

SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

CHARLES VIGNEAU

Plaintiff

- and -

**TOYOTA CANADA INC., TOYOTA MOTOR CORPORATION and
TOYOTA MOTOR NORTH AMERICA INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 2007

**NOTICE OF MOTION
(Approval of Phase 1 Notice)**

To

This is a joint application on behalf of all persons currently parties to this litigation:

Glenn Zakaib and Tim Pinos
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Solicitors for the Defendants
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Evatt Merchant and Aroosha Sadaghianloo
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The current action is a proposed class proceeding. The parties have conditionally agreed to settle this action pursuant to the terms of the Canadian Toyota Unintended Acceleration Marketing, Sales Practices and Products Liability Settlement Agreement, dated August 6, 2013 (the "Settlement Agreement"). The parties will be seeking, inter alia, conditional certification and approval of the Settlement pursuant to section 38 of *Class Proceedings Act* (the "Approval Order"), at a hearing to be held in January or early February, 2014, on a date to be fixed by this Honourable Court, with similar conditional certification and approval applications to be made to the courts of Saskatchewan, Quebec, and Ontario.

Motion

Charles Vigneau, the Plaintiff, and Toyota Canada Inc., Toyota Motor Corporation and Toyota Motor North America Inc., the Defendants, move for an Order in the form attached as Schedule "A" to this Application.

The Court should be aware that the same draft Order is in all material respects identical to that attached as Appendix B to the Settlement Agreement. Orders on materially the same terms (attached as Appendices C and E to the Settlement Agreement) are being requested from the courts of Ontario and Quebec, respectively, and an Order in all material respects identical to that attached as Appendix D to the Settlement Agreement has been issued by the court in Saskatchewan. (The Appendices referred to above do not require review but are attached to the Settlement Agreement which was provided to this Honourable Court by way of a letter from Joel Rochon, dated October 31, 2013. The Settlement Agreement is now formally part of the Court record by virtue of the Affidavit of Joy Hanson, sworn November 12, 2013.) Details of the proposed notice plan are identified in the Affidavit of Nadine Covill, sworn November 12, 2013.

Time and place

The motion is to be heard by the Honourable Justice Glen G. McDougall by telephone on November 22, 2013, commencing at 11:45am. The parties have arranged for 30-45 minutes for the motion to be heard and the moving parties say that the motion will not require more time.

References

The parties rely on the following legislation, Rules, or points of law:

- (a) Sections 4, 15, and 38 of the *Class Proceedings Act*, SNS 2007, c 28.
- (b) The two-phase notice process requested is consistent with the process followed for approval of the settlement in at least one previous class proceeding in Nova Scotia: *Martin v. Roman Catholic Diocese of Antigonish*, 2009 NSSC 331, at paras. 62-63.
- (c) The practice in class proceedings is for courts to approve a Notice of Settlement Approval Hearing that counsel sends to putative class members prior to the Settlement Approval Hearing so that class members may have an opportunity to object: *405341 Ontario Limited v. Midas Canada Inc.*, 2013 ONSC 5714, at para. 11; *Axiom Plastics Inc. v. E.I. DuPont Canada Company*, 2013 ONSC 2675 at para. 20.
- (d) This Honourable Court has jurisdiction to make the requested Order by statute, or alternatively, pursuant to its inherent jurisdiction: *Donna Driediger v. Ashley Furniture Industries Inc. et al.*, 2010 SKQB 437, per Laing C.J., at para. 8.

Evidence

The evidence in support of the motion is as follows:


1. Affidavit of Gerald Brault, sworn October 23, 2013, styled in this action and related actions in the courts of Ontario, Quebec and Saskatchewan;
2. Affidavit of Shawn Gilhula, sworn November 11, 2013, styled in this action and related actions in the courts of Ontario, Quebec and Saskatchewan;

3. Affidavit of Jennifer Dewar, sworn November 8, 2013, styled in this action and related actions in the courts of Ontario, Quebec and Saskatchewan;
4. Affidavit of Nadine Covill, sworn November 12, 2013;
5. Affidavit of Joy Hanson, sworn November 12, 2013;
6. Affidavit of Brittany Russell, sworn November 12, 2013; and,
7. Such further and other material as counsel may advise and this Honourable Court may allow.

Signature

Signed this 14th day of November, 2013 at Regina, Saskatchewan.

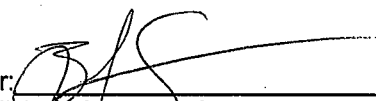
MERCHANT LAW GROUP LLP

Per: 
Solicitors for the Plaintiff
800 - 65 St. Clair Ave E
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Fax: 1-887-975-1983

Signed this 14th day of November, 2013 at Toronto, Ontario.

CASSELS BROCK & BLACKWELL LLP

on behalf of Glenn
Zakaria

Per: 
Solicitors for the Defendants
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Schedule “A”

2010

No. 325016

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

CHARLES VIGNEAU

Plaintiff

-and-

**TOYOTA CANADA INC., TOYOTA MOTOR CORPORATION and
TOYOTA MOTOR NORTH AMERICA INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 2007, c.28

ORDER

BEFORE THE HONOURABLE MR. JUSTICE GLEN G. MCDUGALL

ON THE MOTION of the plaintiff for an Order approving the form and content of the Notice of the Certification and Settlement Approval Hearing in Nova Scotia ("Notice") and approving the method of dissemination of the Notice (the "Notice Plan") was heard on November 22, 2013, at The Law Courts Building, 1815 Upper Water Street, Halifax, Nova Scotia;

UPON READING the material filed, including the Canadian Toyota Unintended Acceleration marketing, Sales Practices and Products Liability Settlement Agreement dated August 6, 2013, a copy of which is attached to this Order as Schedule "A" (the "Settlement Agreement"), and upon hearing submissions of counsel for all the Parties;

IT IS HEREBY ORDERED:

1. That, except as otherwise specified in, or as modified by, this Order, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.
2. That the Plaintiff is granted leave to bring an application to certify this action as a class action for settlement purposes only, pursuant to section 4(4)(b) of the *Class Proceedings Act, 2007*, S.N.S. 2007, c. 28.
3. That the Certification and Settlement Approval Hearing in Nova Scotia is to be held on _____, 2014, beginning at _____ a.m./p.m., at the Law Courts Building, 1815 Upper Water Street, Halifax, Nova Scotia (the "Nova Scotia Certification and Settlement Approval Hearing"), at which time this Court will be asked to decide:
 - a) whether to certify this Action as a Class Proceeding for settlement purposes only; and
 - b) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Nova Scotia National Class Members;
 - c) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted;
 - d) whether to grant an honorarium award to the Class Representative; and
 - e) any other matters as the Court may deem appropriate.
4. That the form of the Notice, substantially in the form as set forth in Exhibit "F" to the Settlement Agreement and attached hereto as Schedule "B", is hereby approved.

5. That the Notice shall be published and disseminated substantially in accordance with the Notice Plan as set forth in Exhibit "K" to the Settlement Agreement and attached hereto as Schedule "C".
6. That the form and manner of notice as approved in paragraphs 4 and 5 herein represents fair and reasonable notice to all persons entitled to notice of the Nova Scotia Certification and Settlement Approval Hearing.
7. That Toyota shall, in accordance with the terms of the Settlement Agreement, pay the costs associated with the Notice approved herein.
8. That the date and time of the Nova Scotia Certification and Settlement Approval Hearing shall be set forth in the Notice, but may be subject to adjournment by the Court without further publication notice to the Nova Scotia National Class Members other than such notice which will be posted on the settlement website (the "Settlement Website").
9. That Crawford Class Action Services shall be provisionally appointed as Claims Administrator for the purposes of coordination of the Notice Plan, administration of objections, opt-out forms and related tasks, including establishing the Settlement Website for purposes of posting the Notice, Settlement Agreement and all related documents.
10. That a copy of this Order shall be posted on the Settlement Website.

Issued November ____, 2013.

Prothonotary