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

IN RE: TOYOTA MOTOR CORP.
UNINTENDED ACCELERATION
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

Case No.: 8:10ML2151 JVS (FMOx)

**ORDER NO. 16: PHASE 3
DISCOVERY PLAN**

This document relates to:

ALL CASES

[JOINTLY PROPOSED] ORDER NO. 16: PHASE 3 DISCOVERY PLAN

1 **I. INTRODUCTION**

2 During the hearing on August 1, 2011, the Court instructed the parties to work
3 together on the details of the Phase 3 Discovery Plan and to provide a Proposed Order
4 for a Phase 3 Discovery Plan by August 15, 2011. August 1, 2011 Hrg. Tr. at 46:6-16.
5 The Plaintiffs and Defendants have done so and the following table reflects the
6 Court’s rulings on August 1 and the Parties agreed upon procedures and schedules for
7 the Phase 3 Discovery Plan.

8 **II. PHASE 3 DISCOVERY AND SCHEDULING**

9 The Court adopts the following schedule regarding Phase 3 Discovery for the
10 Bellwether Cases:¹

<u>No.</u>	<u>Discovery Device</u>	<u>Procedures And Schedules</u>
1	<i>Requests for Production (“RFPs”)</i>	In the PI/WD bellwether cases, requests for production of documents in Phase 3 shall be governed by the Federal Rules of Civil Procedure (“FRCP”).
2	<i>Requests for Admission (“RFAs”)</i>	Pursuant to FRCP 36, there will be a limit of up to 100 RFAs in each bellwether case. There shall be no limit on requests for the genuineness of documents and other foundational requests other than reasonableness. Requests for admission may be accompanied by corresponding interrogatories.

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24 ¹ As set forth in Order No. 14, the Court has not yet “decid[ed] whether one of the first
25 two bellwether cases should be some form of economic loss class action.” Order No.
26 14 (Amended)(Dkt. No. 1511) at 1:23-24. Additionally, the Court has “defer[ed]
27 adopting a timetable for completion of discovery relevant to class determination, and
28 briefing and hearing motion(s) for class certification.” *Id.* at 5:9-11. This issue and
the “[s]election of the second bellwether case will be taken up in September when the
Court conducts a further scheduling conference on class actions issues.” *Id.* at 5:1-2.
Therefore, nothing in this Order waives the parties’ ability to propose timetables and
discovery procedures relative to the class cases or their respective choices for a second
bellwether.

1	3	<i>Third-Party Written Discovery</i>	There shall be no limit on third-party document subpoenas.
2	4	<i>Medical Examinations</i>	Pursuant to FRCP 35. And, where appropriate with agreement of the parties or pursuant to order from the Special Masters for good cause.
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5	5	<i>Vehicle Inspections</i>	Vehicle inspections should commence immediately upon the completion of a protocol. The parties agree to complete an agreed protocol by September 1, 2011. To the extent the parties cannot agree on a protocol the issue will be submitted to the Special Masters for resolution.
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9	6	<i>Plaintiffs' Eighth Set of Requests for Production</i>	Toyota will provide written responses to the 8th set of RFPs by October 1, 2011 and commence a rolling production of remaining responsive documents with a completion date to be determined between the parties.
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13	7	<i>Document Translations</i>	The parties will complete an agreed-upon protocol to address disputed translations. This will eliminate confusion and ultimately will save time and be efficient. The parties will exchange protocols by September 15th and to the extent issues remain unresolved, they be submitted to the Special Masters for resolution by October 1st.
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19	8	<i>Supplemental Fact Sheet Responses and Document Production</i>	The parties will meet and confer before September 1, 2011 regarding updated Fact Sheet responses and production of documents.
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21	9	<i>Denso Documents</i>	If plaintiffs identify specifically what documents they want from Denso and also list the specific RFPs plaintiffs have served that they want Toyota to include in its request to Denso. Toyota will make a request to Denso for those materials. If Denso does not have such documents Toyota will advise plaintiffs. Likewise, if Denso refuses, or is unable to provide the materials requested by plaintiffs, and
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1 2 3		they exist, Toyota will advise plaintiffs. It will then be up to plaintiffs to utilize the appropriate and allowable formal discovery device to obtain such materials.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	10 <i>Interrogatories</i>	<p><i>Number:</i> Each side is initially permitted to serve 100 interrogatories in each of the bellwether cases. The 100 interrogatories may include contention interrogatories. Additional interrogatories may be allowed where appropriate with agreement of the parties or pursuant to order from the Special Master for good cause.</p> <p><i>Timing and Topics Covered:</i> Non-contention interrogatories may be served immediately and timing is governed by the FRCP or by agreement of the parties. Preliminary contention interrogatories with respect to issues of claimed defects can be served on or before September 1, 2011, with responses due on or before November 1, 2011. Additionally, a party may serve up to 15 additional preliminary contention interrogatories on any other topic pursuant to the above schedule. The parties may serve additional contention interrogatories on February 1, 2012, with responses due by April 1, 2012.</p> <p>Responses to preliminary contention interrogatories will not be binding on the parties for future discovery or trial, and may not be used to impeach a subsequent amended or supplemental response to the same interrogatories or a subsequent response to a similar interrogatory.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14	11 <i>OSI Identification</i>	<p><i>Timing of Identifying Initial OSI:</i> Plaintiffs will identify by October 1, 2011, all those claims and other incidents that Plaintiffs contend are other similar incidents (“OSIs”) of which they are currently aware as of the date of the entry of this Order.</p> <p><i>Timing of Identifying Additional OSI:</i> <i>First wave:</i> Plaintiffs will identify any additional OSIs that they have gleaned from review of Toyota discovery or other developments on January 15, 2012.</p> <p><i>Second wave:</i> Plaintiffs will identify by March 15, 2012, any remaining OSIs that were not discoverable prior to January 15, 2012. This wave will include all remaining OSIs, only to be supplemented to the extent Plaintiffs, in good faith, discover new OSIs.</p>
15 16 17 18 19 20 21 22	12 <i>Depositions</i>	Depositions shall be governed by FRCP 30 and the Court’s prior orders. There will be no set limit on the number of depositions that may be taken in the bellwether cases. The parties are free to notice the depositions that they believe are appropriate and reasonable in the bellwether cases, subject to the other parties’ right to object on a case-by-case basis if they believe the depositions are unreasonable in volume or otherwise.
23 24 25 26 27	13 <i>Production of Documents Prior To Depositions</i>	<p><i>Document Production Prior to Individual Bellwether Specific Depositions:</i> Prior to taking individual case-specific depositions in the bellwether cases, both parties will produce all responsive, non-privileged and non-work product documents in their possession</p>

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that relate to the investigations of the accidents in the bellwether cases including , but not limited to, documents related to warranty, service and vehicle history. Additionally, the parties shall meet and confer prior to each deposition to the extent necessary to discuss any specific documents that they believe should be produced prior to that deposition. Any disputes over such documents shall be promptly taken before the Special Masters for resolution.

Documents to be Used in Depositions are to be Distributed Prior to Depositions:
In order to increase the efficiency of the discovery process, the interrogating party in each deposition will make a good faith effort to distribute those documents it reasonably intends to utilize in that deposition to the other party. This shall be done *5 days* prior to each deposition with English-language documents, and *10 days* prior to each deposition with Japanese-language documents. The parties will also have a “safety valve” provision to allow them to produce subsequent documents closer to the deposition, but only to the extent that such documents were not previously discovered and identified by the interrogating party.

Impeachment Exception: As an exception to this provision, the parties are not required to produce in advance any documents that they in good faith intend to use solely to impeach the testimony of a deposition witness.

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	<p><i>Depositions Without Complete Case-Specific Discovery:</i></p> <p>Before bellwether case-specific depositions are taken, the parties shall meet and confer regarding the exchange of all responsive, non-privileged and non-work product documents in their possession, custody or control that relate to the investigation in the bellwether cases. If the parties cannot agree on said production, the parties will seek assistance from the Special Masters before case-specific depositions commence. The parties will also meet and confer at this time regarding whether, to the extent that there are certain depositions that may commence with a more limited document production, the parties can schedule such depositions for earlier in the discovery process.</p>
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IT IS SO ORDERED

Dated: August 31, 2011



JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

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2 Dated: August 12, 2011

Respectfully submitted,

3
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