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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. 6: APPOINTING
SPECIAL MASTERS (PURSUANT
TO STIPULATION)**

This documents relates to:

ALL CASES

WHEREAS the parties agree that the volume of discovery in this litigation warrants special masters to resolve discovery disputes and allow the Court to focus primarily on substantive pre-trial matters in this litigation;

WHEREAS the Court agrees that appointing special masters will assist the Court in effectively and expeditiously resolving the parties' discovery disputes;

WHEREAS all parties to this litigation have stipulated and consented to the appointment of the Honorable John K. Trotter (ret.) and the Honorable Steven Stone (ret.) to serve as the Special Masters in these proceedings; and

WHEREAS the Court appointed the Special Masters in these proceedings by order dated July 1, 2010,

IT IS HEREBY ORDERED, pursuant Fed. R. Civ. P. 53 and by the consent of the parties that the Special Masters shall proceed with all reasonable diligence to fulfill their duties and responsibilities, as follows:

I. DUTIES AND RESPONSIBILITIES

A. The Special Masters are empowered and charged with the duties outlined below, subject to and consistent with Fed. R. Civ. P. 53:

1. Rule on legal and factual disputes arising from discovery issues under Fed. R. Civ. P. 26(b) including, but not limited to, issues of discoverability, privilege, and attorney work product.

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2. Resolve disputes between the parties relating to depositions, including but, not limited to:
 - a. Fixing the time and place of depositions if counsel are not able to reach agreement.
 - b. Attending depositions as necessary or by agreement of the parties. When the Special Masters are requested to be available for a deposition, but cannot attend the deposition in person, one of the Special Masters shall make himself available to be consulted by telephone to rule on disputes arising during the deposition. The Special Masters shall confer, determine which Special Master will be available for consultation during the deposition and notify the parties of such determination prior to the start of the deposition.
 - c. Ruling, if requested, on any objection, refusal to answer, failure to provide a responsive answer to a question at a deposition, or failure to produce documents for deposition. If a party objects to and seeks Court review of (i) a ruling made by the Special Master at the deposition or (ii) any matter arising in a deposition, then the witness is relieved from proceeding as directed by the Special Master pending review by the Court, and the Special Master may order completion of the deposition pending Court review of the Special Master's ruling. If no party requests review of the ruling when made by the Special Master, then the witness shall proceed as directed by the Special Master. With respect to any such Special Master ruling that relates specifically to a deponent who resides outside the United States, a party challenging such ruling of the Special Master

1 shall present its request for review, including any supporting
2 legal or factual showing, within two Court days of the ruling
3 challenged. Any response to the challenge shall be filed
4 within three Court days of the ruling. With this procedure
5 for foreign deponents, it is the Court's goal to obviate the
6 need for a second trip to the foreign country where the
7 deposition is held if the deposition is held outside the United
8 States and the need for the deponent to return to the United
9 States if the deposition is held in the United States.

- 10 3. Rule upon all motions related to discovery, including but, not
11 limited to:
- 12 a. All applications for protective orders in this litigation and
13 requests for modification of, or exceptions to, such
14 protective orders.
 - 15 b. All requests for an order compelling discovery pursuant to
16 Fed. R. Civ. P. 37 and for costs or expenses related thereto.
17 The parties may object to assessments ordered by the
18 Special Masters pursuant to the procedures detailed in
19 Section IV of this Order.
 - 20 c. All issues relating to the manner and format of document
21 production.

22 B. To resolve a discovery dispute, the Special Masters may set a hearing,
23 which may take place in person at a JAMS office, may be conducted telephonically, or
24 as otherwise agreed to by the parties and as approved by the Special Master. A court
25 reporter shall be present at any hearing before the Special Masters, and the court
26 reporter shall submit bills as provided in Section VI of this Order.

27 C. The Special Masters' adjudicatory powers are limited to discovery
28 matters. Rulings on substantive legal issues are within the exclusive jurisdiction of

1 the Court.

2 **II. ALLOCATION OF DUTIES AND RESPONSIBILITIES**

3 A. The Special Masters shall allocate all of the work prescribed under this
4 Order between themselves, at their own discretion.

5 B. All matters within the scope of Section I of this Order may be decided in
6 writing by a single Special Master, provided that the other Special Master shall review
7 and indicate his concurrence in the order. If there is no concurrence by the second
8 Special Master, the matter shall be referred directly to the Court for review. Rulings
9 by the Special Master(s) are subject to review as provided in Section IV, *infra*.

10 C. On all procedural matters to which there is no disagreement between the
11 parties, the signature of a single Special Master shall be sufficient.

12 D. The Special Masters are authorized to carry out their duties and
13 responsibilities using Commissioner Greer Stroud (Ret.) and Derek Scott, J.D., for
14 limited research and administrative work, respectively. The fees for Stroud and Scott,
15 who are affiliated with JAMS, shall be billed by the Special Masters under the
16 procedures set forth in Section VII.

17 E. If the Special Masters deem it necessary to consult with an e-discovery
18 expert, they are authorized to use a JAMS Neutral with expertise in that area after first
19 providing the parties with 5 days' written notice and an opportunity to object. If the
20 Special Master denies an objection, then the objecting party may request formalization
21 of the ruling and also seek judicial review under Section IV. The charges for any
22 JAMS Neutral used for e-discovery shall be billed by the Special Masters under the
23 procedures set forth in Section VII.

24 F. In accordance with Fed. R. Civ. P. 53(b)(3), the Special Masters have
25 submitted affidavits to the Court stating that there are no grounds for disqualification
26 under 28 U.S.C. § 455, copies of which are attached hereto collectively as Exhibit A.

27 **III. BRIEFING AND HEARING OF MOTIONS**

28 A. The timing and procedure for resolving discovery disputes, including

1 briefing of motions, should comply with the Federal Rules of Civil Procedure, and the
2 Court's Local Rules and case management orders.

3 B. Nonetheless, the Special Masters may resolve discovery disputes by
4 informal procedures when both parties consent, such consent not to be unreasonably
5 withheld, or if the Court has authorized the use of such procedures generally or for the
6 specific matter after the parties have had an opportunity to be heard. Under such
7 procedures, the parties may brief the issues orally or by letters or e-mail, and the
8 Special Masters may issue orders by letters or e-mail.

9 C. Absent extraordinary circumstances, the Special Masters shall resolve all
10 disputes within 30 days of submission of a motion or letter by the parties.

1 **IV. JUDICIAL REVIEW OF RULINGS BY THE SPECIAL MASTER**

2 A. After concurring on a ruling, the Special Masters shall either:

- 3 1. Reduce their formal order, finding, report or recommendation to
4 writing and file it electronically on the case docket via Electronic
5 Case Filing (“ECF”); or
6 2. Issue any formal order, finding, report, or recommendation on the
7 record before a court reporter.

8 B. If the Special Masters issue an informal order or finding that is not made
9 part of the record via ECF or the court reporter, and a party wishes to object to that
10 order or finding, then the party shall ask the Special Masters to formalize the order by
11 reducing the order or finding to writing, and filing it on the docket via ECF. Such
12 request shall be made within 5 days of issuance of the informal order or finding. The
13 Special Master shall formalize the order or finding within 3 days of the party’s
14 request. After formalization, the other procedures and deadlines outlined in this
15 Section shall apply. If no party requests formalization within 5 days of the Special
16 Masters issuing the informal order or finding, then the opportunity to object shall be
17 permanently waived and the informal order or finding shall be deemed approved,
18 accepted and ordered by the Court, unless the Court expressly provides otherwise.

19 C. Pursuant to Fed. R. Civ. P. 53(f)(2), any party may file an objection to
20 any formal order, finding, report, or recommendation by the Special Masters with the
21 Court within 12 days of ECF date. Failure to meet this deadline results in permanent
22 waiver of any objection to the Special Masters’ specific order, finding, report, or
23 recommendation.

24 D. Absent an objection within 12 days, the formal orders, findings, reports
25 and recommendations of the Special Masters shall be approved, accepted and ordered
26 by the Court, unless the Court expressly provides otherwise. Motions for extensions
27 of time to file objections will only be granted upon a showing of good cause. The
28 Special Masters may, however, provide in their formal order, finding, report or

1 recommendation that the period for filing objections to that particular document is a
2 period longer or shorter than 12 days if warranted under the circumstances.

3 E. The party seeking review shall, at its own expense, provide the Court
4 with a transcript of the proceedings before the Special Masters (if a court reporter was
5 present), together with a concise statement of the issues and authorities that does not
6 exceed 10 pages. The other party shall have an opportunity to file a responsive
7 statement that does not exceed 10 pages.

8 F. As provided in Fed. R. Civ. P. 53(f), the Court shall review all orders,
9 findings, reports or recommendations by the Special Masters, including any findings
10 of fact and conclusions of law, under the *de novo* standard.

11 **V. EX PARTE COMMUNICATION**

12 A. Except until further order of the Court, *ex parte* communications between
13 the Special Masters and the Court shall be governed by the Court's Minutes from
14 July 9, 2010, which provide that: "[t]he Court shall not communicate with the Special
15 Masters, and the Special Masters shall not communicate with the Court, on
16 substantive matters except in writing with service upon the parties or in the presence
17 of the parties. The Court and the Special Masters may communicate with each other
18 on procedural matters without restriction."

19 B. The Special Masters may not communicate *ex parte* with the parties
20 regarding pending matters requiring adjudication by the Special Masters, unless the
21 parties have consented in writing. Otherwise, the Special Masters may only
22 communicate *ex parte* with the parties concerning purely administrative matters, such
23 as availability for hearing dates.

24 **VI. MAINTENANCE OF RECORDS**

25 A. The Special Masters shall preserve billing records of time spent on this
26 litigation, with reasonably detailed descriptions of the activities worked on.

27 B. The Special Masters shall preserve all documents which they generate or
28 receive during this litigation, including but not limited to the documents which they

1 consider when making orders, findings, reports, or recommendations, until such time
2 that the Court grants permission to destroy the documents.

3 **VII. COMPENSATION**

4 A. Special Masters Trotter and Stone shall each be compensated at their
5 reasonable and customary rates, which are set forth in the JAMS fee schedule
6 attached hereto as Exhibit B:

- 7 ○ \$8,000 for a full day, including up to 10 hours of hearing time;
- 8 ○ \$5,000 for a half day, including up to 4 hours of hearing time; and
- 9 ○ \$750 per hour other professional time.

10 The Special Masters shall incur only such reasonable fees and expenses as may
11 be reasonably necessary to fulfill their duties under this Order. The Special Masters'
12 reasonable expenses shall include any applicable JAMS Case Management fees listed
13 in Exhibit B.

14 B. If the Special Masters use Commissioner Stroud or Mr. Scott for limited
15 research or administrative work, respectively, then the Special Masters shall bill for
16 Stroud's and Scott's time at the reasonable rates of \$400 and \$125 per hour,
17 respectively, as set forth in Exhibit B.

18 C. If the Special Masters consult with a JAMS neutral on e-discovery issues,
19 they shall also bill for the JAMS neutral's time. The JAMS neutral's hourly rate shall
20 not exceed \$400.

21 D. Any court reporter retained by the Special Masters or the parties shall be
22 compensated at rates which are reasonable and customary for the geographic market
23 in which the testimony is taken. The court reporters shall only incur such fees and
24 expenses as may be reasonably necessary to fulfill their duty of acting as
25 stenographers.

26 E. On the first business day of each month, the Special Masters (through
27 JAMS) and any court reporters shall submit to the Court *ex parte* their respective
28 itemized statements of fees and expenses that the Court will inspect carefully for

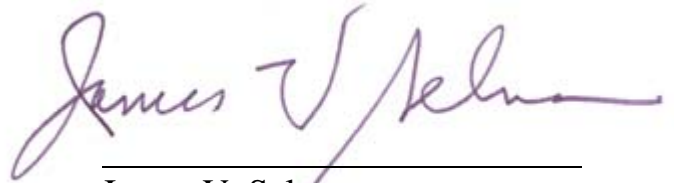
1 reasonably.

2 F. The Special Masters (through JAMS) and any court reporters shall attach
3 to each itemized statement a "Summary Statement," which shall not reflect any
4 confidential information and shall contain a signature line for the Court, accompanied
5 by the statement "approved for disbursement."

6 G. Once approved, the Court shall send the executed Summary Statements
7 to the parties. The parties shall bear the cost equally and submit payments to the
8 Special Masters (through JAMS) and any court reporters, respectively, within 30 days
9 of receiving the Summary Statements.

10 IT IS SO ORDERED.

11 Dated: August 13, 2010

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15 _____
16 James V. Selna
17 United State District Judge
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1 Dated: August 11, 2010

Respectfully submitted,

2 By: /s/ Mark P. Robinson
3 Mark P. Robinson

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43 *Loss Cases*

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