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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: ML 10-2151 JVS (FMOx)

This document relates to:

ALL CASES

ORDER NO. 8: RE FURTHER
PROCEDURES FOR
SIMPLIFICATION AND
ADVANCEMENT OF THESE
CASES

In its Tentative Minute Order for the September 20, 2010 hearing, the Court proposed a plan for reconciling the current Master Consolidated Complaint (“MCC”) filed by the Consumer and Non-Consumer Economic Loss Class Action Plaintiffs (“Plaintiffs”) with the fact that a number of factual and legal theories advanced in the various class actions transferred to this Court were not reflected in the MCC and similarly a number of parties defendant were not reflected in the MCC (collectively “excluded theories”). In brief, the Court proposed a short period for parties to identify excluded theories they believed should proceed coupled with the dismissal with prejudice of all excluded theories not identified in

1 the process. The Court then contemplated further briefing on how these new
2 matters would proceed. The Court is satisfied that it has ample authority to
3 proceed in this manner.¹

4
5 Two things emerged from the September 20, 2010 hearing which bear
6 on the Court's thinking. First, there seemed to be universal agreement that as part
7 of the overall case management of this proceeding, the excluded theories should be
8 dealt with now. Second, the parties agreed that the choice of law questions,
9 particularly the Plaintiffs' theory that California law can be applied to a nation-
10 wide class action, should be dealt with sooner rather than later. Resolution of this
11 issue has the potential for simplification of the proceeding, but at a minimum
12 would identify the outside parameters.

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14 In light of the above, the Court abandons, at least for the time being,
15 its initial scheme for identification, inclusion, and exclusion with regard to the
16 excluded theories, and adopts the following:

17 A. An Amended MCC.

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19 The Court spent considerable time in evaluating candidates for
20 leadership on the Plaintiffs' side in this proceeding. The Court believes that while
21 many candidates for leadership were well qualified, those chosen are of
22 exceptional talent and experience, and the Court has reposed great confidence in
23

24
25 ¹See, e.g., In re Mercedes-Benz Tele Aid Contract Litig., 257 F.R.D. 46, 55 (D.N.J.
26 2009); In re Educ. Testing Serv. Praxis Principles of Learning & Teaching: Grades 7-12 Litig.,
27 517 F. Supp. 2d 832, 837-38 (E.D. La. 2007).

1 them.² At the hearing, counsel for the Consumer and Non-Consumer Economic
2 Loss Class Action Committee acknowledged the problems presented by the
3 excluded theories, and suggested that an amended MCC could be prepared in short
4 order. Counsel noted that while hundreds of lawyers are involved in the
5 transferred cases, it is counsel on the Consumer and Non-Consumer Economic
6 Loss Class Action Committee who have been involved in absorbing the extensive
7 discovery³ which the Court ordered the Toyota defendants to produce and in
8 conducting further fact-finding and analysis as well as the agreed Phase I Rule
9 30(b)(6) depositions. In the first instance, this puts the Consumer and Non-
10 Consumer Economic Loss Class Action Committee in a superior position to deal
11 with the excluded theories.

12
13 For these reasons, and before the Court adopts any preclusion
14 mechanism, the Court believes that the Consumer and Non-Consumer Economic
15 Loss Class Action Committee should have an opportunity to amend the MCC to
16 address concerns with regard to the excluded theories. Accordingly, the Court
17 grants the Plaintiffs thirty days to file an amended MCC.

18 The Court leaves in place the current schedule for motions practice on
19 the MCC. The issues raised by the current motions will not be mooted by an
20 amended complaint, and should be dealt with now. Within ten days of the filing of
21 the amended MCC, the parties shall meet and confer and submit an agreed or
22 separate proposals for motions practice on the amended MCC.

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26 ²Although the Court obviously played no part in the selection of leadership counsel for
the Toyota defendants, the same can be said of counsel for the Toyota defendants.

27 ³Order No. 3, pp. 2-3.

1 B. Choice of Law.

2
3 While acknowledging the importance of a relatively early
4 determination of the choice of law question, at the hearing the Toyota defendants
5 expressed the view that the issue could not be addressed in a vacuum, and
6 discovery would be required. The Court believes that this is a reasonable position.
7 In order to set the stage for an early determination of the choice of law question,
8 the Court orders the parties to meet and confer and to submit within a thirty days
9 either an agreed or separate proposals which include:

10 • A plan for the identification and conduct of discovery relevant to the
11 choice of law question, including a timetable for completion of such
12 discovery. It is essential that the focus be only on the discovery
13 necessary for the choice of law issue.

14
15 • A briefing schedule leading to a hearing on the issue. The Court
16 tends to believe that concurrent opening briefs with concurrent replies
17 represents the most efficient way to address the issue, but solicits the
18 parties' views.

1 C. Conclusion.

2
3 Once these two steps have been accomplished, the Court is prepared
4 to address additional steps to simplify and advance these proceedings.

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6 IT IS SO ORDERED.

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8 Dated: September 27, 2010



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11 James V. Selna
12 United States District Judge
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