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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EVGENIY GOUSSEV and STACY RITCH,
individually and on behalf of all others similarly
situated

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant.

No. 3:21-cv-5708

**DEFENDANT TOYOTA MOTOR
SALES, U.S.A., INC.'S NOTICE OF
REMOVAL**

1 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,
2 Toyota Motor Sales, U.S.A., Inc. (“Toyota”) hereby removes the above-referenced action from the
3 Superior Court of the State of Washington for Thurston County to the United States District Court
4 for the Western District of Washington, Tacoma Division.

5 INTRODUCTION AND BACKGROUND

6 On August 9, 2021, Plaintiffs Evgeniy Goussev (“Goussev”) and Stacy Ritch (“Ritch”)
7 (collectively, “Plaintiffs”) filed a putative class action complaint (“Complaint”) in the Superior
8 Court of the State of Washington for Thurston County, Case No. 21-2-01369-34, alleging claims
9 against Toyota for: (i) violations of the Washington Privacy Act (“WPA”), RCW 9.74 *et seq.*; (ii)
10 declaratory relief; and (iii) injunctive relief. A true and accurate copy of Plaintiffs’ Complaint is
11 attached hereto as **Exhibit B**.

12 Plaintiffs allege that certain Toyota vehicles are equipped with “infotainment systems” that
13 connect to smartphones via USB and/or Bluetooth, Compl. at ¶¶ 10-11; that these systems “also
14 interface with the smartphone’s text messaging system,” *id.* at ¶ 15; and that they “download and
15 store a copy of all text messages on smartphones when connected to Toyota’s infotainment
16 systems,” *id.* at ¶ 17.

17 Plaintiff Goussev claims to own a 2019 Toyota vehicle equipped with an infotainment
18 system and to have connected his smartphone to his Toyota vehicle’s infotainment system at least
19 ten times. *Id.* at ¶¶ 32-34, 36. Plaintiffs allege that the vehicle’s infotainment system “downloaded
20 and recorded” Goussev’s text messages without his consent. *Id.* at ¶¶ 37, 40, 43. And he
21 characterizes this as “intercepti[on]” and “recording” of his text messages without his consent, in
22 violation of the WPA. *Id.* at ¶¶ 51-52, 74. Plaintiff Ritch, who is not a Toyota owner, alleges he
23 sent at least one text message to Plaintiff Goussev in the past three years. *Id.* at ¶ 44. Plaintiffs
24 allege that Ritch’s text message was “downloaded and recorded” by Plaintiff Goussev’s Toyota
25 vehicle’s infotainment system, and likewise claim that this amounts to “intercepti[on]” and
26

1 “recording” of his text message without his consent in violation of the WPA. *Id.* at ¶¶ 44, 46, 48-
2 49, 74.

3 Plaintiffs seek to represent a class defined as “[a]ll persons, who within three years prior
4 to the filing of this Complaint, had their text messages recorded by the infotainment system in a
5 Toyota vehicle (Toyota or Lexus) while a resident of the State of Washington.” *Id.* at ¶ 62. They
6 seek a declaratory judgment that Toyota violated the WPA, an order enjoining Toyota from further
7 WPA violations, “liquidated damages at the rate of one hundred dollars a day for each day of
8 violation, not to exceed one thousand dollars,” and attorneys’ fees and costs. *Id.* at Prayer for
9 Relief.

10 **GROUND FOR REMOVAL**

11 **A. This Action is Removable Under the Class Action Fairness Act of 2005**

12 “[A]ny civil action brought in State court of which the district courts of the United States
13 have original jurisdiction, may be removed by the defendant[.]” 28 U.S.C. § 1441(a). This action
14 is removable under Section 1441 because this Court has original jurisdiction under the Class
15 Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d); *see also* 28 U.S.C. § 1453(b)
16 (setting procedure for removing class actions).

17 CAFA gives federal courts original jurisdiction over putative class actions in which (1) the
18 aggregate number of members in the proposed class is 100 or more; (2) the amount in controversy
19 “exceeds the sum or value of \$5,000,000, exclusive of interest and costs”; and (3) the parties are
20 minimally diverse—that is, “any member of a class of plaintiffs is a citizen of a State different
21 from any defendant.” 28 U.S.C. §§ 1332(d)(2), (d)(5)(A)-(B), (d)(6). These three requirements can
22 be satisfied by “a short and plain statement of the grounds for removal” in the defendant’s notice
23 of removal. 28 U.S.C. § 1446(a); *see Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81,
24 83 (2014).

25 Because all of these requirements are satisfied here, and because Toyota has met all other
26 applicable requirements, this action is removable under CAFA.

1 **1. This is a putative class action in which the number of proposed class**
2 **members is alleged to be 100 or more.**

3 This is a putative class action under CAFA, which defines “class action” as “any civil
4 action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of
5 judicial procedure authorizing an action to be brought by 1 or more representative persons as a
6 class action.” 28 U.S.C. § 1332(d)(1)(B). Plaintiffs filed this action under Washington Civil Rule
7 23, which allows for the maintenance of a class action when (1) “the class is so numerous that
8 joinder of all members is impracticable”; (2) “there are questions of law or fact common to the
9 class”; (3) “the claims or defenses of the representative parties are typical of the claims or defenses
10 of the class”; and (4) “the representative parties will fairly and adequately protect the interests of
11 the class.” Wash. Civ. R. 23(a); *see also* Compl., ¶ 62.

12 Plaintiffs propose to represent a class of “[a]ll persons, who within three years prior to the
13 filing of this Complaint, had their text messages recorded by the infotainment system in a Toyota
14 vehicle (Toyota or Lexus) while a resident of the State of Washington.” Compl. at ¶ 62. Because
15 the Complaint was served on August 27, 2021, the purported class period runs from August 27,
16 2018 to August 27, 2021. While Toyota does not concede that Plaintiffs’ proposed class is
17 certifiable, lawful, or otherwise proper, and while Toyota expressly reserves the right to raise all
18 arguments and defenses to Plaintiffs’ allegations, including their class certification allegations, the
19 proposed class, as defined by the allegations of Plaintiffs’ Complaint, includes well over 100
20 people, as required for CAFA, as at least 50,000 Toyota vehicles with infotainment systems were
21 sold in the state of Washington during the relevant period. *See Exhibit C*, Declaration of Audrey
22 Mito In Support of Toyota’s Notice of Removal (“Mito Decl.”) at ¶ 3; Compl. ¶¶ 10-11, 17
23 (describing “infotainment systems”). CAFA’s first requirement is therefore satisfied.

24 **2. The aggregate amount in controversy exceeds \$5,000,000.**

25 CAFA requires courts to aggregate the claims of putative class members “to determine if
26 the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §

1 1332(d)(6). A court must “determine whether it has jurisdiction by adding up the value of the claim
2 of each person who falls within the . . . proposed class and determine whether the resulting sum
3 exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013). A removing
4 party can establish the amount in controversy by the allegations in the complaint, or by setting
5 forth facts in the notice of removal that demonstrate that the amount placed in controversy by the
6 plaintiff exceeds the jurisdictional minimum. *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d
7 373, 377 (9th Cir. 1997).

8 Plaintiffs do not allege a specific amount in controversy. As a result, Toyota need only
9 “make a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”
10 *Dart Cherokee Basin Operation Co. v. Owens*, 574 U.S. 81, 89 (2014). Here, Plaintiffs seek
11 “liquidated damages at the rate of one hundred dollars a day for each day of violation, not to exceed
12 one thousand dollars, and a reasonable attorneys’ fee and other costs of litigation.” *See* Compl.,
13 Prayer for Relief, ¶ C; RCW 9.73.060. As discussed above, at least 50,000 Toyota vehicles with
14 infotainment systems were sold in the state of Washington during the relevant period. *See* Mito
15 Decl. at ¶ 3; Compl. ¶¶ 10-11. Thus, based on Toyota’s current understanding of the allegations in
16 Plaintiffs’ Complaint, the amount in controversy alleged exceeds \$5,000,000 for liquidated
17 damages alone. *See Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010) (“[O]nce
18 the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5 million, . .
19 . then the case belongs in federal court unless it is legally impossible for the plaintiff to recover
20 that much.”) (citation omitted). Toyota expressly reserves the right to raise all arguments and
21 defenses to Plaintiffs’ allegations, and does not concede that Plaintiffs or putative class members
22 are entitled to liquidated damages under the WPA or that any WPA violation has occurred.

23 In addition, Plaintiffs’ request for attorneys’ fees is properly included in determining the
24 amount in controversy. *See, e.g., Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794
25 (9th Cir. 2018) (concluding that a court must include future attorneys’ fees recoverable by statute
26 or contract when assessing whether the amount-in-controversy requirement is met). The WPA

1 authorizes the recovery of “reasonable attorney’s fee[s]” in connection with alleged violations of
2 the Act. RCW 9.73.060. For purposes of removal, the Ninth Circuit has held that a 25 percent
3 recovery is the “benchmark” level for reasonable attorneys’ fees in class action cases. *See Garibay*
4 *v. Archstone Communities LLC*, 539 F. App’x 763, 764 (9th Cir. 2013) (citation omitted).

5 Plaintiff also seeks declaratory and injunctive relief. Compl. at Prayer for Relief. “In
6 actions seeking declaratory or injunctive relief, it is well established that the amount in controversy
7 is measured by the value of the object of the litigation.” *Hunt v. Washington State Apple Advert.*
8 *Com’n*, 432 U.S. 333, 347 (1977). Accordingly, the amount in controversy here must also include
9 the value of declaratory and injunctive relief.

10 By the statements contained in this Notice of Removal, Toyota does not concede that
11 Plaintiff is entitled to any damages or other relief. The Complaint nonetheless places more than
12 \$5,000,000 in controversy, exclusive of interest and costs, and CAFA’s second requirement is
13 therefore satisfied.

14 **3. The parties are minimally diverse.**

15 To satisfy CAFA’s diversity requirement, a party seeking removal need only show that
16 minimal diversity exists; that is, one putative class member is a citizen of a state different from
17 that of one defendant. *See* 28 U.S.C. § 1332(d)(2); *see also United Steel, Paper & Forestry,*
18 *Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil*
19 *Co.*, 602 F.3d 1087, 1090–91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA
20 provides expanded original diversity jurisdiction for class actions meeting the minimal diversity
21 requirement set forth in 28 U.S.C. § 1332(d)(2)).

22 Plaintiffs allege they are “Washington resident[s].” Compl., ¶¶ 6-7. Plaintiffs further
23 allege that Toyota is incorporated in California and headquartered in Plano, Texas. *Id.*, ¶ 8. “A
24 corporation shall be deemed to be a citizen of every State and foreign state by which it has been
25 incorporated and of the State or foreign state where it has its principal place of business.” 28
26 U.S.C. § 1332(c)(1). The “principal place of business” for the purpose of determining diversity

1 subject matter jurisdiction refers to “the place where a corporation’s officers direct, control, and
2 coordinate the corporation’s activities . . . [I]n practice it should normally be the place where the
3 corporation maintains its headquarters-provided that the headquarters is the actual center of
4 direction, control, and coordination, i.e., the ‘nerve center,’ and not simply an office where the
5 corporation holds its board meetings[.]” *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).
6 Toyota is therefore a citizen of California and Texas for the purpose of evaluating diversity. *See*
7 28 U.S.C. § 1332(c)(1). Thus, “any member of [the class] of plaintiffs is a citizen of a State
8 different from any defendant,” 28 U.S.C. § 1332(d)(2)(A), and CAFA’s third and final
9 requirement is satisfied.

10 **4. None of CAFA’s exceptions bar removal.**

11 This action does not fall within the exceptions to removal jurisdiction under CAFA.
12 Section 1332(d)(4) requires a federal court to decline jurisdiction over a class action when,
13 among other things, “greater than two-thirds of the members of all proposed plaintiff classes in
14 the aggregate are citizens of the State in which the action was originally filed,” and at least one
15 defendant whose “alleged conduct forms a significant basis for the claims asserted by the
16 proposed class . . . is a citizen of the State in which the action was originally filed.” 28 U.S.C. §
17 1332(d)(4)(A); *see also* 28 U.S.C. § 1332(d)(4)(B) (similarly excluding cases where “two thirds
18 or more of” the class members and “the primary defendants . . . are citizens of the State in which
19 the action was originally filed”). Section 1332(d)(4) does not apply here because Toyota is not a
20 citizen of Washington, where the action was originally filed. Likewise, the discretionary
21 exemptions in Section 1332(d)(3) apply only where “the primary defendants are citizens of the
22 State in which the action was originally filed.” 28 U.S.C. § 1332(d)(3).

23 Sections 1332(d)(9) and 1453(d) exempt certain securities and corporate-governance cases
24 from CAFA’s broad jurisdictional grant. *See* 28 U.S.C. §§ 1332(d)(9), 1453(d). They are
25 inapplicable here because Plaintiffs’ claims do not arise under the Securities Act of 1933 or the
26 Securities Exchange Act of 1934 and do not involve state-centric corporate governance issues.

1 **B. This Action is Removable Because There is Complete Diversity Among the Parties**

2 Under 28 U.S.C. § 1332, this Court also has original jurisdiction over civil actions where
3 the matter in controversy exceeds \$75,000 and there is complete diversity—*i.e.*, where all parties
4 are citizens of different states. Here, the requirements of 28 U.S.C. § 1332 are met, providing an
5 additional ground for removal.

6 **1. Complete diversity exists between the parties.**

7 In the Ninth Circuit, a court may determine that evidence of residency can properly
8 establish citizenship. *Mondragon v. Cap. One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013). A
9 party with the burden of proving citizenship may rely on the “presumption of continuing domicile,
10 which provides that, once established, a person’s state of domicile continues unless rebutted with
11 sufficient evidence of change.” *Id.* at 885. The proposed class here includes only Washington
12 residents, and there is no indication that any purported class member is likely to be a citizen of any
13 state other than Washington.

14 As discussed above, Toyota is a citizen of Texas and California. 28 U.S.C. § 1332(c)(1)
15 (“A corporation shall be deemed to be a citizen of every State and foreign state by which it has
16 been incorporated and of the State or foreign state where it has its principal place of business.”).

17 Because Toyota and any potential class member are citizens of different states, complete
18 diversity exists between the parties.

19 **2. The amount in controversy exceeds \$75,000.**

20 As discussed above, the amount in controversy exceeds \$5,000,000—easily clearing the
21 \$75,000 threshold required by 28 U.S.C. § 1332(a). *See supra* at Section II(A)(2).

22 **REMOVAL IS TIMELY**

23 Plaintiffs filed this class action on August 9, 2021 and served the summons and Complaint
24 on Toyota on August 27, 2021. *See* Exhibit B at Service of Process Transmittal and Summons.
25 Pursuant to 28 U.S.C. § 1446(b), removal is timely because Defendants have filed this Notice of
26 Removal within thirty days of service of Plaintiff’s Complaint. *See Murphy Bros., Inc. v. Michetti*

1 *Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). No previous Notice of Removal has been filed for
2 the relief sought in this action.

3 **INTRADISTRICT ASSIGNMENT**

4 Because the Complaint was filed and is currently pending in the Superior Court of the State
5 of Washington for Thurston County, this District is the proper venue for this action upon removal
6 pursuant to 28 U.S.C. § 1441(a). The Tacoma Division is the proper intradistrict assignment for
7 this action upon removal because it is the division that embraces the county where the state court
8 action was pending. LCR 3(d), 101(e).

9 **NOTICE**

10 Toyota will promptly serve on Plaintiffs and will file with the Clerk of Court for the
11 Superior Court of the State of Washington for Thurston County a copy of its Notice of Removal
12 to Federal Court. Toyota will also file with this Court a “Certificate of Service of Notice to
13 Adverse Party of Removal to Federal Court.” 28 U.S.C. § 1446(d); *see also* Fed. R. Civ. P. 5(d).

14 **RESERVATION OF RIGHTS AND DEFENSES**

15 Toyota expressly reserves all of its defenses and rights, and none of the foregoing shall be
16 construed as in any way conceding the truth of any of Plaintiffs’ allegations or waiving any of
17 Toyota’s defenses. Toyota also reserves its right to amend or supplement this Notice of Removal.

18 **CONCLUSION**

19 For the foregoing reasons, Toyota respectfully requests that this Court exercise
20 jurisdiction over this action and enter orders and grant relief as may be necessary to secure
21 removal and prevent further proceedings in the Thurston County Superior Court. If any question
22 arises as to the propriety of the removal of this action, Toyota respectfully requests the
23 opportunity to present a written brief and oral argument in support of its position that this case is
24 subject to removal.

1 Dated: September 24, 2021

2 By: s/ Nicola C. Menaldo
Nicola C. Menaldo, WSBA No. 44459

3 s/ Lauren J. Tsuji
4 Lauren J. Tsuji, WSBA No. 55839

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12 *Attorneys for Defendant*
13 *TOYOTA MOTOR SALES, U.S.A., INC.*

CERTIFICATE OF SERVICE

On September 24, 2021, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record. I also caused to be served upon the below, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing:

Joel B. Ard ARD LAW GROUP PLLC P.O Box 11633 Bainbridge Island, WA 98110 Telephone: (206) 701-9243 E-Mail: joel@ard.law	<input type="checkbox"/> Via hand delivery <input checked="" type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email
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I certify under penalty of perjury that the foregoing is true and correct.

DATED this 24th day of September, 2021.

By: /s/ Nicola C. Menaldo
 Nicola C. Menaldo, WSBA No. 44459
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TOYOTA MOTOR SALES, U.S.A., INC.

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21-2-01369-34

CMP 2

Complaint
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E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
08/09/2021 8:02:51 AM
Linda Myhre Enlow
Thurston County Clerk

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

EVGENIY GOUSSEV and STACY RITCH,
individually and on behalf of all others similarly
situated,

21-2-01369-34

Plaintiffs,

CLASS ACTION COMPLAINT

v.

TOYOTA MOTOR SALES, U.S.A., INC., a
California Corporation,
Defendant.

Plaintiffs Evgeniy Goussev ("Goussev") and Stacy Ritch ("Ritch," and collectively "Plaintiffs"), individually and on behalf of all others similarly situated, allege the following based upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information and belief as to all other allegations, based on investigation of counsel. This investigation included, *inter alia*, a review of public documents prepared by Defendant, media reports, and other information concerning Defendant. The investigation of the facts pertaining to this case is continuing. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. INTRODUCTION

1: This class action suit seeks statutory damages for violations of the Washington Privacy Act, Chapter 9.73 RCW (hereafter the "WPA" or the "Act"), which forbids any entity in

1 Washington from intercepting or recording any private communication without first
2 obtaining the consent of all the participants in the communication.¹

3 2. Because Defendant has violated the WPA, it is liable for liquidated damages computed at
4 the rate of one hundred dollars per day for each day of violation, not to exceed one thousand
5 dollars per Plaintiff and absent class member, and a reasonable attorneys' fee and other
6 costs of litigation.

7 3. Plaintiffs are also entitled to declaratory and injunctive relief that Defendant has violated
8 the WPA, and enjoining further violations.

9 **II. JURISDICTION AND VENUE**

10 4. This Court has jurisdiction over the subject matter of this lawsuit and over the parties to
11 the lawsuit.

12 5. Venue is proper in this Court pursuant to RCW 4.12.025 because Defendant resides in this
13 county.

14 **III. PARTIES**

15 6. Plaintiff Goussev is now, and at all times relevant to this Complaint has been, a Washington
16 resident.

17 7. Plaintiff Ritch is now, and at all times relevant to this Complaint has been, a Washington
18 resident.

19 8. Defendant Toyota Motor Sales, U.S.A., Inc. is a wholly-owned subsidiary of Toyota Motor
20 Corporation, a publicly held Japanese automotive manufacturer headquartered in Toyota
21 City, Japan. Assisted by its subsidiaries and affiliates worldwide, Toyota Motor
22 Corporation designs, manufactures, assembles, and sells "Toyota" and "Lexus" brand
23
24

25 ¹ As described below, Plaintiffs seek to represent a class consisting of: *"All persons, who in the three years*
26 *prior to the date of filing this Complaint, had their text messages recorded by the infotainment system in a*
27 *Toyota vehicle (Toyota or Lexus) while a resident of the State of Washington."*

1 vehicles. Together herein, these vehicles are referred to as “Toyota vehicles” or “vehicles
2 manufactured by Toyota.”

3 9. Toyota Motor Sales, U.S.A., Inc. (hereafter, “Toyota”) is headquartered in Plano, Texas,
4 and is responsible for the marketing, sales, and distribution in the United States of Toyota
5 vehicles.

6 IV. FACTS

7 A. Toyota vehicle infotainment systems.

8 10. Modern vehicles, including those built by Toyota, contain “infotainment systems.”

9 11. Infotainment systems in Toyota vehicles include methods for the system to connect to a
10 smartphone, both by USB and by Bluetooth.

11 12. Once a smartphone is connected to the infotainment system in a Toyota vehicle, the system
12 offers additional apps and functionality native to the smartphone but controlled and
13 accessed through the infotainment system controls rather than through the smartphone.

14 13. These can include, for example, the ability to play music stored on or streamed through the
15 smartphone through the vehicle’s speakers, and to use the smartphone’s satellite
16 navigation software through the infotainment system screen and vehicle speakers for turn-
17 by-turn directions.

18 14. Infotainment systems in Toyota vehicles also include the ability to make and receive
19 telephone calls on a connected smartphone, using the vehicle microphone and speakers and
20 thereby operating hands-free.

21 15. At all relevant times, infotainment systems in Toyota vehicles also interface with the
22 smartphone’s text messaging system.

23 16. The interface of infotainment systems in Toyota vehicles is designed to work specifically
24 with at least the two major smartphone operating systems: CarPlay for Apple smartphones
25 (iPhones) and Android Auto for Android smartphones.

1 17. On information and belief, infotainment systems in Toyota vehicles manufactured from at
2 least 2014 onward also download and store a copy of all text messages on smartphones when
3 connected to Toyota's infotainment systems.

4 18. On information and belief, third party Berla Corporation ("Berla"), based in Annapolis,
5 Maryland, manufactures equipment (hardware and software) capable of extracting stored
6 text messages from infotainment systems in Toyota vehicles.

7 19. On information and belief, the Berla system is not generally available to the general public.

8 20. Berla states that "Our vehicle forensics tools are available to law enforcement, military,
9 civil and regulatory agencies, and select private industry organizations."²

10 21. On information and belief, infotainment systems in Toyota vehicles automatically
11 download a copy of every text message stored on any phone connected to the system and
12 stores that copy in computer memory on the vehicle in such a manner that the vehicle
13 owner cannot access it.

14 22. However, according to Berla, while a vehicle owner cannot retrieve that text message, Berla
15 and Toyota have ensured that law enforcement can.

16 23. According to a 2017 report in CyberScoop, Ben LeMere, the CEO and founder of Berla,
17 bragged in 2014 that "We've been working directly with the [original equipment
18 manufacturers] themselves to educate them. Hey, 'this is privacy data,' 'this is what you
19 need to secure.' *But we only do that when it's part of an agreement that they will allow law
20 enforcement in.*"³ (Emphasis added.)

21 24. In a story published by NBC News, NBC quoted LeMere from a podcast as follows:
22 "People rent cars and go do things with them and don't even think about the places they
23 are going and what the car records,' LeMere said in a June interview for a podcast made by
24

25 ² See <https://berla.co/> (last accessed May 24, 2021).

26 ³ See <https://www.cyberscoop.com/berla-car-hacking-dhs/> (last accessed May 24, 2021 and attached
27 hereto as Exhibit A). That article refers to, and quotes, a 19:52 minute presentation found at
<https://www.youtube.com/watch?v=E0DQEVgY5k>.

1 Cellebrite, a company that makes tools to help law enforcement agencies extract data from
2 locked mobile phones. 'Most of them aren't doing anything wrong, but it's pretty funny to
3 see the hookers and blow request text messages and answers.'"⁴

4 25. A recent article published by The Intercept quoted LeMere as follows: "In a 2015
5 appearance on the podcast 'The Forensic Lunch,' LeMere told the show's hosts how the
6 company uses exactly this accidental-transfer scenario in its trainings: 'Your phone died,
7 you're gonna get in the car, plug it in, and there's going to be this nice convenient USB
8 port for you. When you plug it into this USB port, it's going to charge your phone,
9 absolutely. And as soon as it powers up, it's going to start sucking all your data down into
10 the car.'"⁵

11 26. The Intercept article continues: "In the same podcast, LeMere also recounted the
12 company pulling data from a car rented at BWI Marshall Airport outside Washington,
13 D.C.: 'We had a Ford Explorer ... we pulled the system out, and we recovered 70 phones
14 that had been connected to it. All of their call logs, their contacts and their SMS history, as
15 well as their music preferences, songs that were on their device, and some of their Facebook
16 and Twitter things as well. ... And it's quite comical when you sit back and read some of
17 the the [sic] text messages.'"⁶

18 27. On information and belief, a reasonable opportunity for discovery will show that
19 infotainment systems in Toyota vehicles automatically download a copy of all text messages
20 from connected smartphones and store them in onboard computer memory.
21
22

23
24 ⁴ See <https://www.nbcnews.com/tech/tech-news/snitches-wheels-police-turn-car-data-destroy-suspects-alibis-n1251939> (last accessed May 24, 2021 and attached as Exhibit B). That article purports to
25 hyperlink to a podcast at <https://www.cellebrite.com/en/series/vehicle-data-extractions-ben-lemere-ceo-at-berla-vehicle-forensics/> but no such podcast appears at that URL as of May 24, 2021.

26 ⁵ See <https://theintercept.com/2021/05/03/car-surveillance-berla-msab-cbp/> (last accessed May 24, 2021
27 and attached as Exhibit C). The article contains no internal link to this referenced podcast.

⁶ *Id.*

- 1 28. On information and belief, a reasonable opportunity for discovery will show that the
2 onboard stored copy of text messages cannot be accessed by vehicle owners.
- 3 29. On information and belief, a reasonable opportunity for discovery will show that the
4 onboard stored copy of text messages can be accessed by someone using hardware and
5 software designed and sold by Berla.
- 6 30. Berla specifically restricts access to its systems, making them available primarily to law
7 enforcement and private investigation service providers.
- 8 31. No Plaintiff is able to acquire a Berla system in order to be able to access the text messages
9 stored on his own or any other Toyota vehicle.
- 10 **B. Plaintiff Goussev's Toyota infotainment system, smartphone, and text messages.**
- 11 32. Plaintiff Goussev owns a 2019 vehicle manufactured by Toyota.
- 12 33. Plaintiff Goussev's Toyota is equipped with an infotainment system that syncs to any
13 smartphone either plugged into the system through a USB cable or connected via
14 Bluetooth.
- 15 34. Plaintiff Goussev owns a smartphone.
- 16 35. The infotainment system on Plaintiff Goussev's Toyota is a device designed to record text
17 communications.
- 18 36. In the past three years, on more than ten occasions, Plaintiff Goussev connected his
19 smartphone into his Toyota vehicle's infotainment system.
- 20 37. Plaintiff Goussev never consented to Toyota downloading and storing his text messages,
21 and similarly did not consent to third parties such as Berla or law enforcement having access
22 to copies of such text messages made by his Toyota vehicle's infotainment system.
- 23 38. On at least ten occasions in the past three years, Plaintiff Goussev connected his
24 smartphone to his Toyota vehicle's infotainment system at a time that it had at least one
25 text message stored on it.
- 26 39. Each of Plaintiff Goussev's text messages was and is a private communication, inasmuch
27 as Plaintiff Goussev had not shared the messages with anyone other than the recipients.

1 40. On information and belief, a reasonable opportunity for discovery will show that each text
2 message on Plaintiff Goussev's smartphone was downloaded and recorded onto onboard
3 vehicle memory by his Toyota vehicle's infotainment system.

4 41. Toyota was not a party to any of the text messages.

5 42. By the foregoing conduct, Toyota recorded the text messages through the infotainment
6 system.

7 43. On information and belief, a reasonable opportunity for discovery will show that Plaintiff
8 Goussev's Toyota vehicle infotainment system wrongfully retains the recorded copy of
9 Plaintiff Goussev's text message for more than ten days.

10 **C. Plaintiff Ritch's text messages.**

11 44. In the past three years, Plaintiff Ritch sent at least one text message to Plaintiff Goussev.

12 45. Plaintiff Goussev thereafter connected his smartphone to the infotainment system in his
13 Toyota vehicle.

14 46. On information and belief, a reasonable opportunity for discovery will show that Plaintiff
15 Ritch's text message to Plaintiff Goussev was downloaded and recorded onto onboard
16 vehicle memory by Plaintiff Goussev's Toyota vehicle infotainment system.

17 47. Toyota was not a party to the text message.

18 48. By the foregoing conduct, Toyota intercepted and recorded the text messages through the
19 infotainment system.

20 49. On information and belief, a reasonable opportunity for discovery will show that Plaintiff
21 Goussev's Toyota vehicle infotainment system wrongfully retains the recorded copy of
22 Plaintiff Ritch's text message for more than ten days.

23 **D. Privacy of text messages; Non-consent to Toyota's interception and recording.**

24 50. Each of Plaintiff Goussev's text messages is a private communication between Plaintiff
25 Goussev and his interlocutor.

26 51. Plaintiff Goussev has never consented to Toyota intercepting his text messages.

27 52. Plaintiff Goussev has never consented to Toyota recording his text messages.

- 1 53. Plaintiff Goussev has never inquired of an interlocutor to his text messages whether the
2 counterparty consents to Toyota intercepting and recording the text messages.
- 3 54. As such, no interlocutor of Plaintiff Goussev has ever consented to Toyota intercepting
4 and/ or recording their text messages.
- 5 55. Toyota's recording of Plaintiff Goussev's text messages has injured Plaintiff Goussev. On
6 information and belief, Plaintiff Goussev's private and confidential text messages now
7 reside on his Toyota vehicle, can be accessed by Berla systems, and cannot be deleted by
8 Plaintiff Goussev. Each of Plaintiff Goussev's private and confidential text messages is
9 accessible at any time by law enforcement, by Berla, and by similar private actors.
- 10 56. Toyota has also injured Plaintiff Goussev by depriving him of the right and ability to engage
11 in private text communications without unwillingly allowing Toyota to intercept and record
12 a copy for access by third parties such as Berla and law enforcement.
- 13 57. Each of Plaintiff Ritch's text messages is a private communication between Plaintiff Ritch
14 and his interlocutor.
- 15 58. Plaintiff Ritch has never consented to Toyota intercepting his text messages.
- 16 59. Plaintiff Ritch has never consented to Toyota recording his text messages.
- 17 60. Toyota's recording of Plaintiff Ritch's text messages has injured Plaintiff Ritch. On
18 information and belief, Plaintiff Ritch's private and confidential text messages now reside
19 on Plaintiff Goussev's Toyota vehicle, and can be accessed by Berla systems, and cannot
20 be deleted by either Plaintiff Goussev or Ritch. Each of Plaintiff Ritch's private and
21 confidential text messages to Plaintiff Goussev is accessible at any time by law enforcement,
22 by Berla, and by similar private actors.
- 23 61. Toyota has injured Plaintiff Ritch by depriving him of the right and ability to engage in
24 private text communications without unwillingly allowing Toyota to intercept and record
25 a copy for access by third parties such as Berla and law enforcement.
- 26
27

V. CLASS ALLEGATIONS

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2 62. Plaintiffs bring this action as a class action pursuant to Civil Rule 23 on behalf of the
3 following Classes of persons:

4 All persons, who within three years prior to the filing of this Complaint, had their text
5 messages recorded by the infotainment system in a Toyota vehicle (Toyota or Lexus)
6 while a resident of the State of Washington.

7 Excluded from the Class are Defendant Toyota and any person, firm, trust, corporation,
8 or other entity related to or affiliated with any defendant.

9 63. On information and belief, Toyota vehicles have intercepted and recorded text messages
10 from numerous Washington persons.

11 64. On information and belief, the Class is so numerous that joinder of all affected persons is
12 impracticable and the disposition of their claims in a class action, rather than in individual
13 actions, will benefit both the parties and the courts.

14 65. On information and belief, Class members may be identified from records maintained by
15 one or more of the Washington Department of Licensing, Toyota, and/or Berla, and may
16 be notified of the pendency of this action by mail or electronic mail using the form of notice
17 similar to that customarily used in class actions.

18 66. Plaintiffs' claims are typical of the claims of the other members of the Class.

19 67. All members of the Class have been and/or continue to be similarly affected by Toyota's
20 wrongful conduct as complained of herein. Plaintiffs are unaware of any interests that
21 conflict with or are antagonistic to the interests of the Class.

22 68. Plaintiffs will fairly and adequately protect the Class members' interests and have retained
23 counsel competent and experienced in class actions and complex litigation. Plaintiffs and
24 Plaintiffs' counsel will adequately and vigorously litigate this class action, and Plaintiffs are
25 aware of their duties and responsibilities to the Class.

26 69. Toyota has acted with respect to the Class in a manner generally applicable to each Class
27 member. Common questions of law and fact exist as to all Class members and predominate

1 over any questions affecting individual Class members. The questions of law and fact
2 common to the Class include, *inter alia*:

- 3 a. Whether Toyota recorded private communications and conversations without
4 the consent of all participants in the communication and conversations; and
5 b. The remedies available to Plaintiffs and the Class.

6 70. A class action is superior to all other available methods for the fair and efficient adjudication
7 of this controversy since joinder of all Class members is impracticable. Furthermore, as the
8 statutory damages suffered by individual Class members is relatively small, the expense and
9 burden of individual litigation makes it impossible as a practical matter for Class members
10 to individually redress the wrongs done to them. There will be no difficulty in managing
11 this action as a class action.

12 71. Toyota has acted on grounds generally applicable to the entire Class with respect to the
13 matters complained of herein, thereby making appropriate the relief sought herein with
14 respect to the Class as a whole.

15 **VI. CAUSES OF ACTION**

16 **E. First Cause of Action: Washington Privacy Act**

17 72. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
18 paragraphs of this Complaint.

19 73. This First Cause of Action is brought pursuant to the Washington Privacy Act, Chapter
20 9:73 RCW, on behalf of the Class, against Toyota.

21 74. As to each Plaintiff and member of the Class, Toyota recorded private communications
22 transmitted by telephone, telegraph, radio, or other device between two or more individuals
23 between points within or without the state of Washington by means of a device designed to
24 record or transmit said communication.

25 75. As to each Plaintiff and member of the Class, Toyota did not first obtain the consent of all
26 the participants in such communications.

27

1 76. Toyota recorded private conversations by means of a device designed to record or transmit
2 such conversation without first obtaining the consent of all the persons engaged in the
3 conversation.

4 77. Toyota is therefore liable to each Plaintiff and member of the Class for liquidated damages
5 computed at the rate of one hundred dollars a day for each day of violation, not to exceed
6 one thousand dollars for each Plaintiff and member of the Class, and a reasonable attorneys'
7 fee and other costs of litigation, as provided by RCW 9.73.060.

8 78. Toyota's acts and practices in violation of Chapter 9.73 RCW as complained of herein have
9 injured the persons of Plaintiffs and each member of the Class.

10 79. Because Toyota's wrongful recordation and retention of text messages as alleged above has
11 occurred on more than ten separate occasions and/ or continued for more than ten days,
12 Plaintiffs are entitled to \$1,000 of statutory liquidated damages.

13 80. Each member of the Class is therefore entitled to \$1,000 of statutory liquidated damages.

14 81. Plaintiff therefore seeks recovery of damages, including specifically statutory damages, on
15 his own behalf and on behalf of each member of the Class, together with the costs of the
16 suit, including reasonable attorneys' fees and other costs of litigation.

17 **F. Second Cause of Action: Declaratory Relief**

18 82. Plaintiff hereby incorporates by reference the allegations contained in the preceding
19 paragraphs of this Complaint.

20 83. This Second Cause of Action is brought pursuant to the Uniform Declaratory Judgments
21 Act, Chapter 7.24 RCW, on behalf of the Class, against Toyota.

22 84. Plaintiffs seek a declaration that Toyota's conduct violates the Washington Privacy Act.

23 **G. Third Cause of Action: Injunctive Relief**

24 85. Plaintiff hereby incorporates by reference the allegations contained in the preceding
25 paragraphs of this Complaint.

26

27

1 86. Plaintiffs seek an injunction from this Court, enjoining Toyota from further interception
2 and recordation of text messages by use of its infotainment systems, and ordering Toyota
3 to cause its infotainment systems to delete all stored text messages.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs and the Class prays for relief and judgment as follows:

6 A. Declaring that this action is properly maintainable as a class action under Civil Rule
7 23, and certifying Plaintiffs as the Class representative and their counsel as Counsel for the Class;

8 B. Declaring that Toyota recorded private communications and conversations in
9 violation of the Washington Privacy Act;

10 C. Awarding Plaintiffs and the members of the Classes the remedy of liquidated
11 damages at the rate of one hundred dollars a day for each day of violation, not to exceed one
12 thousand dollars, and a reasonable attorneys' fee and other costs of litigation;

13 D. Enjoining further violations of the WPA; and
14 Such other and further relief as this Court may deem just and proper.


15 **VIII. JURY DEMAND**

16 Plaintiff and the Class hereby demand a trial by jury.

17 ///

18 ///

19 August 9, 2021.

20 ARD LAW GROUP PLLC
21 By: 
22 Joel B. Ard, WSBA # 40104
23 P.O. Box 11633
24 Bainbridge Island, WA 98110
25 Phone: (206) 701-9243
26 ATTORNEYS FOR PLAINTIFF AND THE
27 PUTATIVE CLASS



**Service of Process
Transmittal**

08/27/2021
CT Log Number 540155208

TO: Lola Waldrum
Toyota Legal One
6565 HEADQUARTERS DR, MAIL DROP W1-5C
PLANO, TX 75024-5965

RE: Process Served in Washington

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: EVGENIY GOUSSEV and STACY RITCH, ETC., PLTFS. vs. TOYOTA MOTOR SALES, U.S.A., INC., ETC., DFT.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2120136934

ON WHOM PROCESS WAS SERVED: CT Corporation System, Olympia, WA

DATE AND HOUR OF SERVICE: By Process Server on 08/27/2021 at 14:55

JURISDICTION SERVED : Washington

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 08/27/2021, Expected Purge Date: 09/01/2021

Image SOP

Email Notification, Dawn Pittman Collins dawn.pittman@toyota.com

Email Notification, Lola Waldrum lola.waldrum@toyota.com

Email Notification, Serena Stout serena.stout@toyota.com

Email Notification, Robynann Callahan robynann.pelina.callahan@toyota.com

Email Notification, Shawn Wilson shawn.wilson@toyota.com

REGISTERED AGENT ADDRESS: C T Corporation System
711 Capitol Way S
Suite 204
Olympia, WA 98501
866-665-5799
SouthTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other



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advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

EVGENIY GOUSSEV and STACY RITCH,
individually and on behalf of all others similarly
situated,

21-2-0136A-34

Plaintiffs,

SUMMONS

v.

TOYOTA MOTOR SALES, U.S.A., INC., a
California Corporation,
Defendant.

TO THE DEFENDANT:

A lawsuit has been started against you in the above-entitled court by Evgeniy Goussev and Stacy Ritch, Plaintiffs. Plaintiffs' claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, by filing the original response with the above-entitled court, and by serving a copy upon the plaintiff within 20 days after service of this summons (or 60 days if this summons was served outside the State of Washington) excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance, you are entitled to notice before a default judgment may be entered. A copy of all responsive pleadings must be filed with the court.

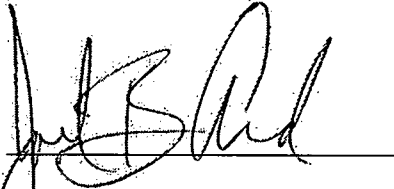
If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

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This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

August 24, 2021.

ARD LAW GROUP PLLC

By: 

Joel B. Ard, WSBA # 40104
P.O. Box 11633
Bainbridge Island, WA 98110
206.701.9243
Joel@Ard.law
ATTORNEYS FOR PLAINTIFFS AND
THE PUTATIVE CLASS

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Toyota, Lexus Vehicles' Infotainment Systems Download, Store Copies of All Connected Smartphones](#)
