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5 Attorney for Plaintiffs MELANIE BERLIEB,
ELVIRA GESELL on behalf of themselves
6 and putative class of German plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 In Re: Toyota Motor Corp. Unintended)
Acceleration Marketing Sales Practices,)
11 and Products Liability Litigation)
12 This document relates to:)
13 MELANIE BERLIEB, ELVIRA GESELL)
on behalf of themselves and putative class)
14 of German plaintiffs)
15)
16)
17)

Case No. 8:10ML 02151 JVS(FMOx)

**MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT FOR PLAINTIFFS MELANIE
BERLIEB, ELVIRA GESELL AND THE
CLASS OF GERMAN PLAINTIFFS
WITHOUT COMPLIANCE WITH COURT
ORDER NO. 4**

Date: September 13, 2010
Time: 1:30 p.m.
Dept.: 10C
Honorable James V. Selna

18 Plaintiffs MELANIE BERLIEB and ELVIRA GESELL and the putative class of German
19 plaintiffs they represent, by and through undersigned counsel move this Honorable Court for entry of an
20 order permitting them to file an amended complaint without compliance with this Court’s Order No. 4,
21 requiring signature of at least one co-lead counsel, stating AS GROUNDS THEREFOR:

22 1. Plaintiffs Melanie Berlieb, Elvira Gesell and the putative class of German plaintiffs
23 (hereinafter “German plaintiff class”) filed their complaint against defendants including Toyota Motor
24 Corporation of Japan, and several of its United States subsidiaries and suppliers of parts and credit
25 (hereinafter “Toyota defendants”) in case no. 10 CV-01931, in the United States District Court for the
26 Northern District of Illinois (hereinafter “USDC-N.D.IL.”) on April 27, 2010, represented by Ribbeck
27 Law Chartered (hereinafter “Ribbeck”), which was transferred to this Court by Conditional Transfer
28 Order (CTO-3) entered June 4, 2010, (Docket #183).

1 2. Over the last month Plaintiffs Berlieb and Gesell have attempted through their German
2 attorney Alex Berstein and your undersigned to communicate with Ribbeck to ascertain the nature and
3 extent of Ribbeck's efforts to protect and pursue the rights and claims of themselves and the German
4 plaintiffs' class they represent.

5 3. The Ribbeck firm has been unresponsive, as a result of which Plaintiffs Berlieb and
6 Gesell and the German plaintiffs' class retained your undersigned to protect and pursue their rights and
7 claims in the case at bar, authorizing William A. Cohan, P.C. to substitute for Ribbeck if necessary.

8 4. Ribbeck has refused to respond to William A. Cohan, P.C.'s inquiries concerning the
9 nature and extent of Ribbeck's efforts to protect and pursue the rights and claims of plaintiffs Berlieb,
10 Gesell and the German plaintiffs' class. Ribbeck has agreed to William A. Cohan, P.C.'s substitution as
11 counsel for plaintiffs Berlieb and Gesell, which agreement is reflected on William A. Cohan, P.C.'s
12 request for substitution as counsel -- filed August 2, 1010, on behalf of Berlieb, Gesell and the German
13 plaintiffs' class -- by Attorney Mervin Mateo's signature on behalf of Ribbeck, but Mr. Mateo
14 obliterated the language in the request providing for William A. Cohan, P.C.'s substitution as counsel
15 for the German plaintiffs' class, insisting in correspondence with William A. Cohan, P.C. that Ribbeck
16 represents other (unnamed) German plaintiffs and the class.

17 5. After William A. Cohan, P.C. provided economic loss committee co-lead counsel with a
18 draft amended complaint on behalf of Plaintiffs Berlieb, Gesell and the class of German plaintiffs to be
19 incorporated in the consolidated Complaint to be filed August 2, 2010, co-lead counsel inquired whether
20 a RICO Statement required by this Court's local rule had been prepared. William A. Cohan, P.C.
21 provided co-lead counsel with a draft RICO Statement.

22 6. On Saturday, July 31, 2010, co-lead counsel Marc Seltzer, Esq. sent an email to your
23 undersigned stating, "... we do not intend on including claims on behalf of foreign plaintiffs in the
24 consolidated complaint we will be filing on Monday. We are reserving judgment on whether to do so in
25 the future."

26 7. On Friday, July 30, 2010, Mr. Seltzer sent an email to your undersigned stating,
27 "I have been following the email dialogue between you and Mervin Mateo
28 (attorney with Ribbeck Law Chartered]. We are not in a position to
 adjudicate the dispute you seem to be having over who has authority to

1 proceed in this matter or which of you represents the foreign plaintiffs you
2 claim to represent.”

3 8. As a result of (1) Ribbeck’s refusal to respond to William A. Cohan, P.C.’s inquiries
4 concerning what, if any, steps Ribbeck has taken and/or will take by August 2, 2010, to protect the rights
5 and pursue the claims of plaintiffs Berlieb, Gesell and the German plaintiffs’ class and (2) Mr. Seltzer’s
6 unequivocal admission that no “... claims on behalf of the foreign plaintiffs...” will be included “... in the
7 consolidated complaint we will be filing on Monday,” your undersigned believes it is essential to file the
8 instant motion and accompanying proposed Amended Complaint and RICO Statement today, August 2,
9 2010, to avoid the unacceptable risk of waiver of plaintiffs Berlieb’s, Gesell’s and the German plaintiffs’
10 class’ rights to pursue the claims alleged in the proposed amended complaint submitted herewith.

11 9. Mr. Seltzer’s explanation for co-lead counsel’s refusal to sign the proposed Amended
12 Complaint and accompanying RICO Statement submitted herewith, as required by paragraph 5 of this
13 Court’s Order No. 4, relies -- at least in part -- on his conclusion that co-lead counsel “are not in a
14 position to adjudicate the dispute” between William A. Cohan, P.C. and the Ribbeck firm over which
15 law firm has authority to represent the German plaintiffs’ class. The request for substitution for this
16 Court to determine that issue has been scheduled for hearing on the earliest available date, September
17 13, 2010.

18 WHEREFOR, plaintiffs Berlieb, Gesell and the German plaintiffs’ class pray for entry of this
19 Court’s order permitting them to file their proposed amended complaint and accompanying RICO
20 Statement to preserve their rights to pursue their claims in the instant consolidated class action lawsuit
21 and for such other and further relief as the Court deems warranted in the premises.

22 RESPECTFULLY submitted this 2nd day of August, 2010.

23 WILLIAM A. COHAN, P.C.

24
25 By: s/ William A. Cohan
26 William A. Cohan
27 Attorney for MELANIE BERLIEB,
28 ELVIRA GESELL on behalf of themselves
and putative class of German plaintiffs
bill@williamacohan.com

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2010, I served a copy of the foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT FOR PLAINTIFFS MELANIE BERLIEB, ELVIRA GESELL AND THE CLASS OF GERMAN PLAINTIFFS WITHOUT COMPLIANCE WITH COURT ORDER NO. 4, upon the all parties in the matter via the CM/ECF system:

By: *s/ William A. Cohan* _____
William A. Cohan
bill@williamacohan.com