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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. 17: CLASS  
DISCOVERY PLAN AND  
SCHEDULE**

This document relates to:  
  
ALL ECONOMIC LOSS CASES

The Court thanks the parties for their substantial efforts in presenting this joint submission.

**I. SCHEDULE FOR THE FIRST BELLWETHER CLASS ACTION<sup>1</sup>**

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<sup>1</sup> Toyota does not waive its right to have constituent cases remanded to their transferor courts pursuant to 28 U.S.C. § 1407(a)-(b) and *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40 (1998), or to seek additional discovery and motion practice to prepare the constituent class action cases for remand. Nor does Toyota waive its due process right to conduct additional discovery of any case after remand to the transferor court. Nor does Toyota consent to the voluntary dismissal and refiling of non-California cases in the Central District of California in an effort to circumvent the requirements of *Lexecon*. See *In re Norplant Contraceptive Prods. Liab. Litig.*, 950 F. Supp. 779, 781 (E.D. Tex. 1996) (criticizing plaintiffs for “pursu[ing] a strategy of forum-shopping by directly filing cases which have absolutely no underlying connection to this district other than the fact that the cases have been consolidated here for pretrial management under § 1407”). There are currently 132 economic loss cases originally filed in 38 states other than California, some filed as early as 2009.

1 The Court hereby adopts the following schedule for the economic loss class  
 2 actions identified by Plaintiffs in their September 20, 2011 Bellwether Class and Class  
 3 Representative Identification (“Class Identification Statement”) [Dkt. 1797]:  
 4

Event	Deadline
AMENDING PLEADINGS	
	No amendments may be made to the identified complaint(s) in Plaintiffs’ Class Identification Statement or the SAMCC (including changes to the class definition or the addition of any party as a plaintiff or defendant), and Plaintiffs shall not file or identify any additional cases on which they intend to base their class certification motion without leave of Court.
RULE 12 MOTIONS LIMITED TO NEW YORK, FLORIDA, AND CALIFORNIA	
Motion	November 30, 2011
Response	January 15, 2012
Reply	February 15, 2012
Hearing	March 15, 2012
ADDITIONAL MOTIONS PRACTICE (PRE-CLASS CERTIFICATION HEARING)	
	Nothing in this Schedule shall preclude any party from filing any motion, not brought under Rule 12, that they believe is appropriate in this litigation, including, but not limited to, motions to strike expert testimony, motions for summary judgment, motions to seek discovery of absent class members, motion for trial plan, and motions for protective order, and nothing herein shall prevent a hearing on any such motion from being decided prior to class certification.

Event	Deadline
	<p>Motions to strike class allegations may not be brought with respect to the “First Bellwether Class Action” identified in Plaintiffs’ Class Identification Statement, limited to New York, California, and Florida. Nor may motions to strike class allegations be brought in any MDL constituent case during the time period proscribed in the Scheduling Order for the First Bellwether Class Action.<sup>2</sup></p> <p>Hearings and briefing schedules for any motions not specifically set forth herein shall be briefed and noticed pursuant to local rules.</p>
<p><b>FACT DISCOVERY LIMITED TO THE PROPOSED BELLWETHER CLASS REPRESENTATIVES<sup>3</sup></b></p>	
<p>Fact sheet responses for <i>Danziger</i> plaintiffs</p>	<p>November 1, 2011</p>
<p>Plaintiffs’ responses to First Set of Interrogatories</p>	<p>December 1, 2011</p>
<p>Last day to supplement contention interrogatories</p>	<p>April 16, 2012</p>
<p>Close of Fact Discovery</p>	<p>January 15, 2013 (only with respect to the claims of the Proposed Class Representatives identified in Plaintiffs’ Class Identification Statement)</p>

<sup>2</sup> Toyota reserves the right to file a motion with the Court to modify or amend the Scheduling Order, including but not limited to this specific provision if Plaintiffs amend their class definition to include states other than New York, Florida, and California.

<sup>3</sup> These dates only apply to the claims brought by the named plaintiffs identified in Plaintiffs’ Class Identification Statement (the “Proposed Class Representatives”). Nothing herein shall act as a waiver of Toyota’s right to seek additional discovery after the dates set forth herein in order to prepare other constituent cases for remand and trial. Additionally, Toyota may at any time move the Court to allow discovery from named plaintiffs in the other constituent cases in this MDL or from absent class members.

Event	Deadline
<b>TUTORIAL</b>	
Technical Tutorial	December 9, 2011
<b>CLASS EXPERTS AND RULE 702 MOTIONS</b>	
Initial disclosures of identity of experts and general subject matter of opinions	May 15, 2012
Expert reports	June 18, 2012
Depositions of class experts	June 18, 2012 – August 1, 2012
Designation of identity of rebuttal experts and general subject matter of opinions	July 16, 2012
Rebuttal reports	August 17, 2012
Depositions of rebuttal experts	August 17, 2012 – September 1, 2012
R. 702 Motions	October 12, 2012
Response	November 12, 2012
Reply	December 10, 2012
Hearing	January 16, 2013
<b>CLASS CERTIFICATION BRIEFING</b>	
Motion	September 14, 2012
Response	November 15, 2012
Reply	December 21, 2012
Hearing	January 16, 2013
<b>POST-CERTIFICATION DECISION SCHEDULE<sup>4</sup></b>	
Petition for permission to appeal (FRCP 23(f))	14 days after order on class certification entered

<sup>4</sup> The post-certification decision deadlines set forth in the sections below are tentative deadlines to be utilized if no stay is entered following the class certification decision.

Event	Deadline
Status Conference to discuss, <i>inter alia</i> , the propriety of staying proceedings pending an appeal and discovery and pre-trial deadlines in additional economic loss class actions in the MDL	21 days after order on class certification entered
<b>ADDITIONAL EXPERTS NEEDED FOR TRIAL OF THE ECONOMIC LOSS CASES (IF ANY)<sup>5</sup></b>	
Commencement of expert discovery	February 1, 2013
Initial disclosures and reports	February 1, 2013
Depositions of experts	February 1, 2013 – February 22, 2013
Rebuttal reports	March 1, 2013
Depositions of rebuttal experts	March 1, 2013 – March 15, 2013
Close of expert discovery	March 15, 2013

<sup>5</sup> Post-certification decision, additional expert discovery on the merits may be needed by both sides to the economic loss cases, and therefore, this proposed schedule has allotted time for that discovery to proceed in an organized and efficient manner.

<b>Event</b>	<b>Deadline</b>
<b>PRE-TRIAL DAUBERT MOTIONS<sup>6</sup></b>	
Motion	April 1, 2013
Response	May 1, 2013
Reply	May 15, 2013
Hearing	May 31, 2013
<b>SUMMARY JUDGMENT AND DISPOSITIVE MOTIONS<sup>7</sup></b>	
Motion	April 1, 2013
Response	May 1, 2013
Reply	May 15, 2013
Hearing	May 31, 2013
<b>MOTIONS IN LIMINE</b>	
Motion	June 14, 2013
Response	June 28, 2013
Reply	July 5, 2013
Hearing	July 17, 2013 at 11:00 a.m.
<b>PRETRIAL CONFERENCE</b>	
Pretrial Conference Filings	July 10, 2013
Pretrial Conference	July 17, 2013 at 11:00 a.m.
<b>TRIAL</b>	July 31, 2013 at 8:30 a.m.

**II. DISCOVERY IN THE CLASS ACTIONS**

**A. Application Of The Federal Rules**

All discovery shall be conducted pursuant to the Federal Rules of Civil Procedure (“FRCP”), as modified herein. Nothing in this Order shall prevent any

<sup>6</sup> As discussed in footnote 5, *supra*, additional expert discovery may be needed in the economic loss cases after the class certification decision. This proposed schedule has therefore allotted time for Rule 702 Motions practice to the extent necessary to address additional expert opinions.

<sup>7</sup> Post-certification decision, there may be summary judgment or other dispositive motions directed to a class, if any. This proposed schedule has therefore allotted time for additional dispositive motions practice to the extent necessary after the Court issues a certification decision.

1 party from moving pursuant to FRCP 26(c) for an order to protect a party or person  
2 from annoyance, embarrassment, oppression, or undue burden or expense.

3  
4 **B. Prioritizing Discovery Needed For Class Certification**

5  
6 Counsel in the economic loss cases shall prioritize discovery needed to create  
7 an evidentiary record upon which Plaintiffs' class certification motion(s) can be  
8 briefed and decided consistent with the briefing schedule set forth above.

9  
10 **C. Scope Of Phase III Fact Discovery In The Class Actions**

11  
12 Until the Court enters an order on Plaintiffs' class certification motion, the  
13 Parties shall focus their discovery efforts on the claims of the Proposed Class  
14 Representatives. However, Toyota may at any time move the Court to allow  
15 discovery from named plaintiffs in the other constituent cases in this MDL or from  
16 absent class members.

17  
18 Nothing in this (Proposed) Order shall act as a waiver of Toyota's right to have  
19 constituent cases remanded to their transferor courts pursuant to 28 U.S.C. § 1407(a)-  
20 (b) and *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40  
21 (1998), or to seek additional discovery and motion practice to prepare the constituent  
22 class action cases for remand. Nor does Toyota waive its due process right to conduct  
23 additional discovery and motion practice of any case after remand to the transferor  
24 court.

25  
26 **D. Requests For Production**

27  
28 Requests for production of documents shall be governed by the FRCP.

1 Plaintiffs may serve a reasonable number of requests for production on each  
2 Defendant. Defendants may serve a reasonable number of requests for production on  
3 each Proposed Class Representative. Toyota may at any time move the Court to allow  
4 discovery from named plaintiffs in the other constituent cases in this MDL or from  
5 absent class members.

6  
7 **E. Requests For Admission**

8  
9 Plaintiffs may serve a reasonable number of requests for admission on each  
10 Defendant. Defendants may serve a reasonable number of requests for admission on  
11 each Proposed Class Representative. Toyota may at any time move the Court to allow  
12 discovery from named plaintiffs in the other constituent cases in this MDL or from  
13 absent class members.

14  
15 **F. Interrogatories**

16  
17 The parties shall not be limited by the twenty-five interrogatory limit set forth  
18 in FRCP 33. Plaintiffs may serve a reasonable number of interrogatories, including  
19 contention interrogatories, on each Defendant. Defendants may serve a reasonable  
20 number of interrogatories, including contention interrogatories, on each Proposed  
21 Class Representative. Toyota may at any time move the Court to allow discovery  
22 from named plaintiffs in the other constituent cases in this MDL or from absent class  
23 members.

24  
25 The Special Masters previously denied Toyota's request to compel responses to  
26 Toyota's First Set of Interrogatories on the ground that Phase II was limited to Choice  
27 of Law issues, among other grounds. Proposed Class Representatives shall be  
28 required to provide responses to Toyota's First Set of Interrogatories by December 1,



1 2011, subject to the right of the Proposed Class Representatives to object to the  
2 interrogatories.

3  
4 **G. Plaintiff Fact Sheets**

5  
6 On or before November 1, 2011, Plaintiffs shall serve Plaintiff Fact Sheet  
7 Responses for all plaintiffs named in the newly filed complaint: *Danziger, et al. v.*  
8 *Toyota Motor Corp., et al.*, No. 11-cv-7778-VBF (PJWx).

9  
10 Named Plaintiffs from the underlying cases have not provided Plaintiff Fact  
11 Sheet Responses. Toyota may at any time move the Court to request Plaintiff Fact  
12 Sheets from named plaintiffs in the underlying cases.

13  
14 **H. Depositions**

15  
16 The parties to the Economic Loss cases shall utilize the procedure for disclosure  
17 of documents intended to be used in depositions that is set out in Order No. 16.  
18 Depositions shall be governed by FRCP 30 and the Court's prior orders.

1 Plaintiffs are permitted to depose TMC, TMS, and employees, agents, or other  
2 persons under the control of TMC or TMS without any presumptive limits on the  
3 number of depositions (except that, to the extent possible, no witness will be deposed  
4 more than once on the same subject matter). Depositions of any Proposed Class  
5 Representative may be taken in this proceeding at any time without any presumptive  
6 limits on the number of depositions (except that it is presumed each class  
7 representative will only be deposed once). Toyota may at any time move the Court to  
8 allow depositions of named plaintiffs in the other constituent cases in this MDL or  
9 from absent class members.

10  
11 **I. Third-Party Discovery**

12  
13 Third-Party discovery shall be governed by the Federal Rules of Civil  
14 Procedure. There shall be no presumptive limits on third-party discovery, including  
15 depositions and document subpoenas.

16  
17 **J. Vehicle Inspections**

18  
19 Vehicle inspections may commence immediately upon the completion of a  
20 protocol. The parties to the Economic Loss cases shall utilize the same protocol  
21 agreed to in the PI/WD cases.

22  
23 In the event that any named plaintiff in the SAMCC or in the constituent  
24 economic loss cases wishes to sell his/her vehicle, Plaintiffs must first notify Toyota  
25 and give Toyota a reasonable opportunity to conduct a vehicle inspection.

26  
27 Toyota shall be permitted to conduct vehicle inspections of the Proposed Class  
28 Representatives' vehicles, irrespective of whether they claim to have experienced a

1 UA event. Toyota may at any time move the Court to allow inspections of vehicles  
2 belonging to named plaintiffs in the other constituent cases in this MDL.

3  
4 **K. Class Expert Disclosures And Discovery, And Rule 702 Motions**

5  
6 In their class certification briefing, the parties shall be precluded from relying  
7 on any experts that are not identified pursuant to the schedule set forth above without  
8 prior leave of Court for good cause shown.

9  
10 To the extent that Plaintiffs, in their class certification brief or reply brief, rely  
11 upon expert opinions not previously disclosed or move on behalf of class definition(s)  
12 not identified on September 20, 2011, Defendants shall be permitted to supplement  
13 their expert reports and briefing to address Plaintiffs' newly raised theories and  
14 arguments.

15  
16 **L. Document Translations**

17  
18 The parties to the Economic Loss cases shall utilize the same translation  
19 protocol(s) agreed to in the PI/WD cases.

20  
21 **M. OSI Identification**

22  
23 The dates for disclosure of OSI set forth in Order No. 16 shall also apply in the  
24 Economic Loss cases.

25  
26 **III. APPLICABILITY OF OTHER ORDERS**

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28 To the extent that any deadline or requirement herein conflicts with the

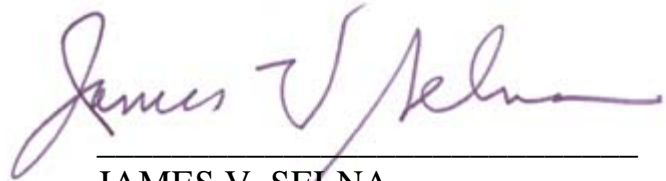
1 provisions of Order No. 14 (Amended) [Dkt. No. 1511], Order No. 15  
2 [Dkt. No. 1655], or Order No. 16 [Dkt. No. 1726], this Order controls.

3  
4 **IV. MODIFICATION**

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6 Modification of this Order may be necessary based on experience operating  
7 under it. Any party is therefore free to seek modification of this Discovery Plan and  
8 Schedule.

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10 IT IS SO ORDERED.

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12 Dated: November 09, 2011.



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15 **JAMES V. SELNA**  
16 **UNITED STATES DISTRICT JUDGE**

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