

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

08 OF CASE **3001**

AMIR SITAFALWALLA,

Plaintiff
PLATT, J.

NOTICE OF REMOVAL

vs.

Civil Action No. **FILED**
BY CLERK OF COURT
U.S. DISTRICT COURT ED NY

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

BOYLE, M.J. ★

JUL 23 2008 ★

Defendant.

BROOKLYN OFFICE

TO: The Honorable Judges of the United States District Court for the
Eastern District of New York:

Removing Party, TOYOTA MOTOR SALES, U.S.A., INC. (hereinafter "TMS"),

by its undersigned attorneys, respectfully shows this Court:

1. The removing party is a defendant in the above-entitled action.
2. On June 19, 2008, the above-entitled action was commenced against the Removing Party in Nassau County Supreme Court, Index Number 11328/2008, by filing a Summons and Verified Complaint, and is now pending therein (a copy of the Summons and Verified Complaint is attached hereto).
3. Upon information and belief, TMS was served with the plaintiff's Summons and Verified Complaint on July 3, 2008 by service upon CT Corporation.
4. No further proceedings have occurred in Nassau County Supreme Court.
5. Upon information and belief, the amount in controversy in the above-entitled action, exclusive of interest and costs, exceeds Seventy-Five Thousand (\$75,000.00) Dollars, as more fully appears in plaintiff's Summons and Verified Complaint and given the nature of the underlying products liability action.

6. The above-entitled action is a civil action for personal injuries alleging breach of express warranty, breach of implied warranty, product liability, and negligence.

7. Plaintiff Amir Sitafalwalla is a citizen and resident of Port Washington, New York according to plaintiff's Summons and Verified Complaint.

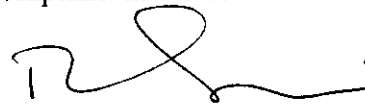
8. Defendant TMS is a foreign corporation with a principal place of business outside of New York State.

9. The above-entitled action only properly involves citizens of different states, in that at the time of commencement of this action in New York, and since that time, upon information and belief, plaintiff was and still is a citizen and resident of the State of New York and defendant TMS was and still is not a resident of the State of New York.

10. This Court therefore has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1332 based upon diversity and is removable pursuant to 28 U.S.C. §1441(a).

11. This Notice is filed with the Court within 20 days after service on removing party of the Summons and Verified Complaint in the above-entitled action.

DATED: Buffalo, New York
July 22, 2008



Robert G. Scumaci, Esq. (RS5343)
GIBSON, McASKILL & CROSBY
Attorneys for Toyota Motor Sales, U.S.A
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
(716) 856-4200

TO: ALBERT ZAFONTE, JR., ESQ.
Attorney for Plaintiff
215 Uniondale Avenue
Uniondale, New York 11553

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ECF CASE

AMIR SITAFALWALLA,

Plaintiff,

AFFIDAVIT OF SERVICE

vs.

Civil Action No.:

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


Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

LYNN M. MARKOWSKI, being duly sworn, deposes and says that deponent is not a party to this action and is over 18 years of age; that on the 22ND day of July, 2008, deponent served the attached NOTICE OF REMOVAL upon:

ALBERT ZAFONTE, JR., ESQ.
Attorney for Plaintiff
215 Uniondale Avenue
Uniondale, New York 11553

at the above address by depositing true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


LYNN M. MARKOWSKI

Sworn to before me this
22nd day of July, 2008.


Notary Public

TAMMY JO DUKARM
Notary Public, State of New York
No. 01DUS060826
Qualified in Erie County
Commission Expires October 23, 2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

AMIR SITAFALWALLA,

Index No.:

11328/08

6/19/08

Plaintiff designates Nassau
County as the place of trial.

Plaintiff(s),

SUMMONS

-against-

Plaintiff's Address:
15 West Gate Road
Port Washington, New York 11050

TOYOTA MOTOR SALES, U.S.A., INC.,
Defendant(s).

The basis of the venue
designated is: Residence of Plaintiff

To the above named Defendant(s),

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Uniondale, New York
June 11, 2008


ALBERT ZAFONTE JR., ESQ.
Attorneys for Plaintiff
Post Office Address & Telephone No.
215 Uniondale Avenue
Uniondale, New York 11553
(516) 505-7001

Defendant's Address:
TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Department WC11
Torrance, California 90501

LEGAL SERVICES

JUL - 7 2008

RECEIVED

LEGAL SERVICES

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

JUL - 7 2008

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6/19/08

-----x
AMIR SITAFALWALLA,

Plaintiff,

Index No.: 11328/08

-against-

**VERIFIED
COMPLAINT**

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

Defendants.

-----x
Plaintiff, AMIR SITAFALWALLA, by his attorney, **ALBERT ZAFONTE JR.**, as and for his Verified Complaint set forth the following, upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF AMIR SITAFALWALLA
(FOR NEGLIGENCE)**

ONE: That at all times hereinafter mentioned, the Plaintiff AMIR SITAFALWALLA resides in the County of Nassau, State of New York.

TWO: That at all times hereinafter mentioned, the Defendant TOYOTA MOTOR SALES, U.S.A., INC. (TOYOTA) is a foreign corporation, duly organized and existing under the laws of the State of New York.

THREE: That at all times hereinafter mentioned, the Defendant TOYOTA is a foreign corporation which transacts business within the State of New York .

FOUR: That at all times hereinafter mentioned, the

Defendant TOYOTA is a foreign corporation which contracts to supply goods and services in the State of New York.

FIVE: That at all times hereinafter mentioned, the Defendant TOYOTA is a foreign corporation which regularly conducts business in the State of New York and derives substantial revenue from the sale of their goods which are used or consumed in New York State.

SIX: That at all times hereinafter mentioned, the Defendant TOYOTA is a foreign corporation which owns, uses, or possesses real property situated within the State of New York

SEVENTH: That at all times hereinafter mentioned, the Defendant TOYOTA is a foreign corporation which regularly conducts business in the State of New York and should have expected or reasonably expected acts done by it to have consequences within the State of New York.

EIGHTH That at all times hereinafter mentioned, the Defendant, TOYOTA, by its agents, servants and/or employees was engaged in the business of manufacturing advertising, distributing and marketing a product known as a "2005 Scion TC" motor vehicle.

NINTH: That at all times hereinafter mentioned, the Plaintiff AMIR SITAFALWALLA purchased a "2005 Scion TC" motor vehicle bearing Vehicle Identification Number JTKDE177250030628 manufactured by the Defendant TOYOTA and as part of said purchase the Defendant TOYOTA provided certain warranties with respect top the said motor vehicle, both express and implied.

TENTH: That at all times hereinafter mentioned, the Plaintiff AMIR SITAFALWALLA was the lawful owner of the subject motor vehicle known as a "2005 Scion TC" motor vehicle bearing Vehicle Identification Number JTKDE177250030628.

ELEVENTH: That on or about the date of October 20, 2005, while the Plaintiff AMIR SITAFALWALLA was lawfully and properly operating the aforesaid motor vehicle, said motor vehicle suddenly and without warning accelerated resulting in a violent collision.

TWELFTH: That on or about the date of October 20, 2005, while the Plaintiff AMIR SITAFALWALLA was lawfully and properly operating the aforesaid motor vehicle and when said motor vehicle suddenly and without warning accelerated resulting in a violent collision, the Plaintiff was seriously injured.

THIRTEENTH: That the aforesaid occurrence and resulting injuries were due solely to the negligence, carelessness, recklessness and wanton and willful disregard on the part of the Defendant TOYOTA herein.

FOURTEENTH: That the foregoing violent collision and resulting injuries occurred without any negligence on the part of the Plaintiff contributing thereto.

FIFTEENTH: By reason of the foregoing, the Plaintiff has been damaged in an amount in excess of the jurisdictional limits of all of the lower courts of competent jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF AMIR SITAFALWALLA
(FOR BREACH OF EXPRESS WARRANTY)**

SIXTEENTH: The Plaintiff AMIR SITAFALWALLA repeats, reiterates and realleges each and every allegation contained in the First Cause of Action numbered "ONE" through "FIFTEENTH" with the same force and effect as if more fully set forth hereat.

SEVENTEENTH: The Defendant(s) herein, in connection with their business activities aforementioned, warranted and represented expressly and implied that their product was fit, capable and suitable for the use and purposes intended and that same was of merchantable quality and that same was safe, not dangerous and improper.

EIGHTEENTH: That upon information and belief the Plaintiff was entitled to and did in fact rely upon the warranty of merchantability and fitness for use, both express and implied, when plaintiff purchased the subject "2005 Scion TC" and subsequently used and operated same.

NINETEENTH: That upon information and belief said representation and warranties were false, misleading and inaccurate in that the said product was proved to be unsafe, dangerous, improper and not of merchantable quality and defective.

TWENTIETH: That at all times hereinafter mentioned the Defendant TOYOTA was in breach of express warranty.

TWENTY-FIRST: That upon information and belief the Plaintiff AMIR SITAFALWALLA had no knowledge of the falsity of these warranties..

TWENTY-SECOND That at all times hereinafter mentioned, as a result of the breach of express warranty by Defendant TOYOTA the Plaintiff was seriously injured.

TWENTY-THIRD: By reason of the foregoing, Plaintiff has been damaged in an amount in excess of the jurisdictional limits of all of the lower courts of competent jurisdiction.

**AS AND FOR A THIRD CAUSE OF
ACTION ON BEHALF OF AMIR SITAFALWALLA
(FOR BREACH OF IMPLIED WARRANTY)**

TWENTY-FOURTH: The Plaintiff AMIR SITAFALWALLA repeats, reiterates, and realleges each and every allegation numbered "ONE" through "TWENTY-THIRD" contained in the First and Second Causes of Action with the same force and effect as if more fully set forth hereat.

TWENTY-FIFTH: That at all times hereinafter mentioned and by reason of the foregoing, the Defendant TOYOTA was in breach of implied warranty.

TWENTY-SIXTH: That upon information and belief the Plaintiff AMIR SITAFALWALLA had no knowledge of the falsity of these warranties.

TWENTY-SEVENTH: That at all times hereinafter mentioned, as a result of the breach of implied warranty by Defendant TOYOTA the Plaintiff was seriously injured.

TWENTY-EIGHTH: By reason of the foregoing, Plaintiff AMIR

SITAFALWALLA has been damaged in an amount in excess of the jurisdictional limits of all of the lower courts of competent jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF AMIR SITAFALWALLA
(FOR STRICT LIABILITY)**

TWENTY-NINTH: Plaintiff AMIR SITAFALWALLA repeats, reiterates and realleges each and every allegation numbered "ONE" through "TWENTY-EIGHTH" contained in the First, Second and Third Causes of Action with the same force and effect as if more fully set forth hereat.

THIRTIETH: That at all times hereinafter mention said product, the "2005 Scion TC", was in a defective, unsafe and hazardous condition and was defectively designed and manufactured in a manner which was unnecessarily unsafe and dangerous to users and/or consumers.

THIRTY-FIRST: That at all times hereinafter mentioned said product, the "2005 Scion TC", was highly defective and dangerous and was manufactured and maintained improperly by Defendant TOYOTA.

THIRTY-SECOND: That at all times hereinafter mentioned, said defects and dangerous conditions of the product known as the "2005 Scion TC" were a substantial factor in bringing about the Plaintiff's injuries and were known or in the exercise of reasonable care should have been known to the Defendant TOYOTA.

THIRTY-THIRD: That at the time of the occurrence herein,

the product known as the "2005 Scion TC", was being used for the purpose and in the manner normally intended.

THIRTY-FOURTH: That at all times hereinafter mentioned the Plaintiff, AMIR SITAFALWALLA, could not by the exercise of reasonable care have discovered the defects or hazards or perceived their dangers.

THIRTY-FIFTH: That upon information and belief the product known as the "2005 Scion TC" was defective at the time of design and/or manufacture and/or distribution.

THIRTY-SIXTH: That upon information and belief, the Plaintiff AMIR SITAFALWALLA was caused to be seriously injured as a result of lawfully and properly operating the defectively designed and manufactured product known as the "2005 Scion TC" bearing Vehicle Identification Number JTKDE177250030628.

THIRTY-FOUR: By reason of the foregoing, Defendant TOYOTA have become strictly liable in tort to the Plaintiff, AMIR SITAFALWALLA.

THIRTY-FIFTH: By reason of the foregoing, Plaintiff AMIR SITAFALWALLA has been damaged in an amount in excess of the jurisdictional limits of all of the lower courts of competent jurisdiction.

WHEREFORE, the Plaintiff, AMIR SITAFALWALLA, demands judgment against the Defendant TOYOTA in the First Cause of Action in an amount in excess of the jurisdictional limits of all of the lower courts of competent; in the Second Cause of Action in an amount in

excess of the jurisdictional limits of all of the lower courts of competent; in the Third Cause of Action in an amount in excess of the jurisdictional limits of all of the lower courts of competent; and in the Fourth Cause of Action in an amount in excess of the jurisdictional limits of all of the lower courts of competent together with interests, costs and disbursements on each and every cause of action.

Dated: Uniondale, New York
June 11, 2008

Yours, etc.



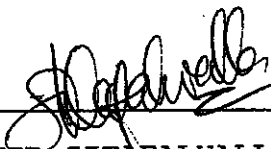
ALBERT ZAFONTE JR.
Attorney for Plaintiff(s)
AMIR SITAFALWALLA
215 Uniondale Avenue
Uniondale, New York 11553
(516) 505-7001
Fax (516) 505-5120

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

AMIR SITAFALWALLA being duly sworn deposes and says:

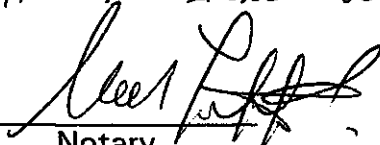
That deponent is the plaintiff in the within action.

That deponent has read the foregoing SUMMONS AND COMPLAINT
and knows the contents thereof; that the same are true to deponent's own knowledge,
except as to those matters therein stated to be alleged on information and belief, and
that as to those matters deponent believes them to be true



AMIR SITAFALWALLA

Sworn to before me this
11th day of June 2008



Notary

ALBERT A. ZAFONTE, JR.
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4861378, Qualified in Nassau
Commission Expires May 12, 2010

Index No.:
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

AMIR SITAFALWALLA,

Plaintiff(s),

-against-

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

Defendant(s).

Summons and Verified Complaint

ALBERT ZAFONTE, JR. ESQ.

Attorneys for Plaintiff(s)

215 Uniondale Avenue

Uniondale, New York 11553

(516) 505-7001

Pursuant to 22NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice law in the State of New York, certifies that upon information and belief based upon reasonable inquiry, the contentions contained in the annexed document are not frivolous

Dated: June 13, 2008

Signature: 

Print Name: ALBERT ZAFONTE, JR., ESQ.

PLEASE TAKE NOTICE

NOTICE OF ENTRY



that the within is a (certified) true copy of a
entered in the office of the Clerk of the within named
Court on 19 .

NOTICE OF SETTLEMENT



that an Order of which the within is a true copy will be presented to the
Hon. , one of the Justices of the within named
Court, at 100 Supreme Court Drive, Mineola, New York 11501, on 2008 at 9:30 A.M.

Dated: Uniondale, New York

ALBERT ZAFONTE, JR., ESQ.
Attorneys for Plaintiff(s)
215 Uniondale Avenue
Uniondale, New York 11553

TO: