

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup>: 500-06-000499-109

**SUPERIOR COURT**  
**(Class Action)**

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**MICHAEL MELLEY**, residing and domiciled at 414 Rue Saint Angelique, in the City of Saint Basile Portneuf, Province of Quebec, G0A 3G0;

*Petitioner*

-vs-

**TOYOTA CANADA INC.**, a legal person duly constituted according to the law, having its principal place of business at 4705 Lapinière, City of Brossard, Province of Quebec, J4Z 3T5;

-and-

**TOYOTA MOTOR CORPORATION**, a legal person duly constituted according to the law, having its head office at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan;

-and-

**TOYOTA MOTOR NORTH AMERICA INC.**, a legal person duly constituted according to the law, having a place of business at 9 W. 57<sup>th</sup> St., Ste. 4900, New York, NY, 10019;

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO ASCRIBE THE STATUS OF REPRESENTATIVE**

(Art. 1002 C.C.P. and following)

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES THE FOLLOWING:

## GENERAL PRESENTATION

### The Action:

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- All persons in Canada who own, lease or otherwise possess a Toyota Prius Hybrid and/or a Lexus HS 250h Hybrid and/or any other Toyota or Lexus vehicle equipped with a brake system similar to the brake system included in the Toyota Prius Hybrid, or any other group to be determined by the Court;

#### **alternately (or as a subclass):**

- All persons in Quebec who own, lease or otherwise possess a Toyota Prius Hybrid and/or a Lexus HS 250h Hybrid and/or any other Toyota or Lexus vehicle equipped with a brake system similar to the brake system included in the Toyota Prius Hybrid, or any other group to be determined by the Court;

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)", the "Consumer(s)");

2. Respondents designed, manufactured, distributed, and sold the Toyota Prius Hybrid (the "**Prius Hybrid**");
3. Respondents through their related companies, also designed, manufactured, distributed, and sold the Lexus HS 250h Hybrid (the "**Lexus Hybrid**");
4. The Prius Hybrid and the Lexus Hybrid are both gas-electric hybrid cars which are both equipped with an identical braking system;
5. Petitioner is unable to confirm at this point whether or not other Toyota or Lexus vehicles are also equipped with a braking system similar to the one in the Prius Hybrid (the "**Other Vehicles**");
6. Hereinbelow, Petitioner shall be referring to the Prius Hybrid, the Lexus Hybrid and the Other Vehicles collectively as the "**Vehicles**";
7. The Vehicles are dangerous and/or defective and/or unsafe in that the braking

system in question lags for a few seconds when the car switches from its gas engine to the electric motor, or vice versa. In fact, whichever motor is powering the car also runs the brakes and the brakes will give out momentarily in the transition;

8. At highway speeds, a car can travel nearly 100 feet in just one second according to the US National Highway Traffic Safety Administration (the "NHTSA") which has said that it has received more than 100 complaints involving the Prius Hybrid's braking system;
9. Transport Canada has indicated that it has received six complains concerning the Prius Hybrid during the two months prior to the present proceedings;
10. The Japanese government in fact ordered Respondents to investigate possible brake problems in the Prius Hybrid on or about February 3, 2010 after receiving 14 complaints about the Prius Hybrid's brakes;
11. Accidents that resulted in injuries were involved in two of the complaints received by NHTSA and one received by the Japanese Government, all of the above being reported by the media the week of February 3, 2010;
12. Therefore, by reason of the above-mentioned actions and omissions by Respondents, the Petitioner and the Class Members have suffered damages which they wish to claim;

**The Respondents:**

13. Respondent Toyota Motor Company is a Japanese automotive company;
14. Respondents Toyota Canada Inc. and Toyota Motor North America Inc. are affiliates of Respondent Toyota Motor Corporation and carry on business on their own behalf throughout Canada and the United States, manufacturing and selling automobiles;
15. Respondents directly or through related companies or entities have designed, manufactured, marketed and distributed the Toyota and Lexus Vehicles throughout Canada;
16. Given the close ties between the Respondents and considering the above, the Respondents are solidarily liable for the acts and omissions of the others;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

17. The Petitioner purchased a brand new 2010 Toyota Prius Hybrid on December 3, 2009 for approximately \$33,000, at Boulevard Toyota in Quebec City;
18. In the approximate 2 months that Petitioner has owned his Prius Hybrid, he has experienced the brake lag situation described above on at least 3 occasions, while approaching a stop sign. The lags in question caused Petitioner to overshoot his desired stop, putting him and his family at grave danger;
19. Petitioner would not have purchased the Prius Hybrid had he been made aware of this brake defect before purchasing it;
20. Petitioner was only made aware of the problem the week of February 3, 2010 when the media reported the story;
21. Petitioner called Respondents in order to inquire as to whether it was safe to continue driving his automobile but Respondent's representative merely asked him to call back the following week as they were still unsure whether a recall would be announced;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

22. Every Member of the Group owns, leases or otherwise possesses one of the Vehicles described above;
23. Each Member of the Group is justified in claiming at least one or more of the following:
  - a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Vehicles;
  - b) Damages for the costs associated with the defects or repairs to the Vehicles;
  - c) Damages for loss of use and enjoyment of their Vehicles;
  - d) Damages for trouble, inconvenience and loss of time;
  - e) Damages for anxiety and fear;

- f) Punitive and/or exemplary damages;
24. All of these damages to the Group Members are a direct result of the Respondents' conduct;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;

25. The number of persons included in the Group is in thousands;
26. The names and addresses of all persons included in the Group are not known to the Petitioner but are known to Respondents;
27. The Vehicles are sold by dealerships scattered across Canada and potential Group Members are therefore widely dispersed geographically across Canada;
28. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;
29. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Class;
30. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
31. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:

32. Individual questions, if any, pale by comparison to the numerous common questions that predominate;

33. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Are the Vehicles designed, manufactured and sold by Respondents equipped with dangerous and/or defective braking systems?
  - b) Are the Vehicles in questions unsafe?
  - c) Are the Vehicles fit for the purpose they were intended?
  - d) Did the Respondents know or should the Respondents have known about these defects affecting the braking systems on the Vehicles?
  - e) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or lease the Vehicles, or thereafter?
  - f) Have the Class Members suffered damages as a result of the defect in question?
  - g) Are Respondents liable to pay compensatory damages to Class Members stemming from the defect?
  - h) What are the categories of damages for which the Respondents are responsible to pay to Class Members, and if so in what amount?
  - i) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?
34. The interests of justice favour that this motion be granted in accordance with its conclusions;

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

35. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;
36. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the resiliation of the sale or lease of the Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or

lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimbursed to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of their Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

37. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Class Members are domiciled in the District of Montreal;
  - b) Respondents have business establishments in the District of Montreal;
  - c) Many of the Vehicles were purchased or leased by Class Members in District of the Montreal;
  - d) Class Counsel are domiciled in the District of Montreal;

38. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) purchased a brand new 2010 Prius Hybrid which is affected by the defect alleged above;
  - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
  - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
  - d) is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
  - e) does not have interests that are antagonistic to those of other members of the Group;
  - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
  - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;
39. The present motion is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Group herein described as:

- All persons in Canada who own, lease or otherwise possess a Toyota Prius Hybrid and/or a Lexus HS 250h Hybrid and/or any other Toyota or



Lexus vehicle equipped with a brake system similar to the brake system included in the Toyota Prius Hybrid, or any other group to be determined by the Court;

**alternately (or as a subclass):**

- All persons in Quebec who own, lease or otherwise possess a Toyota Prius Hybrid and/or a Lexus HS 250h Hybrid and/or any other Toyota or Lexus vehicle equipped with a brake system similar to the brake system included in the Toyota Prius Hybrid, or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Are the Vehicles designed, manufactured and sold by Respondents equipped with dangerous and/or defective braking systems?
- b) Are the Vehicles in questions unsafe?
- c) Are the Vehicles fit for the purpose they were intended?
- d) Did the Respondents know or should the Respondents have known about these defects affecting the braking systems on the Vehicles?
- e) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or lease the Vehicles, or thereafter?
- f) Have the Class Members suffered damages as a result of the defect in question?
- g) Are Respondents liable to pay compensatory damages to Class Members stemming from the defect?
- h) What are the categories of damages for which the Respondents are responsible to pay to Class Members, and if so in what amount?
- i) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the resiliation of the sale or lease of the Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimbursed to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of their Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses

**DECLARE** that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

**ORDER** the publication of a notice to the Members of the Group in accordance with Article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, February 5, 2010

*Merchant Law Group LLP*

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP  
Merchant Law Group, LLP

**MERCHANT LAW GROUP LLP**  
Attorneys for Petitioner and the  
Class Members