

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

TERRY FREEMAN and ANDREW TROUT, )  
on behalf of themselves and all others similarly )  
situated, )

Plaintiffs, )

vs. )

CASE NO. \_\_\_\_\_

TOYOTA MOTOR SALES, U.S.A., INC., )  
TOYOTA MOTOR NORTH AMERICA, INC., )  
AND TOYOTA MOTOR ENGINEERING & )  
MANUFACTURING NORTH AMERICA, )  
INC., )

**Jury Trial Demanded**

Defendants. )

**DEFENDANTS’ NOTICE OF REMOVAL OF CIVIL ACTION**

Defendants Toyota Motor Sales, U.S.A., Inc. (“TMS”), Toyota Motor North America, Inc. (“TMNA”), and Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) (collectively “Toyota”), by their undersigned attorneys, hereby give notice of the removal of this action from the Circuit Court for the County of St. Louis, Twenty-First Judicial District, State of Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1332(d), 1446, and 1453.<sup>1</sup> Toyota bases this removal on the provisions of the Class Action Fairness Act of 2005 (“CAFA”) and states as follows:

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<sup>1</sup> By removing this action to this Court, Defendants do not waive any defenses, objections, or motions available under state or federal law. Defendants specifically reserve the right to move for dismissal of some or all of Plaintiffs’ claims and/or seek dismissal on grounds of lack of personal jurisdiction, insufficient or improper service of process, or improper venue, or under the doctrine of forum non conveniens.

**NATURE OF THE ACTION**

1. On July 24, 2019, Plaintiffs Terry Freeman and Andrew Trout, individually and on behalf of a putative class, filed their Class Action Petition (“Petition”) in the Circuit Court of St. Louis County, Missouri at Clayton.

2. Toyota was served with the Summons and Petition on August 15, 2019.

3. A true and correct copy of all process and pleadings served on Toyota, as well as the complete file from the state court, is attached hereto as Exhibit A.

4. The St. Louis County Circuit Court’s docket sheet indicates that TMS, TMNA, and TEMA are the only named and served Defendants. A true and correct copy of the Circuit Court’s docket sheet (as of the date of this filing) is attached as Exhibit B.

5. The Declaration of Audrey Mito (“Declaration”), a Toyota employee, is offered in support of Toyota’s Notice of Removal. A true and correct copy of the Declaration is attached as Exhibit C.

6. In Count I of the Petition, Plaintiffs allege that Toyota breached its warranty (“Basic Warranty”) with Plaintiffs and the putative Warranty Subclass because “Toyota failed to repair their defective hands-free phone systems<sup>2</sup> within a reasonable time,” and as a result, left Plaintiffs and the putative Warranty Subclass with vehicles of diminished value. Ex. A, ¶ 18, 118, 73-80.

7. In Count II, Plaintiffs allege that Toyota violated the MMPA by means of unfair practices “in failing to disclose the echo defect to Plaintiffs and putative MMPA Subclass

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<sup>2</sup> Plaintiffs reference Toyota Highlander Owner’s Manual from various model years to describe the “hands-free phone system,” which supports Bluetooth and permits a user to make phone calls from their cellular phone without the use of cables and without operating the phone. Ex. A, ¶ 10.

Members prior to their purchases or leases of Toyota's vehicles." Ex. A, ¶ 124. This count is alleged on behalf of Plaintiffs and the putative MMPA Subclass.

8. In Count III, Plaintiffs rely on the same factual allegations offered in support of Count I, alleging Toyota violated the MMPA by means of unfair practices. Specifically, Plaintiffs assert that Toyota "failed to honor written warranties" to "repair the reported defects in the hands-free phone system within a reasonable time," which constitutes "unfair practices" as contemplated by 15 C.S.R. § 60-8.070. Ex. A, ¶¶ 139, 144-46. This Count is alleged on behalf of Plaintiffs and the putative MMPA and Warranty Subclasses.

9. In Count IV, Plaintiffs allege that Toyota violated the MMPA because it promoted its vehicles as containing usable hands-free phone systems without referencing the echo defect. Ex. A, ¶ 158. This Count is alleged on behalf of Plaintiffs and the putative MMPA Subclass.

10. In Count V, Plaintiffs allege that prior to the purchase or lease their respective Toyota vehicles, Toyota omitted reference to any material facts regarding the hands-free phone system in violation of the MMPA. Ex. A, ¶¶ 162-179. This Count is alleged on behalf of Plaintiffs and the putative MMPA Subclass.

11. In Count VI, Plaintiffs allege that Toyota retained substantial monetary benefits from its sale or lease of vehicles with an allegedly defective hands-free phone system, which Toyota knew or should have known of, yet failed to inform Plaintiffs. Plaintiffs contend that under these circumstances, conferring such a benefit is inequitable and constitutes unjust enrichment. Ex. A, ¶¶ 181-183. This count is alleged on behalf of Plaintiffs and the putative Class. *Id.* ¶¶ 180-86.

12. Plaintiffs purport to represent a putative Class and Subclasses defined as:

All individuals who reside in Missouri who purchased or leased a Toyota Highlander, Avalon, Sienna, Prius V, Tacoma, Sequoia, Prius, Tundra, Avalon HV, Yaris, 4Runner, or Highlander HV (a “Class Vehicle”) that, within the applicable period of limitations preceding the filing of this lawsuit to the date of class certification, has or had a defect such that during use of the vehicle’s hands-free phone system, the person on the other end of a phone call hears an echo of his or her own words. (“Class”)

“All Class Members with vehicles covered by Toyota’s Basic Warranty who reported the echo defect to Toyota within the warranty period, for whom Toyota breached the warranty by failing to repair their hands-free phone systems within a reasonable time.” (“MMPA Subclass”)

“All members within the State of Missouri who owned or leased his or her Class Vehicle for personal, family, or household purposes.” (“Warranty Subclass”)

Ex. A, ¶ 103.

13. Plaintiffs, on behalf of themselves and the putative class, seek class certification, entry of appearance for identified counsel, an unspecified amount of actual and punitive damages, pre-judgment and post-judgment interest, and reasonable attorneys’ fees and costs. Ex. A, ¶¶ WHEREFORE 1-4, 6-7.

14. With respect to the equitable claims alleged, Plaintiffs request an award of injunctive relief “enjoining Toyota from continuing the unlawful practices as set forth” in the Petition, on behalf of themselves and the Class. *Id.* Plaintiffs further assert they are entitled to “restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Toyota, plus attorneys’ fees, costs, and interest thereon.” Ex. A, ¶ 185.

**THIS CASE IS REMOVABLE UNDER CAFA**

15. CAFA provides for federal jurisdiction over putative class actions when: (1) there is minimal diversity; (2) there is at least \$5 million in controversy; and (3) none of the exceptions to CAFA jurisdiction apply. 28 U.S.C. §§ 1332(d)(2), 1453(d).

**A. The Parties are Minimally Diverse.**

16. Minimal diversity under CAFA exists when any member of the putative class is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(1)(A), (B), (D); *id.* § 1332(d)(2)(A). *See Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010).

17. Plaintiffs' petition alleges that TMS and TMNA are California corporations, with their principal place of business in Plano, Texas. Ex. A, ¶ 3. Plaintiffs further allege that TEMA is a Kentucky Corporation with its principal place of business in Plano, Texas. Thus, the petition alleges that Defendants are citizens of California, Kentucky and Texas. *See* 28. U.S.C. § 1332(c)(1) (for diversity purposes, a corporation is a citizen of every state in which it is incorporated and in which it has a principal place of business).

18. Plaintiffs' Petition alleges that Plaintiffs Terry Freeman and Andrew Trout are citizens of Missouri. Ex. A, ¶¶ 1-2 (stating that Mr. Freeman and Mr. Trout are residents St. Louis County, Missouri).

19. Plaintiffs' putative statewide class, including each defined subclass, is also comprised of citizens of Missouri. Ex. A, ¶ 102 ("Plaintiffs bring this action on their own behalf and as a class action on behalf of all Missouri owners and lessees of Toyota vehicles . . . as well as Subclasses of Members in Missouri who purchased or leased their vehicles . . .").

20. Therefore, minimal diversity exists in this case because the Parties were minimally diverse at the time of filing Plaintiff's Petition and removal; and at least one of the members of the putative class is a citizen of a state other than California, Kentucky or Texas.

**B. More Than \$5 Million Is In Controversy.**

21. Plaintiffs' petition is silent as to the specific amount they seek. Similarly, Plaintiffs allege no estimate regarding the specific number of class members, but assert that the putative Class is "so numerous that joinder of all members is impracticable." *Id.* ¶ 106. *See also id.* ¶ 103 (alleging that Plaintiffs and "[a]ll individuals who reside in Missouri who purchased or leased" a Class Vehicle with Bluetooth capability, within the applicable period of limitations,<sup>3</sup> have been and will be harmed by the alleged echo defect).

22. Plaintiffs' Petition contains six Counts against Toyota for violations, each count brought on behalf of Plaintiffs and/or the Class in varying combinations. The core factual allegations in support of each Count alleged relates to Plaintiffs' purchase or lease of a Toyota vehicle that contained an undisclosed defect in the vehicle's hands-free phone system, which diminished the vehicle's value "in an amount to be determined at trial." Ex. A, ¶¶ Introduction 1, 17, 121.

23. Plaintiffs allege that they "suffered ascertainable loss" because they paid for "vehicles with properly functioning hands-free phone systems without being informed of the echo defect prior to their purchases or leases, but instead received vehicles that have defective hands-free phone systems that are therefore worth a lesser value." Ex. A, ¶¶ 135, 158, 176.

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<sup>3</sup> Because Plaintiffs' MMPA claims are governed by a 5-year statute of limitations, *see Huffman v. Credit Union of Texas*, 758 F.3d 963, 969 (8th Cir. 2014), their putative Class includes purchases and leases from 2014-2019.

24. Plaintiffs allege that their claims are “typical of the claims of the Class Members” and that “all Class Members have suffered damages” as a result of Toyota’s allegedly unfair acts and omissions. Ex. A, ¶ 108.

25. Based on its records, Toyota sold or leased 52,355 non-fleet Class Vehicles from July 2, 2014 through August 28, 2019. Declaration of Audrey Mito, ¶ 4.

26. It is facially apparent that the amount in controversy in this matter well exceeds the \$5,000,000 threshold for diversity jurisdiction under CAFA. To meet the \$5,000,000 threshold, the combined value of the injunctive relief and damages sought by each of the 52,355 alleged putative class members need only be \$95.50. *See e.g., Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945-46 (8th Cir. 2012) (multiplying named plaintiffs’ alleged damages by the number of class members alleged in the complaint to determine the amount in controversy). As reflected in the Declaration of Audrey Mito, the parts alone to replace the hands-free phone system exceed \$100.

27. This figure does not account for Plaintiffs’ request for punitive damages, attorneys’ fees, equitable relief (violation of ethical standards), and disgorgement of profits. *See* Ex. A, ¶ 185. Including those items of recovery would further increase the amount in controversy well beyond the \$5 million jurisdictional threshold. *See e.g., Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013) (“When considering the total sales in conjunction with the request for punitive damages the amount in controversy requirement is met.”); R.S.Mo. § 510.265.1(2) (stating that punitive damages are limited to up to “[f]ive times the net amount of the judgment); *Hervey v. Mo. Dep’t of Corr.*, 379 S.W.3d 156, 165 (Mo. 2012) (concluding that a determination as to the “net amount of the judgment” includes award of attorneys’ fees).

**C. None of the Exceptions to CAFA Jurisdiction Apply**

28. Although CAFA contains certain exceptions, and it is the Plaintiffs' burden to prove they apply, none apply here.

29. Under 28 U.S.C. § 1332(d)(4), CAFA does not extend federal diversity jurisdiction to class actions in which more than two-thirds of the members of the proposed class are citizens of the State in which the action was originally filed, at least one defendant from whom significant relief is sought and whose alleged conduct forms a significant basis for the asserted claims is a citizen of the State in which the action was originally filed, and the principal injuries occurred in the State in which the action was originally filed. Here, Toyota is not a citizen of Missouri. Accordingly, the provisions of 28 U.S.C. § 1332(d)(4) do not preclude the exercise of federal jurisdiction.

30. Under 28 U.S.C. §§ 1332(d)(5), CAFA does not extend federal diversity jurisdiction to class actions in which “the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief” or “the number of members of all proposed plaintiff classes in the aggregate is fewer than 100.” Here, Toyota is not a state, state official, or other governmental entity. Further, the putative class is well over 100 citizens. Accordingly, the provisions of 28 U.S.C. §1332(d)(5) do not preclude the exercise of federal jurisdiction.

31. Under 28 U.S.C. § 1332(d)(9), CAFA does not extend federal diversity jurisdiction to class actions involving solely (A) securities covered under the federal securities laws, (B) a corporation's internal affairs or governance, or (C) the “rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security.” 28 U.S.C.



§ 1332(d)(9)(A)-(C). The allegations in Plaintiffs' Petition do not relate to such claims. Accordingly, the provisions of 28 U.S.C. § 1332(d)(9) do not preclude the exercise of federal jurisdiction.

**TOYOTA HAS COMPLIED WITH ALL PREREQUISITES FOR REMOVAL**

32. Toyota was served on August 15, 2019. This Notice of Removal is timely filed before the expiration of 30 days from the receipt of Plaintiffs' petition and summons. 28 U.S.C. § 1446(b).

33. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders received by Toyota during the pendency of the action in Missouri Circuit Court are annexed hereto. The summons to Toyota, the Petition, are the only documents in the action on file in the Missouri Circuit Court which have been received.

34. Pursuant to 28 U.S.C. § 1446(a), Toyota will contemporaneously give Plaintiff written notice of this filing and file a copy of this Notice of Removal with the Circuit Court of Missouri, Twenty-First Judicial District, St. Louis County.

35. Toyota reserves the right to amend or supplement this Notice of Removal and it reserves all rights and defenses, including those available under Fed. R. Civ. P. 12.

36. Toyota requests a jury trial in this case.

**CONCLUSION**

37. For all the reasons stated above, this action is a civil action over which this court has original jurisdiction pursuant to 28. U.S.C. § 1332(d).

WHEREFORE, Toyota respectfully removes this case to the United States District Court for the Eastern District of Missouri, Eastern Division.

Respectfully Submitted,

DATED this 12th day of September 2019.

SHOOK, HARDY & BACON L.L.P.

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