly situated v. 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; New United Motor Manufacturing, Inc., a California Joint Venture, and Toyota Motor Corporation, a Japanese corporation.	3:10-cv-00280	N.D. Ohio	Toledo	Carr

LEGAL02/31765049v3

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
61.	Roxanne Early and Edward Ransom, individually and as legal heirs to the estate of Sharon Ransom, deceased, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Kentucky, Inc.	3:10-cv-00332	N.D. Tex	Dallas	Lindsay
62.	James R. Haustein, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, North America, Inc.	5:10-cv-00178	N.D.N.Y.	Syracuse	McCurn
63.	Humberto Rivas-Vigil, individually and on behalf of all others similarly situated, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	0:10-cv-01183	S.D. Fla.	Fort Lauderdale	Cohn
64.	Jonathan Gellman, an individual, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-20006	S.D. Fla.	Miami	Cooke
65.	Arlene S. Heilbrunn, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	9:10-cv-80208	S.D. Fla.	Miami	Zloch

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
66.	Judith M. Enderle, on behalf of herself all others similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00142	S.D. Ind.	Indianapolis	Barker
67.	Christine Mitchell, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing, North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00104	S.D. Miss.	Jackson	Wingate
68.	Rebecca S. Shumaker v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00061	S.D. Ohio	Western (Dayton)	Rice
69.	Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00037	S.D. Tex.	Corpus Christi	Rainey
70.	Thomas Davis, on behalf of himself and all other similarly situated individuals, v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	1:10-cv-00900	S.D.N.Y.	Foley Square	Buchwald

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## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
71.	<p>Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,</p> <p>v.</p> <p>Toyota Motor Corporation, a Japanese Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Engineering &amp; Manufacturing, N.A., Inc., a Kentucky Corp.; Lexus; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing, Texas, Inc.; Toyota Motor Manufacturing, Kentucky, Inc.; New United Motor Manufacturing, Inc., Subaru of Indiana Automotive, Inc.; CTS Corporation and Doe Defendants 1 through 10</p>	1:10-cv-1014	S.D.N.Y.	Foley Square	Castel
72.	<p>Fred Sander</p> <p>v.</p> <p>Toyota Motor Sales, U.S.A., Inc., Toyota North America Inc., and Toyota Engineering &amp; Manufacturing North America, Inc.</p>	1:10-cv-01111	S.D.N.Y.	Foley Square	Hellerstein
73.	<p>Michael Graves and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated,</p> <p>v.</p> <p>Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia Corporation; Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering &amp; 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>	2:09-cv-01247	S.D.W. Va.	Charleston	Goodwin

## SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
74.	Mark Adkinson, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	6:10-cv-06013	W.D. Ark.	Hot Springs	Dawson
75.	David Hulsen, Patrick Mann, and Tyson Markham, on behalf of themselves and all others similarly situated v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00103	W.D. Mo.	Kansas City	Sachs
76.	Jerry Baker Auto Sales, LLC, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	2:10-cv-04025	W.D. Mo.	Central	Laughrey
77.	Carol D. Sill, individually, and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	5:10-cv-00117	W.D. Okla.	Oklahoma City	Russell

**EXHIBIT 2**

**Table C-5. U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending September 30, 2008**

Circuit and District	Total Cases		No Court Action		Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>TOTAL</b>	175,091	8.1	43,257	5.0	105,421	7.8	22,017	13.6	4,396	32.9
<b>DC</b>	1,801	8.5	643	6.2	1,090	9.4	43	11.7	25	36.5
<b>1ST</b>	4,809	8.9	1,922	6.5	2,056	8.5	661	16.6	170	25.9
ME	361	7.0	170	4.6	162	8.8	14	12.1	15	16.9
MA	2,424	8.6	1,267	6.6	784	8.3	292	18.4	81	27.1
NH	335	7.9	78	3.0	109	5.0	142	15.4	6	-
RI	405	8.8	148	7.6	181	8.3	63	11.9	13	28.4
PR	1,284	10.5	259	8.6	820	9.2	150	22.8	55	28.2
<b>2ND</b>	19,205	10.3	3,898	6.6	12,106	10.2	2,902	14.2	299	29.5
CT	1,855	10.1	1,166	7.8	574	13.1	66	22.9	49	31.8
NY,N	1,115	13.5	207	4.9	581	15.1	301	16.0	26	28.0
NY,E	5,672	12.6	866	8.7	3,582	13.0	1,126	14.9	98	29.4
NY,S	9,277	8.4	1,502	5.5	6,352	8.0	1,312	12.5	111	27.8
NY,W	1,059	11.9	137	5.1	820	12.1	93	24.4	9	-
VT	227	8.4	20	2.6	197	8.5	4	-	6	-
<b>3RD</b>	16,674	6.6	3,386	4.3	10,027	5.5	2,995	12.3	266	26.6
DE	746	11.2	163	5.4	588	12.2	16	31.1	29	31.5
NJ	5,288	7.6	1,562	5.3	2,179	5.1	1,479	14.9	68	33.7
PA,E	6,872	4.8	574	2.3	4,972	3.4	1,221	9.6	105	17.5
PA,M	1,439	7.6	416	4.4	928	8.3	61	17.5	34	31.2
PA,W	1,936	6.9	531	4.1	1,348	7.9	31	24.0	26	33.9
VI	393	19.5	140	18.2	62	25.7	187	18.7	4	-
<b>4TH</b>	10,852	7.1	2,743	5.8	6,938	7.0	1,005	8.6	166	20.0
MD	2,423	7.0	902	6.9	1,273	6.0	208	12.8	40	23.0
NC,E	828	8.8	337	8.1	469	9.3	13	11.0	9	-
NC,M	597	8.5	309	6.5	255	11.6	30	12.3	3	-
NC,W	841	7.6	230	7.9	523	5.9	80	14.4	8	-
SC	2,146	8.2	316	3.4	1,689	8.4	115	11.1	46	22.0
VA,E	2,199	4.8	279	2.2	1,363	4.3	520	6.5	37	10.1
VA,W	620	8.7	147	5.5	442	9.5	15	11.1	16	20.5
WA,W	430	10.0	188	8.4	225	10.2	15	23.2	2	-
WA,N	768	9.2	35	9.2	719	9.4	9	-	5	-



Table C-5. (September 30, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>5TH</b>	25,552	9.5	4,500	6.8	15,751	7.6	3,452	15.4	1,849	166.4
LA,E	8,715	8.8	74	3.5	6,119	6.0	2,443	14.9	79	18.9
LA,M	2,148	166.4	294	4.9	393	11.9	25	28.2	1,436	166.4
LA,W	1,600	12.0	400	8.0	1,115	12.5	47	21.2	38	22.3
MS,N	968	16.5	217	8.5	338	10.8	385	48.7	28	27.0
MS,S	1,940	10.6	1,260	10.1	600	10.7	47	21.5	33	21.7
TX,N	2,395	7.4	310	6.8	2,022	7.2	3	-	61	24.0
TX,E	1,842	9.2	280	7.1	1,472	9.0	58	18.5	52	21.1
TX,S	3,883	6.2	1,109	3.0	2,385	6.8	371	9.8	68	20.8
TX,W	2,060	8.3	576	6.8	1,357	8.2	73	14.0	54	18.3
<b>6TH</b>	17,144	9.6	4,105	5.1	9,907	9.4	3,889	14.0	243	25.2
KY,E	1,349	9.4	177	5.4	1,133	9.5	31	17.3	8	-
KY,W	1,067	9.2	281	7.3	694	9.2	77	19.0	15	25.9
MI,E	4,242	9.7	999	4.5	1,275	5.8	1,910	14.9	58	25.8
MI,W	919	8.4	117	3.0	769	9.3	14	19.8	19	22.3
OH,N	4,089	8.9	884	3.5	2,293	12.1	874	9.5	38	20.7
OH,S	2,570	10.3	946	6.5	975	10.3	616	14.2	33	27.8
TN,E	980	11.6	187	6.3	442	9.9	324	16.2	27	23.6
TN,M	1,087	9.2	216	5.9	838	9.6	10	16.9	23	18.4
TN,W	841	11.8	298	9.2	488	11.9	33	24.4	22	27.4
<b>7TH</b>	12,012	7.3	3,587	4.6	6,498	7.3	1,708	12.0	219	25.8
IL,N	6,625	6.2	2,337	4.8	3,574	6.3	601	11.5	113	25.9
IL,C	611	9.3	222	6.8	374	9.7	6	-	9	-
IL,S	672	9.4	147	4.3	483	9.5	27	31.5	15	23.1
IN,N	1,054	11.0	224	4.3	336	8.7	472	14.5	22	30.0
IN,S	1,748	9.2	462	4.8	853	9.6	407	11.6	26	23.7
WI,E	877	6.0	131	3.2	666	8.3	56	15.6	24	31.9
WI,W	425	4.6	64	2.1	212	3.9	139	6.8	10	12.0
<b>8TH</b>	13,226	6.3	5,050	2.7	6,805	9.2	1,170	17.0	201	21.4
AR,E	996	10.9	203	9.5	750	10.8	9	-	34	21.5
AR,W	573	10.0	16	2.2	534	10.0	4	-	19	15.2
IA,N	393	8.9	71	8.2	307	8.7	4	-	11	20.7
IA,S	548	10.6	151	7.4	271	9.5	115	15.9	11	26.3
MN	6,688	3.0	3,058	2.4	2,614	7.6	987	17.0	29	19.4
MO,E	1,586	7.8	675	5.8	874	8.3	8	-	29	20.7
MO,W	1,467	8.1	688	6.7	738	8.9	8	-	33	25.7
NE	541	9.1	20	1.7	482	8.7	22	18.9	17	17.7
ND	220	7.5	97	3.7	116	8.8	3	-	4	-
SD	214	12.5	71	10.8	119	11.0	10	21.0	14	31.1

Table C-5. (September 30, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months		
<b>9TH</b>	<b>26,365</b>	<b>8.0</b>	<b>8,557</b>	<b>5.9</b>	<b>15,524</b>	<b>8.3</b>	<b>1,803</b>	<b>13.5</b>	<b>481</b>	<b>23.5</b>
AK	310	9.9	114	6.4	190	10.7	-	-	6	-
AZ	1,899	9.0	681	7.5	1,163	9.3	15	36.2	40	33.4
CA,N	4,082	7.7	890	4.2	2,054	6.0	1,083	12.4	55	26.2
CA,E	1,920	9.6	678	6.8	1,170	10.7	37	25.9	35	26.3
CAC	8,889	7.0	3,637	6.0	4,998	7.5	106	18.5	148	21.2
CAS	1,685	6.2	160	3.2	1,195	5.8	306	10.4	24	28.9
HI	544	11.4	318	9.3	171	12.4	37	21.4	18	26.9
ID	380	11.0	30	4.9	334	11.2	6	-	10	29.6
MT	503	10.6	196	7.1	190	10.0	100	16.4	17	24.5
NV	1,589	9.5	581	7.8	930	9.9	52	13.7	26	29.5
OR	1,708	10.4	491	8.0	1,159	11.2	16	23.9	42	18.6
WAE	455	8.1	136	4.1	286	8.7	25	17.9	8	-
WAW	2,338	7.1	616	3.9	1,658	8.1	16	15.8	48	17.4
GUAM	27	17.4	9	-	15	19.2	2	-	1	-
NMI	36	14.0	20	14.2	11	12.9	2	-	3	-
<b>10TH</b>	<b>7,282</b>	<b>8.2</b>	<b>1,398</b>	<b>4.7</b>	<b>4,542</b>	<b>8.0</b>	<b>1,177</b>	<b>11.5</b>	<b>165</b>	<b>21.3</b>
CO	2,001	6.9	139	3.0	1,733	6.8	88	15.7	41	25.4
KS	1,096	9.1	364	6.4	610	9.4	100	17.5	22	24.6
NM	971	9.0	195	3.6	351	8.7	399	11.0	26	20.2
OK,N	594	8.9	77	3.1	489	9.6	14	14.9	14	16.4
OK,E	368	8.6	255	9.0	96	6.5	5	-	12	15.3
OK,W	1,089	8.3	287	3.5	358	8.1	422	9.9	22	15.3
UT	934	8.5	56	2.7	822	8.9	38	14.4	18	28.4
WY	229	7.8	25	3.2	83	3.2	111	10.5	10	15.8
<b>11TH</b>	<b>20,169</b>	<b>6.9</b>	<b>3,468</b>	<b>4.3</b>	<b>15,177</b>	<b>7.0</b>	<b>1,212</b>	<b>13.8</b>	<b>312</b>	<b>18.3</b>
AL,N	1,979	8.8	491	8.2	1,436	8.7	25	17.6	27	19.5
AL,M	772	8.7	201	7.2	491	8.0	68	17.9	12	19.0
AL,S	616	7.7	124	7.4	460	7.4	17	15.1	15	15.2
FL,N	876	7.7	169	6.4	668	7.9	17	8.0	22	17.6
FL,M	5,781	8.7	365	4.7	5,249	8.8	85	17.0	82	22.4
FL,S	6,142	4.6	1,445	3.7	4,554	4.8	58	14.8	85	14.5
GA,N	2,965	6.7	475	2.5	1,533	5.2	910	12.3	47	24.1
GA,M	631	11.2	136	6.4	474	11.9	9	-	12	25.4
GA,S	407	10.3	62	6.9	312	10.3	23	14.7	10	20.9

NOTE: MEDIAN TIME INTERVALS NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.

**BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

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IN RE: TOYOTA MOTOR CORP. :  
DEFECTIVE GAS PEDAL PRODUCTS : MDL No. 2151  
LIABILITY LITIGATION :

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2010, I caused a true and correct copy of the foregoing TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407 to be served upon all Parties and Counsel identified in the attached service list via U.S. Mail.

This 26th day of February, 2010.

  
CARI K. DAWSON

**Judicial Panel On Multidistrict Litigation - Panel Service List**

**Docket:** 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation  
**Status:** Pending On / /  
**Transferee District:**  
**Judge:**  
**Transferee District Master Docket No.:**

**Report key:** \* Signifies that an appearance was made on behalf of the party by the representing attorney.  
 # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.  
 All counsel and parties no longer active in this litigation have been suppressed.

**ATTORNEY - FIRM**

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Wisner, Peter\*

# **EXHIBIT B**

**Feb 23, 2010**

FILED  
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

**IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS  
PEDAL PRODUCTS LIABILITY LITIGATION**

MDL No. 2151

**NOTICE TO ALL INVOLVED COUNSEL**

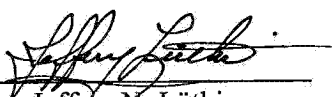
(SEE ATTACHED SCHEDULE)

Presently pending in this litigation are two separate motions collectively seeking centralization, pursuant to 28 U.S.C. §1407, of the eleven actions listed on the attached Schedule A in a single federal district for coordinated or consolidated pretrial proceedings. The first motion was filed on February 2, 2010, by plaintiff Heather A. Lane. The second motion was filed on February 5, 2010, by plaintiffs Daniel Weimer, Jr., Colby Wenck and Ann Cavalier.

The two pending motions encompassing the actions listed on Schedule A will be set for the next Panel Hearing Session in late March 2010. **The deadline for filing motions pursuant to Rule 7.2(h) to add actions to this litigation for consideration at the Panel Hearing has now passed.** In the event that the Panel orders centralization of this docket, additional related actions not listed on Schedule A will be treated as potential tag-along actions in accordance with Panel Rules 7.4 and 7.5. Pursuant to Panel Rule 7.1(i), parties are reminded to notify the Panel promptly of any potential tag-along actions. Any party in a potential tag-along action may file an interested party response to the motions in this docket.

The due date for responsive pleadings to the two motions filed in MDL No. 2151 is now February 26, 2010. All previous response due dates with respect to this MDL are hereby extended to February 26, 2010. Any party wishing to file a response to these motions is strongly encouraged to do so in a single brief. If a party has already submitted a response to the earlier filed motion, it may either rest on that response or incorporate that response by reference in responding to the later filed motion.

FOR THE PANEL:

  
Jeffery N. Lüthi  
Clerk of the Panel

**IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2151

**SCHEDULE A**

Central District of California

Seong Bae Choi, et al. v. Toyota Motor Corp., et al., C.A. No. 2:09-8143  
Eric Kmetz, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-8478  
Heather A. Lane v. Toyota Motor Sales U.S.A., Inc., C.A. No. 2:09-9158  
Dale Baldiseeri v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-9386  
Joseph Hauter, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 8:10-105

Middle District of Florida

Michelle Lynch v. Toyota Motor Corp., et al., C.A. No. 8:10-326

Southern District of Florida

Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc., C.A. No. 1:10-20006

Eastern District of Louisiana

Daniel Weimer, Jr., et al. v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-219  
Amanda R. Maillho v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-279  
Gary T. Brock v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-281

Southern District of West Virginia

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

# **EXHIBIT C**

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

**CHAIRMAN:**  
John G. Heyburn II  
United States District Court  
Western District of Kentucky

**MEMBERS:**  
Robert L. Miller, Jr.  
United States District Court  
Northern District of Indiana

Kathryn B. Vratil  
United States District Court  
District of Kansas

David R. Hansen  
United States Court of Appeals  
Eighth Circuit

W. Royal Furgeson, Jr.  
United States District Court  
Northern District of Texas

Frank C. Damrell, Jr.  
United States District Court  
Eastern District of California

David G. Trager  
United States District Court  
Eastern District of New York

**DIRECT REPLY TO:**

Jeffery N. Lüthi  
Clerk of the Panel  
One Columbus Circle, NE  
Thurgood Marshall Federal  
Judiciary Building  
Room G-255, North Lobby  
Washington, D.C. 20002

Telephone: [202] 502-2800  
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<http://www.jpml.uscourts.gov>

February 25, 2010

NOTICE OF HEARING SESSION

Dear Counsel:

Pursuant to the order of the Judicial Panel on Multidistrict Litigation filed today, you are hereby notified that a hearing session has been scheduled to consider various matters pursuant to 28 U.S.C. § 1407.

DATE OF HEARING SESSION: March 25, 2010

LOCATION OF HEARING SESSION: Edward J. Schwartz U.S. Courthouse  
Ceremonial Courtroom No. 1, 4th Floor  
940 Front Street  
San Diego, California 92101

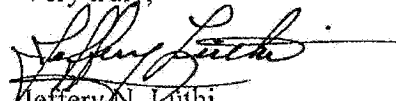
TIME OF HEARING SESSION: In those matters designated for oral argument, counsel presenting oral argument must be present at **8:30 a.m.** in order for the Panel to allocate the amount of time for oral argument. Oral argument will commence at **9:30 a.m.**

Please direct your attention to the enclosed Hearing Session Order and Schedule of Matters for Hearing Session for a listing of the matters scheduled for consideration at this hearing session.

- Section A of this Schedule lists the matters designated for oral argument.
- Section B of this Schedule lists the matters that the Panel has determined to consider **without oral argument**, pursuant to Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001).

For those matters listed on Section A of the Schedule, the enclosed blue "Notice of Presentation or Waiver of Oral Argument" must be returned to this office no later than **March 8, 2010**. Note the procedures governing Panel oral argument which are outlined on the enclosed "Procedures for Oral Argument before the Judicial Panel on Multidistrict Litigation." These procedures are strictly adhered to and your cooperation is appreciated.

Very truly,

  
Jeffery N. Lüthi  
Clerk of the Panel

cc: Clerk, U.S. District Court for the Southern District of California

UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

Feb 25, 2010

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

FILED  
CLERK'S OFFICE

HEARING SESSION ORDER

The Panel issues the following orders in connection with its next hearing session,

IT IS ORDERED that on March 25, 2010, the Panel will convene a hearing session in San Diego, California, to consider the matters on the attached Schedule under 28 U.S.C. § 1407.

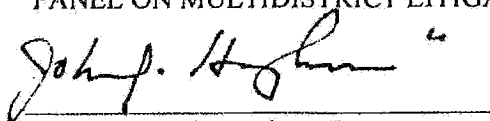
IT IS FURTHER ORDERED that the Panel may, on its own initiative, consider transfer of any or all of the actions in those matters to any district or districts.

IT IS FURTHER ORDERED that the Panel will hear oral argument on the matters listed on Section A of the attached Schedule, unless the parties waive oral argument or unless the Panel later decides to dispense with oral argument pursuant to Panel Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001).

IT IS FURTHER ORDERED that the Panel will consider without oral argument the matters listed on Section B of the attached Schedule pursuant to Panel Rule 16.1(c). *Id.* The Panel reserves the prerogative, on any basis including submissions of parties pursuant to Panel Rule 16.1(b), to designate any of those matters for oral argument. *Id.*

IT IS FURTHER ORDERED that the Clerk of the Judicial Panel on Multidistrict Litigation shall direct notice of this hearing session to counsel for all parties involved in the matters on the attached Schedule.

PANEL ON MULTIDISTRICT LITIGATION:



John G. Heyburn II  
Chairman

Robert L. Miller, Jr.  
David R. Hansen  
Frank C. Damrell, Jr.

Kathryn H. Vratil  
W. Royal Furgeson, Jr.  
David G. Trager



SCHEDULE OF MATTERS FOR HEARING SESSION  
March 25, 2010 -- San Diego, California

SECTION A  
MATTERS DESIGNATED FOR ORAL ARGUMENT

MDL No. 2138 -- **IN RE: BANK OF AMERICA WAGE AND HOUR EMPLOYMENT  
PRACTICES LITIGATION**

Motion of defendants Bank of America Corp., and Bank of America, N.A., for centralization of the following actions in the United States District Court for the Central District of California:

Central District of California

Joshua Gold v. Bank of America, N.A., C.A. No. 2:09-8169  
John S. Paulino v. Bank of America, N.A., et al., C.A. No. 8:09-1168

Eastern District of California

Andrew Gordillo v. Bank of America, N.A., C.A. No. 1:09-1954

Northern District of California

Jennifer Zhou v. Bank of America, N.A., C.A. No. 3:09-4016  
Virginia Kauffman, et al. v. Bank of America, N.A., C.A. No. 3:09-4114

Southern District of California

Juan Franco v. Bank of America, N.A., C.A. No. 3:09-1364

Middle District of Florida

Edward Franco v. Bank of America, N.A., C.A. No. 2:09-274  
Vicky Carrero, et al. v. Bank of America, N.A., C.A. No. 6:09-862

Schedule of Matters for Hearing Session, Section A  
San Diego, California

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MDL No. 2138 (Continued)

District of Kansas

Amanda Brawner, et al. v. Bank of America, N.A., C.A. No. 2:09-2073  
Curtis Schreiber v. Bank of America, N.A., C.A. No. 6:09-1336

Southern District of Texas

Sonia Fortner, et al. v. Bank of America, N.A., C.A. No. 4:09-2651

Western District of Washington

Sanaz Masourian, et al. v. Bank of America, N.A., C.A. No. 2:09-1312

**MDL No. 2139 -- IN RE: AMBULATORY PAIN PUMP-CHONDROLYSIS PRODUCTS  
LIABILITY LITIGATION**

Motion of plaintiffs Shari Martinac, et al.; Brittany Hamilton, et al.; and Wesley Stichweh for centralization of the following actions in the United States District Court for the District of Minnesota:

Northern District of Alabama

Paul W. Westbrook v. DJO, Inc., et al., C.A. No. 5:08-263

District of Arizona

Jessica N. Lopez v. I-Flow, Inc., et al., C.A. No. 2:08-1063  
Cole D. Chapman v. DJO, LLC, et al., C.A. No. 2:08-1064  
Andrew Gilmore, et al. v. DJO, Inc., et al., C.A. No. 2:08-1252  
Matthew B. Goldstein v. I-Flow, Inc., et al., C.A. No. 2:08-1859  
Julie A. Egger v. I-Flow, Inc., et al., C.A. No. 2:09-40  
Dianne L. Engle v. Stryker Corp., et al., C.A. No. 2:09-41  
Anthony B. Hannigan v. I-Flow, Inc., et al., C.A. No. 2:09-42  
Linda Relkin, et al. v. I-Flow, Inc., et al., C.A. No. 2:09-44  
Duane Hjelt v. I-Flow, Inc., et al., C.A. No. 2:09-64

Schedule of Matters for Hearing Session, Section A  
San Diego, California

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MDL No. 2139 (Continued)

District of Arizona (Continued)

Laura E. Ashworth, et al. v. I-Flow Corp., et al., C.A. No. 2:09-721  
Sheri L. Patrick, et al. v. I-Flow Corp., et al., C.A. No. 2:09-723  
Kevin Hines, et al. v. I-Flow Corp., et al., C.A. No. 2:09-2189  
Tyler Benson v. Stryker Corp., C.A. No. 4:08-351  
Erin Whitney Grandy Moore v. Breg, Inc., C.A. No. 4:09-27  
Ray Wilson v. Stryker Corp., et al., C.A. No. 4:09-539

Central District of California

Kent J. Klauer v. SMI Liquidating, Inc., et al., C.A. No. 2:08-4991

Eastern District of California

Adam Phillippi, et al. v. AstraZeneca Pharmaceuticals, LP, et al., C.A. No. 2:08-2445  
Terri Lynn Todd v. Stryker Corp., et al., C.A. No. 2:09-1509  
Julie M. Combs, et al. v. Stryker Corp., et al., C.A. No. 2:09-2018

District of Colorado

Stacey Ann Hansen v. DJO, Inc., et al., C.A. No. 1:08-365  
Vinton Theiss, et al. v. I-Flow, Inc., et al., C.A. No. 1:08-2606  
Cressa Sullivan v. I-Flow Corp., et al., C.A. No. 1:08-2648  
Christina Pavelko v. Breg, Inc., C.A. No. 1:09-1461  
Kevin Hoy v. I-Flow Corp., et al., C.A. No. 1:09-2580

Middle District of Florida

Davis A. Prickett v. Stryker Corp., et al., C.A. No. 8:09-992

Northern District of Florida

Suzette Martin, et al. v. I-Flow Corp., C.A. No. 3:08-127

Schedule of Matters for Hearing Session, Section A  
San Diego, California

p. 4

MDL No. 2139 (Continued)

Southern District of Indiana

Joseph D. Essex, et al. v. I-Flow Corp., C.A. No. 1:09-1380

Eastern District of Kentucky

Joshua P. Boling v. I-Flow Corp., et al., C.A. No. 2:09-94

Western District of Kentucky

Kris Prather v. Stryker Corp., et al., C.A. No. 3:09-573

District of Minnesota

Shari Martinac, et al. v. I-Flow Corp., et al., C.A. No. 0:08-5035  
Jaimee Fougner v. I-Flow Corp., et al., C.A. No. 0:08-5157  
Katie Todd, et al. v. I-Flow Corp., et al., C.A. No. 0:08-6178  
Nicole Stapleton Foley, et al. v. I-Flow Corp., et al., C.A. No. 0:08-6197  
Kathy Ivey, et al. v. McKinley Medical, LLC, et al., C.A. No. 0:08-6407  
April M. Murrell, et al. v. Zimmer, Inc., et al., C.A. No. 0:09-757  
Jeanie A. Hendricks, et al. v. DJO, LLC, et al., C.A. No. 0:09-931  
Anita McGinness, et al. v. DJO, LLC, et al., C.A. No. 0:09-1174  
Robert L. Huggins, et al. v. Stryker Sales Corp., et al., C.A. No. 0:09-1250  
Mary J. Block v. McKinley Medical, LLC, et al., C.A. No. 0:09-1332  
Daniel Krizan v. DJO, LLC, et al., C.A. No. 0:09-1341  
Craig R. Anderson v. DJO, LLC, et al., C.A. No. 0:09-1673  
Wesley Crawford v. DJO, LLC, et al., C.A. No. 0:09-1674  
Joel V. Haymes v. DJO, LLC, et al., C.A. No. 0:09-1675  
Henry Wheeler v. Breg, Inc., et al., C.A. No. 0:09-1692  
Sylvester Ishmael v. DJO, LLC, et al., C.A. No. 0:09-1693  
Joshua H. Voller v. I-Flow Corp., et al., C.A. No. 0:09-1906  
James Forslund v. Stryker Corp., et al., C.A. No. 0:09-2134  
Tara R. Davis v. I-Flow Corp., et al., C.A. No. 0:09-2504  
Marilyn D. Reynolds v. DJO, LLC, et al., C.A. No. 0:09-2706  
Gina K. Bass v. DJO, LLC, et al., C.A. No. 0:09-2707  
Jennifer E. Prettyman v. Stryker Sales Corp., et al., C.A. No. 0:09-2794

Schedule of Matters for Hearing Session, Section A  
San Diego, California

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MDL No. 2139 (Continued)

District of Minnesota (Continued)

Michael B. Bonander v. Breg, Inc., et al., C.A. No. 0:09-2795  
Thomas H. Stiltner v. Stryker Corp., et al., C.A. No. 0:09-2796  
Randall D. Collins v. I-Flow Corp., et al., C.A. No. 0:09-2816  
Carlos R. Flores-Espinoza v. Breg, Inc., et al., C.A. No. 0:09-2817  
Christi L. Fielding v. Stryker Sales Corp., et al., C.A. No. 0:09-2865  
Susan A. Newman v. Stryker Sales Corp., et al., C.A. No. 0:09-2866  
Katherine M. Baker v. DJO, LLC, et al., C.A. No. 0:09-2898  
Jeffrey L. Quibell v. Stryker Sales Corp., et al., C.A. No. 0:09-2899  
Wesley A. Kay v. I-Flow Corp., et al., C.A. No. 0:09-3012  
Adam J. Cramlet v. I-Flow Corp., et al., C.A. No. 0:09-3169

Southern District of Mississippi

Darryl Campbell v. I-Flow Corp., C.A. No. 1:08-168

District of New Jersey

Mark Yodice v. Stryker Corp., et al., C.A. No. 3:09-3896

District of New Mexico

Sherrie Bailey v. I-Flow Corp., et al., C.A. No. 1:09-531

District of Nevada

Rebecca Graham, et al. v. I-Flow Corp., et al., C.A. No. 2:09-531  
Jack Frobes, et al. v. Stryker Corp., et al., C.A. No. 3:09-554

Eastern District of North Carolina

Sarah E. Atwell v. DJO, Inc., et al., C.A. No. 5:08-346  
Corissa R. Allison, et al. v. DJO, Inc., et al., C.A. No. 5:08-549

Schedule of Matters for Hearing Session, Section A  
San Diego, California

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MDL No. 2139 (Continued)

Northern District of Ohio

Deborah L. Mayle, et al. v. Stryker Corp., et al., C.A. No. 5:09-1991  
Allen Crisp v. Stryker Corp., et al., C.A. No. 5:09-2212

Southern District of Ohio

Rachel Krumpelbeck v. Breg, Inc., et al., C.A. No. 1:09-91  
Amy West, et al. v. I-Flow Corp., C.A. No. 1:09-98  
Willie Miller v. Stryker Corp., et al., C.A. No. 1:09-588  
Brittany Hamilton, et al. v. Breg, Inc., et al., C.A. No. 2:09-146  
Kaid C. Musgrave, et al. v. Breg, Inc., et al., C.A. No. 2:09-1029  
Wesley Stichweh v. Stryker Corp., et al., C.A. No. 3:08-370

Western District of Oklahoma

Joe C. Smock v. I-Flow Corp., C.A. No. 5:08-1077

District of Oregon

Christina McClellan v. I-Flow Corp., et al., C.A. No. 6:07-1309  
Gregory Turner, et al. v. Stryker Corp., et al., C.A. No. 6:07-1310  
Gordon J. Addis v. McKinley Medical, LLC, et al., C.A. No. 6:07-1318  
Caleb Huggins, et al. v. Stryker Corp., et al., C.A. No. 6:07-1671  
Danny E. Arvidson, et al. v. DJO, LLC, et al., C.A. No. 6:08-478  
John Eric Butler v. Stryker Corp., et al., C.A. No. 6:08-588  
Joann Stoeher v. I-Flow Corp., C.A. No. 6:08-1012  
Donna Snodgrass, et al. v. I-Flow Corp., et al., C.A. No. 6:08-1387  
Eric J. Schoenborn, et al. v. Stryker Corp., et al., C.A. No. 6:08-1419  
Elizabeth D. Cronin v. I-Flow Corp., C.A. No. 6:09-146  
Ivy Lee Y. Natividad, et al. v. Stryker Corp., et al., C.A. No. 6:09-378

Eastern District of Pennsylvania

Derek Giangulio v. I-Flow Corp., C.A. No. 2:08-2878  
Glen Gore, et al. v. Stryker Corp., et al., C.A. No. 2:09-2987

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MDL No. 2139 (Continued)

Eastern District of Pennsylvania (Continued)

Richard Davis v. Stryker Corp., et al., C.A. No. 2:09-2990  
Allison Foret v. Stryker Corp., et al., C.A. No. 2:09-2991  
Nathan Geesey v. Stryker Corp., et al., C.A. No. 5:09-2988

Western District of Pennsylvania

Donna J. Lawton, et al. v. Advanced Infusion, Inc., et al., C.A. No. 2:09-1197

District of South Dakota

Marcus J. Suhm v. Breg, Inc., et al., C.A. No. 4:08-4190  
Kelly J. Koch v. Breg, Inc., et al., C.A. No. 4:08-4193

Eastern District of Tennessee

Terry A. Hill v. Stryker Corp., et al., C.A. No. 3:08-295  
Randi C. Brostean v. Stryker Corp., et al., C.A. No. 3:08-406

Middle District of Tennessee

Andrew Scott Rodriguez v. Stryker Corp., et al., C.A. No. 2:08-124

Western District of Tennessee

Kimberly Dawn Evans, et al. v. DJO, LLC, et al., C.A. No. 2:09-2515

District of Utah

Erika Creech, et al. v. Stryker Corp., et al., C.A. No. 1:07-22  
Amanda Bennett v. Stryker Corp., et al., C.A. No. 2:08-937  
Ryan Goodrich, et al. v. I-Flow Corp., et al., C.A. No. 2:09-269

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**MDL No. 2140 -- IN RE: INTELIIUS, INC., POST-TRANSACTION MARKETING AND  
SALES PRACTICES LITIGATION**

Motion of defendants Inteliius, Inc., and Inteliius Sales Co., LLC, for centralization of the following actions in the United States District Court for the Western District of Washington:

Central District of California

Denise Baxter v. Inteliius, Inc., et al., C.A. No. 8:09-1031

Western District of Washington

Bruce Keithly, et al. v. Inteliius, Inc., et al., C.A. No. 2:09-1485

**MDL No. 2141 -- IN RE: VERIZON WIRELESS DATA CHARGES LITIGATION**

Motion of plaintiffs Derick Brian Moore, et al., for centralization of the following actions in the United States District Court for the District of New Jersey:

Northern District of Georgia

Jessica Slater v. Cellco Partnership, C.A. No. 1:09-3392

District of New Jersey

Derick Brian Moore, et al. v. Cellco Partnership, C.A. No. 3:09-4592  
Donna Heaton v. Cello Partnership, C.A. No. 3:09-6270

**MDL No. 2142 -- IN RE: BLAIR CORP. CHENILLE ROBE PRODUCTS LIABILITY  
LITIGATION**

Motion of defendants Blair, LLC, and Orchard Brands Corp. for centralization of the following actions in the United States District Court for the Middle District of Alabama:

Middle District of Alabama

Harold A. Ledbetter, etc. v. Blair Corp., et al., C.A. No. 3:09-843



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MDL No. 2142 (Continued)

Southern District of California

Michelle Putini, et al. v. Blair Corp., et al., C.A. No. 3:09-2729

District of Connecticut

Sharon Davis, etc. v. Blair Corp., et al., C.A. No. 3:09-1702

Southern District of Illinois

Agnes Wise v. Blair, LLC, et al., C.A. No. 3:09-871

MDL No. 2143 -- **IN RE: OPTICAL DISK DRIVE PRODUCTS ANTITRUST  
LITIGATION**

Motion of plaintiffs CMP Consulting Services, Inc., and KI, Inc., for centralization of the following actions in the United States District Court for the Northern District of California:

Central District of California

Diana Saed v. Sony Optiarc America, Inc., et al., C.A. No. 2:09-8289

Northern District of California

CMP Consulting Services, Inc., et al. v. Sony Corp., et al., C.A. No. 3:09-5114

Univisions-Crimson Holding, Inc. v. Sony Corp., et al., C.A. No. 3:09-5186

KI, Inc. v. Sony Corp., et al., C.A. No. 3:09-5197

Amber Nikkel v. Sony Corp., et al., C.A. No. 5:09-5135

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**MDL No. 2144 -- IN RE: AIR CRASH OVER THE MID-ATLANTIC ON JUNE 1, 2009**

Motion of defendants Airbus S.A.S.; Honeywell International, Inc.; Rockwell Collins, Inc.; Thales Avionics, S.A.; Thales U.S.A., Inc.; Motorola, Inc.; Intel Corp.; Hamilton Sundstrand Corp.; General Electric Co.; GE Aviation Systems, LLC; Rosemount Aerospace Inc.; E.I. du Pont de Nemours & Co.; and Raychem Corp. for centralization of the following actions in the United States District Court for the Southern District of Texas:

Northern District of California

Margita Gergelova, et al. v. Airbus S.A.S., et al., C.A. No. 3:09-5020

Northern District of Illinois

Rosilene Hemme, et al. v. Airbus S.A.S, et al., C.A. No. 1:09-7239

Southern District of Texas

Hampton Harris, et al. v. Societe Air France, et al., C.A. No. 4:09-3155

**MDL No. 2145 -- IN RE: MEDICAL CAPITAL BROKER-DEALER SECURITIES  
LITIGATION**

Motion of plaintiffs Jana McCoy, et al., for centralization of the following actions in the United States District Court for the Central District of California:

Central District of California

Don Ribacchi, et al. v. Capital Financial Services, Inc., et al., C.A. No. 2:09-8482  
Jana McCoy, et al. v. Cullum & Burks Securities, Inc., et al., C.A. No. 8:09-1084  
Alvin Sabroff, et al. v. Securities America, Inc., et al., C.A. No. 8:09-1295  
James K. Merrill, et al. v. National Securities Corp., et al., C.A. No. 8:09-1340

District of Nebraska

Ilene Grossbard, et al. v. Securities America Financial Corp., et al., C.A. No. 8:09-350

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**MDL No. 2147 -- IN RE: AT&T MOBILITY WIRELESS DATA SERVICES SALES TAX  
LITIGATION**

Motion of defendant AT&T Mobility, LLC, for centralization of the following actions in  
a single United States district court:

Northern District of Alabama

Stephanie Diethelm v. AT&T Mobility, LLC, C.A. No. 2:09-2546

Eastern District of Arkansas

Dorothy Taylor v. American Telephone & Telegraph Co., et al., C.A. No. 4:09-938

District of Colorado

William A. Wieland v. AT&T Mobility, LLC, C.A. No. 1:09-2991

District of Delaware

Kathy J. Cooper v. AT&T Mobility, LLC, C.A. No. 1:09-992

Southern District of Florida

Adrienne D. Munson v. AT&T Mobility, LLC, C.A. No. 9:09-82439

Northern District of Georgia

Robert Wilhite v. AT&T Mobility Corp., C.A. No. 1:10-5

Southern District of Iowa

Penny Annette Wood v. AT&T Mobility, LLC, C.A. No. 4:09-577

Southern District of Illinois

Christopher R. Havron v. AT&T, Inc., et al., C.A. No. 3:09-1040

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MDL No. 2147 (Continued)

Northern District of Indiana

Martin Hoke v. AT&T Mobility, LLC, C.A. No. 2:10-6

District of Kansas

Christopher Hendrix v. AT&T Mobility, LLC, C.A. No. 2:09-2658

Eastern District of Kentucky

Heather Rahn v. AT&T Mobility, LLC, C.A. No. 2:09-218

Western District of Louisiana

Heather Mazcitis v. AT&T Mobility, LLC, C.A. No. 6:09-2179

District of Massachusetts

Lesley Rock v. AT&T Mobility, LLC, C.A. No. 1:10-10069

Eastern District of Michigan

Karen Wiand v. AT&T Mobility, LLC, C.A. No. 2:10-10045  
Kathy Johnson v. AT&T Mobility, LLC, C.A. No. 2:10-10064

Southern District of Mississippi

Michael Bosarge, et al. v. AT&T Mobility, LLC, C.A. No. 3:10-5

Western District of Missouri

Sarah Pauley v. AT&T, Inc., et al., C.A. No. 2:09-4248

District of Nebraska

Matthew Cranford v. AT&T, Inc., et al., C.A. No. 4:09-3243

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MDL No. 2147 (Continued)

District of New Jersey

Ronald Bendian v. AT&T, Inc., et al., C.A. No. 2:09-6100

Southern District of New York

Jonathan Macy v. AT&T, Inc., et al., C.A. No. 1:10-79

Eastern District of North Carolina

Adrienne M. Fox v. AT&T Mobility, LLC, C.A. No. 5:10-26

Southern District of Ohio

John W. Wallace, et al. v. AT&T Mobility, LLC, C.A. No. 1:09-928

Western District of Oklahoma

Jane F. Edmonds, et al. v. AT&T Mobility, LLC, C.A. No. 5:09-1379

Western District of Pennsylvania

Meri Iannetti v. AT&T Mobility, LLC, C.A. No. 2:09-1684

District of Rhode Island

James Shirley v. AT&T Mobility, LLC, C.A. No. 1:09-636

District of South Carolina

Eric Bosse v. AT&T, Inc., et al., C.A. No. 2:09-3145

Eastern District of Tennessee

Randall Shuptrine v. AT&T Mobility, LLC, C.A. No. 1:09-326

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MDL No. 2147 (Continued)

Southern District of Texas

Stephen T. Johnson v. AT&T Mobility, LLC, C.A. No. 4:09-4104

Western District of Texas

Harvey Corn, et al. v. AT&T Mobility, LLC, C.A. No. 1:10-24

MDL No. 2148 -- **IN RE: PPG INDUSTRIES, INC., WAGE AND HOUR EMPLOYMENT  
PRACTICES LITIGATION**

Motion of defendants PPG Industries, Inc., and PPG Architectural Finishes, Inc., for centralization of the following actions in the United States District Court for the District of Kansas:

District of Kansas

Stephen J. Duarte v. PPG Industries, Inc., C.A. No. 6:09-1366

Western District of Pennsylvania

Sue Ann Seymour, et al. v. PPG Industries, Inc., C.A. No. 2:09-1707

Eastern District of Tennessee

Karen Stage v. PPG Industries, Inc., et al., C.A. No. 1:10-5

Western District of Washington

Andrew Fiore v. PPG Industries, Inc., C.A. No. 2:10-96

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**MDL No. 2149 -- IN RE: PLASTIC INJECTION MOLDING MANUFACTURING  
PROCESS ('184) PATENT LITIGATION**

Motion of plaintiff Jens Erik Sorensen, etc., for centralization of the following actions in the United States District Court for the Southern District of California or, in the alternative, the United States District Court for the Northern District of California:

Northern District of California

Jens Erik Sorensen, etc. v. Lexar Media, Inc., C.A. No. 5:08-95

Southern District of California

Jens Erik Sorensen, etc. v. Giant International (USA) Ltd., C.A. No. 3:07-2121  
Jens Erik Sorensen, etc. v. Esseplast (USA) NC, Inc., C.A. No. 3:07-2277  
Jens Erik Sorensen, etc. v. Helen of Troy Texas Corp., et al., C.A. No. 3:07-2278  
Jens Erik Sorensen, etc. v. Emerson Electric Co., et al., C.A. No. 3:08-60  
Jens Erik Sorensen, etc. v. Ryobi Technologies, Inc., et al., C.A. No. 3:08-70  
Jens Erik Sorensen, etc. v. Senco Products, Inc., C.A. No. 3:08-71  
Jens Erik Sorensen, etc. v. Informatics, Inc., et al., C.A. No. 3:08-134  
Jens Erik Sorensen, etc. v. Motorola, Inc., C.A. No. 3:08-136  
Jens Erik Sorensen, etc. v. Alltrade Tools, LLC, C.A. No. 3:08-232  
Jens Erik Sorensen, etc. v. Global Machinery Co., et al., C.A. No. 3:08-233  
Jens Erik Sorensen, etc. v. Emissive Energy Corp., C.A. No. 3:08-234  
Jens Erik Sorensen, etc. v. Metabo Corp., et al., C.A. No. 3:08-304  
Jens Erik Sorensen, etc. v. Rally Manufacturing, Inc., C.A. No. 3:08-305  
Jens Erik Sorensen, etc. v. Sunbeam Products, Inc., C.A. No. 3:08-306  
Jens Erik Sorensen, etc. v. Central Purchasing, LLC, C.A. No. 3:08-309  
Jens Erik Sorensen, etc. v. Kyocera International, Inc., et al., C.A. No. 3:08-411  
Jens Erik Sorensen, etc. v. DMS Holdings, Inc., C.A. No. 3:08-559  
Jens Erik Sorensen, etc. v. Human Touch LLC, et al., C.A. No. 3:08-1080  
Jens Erik Sorensen, etc. v. Conair Corp., et al., C.A. No. 3:08-1256  
ACCO Brands USA LLC v. Jens Erik Sorensen, C.A. No. 3:08-1670  
Jens Erik Sorensen, etc. v. Target Corp., C.A. No. 3:09-56  
Jens Erik Sorensen, etc. v. Big Lots Stores, Inc., C.A. No. 3:09-57  
Jens Erik Sorensen, etc. v. Spectrum Brands, Inc., C.A. No. 3:09-58  
Jens Erik Sorensen, etc. v. Lowe's Companies, Inc., et al., C.A. No. 3:09-59  
Jens Erik Sorensen, etc. v. Axonn, LLC, et al., C.A. No. 3:09-60  
Jens Erik Sorensen, etc. v. Freshlink Product Development, LLC, et al.,  
C.A. No. 3:09-267

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MDL No. 2149 (Continued)

Southern District of California (Continued)

Jens Erik Sorensen, etc. v. Grizzly Industrial, Inc., et al., C.A. No. 3:09-531  
Jens Erik Sorensen, etc. v. Fein Power Tools, Inc., et al., C.A. No. 3:09-558  
Jens Erik Sorensen, etc. v. Dorman Products, Inc., C.A. No. 3:09-1579  
Big Lots Stores, Inc. v. Sorensen Research & Development Trust, C.A. No. 3:09-2702

Eastern District of Pennsylvania

Dorman Products, Inc. v. Sorensen Research & Development Trust,  
C.A. No. 2:09-2946

MDL No. 2150 -- **IN RE: TD BANK, N.A., GIFT CARD FEES LITIGATION**

Motion of defendants TD Bank, N.A., and Commerce Bank, N.A., for centralization of the following actions in the United States District Court for the District of New Jersey or, in the alternative, the United States District Court for the Eastern District of Pennsylvania:

District of New Jersey

Bradley Mann, et al. v. TD Bank, N.A., et al., C.A. No. 1:09-1062

Southern District of New York

Sandra Elmoznino v. TD Bank, N.A., et al., C.A. No. 1:09-9778

Eastern District of Pennsylvania

Chawezi Mwantembe, et al. v. TD Bank, N.A., et al., C.A. No. 2:09-135



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**MDL No. 2151 -- IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL  
PRODUCTS LIABILITY LITIGATION**

Motion of plaintiff Heather A. Lane for centralization of certain of the following actions in the United States District Court for the Central District of California and motion of plaintiffs Daniel Weimer, Jr., et al., for centralization of certain of the following actions in the United States District Court for the Eastern District of Louisiana:

Central District of California

Seong Bae Choi, et al. v. Toyota Motor Corp., et al., C.A. No. 2:09-8143  
Eric Kmetz, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-8478  
Heather A. Lane v. Toyota Motor Sales U.S.A., Inc., C.A. No. 2:09-9158  
Dale Baldiseeri v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-9386  
Joseph Hauter, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 8:10-105

Middle District of Florida

Michelle Lynch v. Toyota Motor Corp., et al., C.A. No. 8:10-326

Southern District of Florida

Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc., C.A. No. 1:10-20006

Eastern District of Louisiana

Daniel Weimer, Jr., et al. v. Toyota Motor North America, Inc., et al.,  
C.A. No. 2:10-219  
Amanda R. Maillho v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-279  
Gary T. Brock v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-281

Southern District of West Virginia

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

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**SECTION B**  
**MATTERS DESIGNATED FOR CONSIDERATION WITHOUT ORAL ARGUMENT**

**MDL No. 381 -- IN RE: "AGENT ORANGE" PRODUCTS LIABILITY LITIGATION**

Motion of defendant Monsanto Co. to transfer the actions listed on Attachment A to the United States District Court for the Eastern District of New York.

**MDL No. 875 -- IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

Opposition of plaintiff Elizabeth J. Coons, etc., to transfer of the following action to the United States District Court for the Eastern District of Pennsylvania:

Southern District of New York

Elizabeth J. Coons, etc. v. A.O. Water Smith Products, et al., C.A. No. 1:09-7496

**MDL No. 1596 -- IN RE: ZYPREXA PRODUCTS LIABILITY LITIGATION**

Motion of defendant Eli Lilly & Co. to transfer the following action to the United States District Court for the Eastern District of New York:

Southern District of Mississippi

Matthew Pitalo, etc. v. Biloxi Regional Medical Center, et al., C.A. No. 1:09-712

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**MDL No. 1657 -- IN RE: VIOXX MARKETING, SALES PRACTICES AND  
PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiff Commonwealth of Kentucky ex rel. Jack Conway to transfer of  
the following action to the United States District Court for the Eastern District of Louisiana:

Eastern District of Kentucky

Commonwealth of Kentucky ex rel. Jack Conway v. Merck & Co., Inc.,  
C.A. No. 3:09-54

**MDL No. 1699 -- IN RE: BEXTRA AND CELEBREX MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Yaarb Alkhafaji, et al., to transfer of the following action to the  
United States District Court for the Northern District of California:

District of Minnesota

Yaarb Alkhafaji, et al. v. Pfizer Inc., et al., C.A. No. 0:09-3077

**MDL No. 1708 -- IN RE: GUIDANT CORP. IMPLANTABLE DEFIBRILLATORS  
PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Mark R. Barlow, et al., to transfer of the following action to the  
United States District Court for the District of Minnesota:

Southern District of West Virginia

Mark R. Barlow, et al. v. Guidant Corp., et al., C.A. No. 2:09-1161

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**MDL No. 1769 -- IN RE: SEROQUEL PRODUCTS LIABILITY LITIGATION**

Motion of defendants AstraZeneca LP and AstraZeneca Pharmaceuticals LP for reconsideration of the Panel's order vacating conditional transfer order of the following actions:

Northern District of California

Lisa Bain, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4147  
Donald Bates, Jr., et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4150  
Carolyn Harrison, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4151  
Cynthia Arnold, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4157  
Todd Boggis, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4159  
Paul Trim, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4160  
Mark Coffey, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4161  
Gloria Miller, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4163  
Sharon Diston, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4165  
Lisa Saunders, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4148  
Kimberly Kessler, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4149  
Angel Colon, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4158  
Antonio Burton, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4162  
David Marte, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4164  
Bong Nguyen, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4166

**MDL No. 1928 -- IN RE: TRASYLOL PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Louis Argento, et al., to transfer of the following action to the United States District Court for the Southern District of Florida:

Eastern District of Missouri

Louis Argento, et al. v. Bayer Corp., et al., C.A. No. 4:09-2020

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**MDL No. 1953 -- IN RE: HEPARIN PRODUCTS LIABILITY LITIGATION**

Opposition of defendants Lucille Salter Packard Children's Hospital and Stanford Hospital & Clinics to transfer of the following action to the United States District Court for the Northern District of Ohio:

Northern District of California

Art Gonzales, et al. v. Lucille Packard Children's Hospital, et al., C.A. No. 5:09-5539

**MDL No. 1983 -- IN RE: INDIANAPOLIS LIFE INSURANCE COMPANY I.R.S. §  
412(I) AND § 419 PLANS LIFE INSURANCE MARKETING  
LITIGATION**

Opposition of plaintiffs Khalid Sawaged, et al., to transfer of the following action to the United States District Court for the Northern District of Texas:

District of New Jersey

Khalid Sawaged, et al. v. Indianapolis Life Insurance Co., et al., C.A. No. 2:09-5422

Motion of plaintiffs Indianapolis Life Insurance Co. and Aviva Life & Annuity Co. to transfer the following actions to the United States District Court for the Northern District of Texas:

Western District of Oklahoma

Aviva Life & Annuity Co. v. Republic Bank & Trust, et al., C.A. No. 5:09-1113  
Aviva Life & Annuity Co. v. Republic Bank & Trust, et al., C.A. No. 5:09-1235

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**MDL No. 1988 -- IN RE: COUNTRYWIDE FINANCIAL CORP. MORTGAGE  
MARKETING AND SALES PRACTICES LITIGATION**

Opposition of plaintiff Jerome Hart and defendant Countrywide Home Loans, Inc., to transfer of the following action to the United States District Court for the Southern District of California:

District of Massachusetts

Jerome Hart v. Bank of America Home Loans, Inc., C.A. No. 1:09-11096

**MDL No. 2009 -- IN RE: REGIONS MORGAN KEEGAN SECURITIES, DERIVATIVE  
AND EMPLOYEE RETIREMENT INCOME SECURITY ACT  
(ERISA) LITIGATION**

Oppositions of plaintiffs J. Richard Freeman, et al.; Edward W. Karrels; and Purdue Avenue Investors LP, et al., to transfer of their respective following actions to the United States District Court for the Western District of Tennessee:

Middle District of Tennessee

J. Richard Freeman, et al. v. Regions Bank, et al., C.A. No. 3:09-1069  
Edward W. Karrels v. Morgan Asset Management, Inc., et al., C.A. No. 3:09-1070

Northern District of Texas

Purdue Avenue Investors LP, et al. v. Morgan Keegan & Co., Inc., et al.,  
C.A. No. 3:09-2255

**MDL No. 2014 -- IN RE: BANK OF AMERICA CORP. AUCTION RATE SECURITIES  
(ARS) MARKETING LITIGATION**

Opposition of plaintiffs American Housing Foundation, et al., to transfer of the following action to the United States District Court for the Northern District of California:

Northern District of Texas

American Housing Foundation, et al. v. Banc of America Securities, LLC, et al.,  
C.A. No. 3:09-2251

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**MDL No. 2027 -- IN RE: SATYAM COMPUTER SERVICES, LTD., SECURITIES  
LITIGATION**

Opposition of plaintiff Aberdeen Claims Administration, Inc., etc., to transfer of the following action to the United States District Court for the Southern District of New York:

Eastern District of Pennsylvania

Aberdeen Claims Administration, Inc., etc. v. Saytam Computer Services, Ltd., et al.,  
C.A. No. 2:09-5453

**MDL No. 2047 -- IN RE: CHINESE-MANUFACTURED DRYWALL PRODUCTS  
LIABILITY LITIGATION**

Motion of defendant The Mitchell Co., Inc., to transfer the following action to the United States District Court for the Eastern District of Louisiana:

Middle District of Georgia

Owners Insurance Co., et al. v. The Mitchell Co., Inc., et al., C.A. No. 5:09-374

**MDL No. 2057 -- IN RE: KAPLAN HIGHER EDUCATION CORP. QUI TAM  
LITIGATION**

Motion of relator Charles Jajdelski to transfer the following action to the United States District Court for the Southern District of Florida:

District of Nevada

United States of America ex rel. Charles Jajdelski v. Kaplan, Inc., et al.,  
C.A. No. 2:05-1054

Schedule of Matters for Hearing Session, Section B  
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**MDL No. 2084 -- IN RE: ANDROGEL ANTITRUST LITIGATION (NO. II)**

Opposition of plaintiff Jabo's Pharmacy, Inc., to transfer of the following action to the United States District Court for the Northern District of Georgia:

Eastern District of Tennessee

Jabo's Pharmacy, Inc. v. Solvay Pharmaceuticals, Inc., et al., C.A. No. 2:09-277

**MDL No. 2088 -- IN RE: FAIRFIELD GREENWICH GROUP SECURITIES LITIGATION**

Opposition of plaintiffs Jose Antonio Pujals, et al., to transfer of the following action to the United States District Court for the Southern District of New York:

Southern District of Florida

Jose Antonio Pujals, et al. v. Standard Chartered Bank International (Americas) Ltd., et al., C.A. No. 1:09-21611

**MDL No. 2099 -- IN RE: STANFORD ENTITIES SECURITIES LITIGATION**

Opposition of plaintiffs Barry Rupert, et al., to transfer of the following action to the United States District Court for the Northern District of Texas:

Western District of Texas

Barry Rupert, et al. v. Robert S. Winter, et al., C.A. No. 5:09-854

Motion of defendants Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co. to transfer the following action to the United States District Court for the Northern District of Texas:

Southern District of Texas

Laura Pendergest-Holt, et al. v. Certain Underwriters at Lloyd's of London, et al., C.A. No. 4:09-3712



Schedule of Matters for Hearing Session, Section B  
San Diego, California

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**MDL No. 2100 -- IN RE: YASMIN AND YAZ (DROSPIRENONE) MARKETING,  
SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs to transfer of their respective following actions to the United States District Court for the Southern District of Illinois:

Central District of California

Rindy Andrews v. Bayer Corp., et al., C.A. No. 2:09-9154  
Arlette Atencio v. Bayer Corp., et al., C.A. No. 2:09-9411  
Felicia Blakely v. Bayer Corp., et al., C.A. No. 2:09-9420  
Jennifer A. Wilkins, et al. v. Bayer Corp., et al., C.A. No. 5:09-2322  
Nancy Grove v. Bayer Corp., et al., C.A. No. 8:09-1509  
Kelly Stewart v. Bayer Corp., et al., C.A. No. 2:10-177  
Kim Rawson v. Bayer Corp., et al., C.A. No. 5:10-46

Northern District of California

Stevie Fanning v. Bayer Corp., et al., C.A. No. 3:09-5374  
Karen Knauer, et al. v. Bayer Corp., et al., C.A. No. 3:09-5387  
Heather Schroeder, et al. v. Bayer Corp., et al., C.A. No. 3:09-5845  
Lekecia C. Milam v. Bayer Corp., et al., C.A. No. 3:09-5902  
Jennifer Metzger, et al. v. Bayer Corp., et al., C.A. No. 3:09-5965  
Nadine Camara, et al. v. Bayer Corp., et al., C.A. No. 3:09-6084

**MDL No. 2121 -- IN RE: MUSICAL INSTRUMENTS AND EQUIPMENT ANTITRUST  
LITIGATION**

Opposition of plaintiff Donnie Collins to transfer of the following action to the United States District Court for the Southern District of California:

Eastern District of Tennessee

Donnie Collins v. Guitar Center, Inc., et al., C.A. No. 3:09-531

**ATTACHMENT A TO THE MARCH 25, 2010  
SCHEDULE OF MATTERS FOR HEARING SESSION, SECTION B**

**MDL No. 381 -- IN RE: "AGENT ORANGE" PRODUCTS LIABILITY LITIGATION**

Southern District of New York

Mary B. Spaulding, et al. v. Monsanto Co., et al., C.A. No. 1:09-9470

Southern District of West Virginia

Nancy Agee v. Monsanto Co., et al., C.A. No. 3:09-1336  
Robert Alley, etc. v. Monsanto Co., et al., C.A. No. 3:09-1337  
Dorothy Bailes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1338  
Patricia Crislip, etc. v. Monsanto Co., et al., C.A. No. 3:09-1339  
Roy Bailes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1340  
Jennifer S. Drout, etc. v. Monsanto Co., et al., C.A. No. 3:09-1341  
Norman L. Cook, etc. v. Monsanto Co., et al., C.A. No. 3:09-1342  
Sherry L. Bryant, etc. v. Monsanto Co., et al., C.A. No. 3:09-1343  
Gary Goble, etc. v. Monsanto Co., et al., C.A. No. 3:09-1344  
Ruth Cunningham, etc. v. Monsanto Co., et al., C.A. No. 3:09-1345  
Mary Cox v. Monsanto Co., et al., C.A. No. 3:09-1346  
Sandra Dorsey v. Monsanto Co., et al., C.A. No. 3:09-1347  
Priscilla Brown v. Monsanto Co., et al., C.A. No. 3:09-1348  
Larry Curry v. Monsanto Co., et al., C.A. No. 3:09-1349  
Tamera Duffield v. Monsanto Co., et al., C.A. No. 3:09-1350  
Tasha Carney v. Monsanto Co., et al., C.A. No. 3:09-1351  
Richard Cox v. Monsanto Co., et al., C.A. No. 3:09-1353  
Lois Bailey v. Monsanto Co., et al., C.A. No. 3:09-1354  
Charles Dixon v. Monsanto Co., et al., C.A. No. 3:09-1355  
William Clark v. Monsanto Co., et al., C.A. No. 3:09-1356  
William Gibson v. Monsanto Co., et al., C.A. No. 3:09-1358  
Shirley Bird v. Monsanto Co., et al., C.A. No. 3:09-1359  
Ellen Creasy v. Monsanto Co., et al., C.A. No. 3:09-1360  
James Cook v. Monsanto Co., et al., C.A. No. 3:09-1361  
Margaret Frazier v. Monsanto Co., et al., C.A. No. 3:09-1362  
Darlene Dixon v. Monsanto Co., et al., C.A. No. 3:09-1363  
Debra Gilmore v. Monsanto Co., et al., C.A. No. 3:09-1364  
Patricia Crislip v. Monsanto Co., et al., C.A. No. 3:09-1365  
George Goff v. Monsanto Co., et al., C.A. No. 3:09-1366  
Shelby Bailey v. Monsanto Co., et al., C.A. No. 3:09-1367  
Amy Bennett v. Monsanto Co., et al., C.A. No. 3:09-1368  
Patricia Blizzard v. Monsanto Co., et al., C.A. No. 3:09-1369

Schedule of Matters for Hearing Session, Section B  
San Diego, California

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**MDL No. 381 Attachment A (Continued)**

Southern District of West Virginia (Continued)

James Brothers v. Monsanto Co., et al., C.A. No. 3:09-1370  
Shirley Brown v. Monsanto Co., et al., C.A. No. 3:09-1371  
James H. Gibson v. Monsanto Co., et al., C.A. No. 3:09-1372  
George Brown v. Monsanto Co., et al., C.A. No. 3:09-1373  
Wanda Allen v. Monsanto Co., et al., C.A. No. 3:09-1374  
Herman Arthur v. Monsanto Co., et al., C.A. No. 3:09-1377  
Dorothy Bailes v. Monsanto Co., et al., C.A. No. 3:09-1378  
Thomas Milam, etc. v. Monsanto Co., et al., C.A. No. 3:09-1381  
Gary E. Hedrick, etc. v. Monsanto Co., et al., C.A. No. 3:09-1382  
Loretta Milhoan, etc. v. Monsanto Co., et al., C.A. No. 3:09-1383  
Johnnie D. Muck, etc. v. Monsanto Co., et al., C.A. No. 3:09-1384  
Avril Mallory, etc. v. Monsanto Co., et al., C.A. No. 3:09-1385  
John D. Muck, etc. v. Monsanto Co., et al., C.A. No. 3:09-1386  
James Keeling, etc. v. Monsanto Co., et al., C.A. No. 3:09-1387  
Carlos Luikart, etc. v. Monsanto Co., et al., C.A. No. 3:09-1388  
Elma L. Hornish, etc. v. Monsanto Co., et al., C.A. No. 3:09-1389  
Walter Krankemann, etc. v. Monsanto Co., et al., C.A. No. 3:09-1390  
Gary W. Hughes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1391  
Evelyn Kessinger v. Monsanto Co., et al., C.A. No. 3:09-1392  
Terry Lanham v. Monsanto Co., et al., C.A. No. 3:09-1393  
Marian Hensley v. Monsanto Co., et al., C.A. No. 3:09-1394  
Alice Hager v. Monsanto Co., et al., C.A. No. 3:09-1395  
Noah Kidd v. Monsanto Co., et al., C.A. No. 3:09-1396  
Richard Jett v. Monsanto Co., et al., C.A. No. 3:09-1397  
Blanche Mace v. Monsanto Co., et al., C.A. No. 3:09-1398  
Lester Hensley v. Monsanto Co., et al., C.A. No. 3:09-1399  
Catherine Larck v. Monsanto Co., et al., C.A. No. 3:09-1400  
Todd Hudson v. Monsanto Co., et al., C.A. No. 3:09-1401  
Ritchie McGrew v. Monsanto Co., et al., C.A. No. 3:09-1402  
Arnold Huffman v. Monsanto Co., et al., C.A. No. 3:09-1403  
Ramona Hickman v. Monsanto Co., et al., C.A. No. 3:09-1404

Schedule of Matters for Hearing Session, Section B  
San Diego, California

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**MDL No. 381 Attachment A (Continued)**

Southern District of West Virginia (Continued)

Purvis King v. Monsanto Co., et al., C.A. No. 3:09-1405  
Veril Jividen v. Monsanto Co., et al., C.A. No. 3:09-1407  
Ruth Mann v. Monsanto Co., et al., C.A. No. 3:09-1408  
Edna LeMaster v. Monsanto Co., et al., C.A. No. 3:09-1409  
Gloria Hughes v. Monsanto Co., et al., C.A. No. 3:09-1410  
Alice Kyle v. Monsanto Co., et al., C.A. No. 3:09-1411  
Charles Higgins v. Monsanto Co., et al., C.A. No. 3:09-1412  
James C. Hager v. Monsanto Co., et al., C.A. No. 3:09-1413  
Kelley Miller v. Monsanto Co., et al., C.A. No. 3:09-1414  
Gary Lane v. Monsanto Co., et al., C.A. No. 3:09-1415  
Baaron Lewis v. Monsanto Co., et al., C.A. No. 3:09-1417  
Melissa Hinton v. Monsanto Co., et al., C.A. No. 3:09-1418  
Stephanie Johnston v. Monsanto Co., et al., C.A. No. 3:09-1419  
John Miller v. Monsanto Co., et al., C.A. No. 3:09-1420  
Shirley Janey v. Monsanto Co., et al., C.A. No. 3:09-1421  
Leo Harrah v. Monsanto Co., et al., C.A. No. 3:09-1422  
Debbie Harris v. Monsanto Co., et al., C.A. No. 3:09-1423  
Harold Loudin v. Monsanto Co., et al., C.A. No. 3:09-1424  
Alma Jarrell v. Monsanto Co., et al., C.A. No. 3:09-1425  
Mary M. Jones, etc. v. Monsanto Co., et al., C.A. No. 3:09-1426  
Ralph H. Lucas v. Monsanto Co., et al., C.A. No. 3:09-1427  
James Marrs v. Monsanto Co., et al., C.A. No. 3:09-1428  
Janet Harrison v. Monsanto Co., et al., C.A. No. 3:09-1429  
Dana Harris v. Monsanto Co., et al., C.A. No. 3:09-1430  
Mary Jones v. Monsanto Co., et al., C.A. No. 3:09-1431  
John Mays v. Monsanto Co., et al., C.A. No. 3:09-1432  
Lynn Hartsog v. Monsanto Co., et al., C.A. No. 3:09-1433  
Angelique Miller v. Monsanto Co., et al., C.A. No. 3:09-1434  
William Hoffman v. Monsanto Co., et al., C.A. No. 3:09-1436  
Eugene Karcheski v. Monsanto Co., et al., C.A. No. 3:09-1437  
Lois McCarthy v. Monsanto Co., et al., C.A. No. 3:09-1438  
Lowell Holston v. Monsanto Co., et al., C.A. No. 3:09-1439

Schedule of Matters for Hearing Session, Section B  
San Diego, California

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**MDL No. 381 Attachment A (Continued)**

Southern District of West Virginia (Continued)

Gwendolyn Morris v. Monsanto Co., et al., C.A. No. 3:09-1440  
Victor Keathley v. Monsanto Co., et al., C.A. No. 3:09-1441  
Robert McClanahan v. Monsanto Co., et al., C.A. No. 3:09-1442  
Roberta Morton v. Monsanto Co., et al., C.A. No. 3:09-1443  
Lisa Morton v. Monsanto Co., et al., C.A. No. 3:09-1444  
JoAnn Tincher v. Monsanto Co., et al., C.A. No. 3:09-1446  
Sheryl Pauley, etc. v. Monsanto Co., et al., C.A. No. 3:09-1447  
Phyllis Perry, etc. v. Monsanto Co., et al., C.A. No. 3:09-1448  
Leslie Oakes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1449  
Jimmie Smith, etc. v. Monsanto Co., et al., C.A. No. 3:09-1450  
Carolyn Thumm, etc. v. Monsanto Co., et al., C.A. No. 3:09-1451  
Larry Spence, etc. v. Monsanto Co., et al., C.A. No. 3:09-1452  
Vada Searls, etc. v. Monsanto Co., et al., C.A. No. 3:09-1453  
Ramona Tidd, etc. v. Monsanto Co., et al., C.A. No. 3:09-1454  
Nancy Shelton, etc. v. Monsanto Co., et al., C.A. No. 3:09-1455  
Bessie Roberts, etc. v. Monsanto Co., et al., C.A. No. 3:09-1456  
Lois Oliver v. Monsanto Co., et al., C.A. No. 3:09-1457  
Barbara Muck v. Monsanto Co., et al., C.A. No. 3:09-1458  
Vernon Rollins v. Monsanto Co., et al., C.A. No. 3:09-1459  
Phyllis Short v. Monsanto Co., et al., C.A. No. 3:09-1460  
Theresa Oxley v. Monsanto Co., et al., C.A. No. 3:09-1461  
Gerald Sayre v. Monsanto Co., et al., C.A. No. 3:09-1462  
Jack Oxley v. Monsanto Co., et al., C.A. No. 3:09-1463  
Steven Pauley v. Monsanto Co., et al., C.A. No. 3:09-1464  
David Painter v. Monsanto Co., et al., C.A. No. 3:09-1465  
James Thornton v. Monsanto Co., et al., C.A. No. 3:09-1466  
William Scott v. Monsanto Co., et al., C.A. No. 3:09-1467  
Donna Parker v. Monsanto Co., et al., C.A. No. 3:09-1468  
Bervin Pauley v. Monsanto Co., et al., C.A. No. 3:09-1469  
Paul Tincher v. Monsanto Co., et al., C.A. No. 3:09-1470  
Jackie Shank v. Monsanto Co., et al., C.A. No. 3:09-1471  
Stephen Stout v. Monsanto Co., et al., C.A. No. 3:09-1472

Schedule of Matters for Hearing Session, Section B  
San Diego, California

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**MDL No. 381 Attachment A (Continued)**

Southern District of West Virginia (Continued)

Frank Perry v. Monsanto Co., et al., C.A. No. 3:09-1473  
David Plumley v. Monsanto Co., et al., C.A. No. 3:09-1474  
Thomas Shepherd v. Monsanto Co., et al., C.A. No. 3:09-1475  
Arnold Persinger v. Monsanto Co., et al., C.A. No. 3:09-1476  
Mary Young, etc. v. Monsanto Co., et al., C.A. No. 3:09-1477  
Paul Stowers v. Monsanto Co., et al., C.A. No. 3:09-1478  
Gloria Puckett v. Monsanto Co., et al., C.A. No. 3:09-1479  
Marie Phillips v. Monsanto Co., et al., C.A. No. 3:09-1480  
Carolyn Tipton v. Monsanto Co., et al., C.A. No. 3:09-1481  
Gloria Strait v. Monsanto Co., et al., C.A. No. 3:09-1482  
Sharon Puffenbarger v. Monsanto Co., et al., C.A. No. 3:09-1483  
Bessie Roberts v. Monsanto Co., et al., C.A. No. 3:09-1485  
Ronald Robson v. Monsanto Co., et al., C.A. No. 3:09-1486  
Sherri Sutherland v. Monsanto Co., et al., C.A. No. 3:09-1487  
Kelly Reimert v. Monsanto Co., et al., C.A. No. 3:09-1488  
Betty Tyson v. Monsanto Co., et al., C.A. No. 3:09-1491  
Lewis Taylor v. Monsanto Co., et al., C.A. No. 3:09-1492  
William Thompson v. Monsanto Co., et al., C.A. No. 3:09-1493  
Katherine Smith v. Monsanto Co., et al., C.A. No. 3:09-1494  
Joan Smith v. Monsanto Co., et al., C.A. No. 3:09-1496  
Susan Smith v. Monsanto Co., et al., C.A. No. 3:09-1498  
Philander Smith v. Monsanto Co., et al., C.A. No. 3:09-1499  
Pamela Simms v. Monsanto Co., et al., C.A. No. 3:09-1500  
Karen Vaughan v. Monsanto Co., et al., C.A. No. 3:09-1501  
Elizabeth Watson v. Monsanto Co., et al., C.A. No. 3:09-1502  
Patricia Westfall v. Monsanto Co., et al., C.A. No. 3:09-1503  
Michael Zitzelsberger v. Monsanto Co., et al., C.A. No. 3:09-1504  
Dwight Wilborne v. Monsanto Co., et al., C.A. No. 3:09-1505  
Ronald Withrow v. Monsanto Co., et al., C.A. No. 3:09-1506  
Victoria Wood v. Monsanto Co., et al., C.A. No. 3:09-1507  
Vada Zitzelsberger v. Monsanto Co., et al., C.A. No. 3:09-1508  
James Wolfe v. Monsanto Co., et al., C.A. No. 3:09-1509  
Guy Wilkinson v. Monsanto Co., et al., C.A. No. 3:09-1510  
Rickie Winter v. Monsanto Co., et al., C.A. No. 3:09-1511

PROCEDURES FOR ORAL ARGUMENT BEFORE THE  
UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

All oral argument is governed by the provisions of Rule 16.1 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (effective April 2, 2001). Rule 16.1(g) allows a maximum of twenty minutes for oral argument in each matter. In most cases, however, less time is necessary for the expression of all views and the Panel reserves the prerogative of reducing the time requested by counsel. Accordingly, counsel should be careful not to overstate the time requested for oral argument.

The Panel insists that counsel limit all oral argument to the appropriate criteria. See generally In re "East of the Rockies" Concrete Pipe Antitrust Cases, 302 F. Supp. 244, 255-56 (J.P.M.L. 1969) (concurring opinion) (discussion concerning criteria for transfer).

Rule 16.1 is duplicated in its entirety hereafter for your convenience.

RULE 16.1: HEARING SESSIONS AND ORAL ARGUMENT

(a) Hearing sessions of the Panel for the presentation of oral argument and consideration of matters taken under submission without oral argument shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be considered at each hearing session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation to be so considered of the time, place and subject matter of such hearing session.

(b) Each party filing a motion or a response to a motion or order of the Panel under Rules 7.2, 7.3, 7.4 or 7.6 of these Rules may file simultaneously therewith a separate statement limited to one page setting forth reasons why oral argument should, or need not, be heard. Such statements shall be captioned "Reasons Why Oral Argument Should [Need Not] Be Heard," and shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(c) No transfer or remand determination regarding any action pending in the district court shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing session has been held for the presentation of oral argument except that the Panel may dispense with oral argument if it determines that:

- (i) the dispositive issue(s) have been authoritatively decided; or
- (ii) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(d) In those matters in which oral argument is not scheduled by the Panel, counsel shall be promptly advised. If oral argument is scheduled in a matter the Clerk of the Panel may require counsel for all parties who wish to make or to waive oral argument to file and serve notice to that effect within a stated time in conformity with Rules 5.12 and 5.2 of these Rules. Failure to do so shall be deemed a waiver of oral argument by that party. If oral argument is scheduled but not attended by a party, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed.

(e) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(f) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the oral argument for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(g) Unless otherwise ordered by the Panel, a maximum of twenty minutes shall be allotted for oral argument in each matter. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.



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(h) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(i) After an action or group of actions has been set for a hearing session, consideration of such action(s) may be continued only by order of the Panel on good cause shown.

THIS FORM MUST BE RETURNED  
TO THE JUDICIAL PANEL NO  
LATER THAN MARCH 8, 2010

TO: Clerk of the Panel  
U.S. Judicial Panel on Multidistrict Litigation  
One Columbus Circle, NE  
Thurgood Marshall Federal Judiciary Building  
Room G-255, North Lobby  
Washington, DC 20002-8004

NOTICE OF PRESENTATION OR WAIVER OF ORAL ARGUMENT

\_\_\_\_\_ This is to give notice that the following designated attorney shall PRESENT ORAL ARGUMENT at the Panel hearing session on behalf of the designated party/parties. Panel Rule 16.1(e) states that:

Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

Also note Rule 16.1(f) requiring counsel with like positions to confer prior to the oral argument for the purpose of selecting a spokesperson to avoid duplication during oral argument.

\_\_\_\_\_ This is to give notice that the party/parties noted hereafter will WAIVE ORAL ARGUMENT pursuant to Rule 16.1(d).

\_\_\_\_\_ This is to give notice that the party/parties noted hereafter will WAIVE ORAL ARGUMENT IF ALL OTHER PARTIES IN THIS MATTER WAIVE ORAL ARGUMENT; otherwise the following designated attorney shall present oral argument at the Panel hearing session on behalf of the designated party/parties pursuant to Rule 16.1(d).

Date	Name	Authorized Signature
------	------	----------------------

Party/Parties Represented, District(s) & Civil Action Number(s) (list even if waiving):

Name and Address of Attorney Designated to Present Oral Argument:

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

ORIGINAL ONLY OF ORAL ARGUMENT APPEARANCE NEEDED FOR FILING. **THIS NOTICE MUST BE SERVED ON ALL OTHER PARTIES IN THE AFFECTED LITIGATION AND A CERTIFICATE OF SERVICE WITH PANEL SERVICE LIST MUST BE ATTACHED TO THIS ORAL ARGUMENT APPEARANCE.**

JPML Form 9 (9/08)

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**CHAIRMAN:**

John G. Heyburn II  
United States District Court  
Western District of Kentucky

**MEMBERS:**

Robert L. Miller, Jr.  
United States District Court  
Northern District of Indiana

Kathryn H. Vratil  
United States District Court  
District of Kansas

David R. Hansen  
United States Court of Appeals  
Eighth Circuit

W. Royal Furgeson, Jr.  
United States District Court  
Northern District of Texas

Frank C. Damrell, Jr.  
United States District Court  
Eastern District of California

David G. Trager  
United States District Court  
Eastern District of New York

**DIRECT REPLY TO:**

Jeffery N. Lüthi  
Clerk of the Panel  
One Columbus Circle, NE  
Thurgood Marshall Federal  
Judiciary Building  
Room G-255, North Lobby  
Washington, D.C. 20002

Telephone: [202] 502-2800  
Fax: [202] 502-2888  
<http://www.jpml.uscourts.gov>

**ADVISORY**

Counsel appearing for oral argument before the Panel are advised to familiarize themselves with local court practices that may prohibit bringing cellphones and/or computers into the courthouse.

## **EXHIBIT D**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

ADILIA AVILES on behalf of herself and  
all others similarly situated,

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and  
TOYOTA MOTOR SALES U.S.A., Inc.,

Defendants.

Case No.: CV10-00706 AHM (FMOx)

**CLASS ACTION**

[Honorable A. Howard Matz]

**ORDER GRANTING STAY**

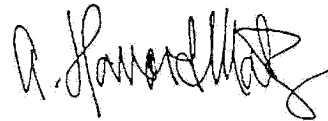
**[SUBMITTED CONCURRENTLY  
WITH STIPULATION TO STAY  
PROCEEDINGS]**

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Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.



DATED: February 22, 2010

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Judge of the United States District Court

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

ANI GAZARYAN, an individual;  
SVETLANA ABAJYAN, an individual;  
ELZA DZHIVALEGYAN, an individual;  
TAMARA HARUTYUNYAN, an  
individual; NERSES MAZMANYAN, an  
individual; KARINE MAZMANYAN, an  
individual; HRAYR OKKASIAN, an  
individual; CHRISTINE AZNAVOU, an  
individual; AKOP GALADZHIAN; an  
individual;

Plaintiffs, on Behalf of Themselves  
and All Others Similarly Situated as  
Well as on Behalf of the General  
Public and Acting in the Public  
Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a  
California corporation; TOYOTA MOTOR  
ENGINEERING & MANUFACTURING  
NORTH AMERICA, INC. a foreign  
corporation; TOYOTA MOTOR  
CORPORATION, a foreign corporation;  
and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

**CLASS ACTION**

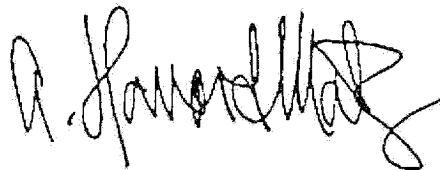
[Honorable A. Howard Matz]

**ORDER GRANTING STAY**

1           Having considered the Parties' Stipulation to Stay Proceedings pending a ruling  
2 by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of  
3 this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C.  
4 § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to  
5 stay the proceedings.  
6

7           IT IS HEREBY ORDERED that the proceedings in this case are stayed in their  
8 entirety, including but not limited to (1) all scheduling deadlines pursuant to the  
9 Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of  
10 California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or  
11 otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on  
12 Multidistrict Litigation ("JPML") concerning the transfer of this action for  
13 coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.  
14

15  
16  
17 SO ORDERED.



18  
19  
20 DATED: February 22, 2010

\_\_\_\_\_  
Judge of the United States District Court



1 LISA GILFORD (SBN 171641)  
 2 JOHN D. ARYA (SBN 156108)  
 2 **ALSTON & BIRD LLP**  
 3 333 South Hope Street, Sixteenth Floor  
 3 Los Angeles, California 90071  
 4 Telephone: (213) 576-1000  
 4 Facsimile: (213) 576-1100  
 5 Email: lisa.gilford@alston.com  
 5 john.arya@alston.com

6 VINCENT GALVIN, JR. (SBN 104448)  
 7 **BOWMAN AND BROOKE LLP**  
 7 1741 Technology Drive, Suite 200  
 8 San Jose, California 95110-1355  
 8 Telephone: (408) 279-5393  
 9 Facsimile: (408) 279-5845  
 9 Email: vincent.galvinjr@sjo.bowmanandbrooke.com

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

12 **UNITED STATES DISTRICT COURT**  
 13  
 14 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

15 ROZ SCHWARTZ, on Behalf of Herself  
 16 and All Others Similarly Situated,

17 Plaintiff,

18 v.

19 TOYOTA MOTOR SALES, U.S.A., INC.,  
 20 TOYOTA MOTOR CORP., and DOE  
 21 DEFENDANTS 1-10,

22 Defendants.

Case No.: CV10-00710 AHM (FMOx)

**PUTATIVE CLASS ACTION**

[Honorable A. Howard Matz]

**ORDER RE DEFENDANT  
 TOYOTOA MOTOR SALES, U.S.A.,  
 INC.'S EX PARTE APPLICATION  
 TO STAY ALL PROCEEDINGS  
 PENDING ACTION BY THE  
 JUDICIAL PANEL ON  
 MULTIDISTRICT LITIGATION**

[Filed concurrently with Ex Parte  
 Application and Declaration of  
 Lisa Gilford]

1 On February 23, 2010, Defendant Toyota Motor Sales, U.S.A., Inc.  
2 (“Toyota”) appeared before this Court, on an *ex parte* basis for an Application to Stay  
3 All Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation.

4 The Court, having considered the application, points and authorities,  
5 evidence, and arguments offered by counsel, and any opposition thereto filed, and  
6 good cause appearing therefore,

7

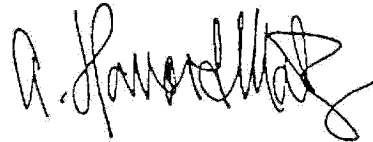
8 **HEREBY ORDERS AND ADJUDGES THAT:**

9 (1) Toyota’s *ex parte* application for an immediate stay of all  
10 proceedings in the action is **GRANTED**; and

11 (2) No further proceedings in this matter shall take place until the  
12 Court issues a further Order lifting this stay or the matter is transferred by the Judicial  
13 Panel on Multi-District Litigation.

14

**IT IS SO ORDERED.**



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16 DATED: February 25, 2010

\_\_\_\_\_  
A. Howard Matz  
Judge of the United States District Court

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**LINK: 12, 13**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 09-9158 GAF (FMOx) Date February 26, 2010  
Title Heather A. Lane v. Toyota Motor Sales, U.S.A., Inc.

---

Present: The Honorable GARY ALLEN FEES

Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

**Proceedings: (In Chambers)**

**ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE  
ALLEGATIONS FROM PLAINTIFF'S COMPLAINT**

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from Plaintiff's Complaint. (Docket Nos. 12, 13.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 29, 2010, is hereby **VACATED**.

**IT IS SO ORDERED.**

**LINK: 20, 21**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	<u>CV 09-9386 GAF (FMOx)</u>	Date	<u>February 26, 2010</u>
Title	<u>Dale Baldiseeri v. Toyota Motor Sales, U.S.A., Inc. et al</u>		

---

Present: The Honorable	<u><b>GARY ALLEN FEESS</b></u>		
Renee Fisher	None	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
None	None		

**Proceedings: (In Chambers)**

**ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE  
ALLEGATIONS FROM FIRST AMENDED COMPLAINT**

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from First Amended Complaint. (Docket Nos. 20, 21.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 8, 2010, is hereby **VACATED**.

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others  
similarly situated,

*Plaintiffs,*

v.

TOYOTA MOTOR SALES, USA, INC.,

*Defendant.*

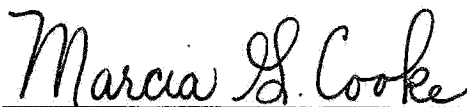
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**ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING  
RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

THIS CASE is before me on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12]. I have reviewed and considered the motion, the record, and the relevant legal authorities. It is **ORDERED and ADJUDGED** as follows:

1. Defendants' Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12] is **GRANTED**. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.
2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendant shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.
3. The Clerk shall *administratively* **CLOSE** this case.

**DONE and ORDERED** in chambers at Miami, Florida, this 25<sup>th</sup> day of February 2010.



---

MARCIA G. COOKE  
United States District Judge

Copies furnished to:  
*All Counsel of record*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Hugh W. Cox, et al.,

vs

Toyota, USA, et al.,

**NOTICE**

Case Number: 2: 10-cv-0181

Judge Watson

Magistrate Judge Abel

**[X] TAKE NOTICE of a PRELIMINARY PRETRIAL CONFERENCE:**

**Judge:** ABEL

**Participants:** Trial Counsel. Parties Welcome.

**Place:** United States District Court **Room Number 208**  
85 Marconi Boulevard  
Columbus, Ohio 43215

**Date/Time:** **March 25, 2010 at 9:00 A.M.**

**CHANGE IN PRACTICE:**

- You must hold a Conference of the Parties on or before **March 11, 2010**.
- You must file a Report of the Parties with the Court on **March 18, 2010**.

**Rule 26(f) Form, General Order on Pretrial and General Order on Settlement Week in Adobe format can be accessed through <http://www.ohsd.uscourts.gov/judges/fpabel.htm>. A WordPerfect file of the Rule 26(f) Report of Parties Form Notice can be obtained by e-mailing [Spencer\\_Harris@ohsd.uscourts.gov](mailto:Spencer_Harris@ohsd.uscourts.gov)**

**PLEASE NOTE:** Magistrate Judge Abel prefers to meet in person with counsel. The Court is willing to re-schedule to a date on which it is more convenient for counsel to travel to Columbus. If travel to Columbus is not practicable, and **ALL PARTIES AGREE**, you may request a telephone pretrial by calling Mr. Harris.

Mark R. Abel  
United States Magistrate Judge

Date: March 3, 2010

s/Spencer D. Harris  
Spencer D. Harris/Courtroom Deputy  
(614) 719-3027

Counsel are listed on the back of this Notice. If you are aware of any parties not included in this Notice, please call Spencer Harris immediately.

**E-mailed to:** Stanley Chesley, Robert Steinberg, Andrew Kwiatkowski, Jeffrey Hinebaugh, Marcy Hils

Sarah Lewis, George Harrison,

**U.S. District Court  
Southern District of Ohio (Columbus)  
CIVIL DOCKET FOR CASE #: 2:10-cv-00181-MHW -MRA**

Cox et al v. Toyota Motor Sales U.S.A., Inc. et al  
Assigned to: Judge Michael H. Watson  
Referred to: Magistrate Judge Mark R. Abel  
Case in other court: Hamilton County Court of Common Pleas, A1000992  
Date Filed: 02/24/2010  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Other Contract

**Plaintiff**

**Hugh W Cox**  
*and all others similarly situated*

represented by **Stanley Morris Chesley**  
Waite Schneider Bayless & Chesley Co  
LPA  
1513 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, OH 45202  
513-621-0267  
Email: [stanchesley@wsbclaw.com](mailto:stanchesley@wsbclaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Robert Alan Steinberg**  
Waite Schneider Bayless & Chelsey  
1513 Central Trust Tower  
5 West Fourth Street  
Cincinnati, OH 45202  
513-621-0267  
Email: [bobsteinberg@wsbclaw.cc](mailto:bobsteinberg@wsbclaw.cc)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Pamela M Cox**  
*and all others similarly situated*

represented by **Stanley Morris Chesley**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Robert Alan Steinberg**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Ernestine Montgomery**  
*and all others similarly situated*

represented by **Stanley Morris Chesley**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Robert Alan Steinberg**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Toyota Lease Trust**

represented by **Andrew R Kwiatkowski**  
Dinsmore & Shohl -1  
1900 Chemed Center  
255 East Fifth Street  
Cincinnati, OH 45202

513-977-8200  
Fax: 513-977-8680  
Email: [andrew.kwiatkowski@dinslaw.com](mailto:andrew.kwiatkowski@dinslaw.com)  
*ATTORNEY TO BE NOTICED*

**Jeffrey P Hinebaugh**  
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Email: [jeff.hinebaugh@dinslaw.com](mailto:jeff.hinebaugh@dinslaw.com)  
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Cincinnati, OH 45202  
513-977-8200  
Fax: 513-977-8200  
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*ATTORNEY TO BE NOTICED*

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Cincinnati, OH 45202  
Email: [slewis@dinslaw.com](mailto:slewis@dinslaw.com)  
*ATTORNEY TO BE NOTICED*

**Gregory Alan Harrison**  
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1900 Chemed Center  
255 E 5th Street  
Cincinnati, OH 45202  
513-977-8200  
Fax: 513-977-8141  
Email: [greg.harrison@dinslaw.com](mailto:greg.harrison@dinslaw.com)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Toyota Motor Engineering  
& Manufacturing North America, Inc.**

represented by **Andrew R Kwiatkowski**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Jeffrey P Hinebaugh**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Mary Gabrielle Hils**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sarah V Lewis**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Gregory Alan Harrison**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Clyde Dyson**

represented by

**Andrew R Kwiatkowski**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Jeffrey P Hinebaugh**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Mary Gabrielle Hils**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sarah V Lewis**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Gregory Alan Harrison**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Beechmont Toyota, Inc.**

represented by **Andrew R Kwiatkowski**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Jeffrey P Hinebaugh**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Mary Gabrielle Hils**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sarah V Lewis**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Gregory Alan Harrison**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Toyota Motor Sales, U.S.A., Inc.**

represented by **Andrew R Kwiatkowski**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Jeffrey P Hinebaugh**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Mary Gabrielle Hils**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sarah V Lewis**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Gregory Alan Harrison**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
02/24/2010	<u>1</u>	NOTICE OF REMOVAL from Hamilton County Court of Common Pleas, case number A1000992 ( Filing fee \$ 350 paid – receipt number: 0648–2511575), filed by Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA Inc., Toyota Lease Trust. (Attachments: # <u>1</u> Exhibit 1 State Court Pleadings, # <u>2</u> Exhibit 2 Certified Copy of Deed, # <u>3</u> Exhibit 3 Certified Copy of Merger Certificate) (Harrison, Gregory) (Entered: 02/24/2010)
02/24/2010	2	**** Former DN 2 *** NOTICE of Consent to Removal re <u>1</u> Notice of Removal by Defendant Beechmont Toyota, Inc. (Harrison, Gregory) Modified to edit text and remove PDF on 2/25/2010 (mr1). (Entered: 02/24/2010)
02/24/2010	<u>3</u>	NOTICE by Defendant Clyde Dyson re <u>1</u> Notice of Removal (Attorney), Notice of Removal (Attorney) ( <i>Consent to Removal</i> ) (Harrison, Gregory) (Entered: 02/24/2010)
02/24/2010	4	**** Former DN 4 **** AFFIDAVIT in Support re <u>1</u> Notice of Removal ( <i>Declaration of George Morino</i> ) by Defendants Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA Inc. (Harrison, Gregory) Modified to edit text and remove PDF on 2/25/2010 (mr1). (Entered: 02/24/2010)
02/25/2010	<u>5</u>	NOTICE of Filing of Civil Cover Sheet and Supplemental Civil Cover Sheet (inadvertently not docketed by counsel when case was opened) re <u>1</u> Notice of Removal by Defendants Beechmont Toyota, Inc., Clyde Dyson, Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (mr1) (Entered: 02/25/2010)
02/25/2010		Notice of Correction re: former dn 2 Notice and former dn 4 Affidavit in Support. PDFs have been removed. A call has been made to counsel regarding the need to re-file. Doc. 2 lacked 2 pages when it was docketed. Doc. 4 lacked the attorney signature block as well as a Certificate of Service. (mr1) (Entered: 02/25/2010)
02/25/2010	<u>6</u>	State COMPLAINT with JURY DEMAND against Beechmont Toyota, Inc., Clyde Dyson, Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. originally filed in the Court of Common Pleas, Hamilton County, Ohio on February 2, 2010 by Pamela M Cox and Hugh W Cox. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Verification Pages) (mr1) (Entered: 02/25/2010)
02/25/2010	<u>7</u>	State MOTION for Temporary Restraining Order filed in the Court of Common Pleas, Hamilton County, Ohio on February 2, 2010 by Plaintiffs Hugh W Cox and Pamela M Cox. (Attachments: # <u>1</u> Certification Notice for Temporary Restraining Order, # <u>2</u> Text of Proposed Order) (mr1) (Entered: 02/25/2010)
02/25/2010	<u>8</u>	State First AMENDED COMPLAINT against Beechmont Toyota, Inc., Clyde Dyson, Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. originally filed on February 5, 2010 in the Court of Common Pleas, Hamilton County, Ohio by Ernestine Montgomery, Pamela M Cox, and Hugh W Cox. (Attachments: # <u>1</u> Exhibit A) (mr1) (Entered: 02/25/2010)
02/25/2010	<u>9</u>	State MOTION for Preliminary Injunction filed originally on February 22, 2010 in the Court of Common Pleas, Hamilton County, Ohio by Plaintiffs Hugh W Cox, Pamela M Cox, and Ernestine Montgomery. (Attachments: # <u>1</u> Exhibits 1 thru 4) (mr1) (Entered: 02/25/2010)
02/25/2010	<u>10</u>	NOTICE of <i>Amended Civil Cover Sheet</i> re <u>1</u> Notice of Removal and <u>5</u> Notice (Other) by Defendants Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. (Harrison, Gregory) Modified to edit text for clarity on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	<u>11</u>	NOTICE of Filing of <i>Declaration of George T. Morino</i> re <u>1</u> Notice of Removal by Defendants Toyota Lease Trust, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. (Harrison, Gregory) Modified to edit text and correct link on 2/25/2010 (mr1). (Entered: 02/25/2010)

02/25/2010	<u>12</u>	NOTICE of Filing of <i>Consent to Removal</i> re <u>1</u> Notice of Removal by Defendant Beechmont Toyota, Inc. (Harrison, Gregory) Modified to edit text and correct link on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/26/2010	<u>13</u>	ORDER REASSIGNING CASE. Case reassigned to the Clerk for reassignment. Case reassigned to Chief Judge Susan J. Dlott for all further proceedings. Judge Michael R. Barrett no longer assigned to case. Signed by Judge Michael R. Barrett on 2/25/2010. (ba1) (Entered: 02/26/2010)
02/26/2010	<u>14</u>	ORDER reassigning to the Honorable Chief Judge Susan J. Dlott. Signed by Judge Michael R. Barrett on 2/26/2010. (ba1) (Entered: 02/26/2010)
02/26/2010	<u>15</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Michael H. Watson and Magistrate Judge Mark R. Abel for all further proceedings. Signed by Chief Judge Susan J. Dlott. (sct1) (Entered: 02/26/2010)
02/26/2010		Cincinnati OHSD Western Division case number 1:10-cv-127 transfered to Columbus OHSD Eastern Division and assigned case number 2:10-cv-181. All further pleadings in this matter shall be filed under case number 2:10-cv-181. (ddo1) (Entered: 02/26/2010)
02/26/2010	<u>16</u>	STIPULATION re <u>6</u> Complaint, <i>for Extension of Time to and including March 10, 2010</i> by Defendants Beechmont Toyota, Inc., Clyde Dyson, Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.. (Harrison, Gregory) (Entered: 02/26/2010)
02/26/2010		Reset Deadlines: Beechmont Toyota, Inc. answer due 3/10/2010; Toyota Lease Trust answer due 3/10/2010; Toyota Motor Engineering & Manufacturing North America, Inc. answer due 3/10/2010; Toyota Motor Sales, U.S.A., Inc. answer due 3/10/2010. (pes1) (Entered: 03/01/2010)
03/02/2010	<u>17</u>	MOTION for Preliminary Injunction <i>and</i> , MOTION for Temporary Restraining Order by Plaintiffs Hugh W Cox, Pamela M Cox, Ernestine Montgomery. (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit 1-Affidavit Of Gerald Rosebluth, # <u>3</u> Exhibit 2-Correspondence, 12-01-2008, # <u>4</u> Exhibit 3-Correspondence, 11-25-2009, # <u>5</u> Exhibit 4-Correspondence, 11-25-2009, # <u>6</u> Exhibit 5-Correspondence, 12-01-2010, # <u>7</u> Exhibit 6-Correspondence, 12-21-2010, # <u>8</u> Exhibit 9-Correspondence, 12-21-2010, # <u>9</u> Exhibit 10-Correspondence, 02-2010, # <u>10</u> Exhibit 9-Toyota Technical Instructions, Feb. 2010, # <u>11</u> Exhibit 10-Toyota Dealer Stock Vehicle Inspection Guide, 02-08-2010, # <u>12</u> Exhibit 11-Toyota Safety Recall Letter-03-01-2010, # <u>13</u> Exhibit 12-Affidavit of Connie A. Kamphaus, # <u>14</u> Exhibit 13-Toyota REport to Yoshi Inaba, # <u>15</u> Exhibit 14-Affidavit of Ernestine Montgomery) (Steinberg, Robert) (Entered: 03/02/2010)
03/02/2010	<u>18</u>	MOTION to Stay <i>Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation and Memorandum in Support</i> by Defendants Beechmont Toyota, Inc., Clyde Dyson, Toyota Lease Trust, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.. (Attachments: # <u>1</u> Exhibits A through D) (Harrison, Gregory) (Entered: 03/02/2010)
03/03/2010	<u>19</u>	NOTICE of Hearing: Preliminary Pretrial Conference set for 3/25/2010 @ 9:00 AM before Magistrate Judge Mark R. Abel. Conf of the parties due 3/11/10; Rule 26f report of the parties due 3/18/10. (sh1) (Entered: 03/03/2010)