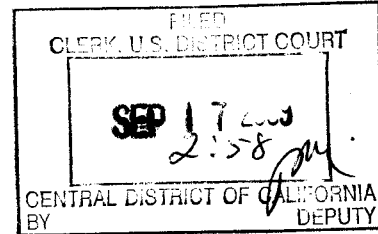


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10 Attorneys for Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 DIMITRIOS P. BILLER;
16 LITIGATION DISCOVERY &
17 TRIAL CONSULTING, INC., a
18 California corporation;

19 Plaintiffs,

20 v.

21 TOYOTA MOTOR CORPORATION;
22 TOYOTA MOTOR SALES,
23 U.S.A., INC.; CHRISTOPHER
24 REYNOLDS; JANE HOWARD
25 MARTIN; ERIC TAIRA; DIAN
OGILVIE; ALICIA McANDREWS;

26 Defendants.
27
28

) Case No.: CV-09-5429 GHK
(RZx)

) FIRST AMENDED COMPLAINT
) FOR: (1) VIOLATION OF CIVIL
) RACKETEER INFLUENCED
) CORRUPT ORGANIZATION ACT;
) (2) CONSTRUCTIVE WRONGFUL
) TERMINATION IN VIOLATION OF
) PUBLIC POLICY; (3)
) INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS; and (4)
) DEFAMATION PER SE

DEMAND FOR JURY TRIAL

1 Plaintiffs, DIMITRIOS P. BILLER and LITIGATION
2 DISCOVERY & TRIAL CONSULTING, INC., allege:

3
4 **I. INTRODUCTION**

5 1. For years, Defendants Toyota Motor Corporation
6 ("TMC"), its United States subsidiaries, and key Toyota
7 executives, have conspired, and continue to conspire,
8 to unlawfully withhold and conceal evidence from
9 plaintiffs and obstruct justice in lawsuits against
10 Toyota throughout the United States. Many of the
11 plaintiffs in these lawsuits sustained catastrophic and
12 fatal injuries in rollover accidents involving Toyota
13 vehicles.
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17 2. Plaintiff Dimitrios P. Biller, the former
18 National Managing Counsel in charge of Toyota's
19 National Rollover Program, became aware of Toyota's
20 conspiracy to conceal, withhold, and destroy evidence
21 and information, and obstruct justice, during his
22 employment at Toyota. As Toyota's in-house counsel in
23 charge of managing some of the very cases in which
24 Toyota was concealing evidence, Mr. Biller was in a
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1 unique position to know the relevance of the evidence
2 and information that was concealed in the cases in
3 which it was requested by plaintiffs in discovery. As
4 Toyota's managing counsel in those cases, Mr. Biller
5 was ethically and legally obligated to turn over the
6 evidence that Toyota had been concealing and
7 withholding, and which it continues to conceal and
8 withhold.
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11

12 3. Mr. Biller repeatedly confronted Toyota
13 executives about the need to turn over the evidence it
14 was concealing and withholding, and repeatedly was told
15 by Toyota executives, including in-house counsel, that
16 Toyota would not comply with its legal duty to do so.
17 Despite Toyota's resistance, Mr. Biller persisted in
18 his efforts to convince Toyota to meet its ethical and
19 legal obligations to turn over the evidence it was
20 concealing and withholding.
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24 4. When it became clear to Toyota and its
25 executives that Mr. Biller could not be dissuaded in
26 his insistence, Toyota and its executives made every
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1 effort to prevent Mr. Biller from turning over, and
2 even preserving, the damaging evidence the company so
3 desperately sought to conceal. Mr. Biller was
4 subjected to intimidation, harassment, and an uncertain
5 future, both at Toyota and elsewhere, as a result of
6 his efforts to comply with the legal and ethical
7 obligations.
8 obligations.

10 5. Mr. Biller suffered a complete mental and
11 physical breakdown as a result of Toyota's campaign to
12 stop his efforts and silence him. Mr. Biller was
13 forced to resign, enter into a Severance Agreement
14 during a time in which he was on medical leave from
15 Toyota due to his compromised mental and physical
16 condition, and subjected to lawsuits and further
17 harassment, intimidation, and retaliation by Toyota
18 following his departure from the company.
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23 6. Toyota's campaign of intimidation and
24 harassment of Mr. Biller in the months prior to, and
25 years following, his forced resignation from the
26 company are part of Toyota's calculated conspiracy to
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1 prevent the disclosure of damaging evidence that it has
2 been concealing and withholding for years from
3 plaintiffs, the judicial system, the United States
4 National Highway Traffic Safety Administration
5 ("NHTSA"), and the American public. Mr. Biller's life,
6 both professionally and personally, has been
7 irreparably injured by Toyota's ruthless conspiracy and
8 relentless effort to prevent evidence of its vehicles'
9 structural shortcomings from becoming known. By this
10 action, Mr. Biller seeks to end the conspiracy of
11 illegal and obstructive practices of Toyota aimed at
12 him, and redress for the nearly immeasurable damages he
13 and his family have suffered as a result.
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21 **II. FACTS COMMON TO ALL CLAIMS FOR RELIEF**

22 **A. Parties.**

23 Plaintiffs.

24 7. Plaintiff DIMITRIOS P. BILLER ("BILLER") is,
25 and was at all relevant times, a resident of the County
26 of Los Angeles, California and an active member of the
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1 State Bar of California, Bar No. 142,730. BILLER has
2 been licensed to practice law in the State of
3 California since December 11, 1989, and is in good
4 standing with the State Bar of California. BILLER has
5 been employed solely as an attorney since that time.
6

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8 8. Plaintiff LITIGATION DISCOVERY & TRIAL
9 CONSULTING, INC. ("LDT CONSULTING") is, and since
10 October 9, 2008 has been, a California corporation with
11 its principal place of business located in Los Angeles
12 County, California. BILLER is, and since October 9,
13 2008 has been, a fifty-percent shareholder of, and the
14 President of LDT CONSULTING.
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19 Defendants.

20 9. Defendant, TOYOTA MOTOR CORPORATION ("TMC")
21 is, and at all times relevant was, a Japanese
22 corporation with its headquarters in Toyota City, Aichi
23 Prefecture, Japan.
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26 10. Defendant, TOYOTA MOTOR SALES, U.S.A., INC.
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1 ("TMS") is, and at all times relevant was, a California
2 corporation with its principal place of business and/or
3 headquarters in Los Angeles County, California. TMS is
4 distinct from and not a wholly owned subsidiary of TMC.
5 TMS is affiliated with other entities such as TOYOTA
6 NORTH AMERICA MOTOR CORP. ("TMA"), TOYOTA MOTOR NORTH
7 AMERICA, INC. ("TMNA"), and TOYOTA TECHNICAL CENTER
8 U.S.A. INC. ("TTC"), now known as TOYOTA MOTOR
9 ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
10 ("TEMA"). TMC, TMS, TMA, TMNA, TEMA, and TTC
11 collectively sometimes are referred to herein as
12 "Toyota Entities."
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17 11. Defendant Christopher Reynolds ("REYNOLDS")
18 is, and at all times relevant was, a resident of Los
19 Angeles County, California. REYNOLDS is the Vice
20 President and General Counsel of TMS. REYNOLDS was and
21 continues to be the immediate supervisor of all
22 managing counsel in the Legal Services Group at TMS.
23 As the Managing Counsel for TMS, REYNOLDS is fully and
24 completely responsible for the acts, actions,
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1 omissions, conduct, agreements and decisions that
2 managing counsel make in managing litigation.

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4 12. Jane Howard Martin ("MARTIN") is, and at
5 all times relevant was, a resident of Los Angeles
6 County, California. MARTIN is the Assistant General
7 Counsel in the Legal Services Group of TMS. MARTIN is,
8 and at all times relevant was, responsible for
9 directing, coordinating, and approving the conduct of
10 outside counsel (including, but not limited to, the law
11 firm Littler Mendelson, P.C.) engaged by TMS, and
12 jointly managing and participating with outside counsel
13 litigation in which TMS is engaged.
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18 13. Defendant Eric Taira ("TAIRA") is the
19 Assistant General Counsel for TMS and was the immediate
20 supervisor of BILLER during the time period in which
21 BILLER was employed by TMS. Upon information and
22 belief, TAIRA resides in Los Angeles County,
23 California.
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26 14. Defendant Dian Ogilvie ("OGILVIE") was, at
27 the time BILLER worked at TMS, the Senior Vice-
28

1 President and General Counsel for TMS. OGILVIE had the
2 same duties and responsibilities as REYNOLDS when she
3 worked at TMS. Upon information and belief, OGILVIE
4 resides in Los Angeles County, California.
5

6 15. Defendant Alicia McAndrews ("McANDREWS") is
7 a managing counsel in the Product Liability Group at
8 TMS. She was and continues to be responsible for
9 managing airbag litigation and serves as counsel to TMA
10 by providing advice to Christopher Tinto. Upon
11 information and belief, MCANDREWS resides in Los
12 Angeles County, California.
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16 16. With respect to all allegations in this
17 Complaint, one or more Defendants knowingly
18 participated in, approved, cooperated in, directed,
19 and/or had actual or constructive knowledge of all
20 activities alleged, acted in concert with all other
21 named and unnamed Defendants pursuant to a common
22 design with them, and/or gave substantial assistance or
23 encouragement to other Defendants in carrying out all
24 alleged activities. One or more Defendants profited
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1 through the unlawful acts alleged herein and willfully
2 caused injury to the business and property interests of
3 Plaintiffs.
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6 **B. Jurisdiction.**
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8 17. This court has jurisdiction over this
9 action pursuant to 28 U.S.C. Sec. 1331, which bestows
10 upon the District Courts original jurisdiction of all
11 civil actions arising under the Constitution, laws, or
12 treaties of the United States. This court also has
13 jurisdiction over this action pursuant to 18 U.S.C.
14 Sec. 1962. This court also has supplemental
15 jurisdiction over the state law claims pursuant to 28
16 U.S.C. Sec. 1367.
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22 **C. Venue.**

23 18. Venue is proper in the Central District of
24 California pursuant to 28 U.S.C. Sec. 1391(a) and 28
25 U.S.C. Sec. 1391(b)(2) because all Plaintiffs and at
26 least one Defendant reside in this judicial district,
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1 and a substantial part of the events and omissions
2 giving rise to Plaintiffs' claims occurred in this
3 district.
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6 **D. General Background.**

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8 19. Plaintiff BILLER holds a Bachelor's degree
9 from UCLA and a Juris Doctor degree from Loyola Law
10 School, Los Angeles, California.
11

12 20. Upon graduating from Loyola Law School in
13 1989, BILLER began practicing law at the Los Angeles
14 law firm Lillick, McHose & Charles. That firm later
15 merged with a San Francisco-based law firm called
16 Pillsbury, Madison & Sutro. Pillsbury, Madison & Sutro
17 later changed its name to Pillsbury Winthrop.
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20 21. In 1997, BILLER was elevated from
21 Associate to Senior Associate at Pillsbury Winthrop.
22

23 22. In 1998, BILLER was elevated from Senior
24 Associate to Partner at Pillsbury Winthrop. As a
25 Partner at Pillsbury Winthrop, BILLER became well
26 versed and knowledgeable regarding the laws and
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1 forensic computer system search requirements pertaining
2 to E-discovery and Electronically Stored Information
3 ("ESI") while litigating against major corporations
4 that had no protocol for dealing with such issues.
5

6 23. On April 15, 2003, BILLER resigned from
7 Pillsbury Winthrop after being hired by Defendant, TMS,
8 as National Managing Counsel in charge of TMS's
9 National Rollover Program.
10

11 24. BILLER also was hired to advise generally,
12 and defend the Toyota Entities in discovery proceedings
13 in product liability cases and to manage cases in which
14 these entities were named defendants. In this
15 capacity, BILLER was responsible for advising the
16 Toyota Entities regarding the information those
17 entities were required to produce in discovery to
18 adversaries in active and future litigation. BILLER
19 also was hired to receive and review discovery requests
20 served on TMC, send draft responses to TMC for
21 approval, finalize responses and submit the responses
22 for signature on the verification page. BILLER was
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1 hired to keep this process in place and make sure
2 discovery responses in rollover litigation were
3 consistently issued.
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5 25. When BILLER started working in the Product
6 Liability Group at TMS, he immediately was surprised
7 and alarmed that the Toyota Entities were not producing
8 ESI in the discovery process. BILLER's concern
9 stemmed, in part, from the fact that E-discovery issues
10 were becoming increasingly important in cases across
11 the United States.
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16 Changes in the Law Regarding "E-discovery" and ESI

17 26. BILLER was aware that changes were
18 occurring in the laws governing E-discovery and
19 discovery of ESI, such as e-mails and documents stored
20 on computers. Even though, for example, Federal Rules
21 of Evidence, Rule 1001 had long defined "writings" as
22 "letters, words, or numbers, or their equivalent, set
23 down by handwriting, typewriting, printing,
24 photostating, photographing, magnetic impulse,
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1 mechanical or electronic recording, or other form of
2 data compilation," the rise in the use of computers,
3 the internet, and e-mail in our world triggered
4 commentators and, ultimately, courts, to reassess
5 discovery and evidence laws in light of these
6 technological changes in society.
7
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9 27. In 2003, four seminal decisions analyzing
10 E-discovery and discovery of ESI were rendered in the
11 United States District Court for the Southern District
12 of New York: Zubulake v. UBS Warburg, 217 F.R.D. 309
13 (S.D.N.Y. 2003); Zubulake v. UBS Warburg, 2003 WL
14 21087136 (S.D.N.Y.); Zubulake v. UBS Warburg, 216
15 F.R.D. 280 (S.D.N.Y. 2003); Zubulake v. UBS Warburg,
16 220 F.R.D. 212 (S.D.N.Y. 2003). In early 2004, the
17 final Zubulake decision was issued, Zubulake v. UBS
18 Warburg, 229 F.R.D. 422 (S.D.N.Y. 2004). These cases
19 established a framework governing E-discovery and
20 discovery of ESI.
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26 28. Additionally, in January 2004, "The Sedona
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1 Principles for Electronic Document Production" was
2 published by The Sedona Conference, a think-tank
3 devoted to promoting consideration and discussion of
4 cutting-edge issues in the areas of antitrust law,
5 complex litigation, and intellectual property rights
6 among leading jurists, lawyers, experts, academics, and
7 others. The Sedona Conference was in large part
8 comprised of United States District and Circuit Court
9 Judges and Federal practitioners. In 2006, the
10 amendments to the Federal Rules of Civil Procedure
11 regarding E-discovery were implemented and required all
12 litigants in Federal Court to comply with them in the
13 discovery process.
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19 29. Prior to and during his employment by TMS,
20 BILLER undertook to further his knowledge of E-
21 discovery and ESI and the new and emerging case law and
22 theories regarding its production and use. BILLER also
23 developed knowledge regarding the duties of attorneys
24 regarding the production, recovery, storage,
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