UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

JOHNNY E. GRIFFIN,	*	
individually and on behalf of all	*	
others similarly situated,	*	
	*	
Plaintiff,	*	
v.	*	Civil Action No. _____
	*	
TOYOTA MOTOR CORPORATION,	*	
a foreign corporation, **and**	*	
TOYOTA MOTOR SALES, USA, INC.,	*	
a California corporation,	*	**JURY TRIAL REQUESTED**
	*	
Defendants,	*	

CLASS ACTION COMPLAINT

Plaintiff, Johnny E Griffin, sues Defendants, Toyota Motor Corporation and Toyota Motor Sales, USA, Inc., and alleges as follows:

PARTIES

1. Plaintiff, Johnny E. Griffin ("Plaintiff") as an individual consumer, who at all times material hereto, was and is a resident of the State of Alabama.

2. Defendant, Toyota Motor Corporation, is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world.

3. Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 S.2. Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

JURISDICTION AND VENUE

4. This court has jurisdiction over this class action under 18 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act ("CAFA") explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a State different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs. Plaintiff alleges that the total claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of the State of Alabama whereas, as set forth above, Defendant Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendant Toyota Motor Sales, USA, Inc. is a citizen of the State of California. Furthermore, Plaintiff alleges that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged occurred in this district, Plaintiff resides in the this District, and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

6. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands Toyota, Lexus and Scion.

7. Toyota Motor Sales, USA, Inc., a subsidiary of the Toyota Motor Corporation, distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

8. Toyota prides itself on the safety of its vehicles. The website

www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, clams:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means..., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

9. Toyota has sold at least 133,000 units of the 2010 Prius models in the United States. Toyota also has approximately 14,500 units of their Lexus Hybrid sold in the United States. Toyota has sold upwards of 500,000 units of these vehicles worldwide. Toyota has sold over 1.2 million units of the Prius model since it's inception in 1997.

10. The National Highway Traffic Safety Administration ("NHTSA"), which helps investigate consumer complaints of automotives, has, over 1000 complaints currently with the Office of Defects Investigation database that are just for the 2010 model year alone related either to the electric, hydraulic and ABS portion of the braking system ("braking system" or "system"). As a result of these complaints, NHTSA has launched more investigations into Toyota's Prius model concerning braking issues. All of this comes on the heels of Toyota's recalls on millions of models, including the Prius, for design and manufacturing defects.

11. Further, Toyota has downplayed or dismissed owner complaints, blaming it on customer ignorance. They attribute the mounting complaints "as matter of customer preference" or "brake feel" rather than any true defect.

12. Shortly after a September 2009 Recall, the Los Angeles Times conducted an investigation into Toyota's safety issues over the past several years. *See* "Toyota Found To Keep Tight Lid On Potential Safety Problems." The article stated among other issues, that a former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a

scheme to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

13. On February 8, 2010, Toyota finally admitted that the braking systems were not entirely free from defects, as Toyota had contended, and issued a recall of these systems. This recall covers Prius and Lexus hybrids ("Vehicles in Question") with this same braking system. This recall will cover nearly 437,000 vehicles worldwide. As the public has learned from the previous recalls, the exact years and models involved, and Toyota's admissions of fault, may continue to grow as details come to light.

14. Plaintiff Johnny E. Griffin, a resident of Coffee County, Alabama, is the owner of a **2008 Toyota Prius.**

15. Plaintiff contends that his 2008 Toyota vehicle is designed, manufactured and sold using Toyota's Braking System.

16. Plaintiff's vehicle, upon information and belief, may no longer be safe to operate due to the braking system problems.

17. For example, every second the braking system malfunctions, a vehicle moving at 30 miles per hour will go 44 feet. This would create a significantly dangerous condition when driving. It is unreasonably dangerous for the Plaintiff and Class members to be expected to compensate for such unsafe and unreliable systems.

18. Plaintiff alleges upon information and belief, that the Defendants knew that this system was susceptible to malfunction that could result in unintended braking conditions and serious safety issues. The Defendants continued to manufacture the Vehicles in Question with this defective system.

19. Plaintiff contends upon information and belief, that the Defendants' actions have diminished or devalued Plaintiff's vehicle resulting in monetary loss.

CLASS ALLEGATIONS

20. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

21. Pursuant to F.R.C.P. 23, Plaintiff brings this action on behalf of himself and the

Class comprised of all other consumers who purchased the Vehicles in Question during the relevant time period. Toyota's practices and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased the Vehicles in Question for their intended and foreseeable purpose as promoted, marketed, advertised, packaged and labeled by Toyota as set forth in detail above, and the relief sought herein is for the benefit of the Plaintiff and members of the putative Class. Plaintiff alleges that the Class is so numerous that joinder of all members would be impractical.

22. Based on the annual sales of the Vehicles in Question and the popularity of the Vehicles in Question, it is apparent that the number of consumers of the Vehicles in Question would at least be in the many thousands, thereby making joinder impossible. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota designed, tested, manufactured, assembled, developed and sold defective Vehicles resulting in diminution of value and monetary loss to the Plaintiff and other Class members,

(b) Whether Toyota breached express warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;

(c) Whether Toyota breached implied warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;

(d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Vehicles in Question; and

(e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Vehicles in Question unjustly enriched Toyota at the expense of, and to the detriment of, the Plaintiff and other Class members.

(f) Whether Toyota through their activities in the promotion, marketing, advertising, packaging, labeling and sale of the Vehicles in Question violated the Lanham Act, 15 USC §1125 (a), for their

misleading and false advertising and representations regarding the Vehicles in Question to the Plaintiff and Class Members.

23. The claims asserted by the Plaintiff in this action are typical of the claims of other Class members as the claims arise from the same course of conduct by Toyota, and the relief sought is common.

24. The Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

25. Certification of this class action is appropriate under F.R.C.P. 23(b) because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action remedy, it would be highly unlikely that the representative Plaintiff or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate because Toyota acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number of consumers of the Vehicles in Question, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

26. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

I. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

27. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

28. Toyota provided the Plaintiff and other members of the Class with written express warranties including, but not limited to, that the Vehicles in Question were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

29. Toyota breached these express warranties which resulted in damages to the Plaintiff and other members of the Class, who overpaid for the Vehicles in Question, as the Vehicles in Question were not safe as they may contain a defective braking system causing erratic braking conditions, potentially resulting in injury or death, and as such, the Vehicles in Question were not safe to operate.

30. As a proximate result of the breach of warranties by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it.

31. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

II. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

32. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

33. Plaintiff and other Class members purchased the Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Vehicles in Question would be merchantable, including that the Vehicles in Question would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Vehicles' in Question promotions, marketing, advertising, packaging and labels. In doing so, the Plaintiff and other Class members relied on Toyota's representations that the Vehicles in Question were safe to operate, and at or about that time, Toyota sold to the Plaintiff and other Class members the Vehicles in Question.

34. The Defendants, by its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question, Toyota warranted that the Vehicles in Question were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's representations that the Vehicles in Question were safe to operate; however, these vehicles may have contained a defective braking system causing erratic braking conditions which could potentially result in injury or death.

35. Toyota breached the warranty implied at the time of sale in that the Plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

36. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the

benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

III. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

37. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

38. Plaintiff and other Class members purchased Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question that they were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the Vehicles in Question were safe to operate. However, Toyota's Vehicles in Question were not safe to operate as they may have contained a defective braking system causing erratic braking conditions, potentially resulting in injury or death.

39. Toyota breached the warranty implied at the time of sale in that Plaintiff and Class members did not receive products that were safe to operate as they possibly contained a defective braking system potentially resulting in injury or death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

40. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class

members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IV. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

41. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

42. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above, but delayed and failed to do so.

43. Toyota concealed these facts relating to the accelerator braking system of the Vehicles in Question when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Vehicles in Question, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the vehicles.

44. The concealment of the true facts, from the Plaintiff and other members of the Class, was done with the intent to induce the Plaintiff and Class members to purchase the Vehicles in Question.

45. The reliance by the Plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. The Plaintiff and

Class members would not have purchased the Vehicles in Question had they known the true facts about the Vehicles in Question that they may result in potential injury or death.

46. As a direct and proximate result of the fraud and deceit alleged, the Plaintiff and Class members were induced to purchase the Vehicles in Question, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

47. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Vehicles in Question, in purchasing such vehicles.

48. Plaintiff and other members of the Class, in purchasing and using the Vehicles in Question, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and the Plaintiff and Class members are, therefore, entitled to recover punitive damages.

49. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties), plus further diminution based upon Toyota's actions.

V. FIFTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

50. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

51. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Vehicles in Question, described in detail above, Toyota profited, at the expense of the Plaintiff and the Class, through the payment of the purchase price for Toyota's Vehicles in Question.

52. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from the Plaintiff and other members of the Class in light of the fact that the Vehicles in Question were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to the Plaintiff and other members of the Class for the monies paid to Toyota for such Vehicles in Question.

VI. SIXTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

57. Plaintiff realleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

58. Plaintiff's Agreement with the Defendant includes not only express written provisions, but also those terms and conditions, which although not formally expressed, are implied by the Law.

59. Such terms are as binding as the terms that are actually written into the agreement with the Plaintiff, and those who are similarly situated against the Defendants.

60. Inherent in all contracts and agreements is a covenant that the parties will act in good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

61. The obligations of Defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between Defendants and the Plaintiff. This imbalance allows Defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

62. Through the actions and inactions of the Defendants as outlined above, Defendants

have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and others similarly situated.

63. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

VII. SEVENTH CAUSE OF ACTION

(VIOLATION OF THE LANHAM ACT, 15 USC §1125 (a))

64. Plaintiff realleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

65. As a result of Toyota's deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the Vehicles in Question, described in detail above, violated the Lanham Act, 15 USC §1125 (a).

66. The Defendants through their actions and inactions did deceive the Plaintiff and Class Members into purchasing the Vehicles in Question. The Defendants violated this act through the use of advertising and marketing and statements that portrayed the Vehicles in Question as among other things, safe and reliable. This false and misleading advertising, misstatement of facts regarding the Defendant's products has caused the Plaintiff and Class members to purchase the Vehicles in Question which may actually be unsafe.

67. The Plaintiff's use of the Vehicles in Question may actually result in injury or death. The Vehicles in Question would also have sold for and will continue to sell for, a lesser value, but for, the Defendant's violation of the Lanham Act as described above. As a result, the Plaintiff and Class members have been damaged by the acts of the Defendant.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. An award of compensatory damages, and other damages, the amount of which is to be determined at trial;

C. For interest at the legal rate on the foregoing sums;

D. For costs of suit incurred; and

E. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 11, 2010

Respectfully submitted,

W. Daniel Miles, III
Dee.Miles@beasleyallen.com
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
218 Commerce Street
Montgomery, AL 36104
(800) 898-2034
(334) 269-2343
(334) 954-7555 facsimile
(Counsel for the Plaintiff)

Joe R. Whatley, Esq.
jwhatley@wdklaw.com
Edith M. Kallas, Esq.
ekallas@wdklaw.com
Patrick J. Sheehan, Esq.
psheehan@wdklaw.com
Shujah A. Awan, Esq.
sawan@wdklaw.com
Whatley, Drake & Kallas, LLC
1540 Broadway, 37th Floor
New York, New York 10036
(212) 447-7070 (ofc)
(Co-counsel for the Plaintiff
Pro Hac Vice pending)

Howard Rubinstein, Esq.
Florida Bar No. 0104108
HowardR@pdq.net
Law Offices of Howard Rubenstein
914 Waters Ave., Suite 20
Aspen, Colorado 81611
(832) 715-2788 (ofc)
(Co-counsel for the Plaintiff
Pro Hac Vice pending)

Brian W. Smith, Esq.

Florida Bar No. 0470510
bws@smithvanture.com
Smith & Vanture, LLP
1615 Forum Place, Suite 4C
West Palm Beach, Florida 33401
(561) 684-6330 (ofc) (561) 688-0630 (fax)
(Co-Counsel for the Plaintiff –
Pro Hac Vice pending)

Defendants:

TOYOTA MOTOR CORPORATION,
1 Toyota-Cho
Toyota City, Aichi Prefecture 471-8571, Japan

TOYOTA MOTOR SALES, U.S.A., INC.
c/o The Corporation Company
2000 Interstate Park drive, Suite 204
Montgomery, Alabama 36104