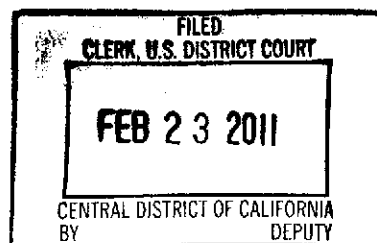


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8 Attorneys for Plaintiff Neal Kruszka,  
9 and the Plaintiff Class

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA DIVISION**

12 **CV11 01578 CBM (FEMx)**

13 NEAL KRUSZKA, )  
14 )  
15 Individually and on behalf )  
16 of all others similarly situated, )  
17 )  
18 PLAINTIFF, )  
19 )  
20 -vs- )  
21 )  
22 TOYOTA MOTOR CORPORATION, )  
23 TOYOTA MOTOR SALES USA, INC., )  
24 TOYOTA MOTOR NORTH AMERICA, )  
25 INC., LEXUS, and DOES 1-10, )  
26 )  
27 DEFENDANTS. )

CASE NO:

JUDGE:

**CLASS ACTION COMPLAINT**

**Jury Demand Endorsed Hereon**

28 **CLASS ACTION COMPLAINT**







1 11. Venue in this judicial district is also proper as Defendants TMS and  
2 TMNA are residents of this judicial district, and have their principal place of  
3 business within this judicial district.

4 12. Defendants distribute and inject vehicles within the stream of  
5 commerce into this district. Venue in this judicial district is, therefore, proper  
6 under 28 U.S.C. § 1391.

7 13. Lexus is one of the nation's most popular luxury automobile brands.  
8 Toyota sells its Lexus-branded vehicles through Toyota-approved dealers located  
9 throughout the United States.

10  
11 **FACTUAL ALLEGATIONS**

12 14. On or about May 19, 2010, Named Plaintiff purchased a new 2010  
13 model year black Lexus IS 250 from a dealer of Defendant. The vehicle was  
14 equipped with a factory warranty. copy of the warranty is attached hereto as  
15 Exhibit 1.

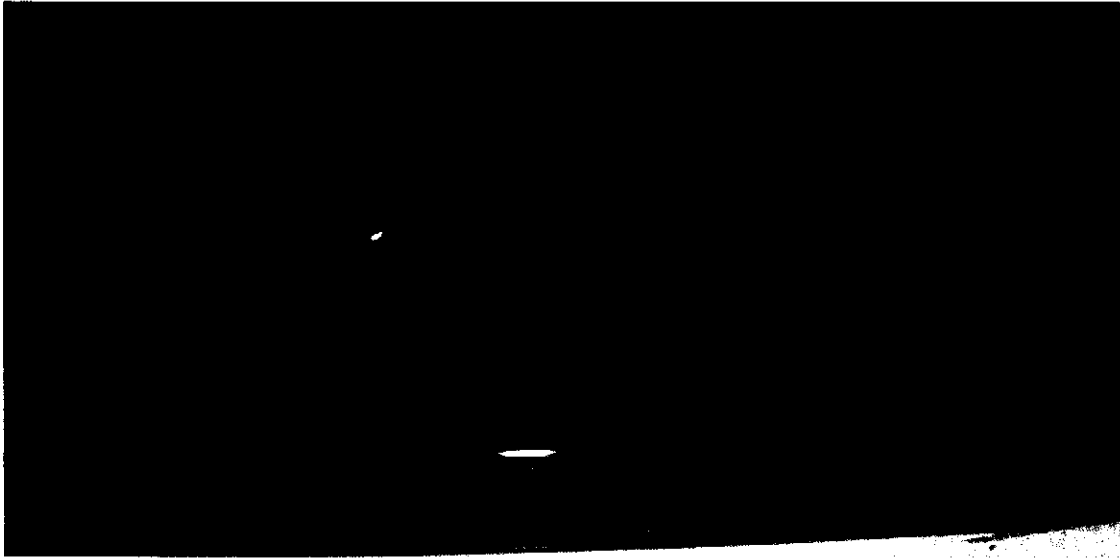
16 15. Shortly after purchasing the vehicle, the paint began chipping and  
17 scratching. An example of the problems experienced by Named Plaintiff can be  
18 seen in these photographs which were taken just after the car was washed:

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16. This was clearly an unacceptable condition that did not conform to industry standards, particularly given the new age of the vehicle.



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5/28/08	<p>I picked up my car with Smokey Granite Mica paint Feb. 8 2008. I quickly noticed after each hand washing all the scratches that were showing up. Each scratch and chip showed up as white lines or marks. A casual bump with my brief case and bam another chip. Within 2 months of ownership I am waxing the car and rubbing out the multiple scratches. The car has been on no dirt roads or car washes. Am I the only one with this problem or is this problem concentrated on my color or this model or production date? The dealer has been called and records noted. I have never had a car that scratches and chips so easily. I hate to see what it will look like in 3 years when I turn it in.</p> <p><b>Posted by draperysewer at</b> <b><a href="http://townhalltalk.edmunds.com/direct/view/.f19c793/0">http://townhalltalk.edmunds.com/direct/view/.f19c793/0</a></b></p>
7/15/2008	<p>I have had similar issues with paint on my Lexus 460L 2008. In the first 1000 miles excessive rock chipping on front and lower rocker panels on sides of car. Lexus repaired the paint on the sides and installed clear protective film. The front is still an issue I am trying to resolve with Lexus now. I have had an independant painter look at it and he thought the clear coat or last finish was not hard enough. There is definately a flaw with the paint. I have only 4000 miles on my car and am very unhappy. Also paint chips on trunk shelf from merely resting a suitcase and also white paint scratches from who</p>

	<p>knows what. Possible car wash? I use to take my 745i BMW through the same car wash. Never an issue.</p> <p><b>Posted by debra12 at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/0">http://townhall-talk.edmunds.com/direct/view/.f19c793/0</a></p>
7/29/2008	<p>I have the same problems.I have a new 07 gs350 same paint color. 1800 miles all sort of small scratches,and a number of blemishes on the hood ,quarter panel ,roof trunk.The dealer first said it was caused by moths stuck in the protective cover while being shipped.Now speaking direct to Lexus,its "rail dust" that settles on the paint during shipping, that caused the blemishes, the small scratches are because of the "clear coat" getting scratched,and the dark color paint.The dealer will solve the problem, by either buffing out the blemishes ,or repaint.I am not happy...this shouldn't happen on a Lexus.I have asked the dealer to make me happy....will see.</p> <p><b>Posted by joeldavid at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/0">http://townhall-talk.edmunds.com/direct/view/.f19c793/0</a></p>
8/15/2008	<p>I have a 1 and half yr old 350 same color. I talked to the dealer a few months ago about the same problem. The car just seems to get scratches and chips too easily. The dealer says non-lead paint nowadays is not as hard as those used years ago. I don't quite buy the answer. I doubt if other premium brand car has the same paint issue. A few days ago,</p>

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CLASS ACTION COMPLAINT

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	<p>I discover that there are small brown bubble just below the license plate. Upon close inspection, I can see rust starting to surface. And it is not even at a spot that you get chips. I had the feeling that there is some problem with the paint job in 350. I find that really surprising given lexus renowned quality. It is actually some sort of a relief to know that this is not a problem peculiar to my car. I am going to talk to lexus and see what they will do.</p> <p><b>Posted by roadrunner4 at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/0">http://townhall-talk.edmunds.com/direct/view/.f19c793/0</a></p>
8/27/2008	<p>I have a 2007 Lexus ES 350 Smokey Graphite. I'm having the exact same problem too. The chips are huge I mean larger and deeper then average. The chips are so deep that they go through the primer. Today I found one about the size of the head of a thumb tack, also down to the metal/fiberglass body. Its like they didn't even prime the car. Further more it was not on the hood, but on the side of the front driver side wheel well.</p> <p><b>Posted by llee44 at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/0">http://townhall-talk.edmunds.com/direct/view/.f19c793/0</a></p>
4/30/2009	<p>The hood on my 2007 ES 350 has a chipping and rust issue. Some are almost the size of a dime, others are down to the metal. The metal has rust which is generating under the paint. Contacted the dealer and they said they would not help with</p>

1 out Lexus approval. Contacted Lexus California's Corporate  
2 office and after many discussions they said we will fix to  
3 Lexus standards. Brought the car to the dealer and the Lexus  
4 district representative had the dealer chip away some paint  
5 and try to fix it with bottled brush on touch up paint which  
6 shows lifting under the original paint even more. The Hood  
7 looks worse than before. Lexus and the dealer all agree the  
8 hood needs to be re painted to be done right but washed their  
9 hands of it and said we are on our own to have the hood  
10 repainted. The same dealer estimate is approximately  
11 \$1500.00. Basically there 7 year paint rust warranty is none.  
12 Find this totally un acceptable and we are very disappointed.  
13 Never had paint issues with our 1999 S80 Volvo or 2003  
14 BMW Z4. Our Volvo has seen 8 winters the Lexus one and  
15 the Volvo looks new. The hood on our Lexus is an  
16 embarrassment. Have Owned many vehicles over the years  
17 and never experienced this type of problem.

18  
19 **Posted by zaff6 at**

20 **<http://townhall-talk.edmunds.com/direct/view/.f19c793/10>**

21  
22  
23 7/31/2009

24 Well just got emailed to day from the dealer and they are  
25 going to re-paint the front of the car at no charge. However,  
26 the compromise I had to make will be that after 30 days I

	<p>1 have to have a protective sheathing put on the front of the car  2 for protection. That I will have to pay for  3 ^\$%&amp;*^%/%^&amp;*%, cost about \$1,000. I will be turning mine  4 in December 2011. If I hear anything about how bad car is  5 with marks there will be another battle at that time. But we  6 will see what happens. That will be a story for another day.</p> <p>7</p> <p>8 <b>Posted by dviscuso at</b>  9 <b><u><a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/20">http://townhall-talk.edmunds.com/direct/view/.f19c793/20</a></u></b></p>
7/31/2009	<p>11 Has anybody started a class action suit against Lexus for their  12 lousy paint ? I have '09 that is full of scratches &amp; chips @12K  13 miles</p> <p>14</p> <p>15 <b>Posted by carhop1 at</b>  16 <b><u><a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/20">http://townhall-talk.edmunds.com/direct/view/.f19c793/20</a></u></b></p>
8/7/2009	<p>18 I own a 2008 ES 350 with 19000 miles and I too have the  19 same paint chip problem. It's really frustrating to have spent  20 so much money on a car and having this type of fundamental  21 problem. My previous car (2005 Acura TL) did not have this  22 problem. It had only 3 chips in 4 years that I owned it. I have  23 at least 15 chips on the bumper and hood areas on my ES.  24 The sad part is I've only owned it for 12 months!!!</p>

	<p><b>Posted by klee3 at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/20">http://townhall-talk.edmunds.com/direct/view/.f19c793/20</a></p>
<p>8/15/2009</p>	<p>I like about 350 people on this post have owned an ES350 and am experiencing paint issues with chips. It is obsidian black and has about 15 chips in the hood and bumpers and picks up scratches very easily. What do we Lexus owners need to do to start a class action suit vs the dealers? This is ridiculous-I did not pay \$38k to look at paint chips. In fact I am not even sure if the car was primed since the color beneath is white</p> <p><b>Posted by billevee at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/20">http://townhall-talk.edmunds.com/direct/view/.f19c793/20</a></p>
<p>9/29/2010</p>	<p>Help , my paint gets worse everyday . First oil change , I told my dealer and he said that is the curse of the Lexus Paint . Wow, that made me feel great . So of course they will not paint the car . He said it was just road conditions too . Bull ,I had a 11 year old Honda , Only had a few chips in paint , no dings in the paint . Makes me sick for the money I paid . Honda had 237000 miles . What can we do from here ? Is ther a lawsuit for this going on ?</p> <p><b>Posted by brina5 at</b>  <a href="http://townhall-talk.edmunds.com/direct/view/.f19c793/50">http://townhall-talk.edmunds.com/direct/view/.f19c793/50</a></p>





1  
2 27. Named Plaintiff's claims are typical of the claims of the members of  
3 the Class. Named Plaintiff has no interests antagonistic to those of the Class and is  
4 not subject to any unique defenses.

5 28. Named Plaintiff will fairly and adequately protect the interests of all  
6 members of the Class and has retained attorneys experienced in class action and  
7 complex litigation.

8 29. A class action is superior to all other available methods for the fair  
9 and efficient adjudication of this controversy for, inter alia, the following reasons:

- 10 a. It is economically impractical for members of the class to  
11 prosecute separate actions;  
12 b. The class is readily definable;  
13 c. Prosecution as a class action will eliminate the possibility of  
14 repetitious litigation; and  
15 d. A class action will enable claims to be handled in an orderly  
16 and expeditious manner, will save time and expense and will ensure  
17 uniformity of decisions.

18  
19 **COUNT I**  
**VIOLATION OF THE CONSUMERS LEGAL REMEDY ACT**

20 30. Named Plaintiff hereby incorporates by reference every allegation of  
21 this Complaint as if fully restated herein.

22 31. At all times relevant hereto, Named Plaintiff and each putative class  
23 member was a "consumer," as that term is defined in Cal. Civ. Code § 1761(d).

24 32. At all times relevant hereto, Lexus automobiles constituted "goods,"  
25 as that term is defined in Cal. Civ. Code § 1761 (a).

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**CLASS ACTION COMPLAINT**

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1 course of Defendants' business. Thus, Defendants' conduct impacts the public  
2 interest.

3 49. Named Plaintiff and the putative class members all paid money in  
4 form of their purchase prices or lease payments for their 2007 and forward model  
5 year Lexus automobiles. Thus, Named Plaintiff and the Class all have suffered  
6 monetary injury a result of Defendants' unfair, deceptive and unlawful business  
7 practices. As such, Named Plaintiff and the putative class members have standing  
8 to bring their claims for violation of California Bus. & Prof. Code §§ 17200 et seq.

9  
10 **COUNT III**  
11 **(VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW)**

12 50. Named Plaintiff hereby incorporates by reference every allegation of  
13 this complaint as if fully restated herein.

14 51. Cal. Bus. & Prof. Code §§ 17200 et seq. prohibits all unlawful,  
15 unfair or fraudulent business practices and/or acts. Said statute is liberally  
16 construed to protect the public.

17 52. In doing and/or refusing to do the acts alleged herein, Toyota  
18 engaged and continues to engage in an unfair practice in violation of Cal. Bus. &  
19 Prof. Code §§ 17200 et seq.

20 53. Defendants' wrongful conduct alleged herein is part of a pattern or  
21 generalized course of conduct that occurred and continues to occur in the ordinary  
22 course of Defendants' business. Thus, Defendants' conduct impacts the public  
23 interest.

24 54. Defendants' acts and practices are unfair within the meaning of  
25 California's Business and Professions 'Code, Section 17200 et. seq. of the  
26

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27 CLASS ACTION COMPLAINT

1 California Business and Professions Code because Defendants refuse to take any  
2 responsibility or offer any remedy for the defective paint, have a policy of denying  
3 warranty coverage for damage caused by the defective paint, have placed the onus  
4 on the consumer to repair this vehicle by repainting the vehicle at a cost of  
5 thousands of dollars, and have allowed and/or encouraged its dealers to use the  
6 damage done by the defect to sell repainting and/or protective coatings to Class  
7 Members.

8           55. Named Plaintiff and the putative class members all paid money in  
9 the form of their purchase prices or lease payments for their 2007 and forward  
10 model year Lexus automobiles. Thus, Named Plaintiff and the Class all have  
11 suffered monetary injury a result of Defendants' unfair, deceptive and unlawful  
12 business practices. As such, Named Plaintiff and the putative class members have  
13 standing to bring their claims for violation of California Bus. & Prof. Code §§  
14 17200 et seq.

15           56. The acts and practices described herein are not outweighed by any  
16 alleged countervailing benefit to consumers or to competition, because Named  
17 Plaintiff and Class Members paid significantly more for the vehicles than they  
18 would or should have been required to pay under the circumstances, thereby  
19 placing Defendants at a competitive advantage vis-à-vis others, to the detriment of  
20 Named Plaintiff and Class Members

21           57. The injury complained of is not an injury the consumers themselves  
22 could reasonably have avoided, because the defect in the paint is latent and could  
23 not reasonably have been discovered prior to purchase.

24           58. Named Plaintiff, on behalf of himself and the putative class  
25 members, seeks an order of this Court awarding restitution, injunctive relief and all  
26

1 other relief allowed under Cal. Bus. & Prof. Code § 17203 and Civil Code § 3345,  
2 plus interest, attorneys' fees and costs pursuant to, *inter alia*, Code of Civ. Proc. §  
3 1021.5.

4 **COUNT IV**  
5 **(BREACH OF CONTRACT)**

6 59. Named Plaintiff hereby incorporates by reference each and every  
7 allegation of this complaint with the same force and effect as if it had been fully  
8 restated herein.

9 60. A contract implied in law exists between Named Plaintiff and  
10 members of the putative class and Defendants, regarding the purchase and/or lease  
11 of the Lexus vehicles.

12 61. As part of this contract, Named Plaintiff and the putative class  
13 members paid Defendant significant consideration in the form of the purchase  
14 price of the vehicle and/or lease payments for the vehicles. As part of the  
15 bargained-for-exchange of this contract, Defendants were to sell or lease, through  
16 its intermediaries (Lexus dealers), new Lexus vehicles **in new condition**.

17 62. A vehicle containing a defect in its paint, body, and/or workmanship  
18 that causes it to routinely have its paint fade, peel off, or otherwise discolor within  
19 its foreseeable ownership lifetime is not a vehicle in new condition. Defendants,  
20 therefore, materially breached their contractual obligations by delivering to Named  
21 Plaintiff and members of the putative class vehicles that were prone to and/or did  
22 exhibit such paint peeling, fading, and/or discoloration.

23 63. Defendants' breach was not excused by any event or circumstance.

24 64. As a proximate and foreseeable result of Defendants' breach, Named  
25 Plaintiff and the members of the putative class have and/or will sustain damages

1 and loss. These damages include, but are not limited to, the loss of value of the  
2 vehicle as a result of the paint defect, paint peeling, fading and/or discoloration;  
3 expectation damages for plaintiff and the class members failing to obtain the  
4 benefit of the bargain that they struck with Defendant; damages that Named  
5 Plaintiff and the class members have or will have to incur in order to remedy the  
6 paint problems of their vehicles.

7  
8 **COUNT V**  
**(BREACH OF EXPRESS WARRANTY)**

9 65. Named Plaintiff hereby incorporates by reference each and every  
10 allegation of this complaint as if fully restated herein.

11 66. Defendants' written warranty for the subject vehicles states in  
12 relevant part that Lexus will repair any defect in materials or workmanship of the  
13 subject vehicles.

14 67. The warranty was a part of the basis of Named Plaintiff's and Class  
15 Members' bargain with Defendants.

16 68. Defendants' failure to offer a remedy to Named Plaintiff and Class  
17 Members that will cause the vehicle to conform to the contract of sale constitutes a  
18 breach of Defendants' express written warranty.

19 69. Defendants' have received timely notice of the breach of warranty  
20 alleged herein. Defendant was provided ample notice of the problem with the  
21 paint on the vehicles as alleged above and failed to take any steps to remedy the  
22 problem.

23 70. As a direct and proximate result of Defendants' breach of warranty,  
24 Named Plaintiffs and Class Members have suffered damages in an amount to be  
25 determined at trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Named Plaintiff, on behalf of himself and all others  
3 similarly situated, pray for a judgment against Defendants as follows:

- 4 a. For an order certifying the proposed Class herein under Federal Rule of Civil  
5 Procedure 23(a) and (b)(3) and appointing Named Plaintiffs and their counsel of  
6 record to represent said Class;
- 7 b. For an order that Defendants be permanently enjoined from engaging in the  
8 unlawful activities and practices complained of herein;
- 9 c. For an order awarding restitution and disgorgement of all monies paid by  
10 Named Plaintiff and the Class Members and/or ill-gotten gains realized by  
11 Defendants as a direct result of Defendants unlawful, unfair and/or fraudulent  
12 business practices complained of herein;
- 13 d. For an order imposing a constructive trust for the benefit of Named Plaintiff and  
14 the Class Members upon all charges paid by Plaintiff and the Class Members;
- 15 e. For declaratory relief as this Court deems appropriate;
- 16 f. For attorneys' fees and costs of suit, including expert witness fees;
- 17 g. For an order awarding pre-judgment and post-judgment interest as prescribed  
18 by law;
- 19 h. For actual and punitive damages plus interest thereon; and,
- 20 i. For such other further relief as this Court may deem just and proper.

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CLASS ACTION COMPLAINT

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1 **DEMAND FOR JURY TRIAL**

2 Named Plaintiff hereby demands a trial by jury on all claims so triable.

3 Dated: February 23, 2011

Respectfully submitted,

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5   
6 **Ryan K. Bakhtiari (SBN 199147)**  
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15 (Pro Hac Vice to be filed)  
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CLASS ACTION COMPLAINT

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