

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BLITZSAFE TEXAS, LLC,

Plaintiff,

v.

HONDA MOTOR CO., LTD. ET AL

Defendants.

Civil Action No. 2:15-cv-01274-JRG-RSP

(LEAD CASE)

JURY TRIAL DEMANDED

BLITZSAFE TEXAS, LLC,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION ET AL

Defendants.

Civil Action No. 2:15-cv-01277-JRG-RSP

(CONSOLIDATED CASE)

JURY TRIAL DEMANDED

DECLARATION OF MATTHEW G. BERKOWITZ

1) I, Matthew G. Berkowitz, make this declaration in connection with the case captioned Blitzsafe Texas, LLC v. Toyota Motor Corp et al., 2:15-cv-01277-JRG-RSP (E.D. Tex) (“Blitzsafe matter” or “Blitzsafe case”).

2) I am currently a partner with the law firm of Shearman & Sterling LLP (“Shearman”). I joined Shearman on November 9, 2015. I also currently have a part-time role as a seconded attorney at Toyota Motor Sales, U.S.A., Inc. (“TMS”). I have held this secondment position since December 2015.

3) Prior to joining Shearman, I was a partner at the law firm of Kenyon & Kenyon LLP (“Kenyon”). I was a partner at Kenyon effective from January 1, 2014 through November 6, 2015. Prior to being promoted to partner at Kenyon, I held the title of Associate. I held this title from September 2005 through the end of 2013.

4) While at Kenyon, I represented Toyota entities in numerous patent infringement litigations. I also represented Toyota in many *inter partes* review (“IPR”) proceedings. The patent litigation matters in which I represented one or more Toyota entities included at least the following:

- Signal IP Inc. v. Toyota North America, 2:15-cv-05162 (C.D. Cal.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., 8:15-cv-01391 (C.D. Cal.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00404 (E.D. Tex.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00405 (E.D. Tex.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00406 (E.D. Tex.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00407 (E.D. Tex.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00408 (E.D. Tex.);
- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00409 (E.D. Tex.);

- American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00410 (E.D. Tex.);¹
- Fernandez v. Toyota Motor Corp., et al. 2:11-cv-09605 (C.D. Cal.).
- Affinity Labs of Texas, LLC v. Toyota Motor North America, Inc. et al., 6:13-cv-00365 (W.D. Tex.)
- Joao Control and Monitoring Systems of California LLC v. ACTI Corp. Inc. et al. (8:10-cv-1909 (C.D. Cal.)
- In re Hybrid Electric Vehicles and Components Thereof, Inv. No. 337-TA-688

5) I am familiar with Kenyon's representation of Toyota entities in these matters until the time that I left the firm, including the Kenyon team that worked on those matters, and the communications to and from Toyota regarding those matters. I also have familiarity with certain billing records of attorneys working on Toyota patent litigation matters.

6) Vincent Rubino was employed by Kenyon as an associate attorney from 2007 until at least late summer 2015.

7) During the course of his employment at Kenyon, Mr. Rubino represented Toyota in several patent litigations, including the AVS matters.

8) In two of the AVS matters, aspects of Toyota's Entune and Enform technology were accused of patent infringement. In particular, American Vehicular Sciences v. Toyota Motor Corp., et al., No. 6:12-cv-00404 (E.D. Tex.) ("the -404 case") and American Vehicular Sciences

¹ The cases against American Vehicular Sciences that were filed in the District Court for the Eastern District of Texas may be collectively referred to as the "AVS matters." Certain of these cases were transferred to the District Court for the Eastern District of Michigan in July 2014, approximately two years after the cases were filed. Toyota filed 14 IPR petitions challenging the validity of patents asserted in the various AVS matters.

v. Toyota Motor Corp., et al., No. 6:12-cv-00405 (E.D. Tex.) (“the -405 case”) involved allegations that aspects of Entune and Enform technology infringed patents purportedly owned by AVS.

9) I understand that Exhibit 1 is a copy of Vincent Rubino’s billing records from Kenyon for various Toyota matters. *See* September 9, 2016 Declaration of Kathleen Deering.

10) As reflected in Exhibit 1, since 2013, Mr. Rubino billed more than 1500 hours to various Toyota litigation matters. A significant proportion of those 1500 hours were spent working on one or more of the AVS matters.

11) On a typical patent litigation matter for Toyota, all attorneys on the Kenyon team were privy to, and expected to be familiar with, client communications. On a typical patent litigation for Toyota, Kenyon would create an email list serv that included the email addresses of all team members. This email list serv was copied on nearly all (if not all) emails exchanged with Toyota. This approach was used on the AVS matters.

12) Internally, Kenyon team members working on a Toyota patent litigation typically used the group email list serv on all significant internal correspondence, including case strategy emails. This approach was used on the AVS matters.

13) During the course of his work on Toyota matters, Mr. Rubino was privy to, and participated in, numerous highly-sensitive and privileged communications with Toyota.

14) Mr. Rubino was privy to a Kenyon email to Toyota shortly after the filing of Blitzsafe’s complaint in the instant case, in which Kenyon commented on Blitzsafe, its prior litigation history, and the patents-in-suit. *See* Exhibit 2.

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