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John A. Clarke, Executive Officer/Clerk
By _____, Deputy
ACE LaFLEUR-CLAYTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; and DOES 1-200, Defendants.	CASE NO. BC408153 **FIRST-AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** 1. Negligence (Premises Liability) 2. Negligence *Per Se* 3. Strict Liability (Product Defect) 4. Negligence (Product Defect) 5. Breach of Express Warranties 6. Breach of Implied Warranties 7. Wrongful Death

COME NOW plaintiffs, BULENT EZAL, individually, and KENAN EZAL, individually, who for causes of action against the defendants, and each of them, including DOES 1 through 200, inclusive, assert as follows:

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GENERAL ALLEGATIONS

1. Plaintiffs assert that a defendant named in this Complaint, TOYOTA MOTOR SALES USA, INC., resides in the County of Los Angeles, State of California. Venue of this action against all private party defendants herein, whether corporate or individual, is proper in Los Angeles County.

2. Plaintiffs assert that all of the personal injuries, harm, losses and other damages alleged herein were incurred, suffered and took place outside the County of Los Angeles, in the County of San Luis Obispo, State of California. Pursuant to Rule 2.0 of the Los Angeles County Court Rules, the filing of this action against the private party defendants herein is proper in the Central District of the Los Angeles County Superior Court.

3. Plaintiff BULENT EZAL is, and at all times relevant herein was a resident of the County of Kern, State of California, with his place of residence located at 7901 Calle Nobleza, Bakersfield, California 93309.

4. Plaintiff KENAN EZAL is, and at all times relevant herein was a resident of the County of Santa Barbara, State of California, with his place of residence located at 1109 North Patterson, Santa Barbara, California.

5. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

6. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

7. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

TOY-RQ-05E-00004392

8. Plaintiffs assert that defendant MARTIN RESORTS, INC. is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant MARTIN RESORTS, INC. will be referred to as "MARTIN RESORTS.")

9. Plaintiffs assert that defendant MARTIN RESORTS is and at all times herein relevant was a resident of the County of San Luis Obispo, State of California, with its principal place of business in the State of California located at 1201 Palm Street, San Luis Obispo, California 93401.

10. Plaintiffs assert that defendant TOYOTA MOTOR SALES USA, INC., is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant TOYOTA MOTOR SALES USA, INC. will be referred to as "TOYOTA.")

11. Plaintiffs assert that defendant TOYOTA is and at all times herein relevant was a resident of the County of Los Angeles, State of California, with its principal place of business in the State of California located at 19001 South Western Avenue, Torrance, California 90501.

12. Plaintiffs further assert that DOES 1 through 200, and each of them, are individuals corporations, partnerships, limited partnerships, associations, trusts, parent companies and/or subsidiaries who together with the aforementioned other defendants are individuals or entities duly authorized to do and doing business in the State of California.

13. The true names and capacities, whether individual, corporate, associates, agents or otherwise of defendants, DOES 1 through 200, inclusive, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names, and will ask leave of this Court to amend this Complaint when the identities of such individuals have been ascertained. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated herein as a DOE is responsible in some manner and liable herein by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and conscious disregard, and said defendants directly, legally and proximately caused the injuries and damages asserted in this Complaint by such wrongful conduct.

14. The acts, conduct, and nonfeasance herein carried out by each and every representative, employee or agent of each and every corporate or business defendant, were authorized, ordered, and directed by the respective defendant's corporate or business employers, officers, directors and/or managing agents; that in addition thereto, said corporate or business employers,

TOY-RQ-05E-00004393

officers, directors and/or managing agents had advance knowledge of, authorized, and participated in the herein described acts, conduct and nonfeasance of their representatives, employees, agents and each of them; and that in addition thereto, upon the completion of the aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and business employers, officers, directors and/or managing agents respectively ratified, accepted the benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their co-employees, employers, and agents.

15. In addition, at all times herein relevant, each defendant, whether named herein or designated as a DOE, was a principal, master, employer and joint venturer of every other defendant, and every defendant was acting within the scope of said agency authority, employment and joint venture.

16. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 owned, leased, licensed, operated, maintained and controlled the Pelican Point Restaurant in Pismo Beach, California, together with a parcel of land located at 2555 Price Street, Pismo Beach, California, which serves as a parking lot intended for use by patrons of the Pelican Point Restaurant. (Hereinafter the subject parcel of land used as a parking lot will be referred to as the "SUBJECT PARKING LOT.")

17. The SUBJECT PARKING LOT is located at the top of a bluff overlooking the Pacific Ocean. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were responsible for and had control over any design, development, planning, mapping, inspecting, installing, placing, maintaining, landscaping, surveying, contracting, subcontracting, building, erecting, constructing, excavating, trenching, filling and repairing of the SUBJECT PARKING LOT, including all curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers or lack thereof surrounding the SUBJECT PARKING LOT.

18. At all times herein relevant, plaintiff BULENT EZAL was the registered owner of a 2005 model Toyota Camry motor vehicle, California license no. 5LJU783. (Hereinafter the subject Toyota Camry motor vehicle will be referred to as the "SUBJECT CAMRY.")

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TOY-RQ-05E-00004394

19. Defendant TOYOTA and DOES 101-200, inclusive, sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, provided, warranted, repaired, maintained, marketed, labeled, promoted, advertised, furnished, analyzed, inspected, supplied and placed into the stream of commerce the SUBJECT CAMRY, including its component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same.

20. On or about February 25, 2007, at approximately 1:05 P.M., plaintiff BULENT EZAL was driving the SUBJECT CAMRY in the SUBJECT PARKING LOT of the Pelican Point Restaurant owned, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100. While driving the SUBJECT CAMRY, plaintiff BULENT EZAL was seated in the left front seat of the SUBJECT CAMRY and was properly wearing his seat belt and shoulder harness.

21. At that time, decedent ANNE EZAL was riding as a passenger in the SUBJECT CAMRY. While riding as a passenger in the SUBJECT CAMRY, decedent ANNE EZAL was seated in the right front seat of the SUBJECT CAMRY and was properly wearing her seat belt and shoulder harness.

22. At that time, plaintiff BULENT EZAL was driving the SUBJECT CAMRY in an intended and foreseeable manner, at a safe legal speed, in accordance with all applicable traffic laws and regulations.

23. At that time, and at all times herein relevant, the SUBJECT PARKING LOT lacked any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

24. At that time, and at all times herein relevant, there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

25. At that time, and at all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the premises.

TOY-RQ-05E-00004395

26. On or about February 25, 2007, at approximately 1:05 P.M., as plaintiff BULENT EZAL was in the process of parking the SUBJECT CAMRY in the SUBJECT PARKING LOT, the SUBJECT CAMRY malfunctioned, went out of control and accelerated uncontrollably.

27. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY, the SUBJECT CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

28. Plaintiffs assert that the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY was an imminent peril. Thus, plaintiff BULENT EZAL through no fault of his own was suddenly and unexpectedly confronted with the emergency herein described and had no time for any deliberate or considered choice of alternatives.

29. On or about February 25, 2007, at approximately 1:05 P.M., as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, plaintiff BULENT EZAL and decedent ANNE EZAL were severely and grievously injured.

30. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, decedent ANNE EZAL sustained injuries from which she ultimately died.

31. At the time that the SUBJECT CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed, plaintiff BULENT EZAL perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injury to decedent ANNE EZAL.

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TOY-RQ-05E-00004396

32. Plaintiff BULENT EZAL contemporaneously perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injuries to decedent ANNE EZAL at the time that decedent ANNE EZAL suffered those injuries, and of the immediate consequences thereof.

33. Plaintiff BULENT EZAL simultaneously perceived and was aware of traumatic injuries to decedent ANNE EZAL at the same time that plaintiff BULENT EZAL himself suffered severe and grievous injuries caused by the the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY.

34. As a consequence of all of the foregoing, plaintiff BULENT EZAL suffered serious emotional distress beyond that which would be anticipated in a disinterested witness.

FIRST CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE (Premises Liability)

35. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

36. At all times herein relevant, the condition of the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100 was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT.

37. At all times herein relevant, as the owners and operators of a parking lot open to the general public, defendant MARTIN RESORTS and DOES 1-100 had a duty to exercise due care in the ownership, operation, and maintenance of the SUBJECT PARKING LOT to ensure that persons using the SUBJECT PARKING LOT were not subject to any unreasonable risk of harm posed by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004397

38. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

39. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

40. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 knew or should have known of the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

41. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

42. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

43. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

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44. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

45. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

46. Further also, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

47. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

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48. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

49. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant MARTIN RESORTS and DOES 1-100, inclusive, regarding the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT, moved upward through the structure of management to a point where corporate policy was formulated.

50. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, were in fact aware of risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT, and consciously and deliberately chose not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

51. The entire corporate organization of defendant MARTIN RESORTS and DOES 1-100, ~~inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant MARTIN RESORTS and DOES 1-100, inclusive, wherein corporate policy was formulated decided not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, despite knowledge of the risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.~~

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52. Authorized persons within the corporate hierarchy of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, did in fact compromise public safety by reducing costs and/or expediting operation and maintenance of the SUBJECT PARKING LOT in willful and conscious disregard of risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

53. As a direct, legal and proximate result of the negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

54. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

55. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

56. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

TOY-RQ-05E-00004401

57. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

58. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

59. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SECOND CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE *PER SE*

60. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

61. At all times herein relevant, the City of Pismo Beach is and was a lawfully incorporated California public entity. The City of Pismo Beach has adopted and promulgated the Pismo Beach Municipal Code.

62. At all times herein relevant, the Pismo Beach Municipal Code sets forth statutes and ordinances including those contained in Title 17, Chapter 17.34, which regulate zoning and parking in the City of Pismo Beach.

TOY-RQ-05E-00004402

63. Title 17, Chapter 17.34, section 17.34.070 of the Pismo Beach Municipal Code sets forth standards for off-street parking. Off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, are required to be in compliance with this section.

64. Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code sets forth standards for Wheel Stops and Curbing applicable to off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100.

65. Standards set forth under Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, applicable to the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, require that "Continuous concrete curbing at least six inches high and six inches wide shall be provided for all parking spaces located adjacent to walls, fences, property lines and structures."

66. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were in violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code.

67. At all times herein relevant, the SUBJECT PARKING LOT did not have the required concrete curbing at least six inches high provided for parking spaces located adjacent to the property line of the SUBJECT PARKING LOT, including those parking spaces at the edge of the bluff overlooking the Pacific Ocean.

68. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL.

69. Title 17, Chapter 17.34, section 17.34.010, subdivision (D) of the Pismo Beach Municipal Code states that the off-street parking standards of Chapter 17.34 are intended to reduce traffic hazards.

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70. Accordingly, the injuries caused to plaintiff BULENT EZAL and the injuries and death caused to decedent ANNE EZAL, that resulted from the aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, were of the nature that the standards for Wheel Stops and Curbing set forth in Section 17.34.070, subdivision (K), were designed to prevent.

71. Title 17, Chapter 17.01, section 17.01.010 of the Pismo Beach Municipal Code states that the statutes and ordinances under Title 17 are "adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, and businesses in the city."

72. Accordingly, as users of the SUBJECT PARKING LOT that was open to the public and intended for use by patrons of defendants' Pelican Point Restaurant, plaintiff BULENT EZAL and decedent ANNE EZAL were members of the class of persons for whose protection Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code was adopted.

73. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code that directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL was not reasonable under the circumstances of this case.

74. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code by defendant MARTIN RESORTS, INC. and DOES 1-100 was not what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.

75. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT failed to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code; but in conscious disregard of the rights and safety of others,

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including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

76. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

77. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

78. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant MARTIN RESORTS and DOES 1-100, inclusive, regarding the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code, moved upward through the structure of management to a point where corporate policy was formulated.

79. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, were in fact aware of risks to the safety of others posed the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code, and consciously and deliberately chose not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

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80. The entire corporate organization of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant MARTIN RESORTS and DOES 1-100, inclusive, wherein corporate policy was formulated decided not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, despite knowledge of the risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code.

81. Authorized persons within the corporate hierarchy of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, did in fact compromise public safety by reducing costs and/or expediting operation and maintenance of the SUBJECT PARKING LOT in willful and conscious disregard of risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code.

82. As a direct, legal and proximate result of the aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the fencing of the SUBJECT PARKING LOT, onto the bluff outside, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

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83. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

84. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

85. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

86. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

87. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

88. Plaintiffs further assert that the aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant MARTIN RESORTS and DOES 1-100, inclusive, and each

TOY-RQ-05E-00004407

of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

THIRD CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR STRICT LIABILITY (Product Defect)

89. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

90. The aforementioned SUBJECT CAMRY and its component parts, ingredients, packaging, mounting, associated warnings, and constituents thereof, or lack of same, were defectively sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, leased, rented, vended, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce by defendant TOYOTA and DOES 101-200, inclusive.

91. At all times herein relevant, the SUBJECT CAMRY failed to perform as safely as an ordinary consumer of said equipment would have expected when used in a manner reasonably foreseeable by the aforesaid defendants, and each of them. In addition, the benefits of the design of the SUBJECT CAMRY did not outweigh the risks inherent in the design of said vehicle.

92. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, failed to warn purchasers and users of the SUBJECT CAMRY and the general public, including plaintiffs herein, that the SUBJECT CAMRY as sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, installed,

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handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects

93. The aforementioned defects existed at the time that the SUBJECT CAMRY was tested, manufactured, distributed and sold by defendant TOYOTA and DOES 101-200, inclusive, and the SUBJECT CAMRY reached plaintiffs without substantial change in the condition in which the SUBJECT CAMRY was manufactured, distributed and sold by defendant TOYOTA and DOES 101-200, inclusive. Defendant TOYOTA and DOES 101-200, inclusive, knew that the SUBJECT CAMRY was to be used without inspection for defects by plaintiffs.

94. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

95. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

96. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was knowable by means of scientific knowledge available to defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and

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dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

97. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew, or by means of available scientific knowledge should have known, of the numerous other earlier deaths, injuries, consumer complaints, warranty claims and lawsuits caused by vehicles substantially similar to the SUBJECT CAMRY in substantially similar crashes, including earlier versions and similar products, due to the inadequate and improper design, defective manufacturing and lack of proper warnings, as specifically described herein, and yet, in conscious disregard of the rights and safety of others, including plaintiffs and decedents herein, defendant TOYOTA and DOES 101-200, inclusive, chose not to design or redesign the SUBJECT CAMRY with defective-free components and materials, or proper instructions and warnings, or conduct a proper, timely and reasonable recall of the SUBJECT CAMRY.

98. Defendant TOYOTA and DOES 101-200, inclusive, had unfettered ability, after years of extensive in-house, government and independent testing, to minimize the substantial risk of serious bodily harm or death caused by the SUBJECT CAMRY by redesigning or warning of the potential for serious risk or harm, thereby minimizing or eliminating said potential. Defendant TOYOTA and DOES 101-200, inclusive, consciously chose not to take such steps, including, but not limited to, not providing proper design and manufacturing provisions, all of which allowed defendant TOYOTA and DOES 101-200, inclusive, to save money, increase profit margin and avoid loss of sales. These acts by defendant TOYOTA and DOES 101-200 prevented the public from becoming aware that the SUBJECT CAMRY was unsafe, dangerous and defective.

99. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or by means of available scientific knowledge should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious

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disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

100. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

101. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

102. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

103. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

104. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200,

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inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

105. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

106. As a direct, legal and proximate result of the aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

107. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

108. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

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109. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

110. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

111. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

112. Plaintiffs further assert that the aforementioned design, manufacturing and marketing defects, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR NEGLIGENCE (Product Defect)

113. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

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114. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, were and are engaged in the business of selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, providing, warranting, repairing, maintaining, marketing, leasing, installing, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying and placing into the stream of commerce, certain products and their component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same, known as the SUBJECT CAMRY and substantially similar motor vehicles.

115. Defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, had a legal duty to adequately and properly manage and operate their business and their manufacturing, distribution, and retail operations; to adequately and properly train and supervise their employees and agents, including their designers, inspectors, quality control agents and other manufacturing, testing, distribution and delivery personnel; and to act without negligence, conscious disregard or other wrongful conduct.

116. Defendant TOYOTA and DOES101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, failed to adequately and properly manage and operate their business and their design, manufacturing and distribution centers; failed to adequately and properly train and supervise their employees and agents, including designers, inspectors, quality control agents and other manufacturing, distribution and delivery personnel; failed to act without negligence, conscious disregard or other wrongful conduct in that, among other things to be discovered, said defendants failed to properly conduct themselves, adequately interact and coordinate business matters with others; and failed to properly train and supervise their employees and agents regarding employment duties, and the design, test manufacture, inspection, delivery, demonstration and advertising of their merchandise, including, but not limited to the SUBJECT CAMRY and other related business matters.

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117. Said failures by the aforementioned defendants including the defendant designers, manufacturers, distributors and retailers, known as defendant TOYOTA and DOES 101-200, inclusive, constituted a breach of the aforementioned duties that in a foreseeable manner, legally and proximately caused the serious and permanent injuries and other damage to plaintiffs herein asserted.

118. In addition, defendant TOYOTA and DOES 101-200, inclusive, negligently and carelessly sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, bought, leased, rented, vended, installed, handled, labeled, compounded, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, the aforementioned SUBJECT CAMRY including, but not limited to, its component parts, ingredients, packaging, attachments, associated warnings, and constituents thereof, and lack of the same. Said negligence included, but was not limited to, supplying inadequate and improper on-product and other warnings and instructions regarding the defects and dangerous propensities of the aforementioned SUBJECT CAMRY.

119. Defendant TOYOTA and DOES 101-200, inclusive, as asserted above, negligently and carelessly failed to inform purchasers and users of said TOYOTA CAMRY and others, including plaintiff BULENT EZAL, that the SUBJECT CAMRY was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects.

120. In conducting their business, and in selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, utilizing, providing, warranting, repairing, maintaining, marketing, installing, handling, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying, and placing into the stream of commerce the SUBJECT CAMRY, defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, and each of them, either lacked or failed to use the knowledge and skill ordinarily possessed by similarly-situated persons, companies, designers, manufacturers, testers, assemblers, inspectors, distributors, retailers and suppliers of such products.

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121. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

122. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

123. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was known to defendant TOYOTA and DOES 101-200, inclusive, and each of them, or in the exercise of reasonable care should have been known and discovered by defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

124. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew of the danger of serious injury or death from the SUBJECT CAMRY due to its defectively designed and manufactured nature. Defendant TOYOTA and DOES 101-200, inclusive, consciously decided to design, manufacture, distribute and sell the SUBJECT CAMRY in its defective state without adequate warning or proper instructions to owners and users of said vehicle in order to save money,

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increase profits and prevent loss of sales. These despicable acts by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done to deliberately prevent the general public from becoming aware that the SUBJECT CAMRY and substantially similar vehicles were and continue to be unsafe, dangerous and defective.

125. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or in the exercise of reasonable care should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

126. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

127. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

128. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

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129. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

130. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

131. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

132. As a direct, legal and proximate result of the negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

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133. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

134. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

135. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

136. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

137. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

138. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and

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DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FIFTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF EXPRESS WARRANTIES

139. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

140. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted to plaintiffs and decedent herein and the general consuming public, through print, media and television advertising and other express means, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

141. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

142. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

143. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

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144. As a direct, legal and proximate result of the aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

145. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

146. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

147. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

148. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

149. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

150. Plaintiffs further assert that the aforementioned despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive,

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and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SIXTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF IMPLIED WARRANTIES

151. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

152. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted to purchasers and owners of the SUBJECT CAMRY, including plaintiffs and decedent herein, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

153. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

154. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

155. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

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TOY-RQ-05E-00004422

156. As a direct, legal and proximate result of the aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

157. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

158. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

159. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

160. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

161. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

162. Plaintiffs further assert that the aforementioned despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive,

TOY-RQ-05E-00004423

and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

FOR WRONGFUL DEATH

163. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

164. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

165. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

166. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

167. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, loyal, dutiful and devoted spouse to her lawful husband, plaintiff BULENT EZAL.

168. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, kindly and affectionate mother to her son, plaintiff KENAN EZAL.

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169. On or about February 25, 2007, as a direct, proximate and legal result of the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, decedent ANNE EZAL was fatally injured and died.

170. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff BULENT EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society and services of his lawful spouse, decedent ANNE EZAL.

171. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff KENAN EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society, education and moral training of his mother, decedent ANNE EZAL.

172. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiffs BULENT EZAL and KENAN EZAL have suffered and incurred funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

WHEREFORE, plaintiffs herein pray for judgment as follows:

Against all defendants, and each of them:

1. For general damages, including personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

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TOY-RQ-05E-00004425

2. For further general damages, including loss to plaintiff BULENT EZAL of the society, comfort, companionship, attention, services and support of his lawful spouse, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

3. For further general damages, including loss to plaintiff KENAN EZAL of the society, comfort, companionship, attention, services, support, education and moral training of his mother, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

4. For further general damages, including all other damages for the wrongful death of decedent ANNE EZAL that under all of the circumstances of this case may be just;

5. For special damages, including past and future medical, hospital and incidental expenses incurred on behalf of decedent ANNE EZAL and plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

6. For further special damages, including loss to plaintiff BULENT EZAL of past and future pension and retirement benefits, in amounts exceeding the jurisdictional limits of this Court and according to proof at trial;

7. For further special damages, including loss and damage to valuable tangible items of personal property, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

8. For further special damages, including funeral, burial and incidental expenses incurred on behalf of decedent ANNE EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

9. For costs of suit incurred herein;

10. For interest as provided by law;

11. For such other and further relief, including but not limited to attorney's fees, as the Court may deem just and proper.

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TOY-RQ-05E-00004426

Against defendants MARTIN RESORTS, INC. and DOES 1-100, inclusive:

12. For an award of exemplary damages, in an amount properly calculated to punish defendants MARTIN RESORTS, INC. and DOES 1-100, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

Against defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, inclusive:

13. For an award of exemplary damages, in an amount properly calculated to punish defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL IN THIS ACTION.

DATED: March 10, 2009

RAYMOND PAUL JOHNSON, A LAW CORPORATION

AND

HABUSH HABUSH & ROTTIER S.C.

By: _____
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TOY-RQ-05E-00004427

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; and DOES 1-200, Defendants.	CASE NO. BC408153 **SECOND-AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** 1. Negligence (Premises Liability) 2. Negligence *Per Se* 3. Strict Liability (Product Defect) 4. Negligence (Product Defect) 5. Breach of Express Warranties 6. Breach of Implied Warranties 7. Wrongful Death

COME NOW plaintiffs, BULENT EZAL, individually, and KENAN EZAL, individually, who for causes of action against the defendants, and each of them, including DOES 1 through 200, inclusive, assert as follows:

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GENERAL ALLEGATIONS

1. Plaintiffs assert that a defendant named in this Complaint, TOYOTA MOTOR SALES USA, INC., resides in the County of Los Angeles, State of California. Venue of this action against all private party defendants herein, whether corporate or individual, is proper in Los Angeles County.

2. Plaintiffs assert that all of the personal injuries, harm, losses and other damages alleged herein were incurred, suffered and took place outside the County of Los Angeles, in the County of San Luis Obispo, State of California. Pursuant to Rule 2.0 of the Los Angeles County Court Rules, the filing of this action against the private party defendants herein is proper in the Central District of the Los Angeles County Superior Court.

3. Plaintiff BULENT EZAL is, and at all times relevant herein was a resident of the County of Kern, State of California, with his place of residence located at 7901 Calle Nobleza, Bakersfield, California 93309.

4. Plaintiff KENAN EZAL is, and at all times relevant herein was a resident of the County of Santa Barbara, State of California, with his place of residence located at 1109 North Patterson, Santa Barbara, California.

5. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

6. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

7. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

TOY-RQ-05E-00004429

8. Plaintiffs assert that defendant MARTIN RESORTS, INC. is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant MARTIN RESORTS, INC. will be referred to as "MARTIN RESORTS.")

9. Plaintiffs assert that defendant MARTIN RESORTS is and at all times herein relevant was a resident of the County of San Luis Obispo, State of California, with its principal place of business in the State of California located at 1201 Palm Street, San Luis Obispo, California 93401.

10. Plaintiffs assert that defendant TOYOTA MOTOR SALES USA, INC., is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant TOYOTA MOTOR SALES USA, INC. will be referred to as "TOYOTA.")

11. Plaintiffs assert that defendant TOYOTA is and at all times herein relevant was a resident of the County of Los Angeles, State of California, with its principal place of business in the State of California located at 19001 South Western Avenue, Torrance, California 90501.

12. Plaintiffs further assert that DOES 1 through 200, and each of them, are individuals corporations, partnerships, limited partnerships, associations, trusts, parent companies and/or subsidiaries who together with the aforementioned other defendants are individuals or entities duly authorized to do and doing business in the State of California.

13. The true names and capacities, whether individual, corporate, associates, agents or otherwise of defendants, DOES 1 through 200, inclusive, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names, and will ask leave of this Court to amend this Complaint when the identities of such individuals have been ascertained. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated herein as a DOE is responsible in some manner and liable herein by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and conscious disregard, and said defendants directly, legally and proximately caused the injuries and damages asserted in this Complaint by such wrongful conduct.

14. The acts, conduct, and nonfeasance herein carried out by each and every representative, employee or agent of each and every corporate or business defendant, were authorized, ordered, and directed by the respective defendant's corporate or business employers, officers, directors and/or managing agents; that in addition thereto, said corporate or business employers,

TOY-RQ-05E-00004430

officers, directors and/or managing agents had advance knowledge of, authorized, and participated in the herein described acts, conduct and nonfeasance of their representatives, employees, agents and each of them; and that in addition thereto, upon the completion of the aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and business employers, officers, directors and/or managing agents respectively ratified, accepted the benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their co-employees, employers, and agents.

15. In addition, at all times herein relevant, each defendant, whether named herein or designated as a DOE, was a principal, master, employer and joint venturer of every other defendant, and every defendant was acting within the scope of said agency authority, employment and joint venture.

16. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 owned, leased, licensed, operated, maintained and controlled the Pelican Point Restaurant in Pismo Beach, California, together with a parcel of land located at 2555 Price Street, Pismo Beach, California, which serves as a parking lot intended for use by patrons of the Pelican Point Restaurant. (Hereinafter the subject parcel of land used as a parking lot will be referred to as the "SUBJECT PARKING LOT.")

17. The SUBJECT PARKING LOT is located at the top of a bluff overlooking the Pacific Ocean. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were responsible for and had control over any design, development, planning, mapping, inspecting, installing, placing, maintaining, landscaping, surveying, contracting, subcontracting, building, erecting, constructing, excavating, trenching, filling and repairing of the SUBJECT PARKING LOT, including all curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers or lack thereof surrounding the SUBJECT PARKING LOT.

18. At all times herein relevant, plaintiff BULENT EZAL was the registered owner of a 2005 model Toyota Camry motor vehicle, California license no. 5LJU783. (Hereinafter the subject Toyota Camry motor vehicle will be referred to as the "SUBJECT CAMRY.")

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TOY-RQ-05E-00004431

19. Defendant TOYOTA and DOES 101-200, inclusive, sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, provided, warranted, repaired, maintained, marketed, labeled, promoted, advertised, furnished, analyzed, inspected, supplied and placed into the stream of commerce the SUBJECT CAMRY, including its component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same.

20. On or about February 25, 2007, at approximately 1:05 P.M., plaintiff BULENT EZAL was driving the SUBJECT CAMRY in the SUBJECT PARKING LOT of the Pelican Point Restaurant owned, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100. While driving the SUBJECT CAMRY, plaintiff BULENT EZAL was seated in the left front seat of the SUBJECT CAMRY and was properly wearing his seat belt and shoulder harness.

21. At that time, decedent ANNE EZAL was riding as a passenger in the SUBJECT CAMRY. While riding as a passenger in the SUBJECT CAMRY, decedent ANNE EZAL was seated in the right front seat of the SUBJECT CAMRY and was properly wearing her seat belt and shoulder harness.

22. At that time, plaintiff BULENT EZAL was driving the SUBJECT CAMRY in an intended and foreseeable manner, at a safe legal speed, in accordance with all applicable traffic laws and regulations.

23. At that time, and at all times herein relevant, the SUBJECT PARKING LOT lacked any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

24. At that time, and at all times herein relevant, there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

25. At that time, and at all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the premises.

TOY-RQ-05E-00004432

26. On or about February 25, 2007, at approximately 1:05 P.M., as plaintiff BULENT EZAL was in the process of parking the SUBJECT CAMRY in the SUBJECT PARKING LOT, the SUBJECT CAMRY malfunctioned, went out of control and accelerated uncontrollably.

27. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY, the SUBJECT CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

28. Plaintiffs assert that the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY was an imminent peril. Thus, plaintiff BULENT EZAL through no fault of his own was suddenly and unexpectedly confronted with the emergency herein described and had no time for any deliberate or considered choice of alternatives.

29. On or about February 25, 2007, at approximately 1:05 P.M., as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, plaintiff BULENT EZAL and decedent ANNE EZAL were severely and grievously injured.

30. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, decedent ANNE EZAL sustained injuries from which she ultimately died.

31. At the time that the SUBJECT CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed, plaintiff BULENT EZAL perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injury to decedent ANNE EZAL.

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TOY-RQ-05E-00004433

32. Plaintiff BULENT EZAL contemporaneously perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injuries to decedent ANNE EZAL at the time that decedent ANNE EZAL suffered those injuries, and of the immediate consequences thereof.

33. Plaintiff BULENT EZAL simultaneously perceived and was aware of traumatic injuries to decedent ANNE EZAL at the same time that plaintiff BULENT EZAL himself suffered severe and grievous injuries caused by the the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY.

34. As a consequence of all of the foregoing, plaintiff BULENT EZAL suffered serious emotional distress beyond that which would be anticipated in a disinterested witness.

FIRST CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE (Premises Liability)

35. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

36. At all times herein relevant, the condition of the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100 was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT

37. At all times herein relevant, as the owners and operators of a parking lot open to the general public, defendant MARTIN RESORTS and DOES 1-100 had a duty to exercise due care in the ownership, operation, and maintenance of the SUBJECT PARKING LOT to ensure that persons using the SUBJECT PARKING LOT were not subject to any unreasonable risk of harm posed by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004434

38. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

39. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

40. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 knew or should have known of the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

41. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

42. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

43. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004435

44. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

45. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

46. Further also, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but said defendants chose not to take any adequate or reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

47. As a direct, legal and proximate result of the negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

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TOY-RQ-05E-00004436

48. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

49. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

50. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

51. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

52. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

53. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their First Cause of Action for Negligence (Premises Liability).

SECOND CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE *PER SE*

54. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

55. At all times herein relevant, the City of Pismo Beach is and was a lawfully incorporated California public entity. The City of Pismo Beach has adopted and promulgated the Pismo Beach Municipal Code.

TOY-RQ-05E-00004437

56. At all times herein relevant, the Pismo Beach Municipal Code sets forth statutes and ordinances including those contained in Title 17, Chapter 17.34, which regulate zoning and parking in the City of Pismo Beach.

57. Title 17, Chapter 17.34, section 17.34.070 of the Pismo Beach Municipal Code sets forth standards for off-street parking. Off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, are required to be in compliance with this section.

58. Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code sets forth standards for Wheel Stops and Curbing applicable to off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100.

59. Standards set forth under Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, applicable to the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, require that "Continuous concrete curbing at least six inches high and six inches wide shall be provided for all parking spaces located adjacent to walls, fences, property lines and structures."

60. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were in violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code.

61. At all times herein relevant, the SUBJECT PARKING LOT did not have the required concrete curbing at least six inches high provided for parking spaces located adjacent to the property line of the SUBJECT PARKING LOT, including those parking spaces at the edge of the bluff overlooking the Pacific Ocean.

62. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL.

63. Title 17, Chapter 17.34, section 17.34.010, subdivision (D) of the Pismo Beach Municipal Code states that the off-street parking standards of Chapter 17.34 are intended to reduce traffic hazards.

TOY-RQ-05E-00004438

64. Accordingly, the injuries caused to plaintiff BULENT EZAL and the injuries and death caused to decedent ANNE EZAL, that resulted from the aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, were of the nature that the standards for Wheel Stops and Curbing set forth in Section 17.34.070, subdivision (K), were designed to prevent.

65. Title 17, Chapter 17.01, section 17.01.010 of the Pismo Beach Municipal Code states that the statutes and ordinances under Title 17 are "adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, and businesses in the city."

66. Accordingly, as users of the SUBJECT PARKING LOT that was open to the public and intended for use by patrons of defendants' Pelican Point Restaurant, plaintiff BULENT EZAL and decedent ANNE EZAL were members of the class of persons for whose protection Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code was adopted.

67. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code that directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL was not reasonable under the circumstances of this case.

68. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code by defendant MARTIN RESORTS, INC. and DOES 1-100 was not what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.

69. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT failed to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code; but said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004439

70. As a direct, legal and proximate result of the aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the fencing of the SUBJECT PARKING LOT, onto the bluff outside, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

71. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

72. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

73. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

74. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

75. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

76. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Second Cause of Action for Negligence *Per Se*.

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THIRD CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR STRICT LIABILITY (Product Defect)

77. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

78. The aforementioned SUBJECT CAMRY and its component parts, ingredients, packaging, mounting, associated warnings, and constituents thereof, or lack of same, were defectively sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, leased, rented, vended, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce by defendant TOYOTA and DOES 101-200, inclusive.

79. At all times herein relevant, the SUBJECT CAMRY failed to perform as safely as an ordinary consumer of said equipment would have expected when used in a manner reasonably foreseeable by the aforesaid defendants, and each of them. In addition, the benefits of the design of the SUBJECT CAMRY did not outweigh the risks inherent in the design of said vehicle.

80. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, failed to warn purchasers and users of the SUBJECT CAMRY and the general public, including plaintiffs herein, that the SUBJECT CAMRY as sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects

81. The aforementioned defects existed at the time that the SUBJECT CAMRY was tested, manufactured, distributed and sold by defendant TOYOTA and DOES 101-200, inclusive, and the SUBJECT CAMRY reached plaintiffs without substantial change in the condition in which the

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SUBJECT CAMRY was manufactured, distributed and sold by defendant TOYOTA and DOES 101-200, inclusive. Defendant TOYOTA and DOES 101-200, inclusive, knew that the SUBJECT CAMRY was to be used without inspection for defects by plaintiffs.

82. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

83. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

84. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was knowable by means of scientific knowledge available to defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

85. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew, or by means of available scientific knowledge should have known, of the numerous other earlier deaths, injuries, consumer complaints, warranty claims and lawsuits caused by vehicles substantially similar to the SUBJECT CAMRY in substantially similar crashes, including earlier versions and similar products, due to the inadequate and improper design, defective manufacturing and lack of

TOY-RQ-05E-00004442

proper warnings, as specifically described herein, and yet, in conscious disregard of the rights and safety of others, including plaintiffs and decedents herein, defendant TOYOTA and DOES 101-200, inclusive, chose not to design or redesign the SUBJECT CAMRY with defective-free components and materials, or proper instructions and warnings, or conduct a proper, timely and reasonable recall of the SUBJECT CAMRY.

86. Defendant TOYOTA and DOES 101-200, inclusive, had unfettered ability, after years of extensive in-house, government and independent testing, to minimize the substantial risk of serious bodily harm or death caused by the SUBJECT CAMRY by redesigning or warning of the potential for serious risk or harm, thereby minimizing or eliminating said potential. Defendant TOYOTA and DOES 101-200, inclusive, consciously chose not to take such steps, including, but not limited to, not providing proper design and manufacturing provisions, all of which allowed defendant TOYOTA and DOES 101-200, inclusive, to save money, increase profit margin and avoid loss of sales. These acts by defendant TOYOTA and DOES 101-200 prevented the public from becoming aware that the SUBJECT CAMRY was unsafe, dangerous and defective.

87. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or by means of available scientific knowledge should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

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TOY-RQ-05E-00004443

88. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

89. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

90. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

91. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

92. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

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93. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

94. As a direct, legal and proximate result of the aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

95. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

96. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

97. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

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98. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

99. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

100. Plaintiffs further assert that the aforementioned design, manufacturing and marketing defects, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR NEGLIGENCE (Product Defect)

101. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

102. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, were and are engaged in the business of selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, providing, warranting, repairing, maintaining, marketing, leasing, installing, labeling, promoting, advertising, furnishing, analyzing, inspecting,

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supplying and placing into the stream of commerce, certain products and their component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same, known as the SUBJECT CAMRY and substantially similar motor vehicles.

103. Defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, had a legal duty to adequately and properly manage and operate their business and their manufacturing, distribution, and retail operations; to adequately and properly train and supervise their employees and agents, including their designers, inspectors, quality control agents and other manufacturing, testing, distribution and delivery personnel; and to act without negligence, conscious disregard or other wrongful conduct.

104. Defendant TOYOTA and DOES101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, failed to adequately and properly manage and operate their business and their design, manufacturing and distribution centers; failed to adequately and properly train and supervise their employees and agents, including designers, inspectors, quality control agents and other manufacturing, distribution and delivery personnel; failed to act without negligence, conscious disregard or other wrongful conduct in that, among other things to be discovered, said defendants failed to properly conduct themselves, adequately interact and coordinate business matters with others; and failed to properly train and supervise their employees and agents regarding employment duties, and the design, test manufacture, inspection, delivery, demonstration and advertising of their merchandise, including, but not limited to the SUBJECT CAMRY and other related business matters.

105. Said failures by the aforementioned defendants including the defendant designers, manufacturers, distributors and retailers, known as defendant TOYOTA and DOES 101-200, inclusive, constituted a breach of the aforementioned duties that in a foreseeable manner, legally and proximately caused the serious and permanent injuries and other damage to plaintiffs herein asserted.

106. In addition, defendant TOYOTA and DOES 101-200, inclusive, negligently and carelessly sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, bought, leased, rented, vended, installed,

TOY-RQ-05E-00004447

handled, labeled, compounded, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, the aforementioned SUBJECT CAMRY including, but not limited to, its component parts, ingredients, packaging, attachments, associated warnings, and constituents thereof, and lack of the same. Said negligence included, but was not limited to, supplying inadequate and improper on-product and other warnings and instructions regarding the defects and dangerous propensities of the aforementioned SUBJECT CAMRY.

107. Defendant TOYOTA and DOES 101-200, inclusive, as asserted above, negligently and carelessly failed to inform purchasers and users of said TOYOTA CAMRY and others, including plaintiff BULENT EZAL, that the SUBJECT CAMRY was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects.

108. In conducting their business, and in selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, utilizing, providing, warranting, repairing, maintaining, marketing, installing, handling, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying, and placing into the stream of commerce the SUBJECT CAMRY, defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, and each of them, either lacked or failed to use the knowledge and skill ordinarily possessed by similarly-situated persons, companies, designers, manufacturers, testers, assemblers, inspectors, distributors, retailers and suppliers of such products.

109. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

110. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints

TOY-RQ-05E-00004448

of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

111. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was known to defendant TOYOTA and DOES 101-200, inclusive, and each of them, or in the exercise of reasonable care should have been known and discovered by defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

112. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew of the danger of serious injury or death from the SUBJECT CAMRY due to its defectively designed and manufactured nature. Defendant TOYOTA and DOES 101-200, inclusive, consciously decided to design, manufacture, distribute and sell the SUBJECT CAMRY in its defective state without adequate warning or proper instructions to owners and users of said vehicle in order to save money, increase profits and prevent loss of sales. These despicable acts by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done to deliberately prevent the general public from becoming aware that the SUBJECT CAMRY and substantially similar vehicles were and continue to be unsafe, dangerous and defective.

113. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or in the exercise of reasonable care should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious

TOY-RQ-05E-00004449

disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

114. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

115. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

116. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

117. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

118. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production,

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manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

119. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

120. As a direct, legal and proximate result of the negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

121. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

122. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

123. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

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124. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

125. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

126. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FIFTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF EXPRESS WARRANTIES

127. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

128. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted to plaintiffs and decedent herein and the general consuming public, through print, media and television advertising and other express means, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use,

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and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

129. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

130. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

131. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

132. As a direct, legal and proximate result of the aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

133. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

134. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

135. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

TOY-RQ-05E-00004453

136. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

137. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

138. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Fifth Cause of Action for Breach of Express Warranties.

SIXTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF IMPLIED WARRANTIES

139. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

140. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted to purchasers and owners of the SUBJECT CAMRY, including plaintiffs and decedent herein, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

141. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

142. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

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TOY-RQ-05E-00004454

143. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

144. As a direct, legal and proximate result of the aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

145. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

146. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

147. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

148. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

149. The aforementioned breaches of warranties by defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

150. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Sixth Cause of Action for Breach of Implied Warranties

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TOY-RQ-05E-00004455

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

FOR WRONGFUL DEATH

151. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

152. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

153. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

154. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

155. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, loyal, dutiful and devoted spouse to her lawful husband, plaintiff BULENT EZAL.

156. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, kindly and affectionate mother to her son, plaintiff KENAN EZAL.

157. On or about February 25, 2007, as a direct, proximate and legal result of the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, decedent ANNE EZAL was fatally injured and died.

158. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and

TOY-RQ-05E-00004456

nonfeasance by all defendants, and each of them, plaintiff BULENT EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society and services of his lawful spouse, decedent ANNE EZAL.

159. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff KENAN EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society, education and moral training of his mother, decedent ANNE EZAL.

160. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiffs BULENT EZAL and KENAN EZAL have suffered and incurred funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

161. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Seventh Cause of Action for Wrongful Death.

WHEREFORE, plaintiffs herein pray for judgment as follows:

Against all defendants, and each of them:

1. For general damages, including personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

2. For further general damages, including loss to plaintiff BULENT EZAL of the society, comfort, companionship, attention, services and support of his lawful spouse, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

3. For further general damages, including loss to plaintiff KENAN EZAL of the society, comfort, companionship, attention, services, support, education and moral training of his mother, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

TOY-RQ-05E-00004457

4. For further general damages, including all other damages for the wrongful death of decedent ANNE EZAL that under all of the circumstances of this case may be just;

5. For special damages, including past and future medical, hospital and incidental expenses incurred on behalf of decedent ANNE EZAL and plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

6. For further special damages, including loss to plaintiff BULENT EZAL of past and future pension and retirement benefits, in amounts exceeding the jurisdictional limits of this Court and according to proof at trial;

7. For further special damages, including loss and damage to valuable tangible items of personal property, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

8. For further special damages, including funeral, burial and incidental expenses incurred on behalf of decedent ANNE EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

9. For costs of suit incurred herein;

10. For interest as provided by law;

11. For such other and further relief, including but not limited to attorney's fees, as the Court may deem just and proper.

Against defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, only; and in favor of plaintiff BULENT EZAL, only; and in regard to plaintiffs' Third Cause of Action for Strict Liability (Product Defect) and Fourth Cause of Action for Negligence (Product Defect), only:

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TOY-RQ-05E-00004458

12. For an award of exemplary damages, in an amount properly calculated to punish defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL IN THIS ACTION.

DATED: June 10, 2009

RAYMOND PAUL JOHNSON, A LAW CORPORATION

AND

HABUSH HABUSH & ROTTIER S.C.

By: _____

Raymond Paul Johnson ✦ Donald V. Slavik
Cory G. Lee
Attorneys for Plaintiffs

TOY-RQ-05E-00004459

PROOF OF SERVICE
(Section 1013a, Section 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I , Kellie A. Baker, am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245.

On June 11, 2009, I served the foregoing document described as **SECOND-AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL (1) Negligence (Premises Liability); (2) Negligence *Per Se*; (3) Strict Liability (Product Defect); (4) Negligence (Product Defect); (5) Breach of Express Warranties; (6) Breach of Implied Warranties; (7) Wrongful Death** on the interested parties in said action, listed on the attached service list, by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

See Attached Service List

_X_ **BY MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

___ **BY OVERNIGHT:** By sealing the envelope and placing it for collection and overnight delivery in a box regularly maintained by the overnight carrier with delivery fees paid or provided for in accordance with ordinary business practices.

___ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to each of the individuals listed on the attached Service List.

___ **BY ELECTRONIC TRANSFER/VIA FACSIMILE:** I caused all of the pages of the above-entitled document(s) to be sent to the recipients noted above via electronic transfer (FAX) at the respective telephone numbers indicated above. A courtesy copy was also emailed to them on this date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 11, 2009 at Los Angeles, California.

Kellie A. Baker

Ezal v. Toyota Motor Sales USA, Inc., et al.
LASC Case No. BC408153

Donald H. Slavik, Esq. Timothy Trecek, Esq. Colleen B. Beaman, Esq. Habush Habush & Rottier S.C. 777 E. Wisconsin Ave, Suite 2300 Milwaukee, Wisconsin 53202	Tel.: (414) 271-0900 Fax: (414) 271-6854 Attorneys for *Plaintiffs BULENT EZAL and KENAN EZAL*
H. Franklin Hostetler, Esq. Mike H. Madokoro, Esq. Bowman and Brooke, L.L.P. 879 West 190th Street, Suite 700 Gardena, California 90248	Tel.: (310) 768-3068 Direct: (310) 380-6515 Fax: (310) 719-1019 Attorneys for *Defendant, TOYOTA MOTOR SALES USA, INC.*
Louis E. DeStefano, Esq. Lewis, Brisbois, Bisgaard & Smith, LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, California 90012	Tel.: (213) 250-1800 Fax: (213) 250-7900 Attorneys for *Defendant MARTIN RESORTS, INC.*

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; TOYOTA MOTOR CORPORATION, a Japanese Corporation, and DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 **THIRD-AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** 1. Negligence (Premises Liability) 2. Negligence *Per Se* 3. Strict Liability (Product Defect) 4. Negligence (Product Defect) 5. Breach of Express Warranties 6. Breach of Implied Warranties 7. Wrongful Death

COME NOW plaintiffs, BULENT EZAL, individually, and KENAN EZAL, individually, who for causes of action against the defendants, and each of them, including DOES 1 through 200, inclusive, assert as follows:

GENERAL ALLEGATIONS

1. Plaintiffs assert that a defendant named in this Complaint, TOYOTA MOTOR SALES USA, INC., resides in the County of Los Angeles, State of California. Venue of this action against all private party defendants herein, whether corporate or individual, is proper in Los Angeles County.

TOY-RQ-05E-00004462

2. Plaintiffs assert that all of the personal injuries, harm, losses and other damages alleged herein were incurred, suffered and took place outside the County of Los Angeles, in the County of San Luis Obispo, State of California. Pursuant to Rule 2.0 of the Los Angeles County Court Rules, the filing of this action against the private party defendants herein is proper in the Central District of the Los Angeles County Superior Court.

3. Plaintiff BULENT EZAL is, and at all times relevant herein was a resident of the County of Kern, State of California, with his place of residence located at 7901 Calle Nobleza, Bakersfield, California 93309.

4. Plaintiff KENAN EZAL is, and at all times relevant herein was a resident of the County of Santa Barbara, State of California, with his place of residence located at 1109 North Patterson, Santa Barbara, California.

5. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

6. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

7. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

8. Plaintiffs assert that defendant MARTIN RESORTS, INC. is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant MARTIN RESORTS, INC. will be referred to as "MARTIN RESORTS.")

9. Plaintiffs assert that defendant MARTIN RESORTS is and at all times herein relevant was a resident of the County of San Luis Obispo, State of California, with its principal

TOY-RQ-05E-00004463

place of business in the State of California located at 1201 Palm Street, San Luis Obispo, California 93401.

10. Plaintiffs assert that defendant TOYOTA MOTOR SALES USA, INC., is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant TOYOTA MOTOR SALES USA, INC. will be referred to as "TOYOTA.")

11. Plaintiffs assert that defendant TOYOTA is and at all times herein relevant was a resident of the County of Los Angeles, State of California, with its principal place of business in the State of California located at 19001 South Western Avenue, Torrance, California 90501.

12. Plaintiffs assert that defendant, TOYOTA MOTOR CORPORATION, is a Japanese corporation, licensed to do business and doing business in the State of California, whose principal place of business is 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. (Hereinafter defendant TOYOTA MOTOR CORPORATION will be referred to as "TMC"). TMC is the true name of the fictitious defendant originally named as DOE 101.

13. Plaintiffs further assert that DOES 1-100 and 102-200, and each of them, are individuals corporations, partnerships, limited partnerships, associations, trusts, parent companies and/or subsidiaries who together with the aforementioned other defendants are individuals or entities duly authorized to do and doing business in the State of California.

14. The true names and capacities, whether individual, corporate, associates, agents or otherwise of defendants, DOES 1-100 and 102-200, inclusive, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names, and will ask leave of this Court to amend this Complaint when the identities of such individuals have been ascertained. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated herein as a DOE is responsible in some manner and liable herein by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and conscious disregard, and said defendants directly, legally and proximately caused the injuries and damages asserted in this Complaint by such wrongful conduct.

15. The acts, conduct, and nonfeasance herein carried out by each and every

TOY-RQ-05E-00004464

representative, employee or agent of each and every corporate or business defendant, were authorized, ordered, and directed by the respective defendant's corporate or business employers, officers, directors and/or managing agents; that in addition thereto, said corporate or business employers, officers, directors and/or managing agents had advance knowledge of, authorized, and participated in the herein described acts, conduct and nonfeasance of their representatives, employees, agents and each of them; and that in addition thereto, upon the completion of the aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and business employers, officers, directors and/or managing agents respectively ratified, accepted the benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their co-employees, employers, and agents.

16. In addition, at all times herein relevant, each defendant, whether named herein or designated as a DOE, was a principal, master, employer and joint venturer of every other defendant, and every defendant was acting within the scope of said agency authority, employment and joint venture.

17. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 owned, leased, licensed, operated, maintained and controlled the Pelican Point Restaurant in Pismo Beach, California, together with a parcel of land located at 2555 Price Street, Pismo Beach, California, which serves as a parking lot intended for use by patrons of the Pelican Point Restaurant. (Hereinafter the subject parcel of land used as a parking lot will be referred to as the "SUBJECT PARKING LOT.")

18. The SUBJECT PARKING LOT is located at the top of a bluff overlooking the Pacific Ocean. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were responsible for and had control over any design, development, planning, mapping, inspecting, installing, placing, maintaining, landscaping, surveying, contracting, subcontracting, building, erecting, constructing, excavating, trenching, filling and repairing of the SUBJECT PARKING LOT, including all curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers or lack thereof surrounding the SUBJECT PARKING LOT.

19. At all times herein relevant, plaintiff BULENT EZAL was the registered owner of

TOY-RQ-05E-00004465

a 2005 model Toyota Camry motor vehicle, California license no. 5LJU783. (Hereinafter the subject Toyota Camry motor vehicle will be referred to as the "SUBJECT CAMRY.")

20. Defendant TOYOTA, TMC and 102-200, inclusive, sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, provided, warranted, repaired, maintained, marketed, labeled, promoted, advertised, furnished, analyzed, inspected, supplied and placed into the stream of commerce the SUBJECT CAMRY, including its component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same.

21. On or about February 25, 2007, at approximately 1:05 P.M., plaintiff BULENT EZAL was driving the SUBJECT CAMRY in the SUBJECT PARKING LOT of the Pelican Point Restaurant owned, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100. While driving the SUBJECT CAMRY, plaintiff BULENT EZAL was seated in the left front seat of the SUBJECT CAMRY and was properly wearing his seat belt and shoulder harness.

22. At that time, decedent ANNE EZAL was riding as a passenger in the SUBJECT CAMRY. While riding as a passenger in the SUBJECT CAMRY, decedent ANNE EZAL was seated in the right front seat of the SUBJECT CAMRY and was properly wearing her seat belt and shoulder harness.

23. At that time, plaintiff BULENT EZAL was driving the SUBJECT CAMRY in an intended and foreseeable manner, at a safe legal speed, in accordance with all applicable traffic laws and regulations.

24. At that time, and at all times herein relevant, the SUBJECT PARKING LOT lacked any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

25. At that time, and at all times herein relevant, there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing,

TOY-RQ-05E-00004466

rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

26. At that time, and at all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the premises.

27. On or about February 25, 2007, at approximately 1:05 P.M., as plaintiff BULENT EZAL was in the process of parking the SUBJECT CAMRY in the SUBJECT PARKING LOT, the SUBJECT CAMRY malfunctioned, went out of control and accelerated uncontrollably.

28. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY, the SUBJECT CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

29. Plaintiffs assert that the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY was an imminent peril. Thus, plaintiff BULENT EZAL through no fault of his own was suddenly and unexpectedly confronted with the emergency herein described and had no time for any deliberate or considered choice of alternatives.

30. On or about February 25, 2007, at approximately 1:05 P.M., as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, plaintiff BULENT EZAL and decedent ANNE EZAL were severely and grievously injured.

31. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, decedent ANNE EZAL sustained injuries from which she ultimately died.

32. At the time that the SUBJECT CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed, plaintiff BULENT EZAL perceived and was aware that

TOY-RQ-05E-00004467

the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injury to decedent ANNE EZAL.

33. Plaintiff BULENT EZAL contemporaneously perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injuries to decedent ANNE EZAL at the time that decedent ANNE EZAL suffered those injuries, and of the immediate consequences thereof.

34. Plaintiff BULENT EZAL simultaneously perceived and was aware of traumatic injuries to decedent ANNE EZAL at the same time that plaintiff BULENT EZAL himself suffered severe and grievous injuries caused by the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY.

35. As a consequence of all of the foregoing, plaintiff BULENT EZAL suffered serious emotional distress beyond that which would be anticipated in a disinterested witness.

FIRST CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE (Premises Liability)

36. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

37. At all times herein relevant, the condition of the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100 was unreasonably dangerous and posed an unreasonable risk of harm to persons

TOY-RQ-05E-00004468

using the SUBJECT PARKING LOT

38. At all times herein relevant, as the owners and operators of a parking lot open to the general public, defendant MARTIN RESORTS and DOES 1-100 had a duty to exercise due care in the ownership, operation, and maintenance of the SUBJECT PARKING LOT to ensure that persons using the SUBJECT PARKING LOT were not subject to any unreasonable risk of harm posed by the condition of the SUBJECT PARKING LOT.

39. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

40. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

41. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 knew or should have known of the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

42. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

43. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to

TOY-RQ-05E-00004469

persons using the SUBJECT PARKING LOT to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

44. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

45. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

46. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

47. Further also, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but said defendants chose not to take any adequate or reasonable steps to warn or guard against

TOY-RQ-05E-00004470

the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

48. As a direct, legal and proximate result of the negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

49. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

50. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

51. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

52. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

53. The aforementioned negligence and carelessness by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

54. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their First Cause of Action for Negligence (Premises Liability).

TOY-RQ-05E-00004471

SECOND CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE *PER SE*

55. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

56. At all times herein relevant, the City of Pismo Beach is and was a lawfully incorporated California public entity. The City of Pismo Beach has adopted and promulgated the Pismo Beach Municipal Code.

57. At all times herein relevant, the Pismo Beach Municipal Code sets forth statutes and ordinances including those contained in Title 17, Chapter 17.34, which regulate zoning and parking in the City of Pismo Beach.

58. Title 17, Chapter 17.34, section 17.34.070 of the Pismo Beach Municipal Code sets forth standards for off-street parking. Off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, are required to be in compliance with this section.

59. Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code sets forth standards for Wheel Stops and Curbing applicable to off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100.

60. Standards set forth under Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, applicable to the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, require that "Continuous concrete curbing at least six inches high and six inches wide shall be provided for all parking spaces located adjacent to walls, fences, property lines and structures."

TOY-RQ-05E-00004472

61. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were in violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code.

62. At all times herein relevant, the SUBJECT PARKING LOT did not have the required concrete curbing at least six inches high provided for parking spaces located adjacent to the property line of the SUBJECT PARKING LOT, including those parking spaces at the edge of the bluff overlooking the Pacific Ocean.

63. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL.

64. Title 17, Chapter 17.34, section 17.34.010, subdivision (D) of the Pismo Beach Municipal Code states that the off-street parking standards of Chapter 17.34 are intended to reduce traffic hazards.

65. Accordingly, the injuries caused to plaintiff BULENT EZAL and the injuries and death caused to decedent ANNE EZAL, that resulted from the aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, were of the nature that the standards for Wheel Stops and Curbing set forth in Section 17.34.070, subdivision (K), were designed to prevent.

66. Title 17, Chapter 17.01, section 17.01.010 of the Pismo Beach Municipal Code states that the statutes and ordinances under Title 17 are "adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, and businesses in the city."

67. Accordingly, as users of the SUBJECT PARKING LOT that was open to the public and intended for use by patrons of defendants' Pelican Point Restaurant, plaintiff BULENT EZAL and decedent ANNE EZAL were members of the class of persons for whose protection Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code was adopted.

68. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code that directly and proximately caused injuries to plaintiff BULENT EZAL and

TOY-RQ-05E-00004473

injuries and death to decedent ANNE EZAL was not reasonable under the circumstances of this case.

69. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code by defendant MARTIN RESORTS, INC. and DOES 1-100 was not what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.

70. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT failed to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code; but said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

71. As a direct, legal and proximate result of the aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the fencing of the SUBJECT PARKING LOT, onto the bluff outside, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

72. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

73. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

TOY-RQ-05E-00004474

74. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

75. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

76. The aforementioned violation of the Pismo Beach Municipal Code and negligence *per se* by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

77. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Second Cause of Action for Negligence *Per Se*.

THIRD CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CORPORATION AND DOES 102-200 FOR STRICT LIABILITY (Product Defect)

78. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

79. The aforementioned SUBJECT CAMRY and its component parts, ingredients, packaging, mounting, associated warnings, and constituents thereof, or lack of same, were defectively sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, leased, rented, vended, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce by defendants TOYOTA, TMC and DOES 102-200, inclusive.

TOY-RQ-05E-00004475

80. At all times herein relevant, the SUBJECT CAMRY failed to perform as safely as an ordinary consumer of said equipment would have expected when used in a manner reasonably foreseeable by the aforesaid defendants, and each of them. In addition, the benefits of the design of the SUBJECT CAMRY did not outweigh the risks inherent in the design of said vehicle.

81. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, failed to warn purchasers and users of the SUBJECT CAMRY and the general public, including plaintiffs herein, that the SUBJECT CAMRY as sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects

82. The aforementioned defects existed at the time that the SUBJECT CAMRY was tested, manufactured, distributed and sold by defendants TOYOTA, TMC and DOES 102-200, inclusive, and the SUBJECT CAMRY reached plaintiffs without substantial change in the condition in which the SUBJECT CAMRY was manufactured, distributed and sold by defendant TOYOTA, TMC and DOES 102-200, inclusive. Defendants TOYOTA, TMC and DOES 102-200, inclusive, knew that the SUBJECT CAMRY was to be used without inspection for defects by plaintiffs.

83. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

84. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or "uncommanded acceleration" have been

TOY-RQ-05E-00004476

made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

85. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was knowable by means of scientific knowledge available to defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them.

86. Further, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew, or by means of available scientific knowledge should have known, of the numerous other earlier deaths, injuries, consumer complaints, warranty claims and lawsuits caused by vehicles substantially similar to the SUBJECT CAMRY in substantially similar crashes, including earlier versions and similar products, due to the inadequate and improper design, defective manufacturing and lack of proper warnings, as specifically described herein, and yet, in conscious disregard of the rights and safety of others, including plaintiffs and decedents herein, defendant TOYOTA, TMC and DOES 102-200, inclusive, chose not to design or redesign the SUBJECT CAMRY with defective-free components and materials, or proper instructions and warnings, or conduct a proper, timely and reasonable recall of the SUBJECT CAMRY.

87. Defendants TOYOTA, TMC and DOES 102-200, inclusive, had unfettered ability, after years of extensive in-house, government and independent testing, to minimize the substantial risk of serious bodily harm or death caused by the SUBJECT CAMRY by redesigning or warning of the potential for serious risk or harm, thereby minimizing or eliminating said potential. Defendants TOYOTA, TMC and DOES 102-200, inclusive, consciously chose not to take such steps, including, but not limited to, not providing proper design and manufacturing

TOY-RQ-05E-00004477

provisions, all of which allowed defendants TOYOTA, TMC and DOES 102-200, inclusive, to save money, increase profit margin and avoid loss of sales. These acts by defendants TOYOTA, TMC and DOES 102-200 prevented the public from becoming aware that the SUBJECT CAMRY was unsafe, dangerous and defective.

88. Further, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew or by means of available scientific knowledge should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

89. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

90. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

91. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendants TOYOTA, TMC and DOES 102-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

TOY-RQ-05E-00004478

92. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendants TOYOTA, TMC and DOES 102-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

93. The entire corporate organization of defendants TOYOTA, TMC and DOES 102-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendants TOYOTA, TMC and DOES 102-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

94. Authorized persons within the corporate hierarchy of defendants TOYOTA, TMC and DOES 102-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendants TOYOTA, TMC and DOES 102-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

95. As a direct, legal and proximate result of the aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

96. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants

TOY-RQ-05E-00004479

TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

97. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

98. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

99. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

100. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

101. Plaintiffs further assert that the aforementioned design, manufacturing and marketing defects, despicable conduct, malice and conscious disregard for the safety of others by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them,

TOY-RQ-05E-00004480

and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CORPORATION AND DOES 102-200

FOR NEGLIGENCE (Product Defect)

102. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

103. At all times herein relevant, defendants TOYOTA, TMC and DOES 102-200, inclusive, were and are engaged in the business of selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, providing, warranting, repairing, maintaining, marketing, leasing, installing, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying and placing into the stream of commerce, certain products and their component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same, known as the SUBJECT CAMRY and substantially similar motor vehicles.

104. Defendants TOYOTA, TMC and DOES 102-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, had a legal duty to adequately and properly manage and operate their business and their manufacturing, distribution, and retail operations; to adequately and properly train and supervise their employees and agents, including their designers, inspectors, quality control agents and other manufacturing, testing, distribution and delivery personnel; and to act without negligence, conscious disregard or other wrongful conduct.

TOY-RQ-05E-00004481

105. Defendants TOYOTA, TMC and DOES102-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, failed to adequately and properly manage and operate their business and their design, manufacturing and distribution centers; failed to adequately and properly train and supervise their employees and agents, including designers, inspectors, quality control agents and other manufacturing, distribution and delivery personnel; failed to act without negligence, conscious disregard or other wrongful conduct in that, among other things to be discovered, said defendants failed to properly conduct themselves, adequately interact and coordinate business matters with others; and failed to properly train and supervise their employees and agents regarding employment duties, and the design, test manufacture, inspection, delivery, demonstration and advertising of their merchandise, including, but not limited to the SUBJECT CAMRY and other related business matters.

106. Said failures by the aforementioned defendants including the defendant designers, manufacturers, distributors and retailers, known as defendants TOYOTA, TMC and DOES 102-200, inclusive, constituted a breach of the aforementioned duties that in a foreseeable manner, legally and proximately caused the serious and permanent injuries and other damage to plaintiffs herein asserted.

107. In addition, defendants TOYOTA, TMC and DOES 102-200, inclusive, negligently and carelessly sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, bought, leased, rented, vended, installed, handled, labeled, compounded, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, the aforementioned SUBJECT CAMRY including, but not limited to, its component parts, ingredients, packaging, attachments, associated warnings, and constituents thereof, and lack of the same. Said negligence included, but was not limited to, supplying inadequate and improper on-product and other warnings and

TOY-RQ-05E-00004482

instructions regarding the defects and dangerous propensities of the aforementioned SUBJECT CAMRY.

108. Defendants TOYOTA, TMC and DOES 102-200, inclusive, as asserted above, negligently and carelessly failed to inform purchasers and users of said TOYOTA CAMRY and others, including plaintiff BULENT EZAL, that the SUBJECT CAMRY was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects.

109. In conducting their business, and in selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, utilizing, providing, warranting, repairing, maintaining, marketing, installing, handling, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying, and placing into the stream of commerce the SUBJECT CAMRY, defendants TOYOTA, TMC and DOES 102-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, and each of them, either lacked or failed to use the knowledge and skill ordinarily possessed by similarly-situated persons, companies, designers, manufacturers, testers, assemblers, inspectors, distributors, retailers and suppliers of such products.

110. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

111. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or "uncommanded acceleration" have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety

TOY-RQ-05E-00004483

Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

112. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was known to defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, or in the exercise of reasonable care should have been known and discovered by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them.

113. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew of the danger of serious injury or death from the SUBJECT CAMRY due to its defectively designed and manufactured nature. Defendants TOYOTA, TMC and DOES 102-200, inclusive, consciously decided to design, manufacture, distribute and sell the SUBJECT CAMRY in its defective state without adequate warning or proper instructions to owners and users of said vehicle in order to save money, increase profits and prevent loss of sales. These despicable acts by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, were done to deliberately prevent the general public from becoming aware that the SUBJECT CAMRY and substantially similar vehicles were and continue to be unsafe, dangerous and defective.

114. Further, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew or in the exercise of reasonable care should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a

TOY-RQ-05E-00004484

proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

115. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

116. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

117. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendants TOYOTA, TMC and DOES 102-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

118. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendants TOYOTA, TMC and DOES 102-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle=s defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

119. The entire corporate organization of defendants TOYOTA, TMC and DOES 102-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendants TOYOTA, TMC and DOES 102-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but

TOY-RQ-05E-00004485

not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

120. Authorized persons within the corporate hierarchy of defendants TOYOTA, TMC and DOES 102-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendants TOYOTA, TMC and DOES 102-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

121. As a direct, legal and proximate result of the negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

122. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

123. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

124. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

125. The aforementioned negligence, carelessness, malice, conscious disregard for the

TOY-RQ-05E-00004486

safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

126. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

127. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FIFTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CORPORATION AND DOES 102-200

FOR BREACH OF EXPRESS WARRANTIES

128. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

129. At all times herein relevant, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, expressly warranted to plaintiffs and decedent herein and the general consuming public, through print, media and television advertising and other express means, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended,

TOY-RQ-05E-00004487

foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, expressly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

130. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendants TOYOTA, TMC and DOES 102-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

131. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, received timely notice of said breach of warranties.

132. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

133. As a direct, legal and proximate result of the aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

134. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

135. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

136. The aforementioned breaches of warranties by defendants TOYOTA, TMC and

TOY-RQ-05E-00004488

DOES 102-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

137. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

138. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

139. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Fifth Cause of Action for Breach of Express Warranties.

SIXTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CORPORATION AND DOES 102-200 FOR BREACH OF IMPLIED WARRANTIES

140. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

141. At all times herein relevant, and DOES 102-200, inclusive, and each of them, impliedly warranted to purchasers and owners of the SUBJECT CAMRY, including plaintiffs and decedent herein, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, impliedly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

142. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendants TOYOTA, TMC and DOES 102-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and

TOY-RQ-05E-00004489

decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

143. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, received timely notice of said breach of warranties.

144. Defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

145. As a direct, legal and proximate result of the aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

146. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

147. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

148. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

149. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

150. The aforementioned breaches of warranties by defendants TOYOTA, TMC and DOES 102-200, inclusive, and each of them, directly, legally and proximately caused plaintiff

TOY-RQ-05E-00004490

BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

151. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Sixth Cause of Action for Breach of Implied Warranties

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

FOR WRONGFUL DEATH

152. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

153. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

154. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

155. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

156. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, loyal, dutiful and devoted spouse to her lawful husband, plaintiff BULENT EZAL.

157. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, kindly and affectionate mother to her son, plaintiff KENAN EZAL.

TOY-RQ-05E-00004491

158. On or about February 25, 2007, as a direct, proximate and legal result of the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, decedent ANNE EZAL was fatally injured and died.

159. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff BULENT EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society and services of his lawful spouse, decedent ANNE EZAL.

160. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff KENAN EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society, education and moral training of his mother, decedent ANNE EZAL.

161. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiffs BULENT EZAL and KENAN EZAL have suffered and incurred funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

162. Plaintiffs do not assert any claim for exemplary or punitive damages in regard to their Seventh Cause of Action for Wrongful Death.

WHEREFORE, plaintiffs herein pray for judgment as follows:

Against all defendants, and each of them:

1. For general damages, including personal injuries, physical suffering and severe

TOY-RQ-05E-00004492

mental and emotional pain and distress to plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

2. For further general damages, including loss to plaintiff BULENT EZAL of the society, comfort, companionship, attention, services and support of his lawful spouse, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

3. For further general damages, including loss to plaintiff KENAN EZAL of the society, comfort, companionship, attention, services, support, education and moral training of his mother, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

4. For further general damages, including all other damages for the wrongful death of decedent ANNE EZAL that under all of the circumstances of this case may be just;

5. For special damages, including past and future medical, hospital and incidental expenses incurred on behalf of decedent ANNE EZAL and plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

6. For further special damages, including loss to plaintiff BULENT EZAL of past and future pension and retirement benefits, in amounts exceeding the jurisdictional limits of this Court and according to proof at trial;

7. For further special damages, including loss and damage to valuable tangible items of personal property, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

8. For further special damages, including funeral, burial and incidental expenses incurred on behalf of decedent ANNE EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

9. For costs of suit incurred herein;

10. For interest as provided by law;

11. For such other and further relief, including but not limited to attorney=s fees, as the Court may deem just and proper.

12. For an award of exemplary damages, in an amount properly calculated to punish

TOY-RQ-05E-00004493

defendants TOYOTA MOTOR SALES USA, INC. and DOES 102-200, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL IN THIS ACTION.

DATED: October 28, 2009

HABUSH HABUSH & ROTTIER S.C.

By:_____
TIMOTHY S. TRECEK (*ADMITTED PRO HAC VICE*)
DONALD H. SLAVIK (*ADMITTED PRO HAC VICE*)

AND

RAYMOND PAUL JOHNSON, A LAW CORPORATION
Raymond Paul Johnson
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TOY-RQ-05E-00004494

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Attorneys for Plaintiffs

FILED
LOS ANGELES SUPERIOR COURT

FEB 20 2009

JOHN A. CLARKE, CLERK
BY D.M. SWAIN, DEPUTY

Case assigned to Judge William F. Fahey

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BULENT EZAL, individually, and KENAN EZAL, individually,

Plaintiffs,

vs.

MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; and DOES 1-200,

Defendants.

CASE NO. BC408153

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1. Negligence (Premises Liability)
2. Negligence *Per Se*
3. Strict Liability (Product Defect)
4. Negligence (Product Defect)
5. Breach of Express Warranties
6. Breach of Implied Warranties
7. Wrongful Death

COME NOW plaintiffs, BULENT EZAL, individually, and KENAN EZAL, individually, who for causes of action against the defendants, and each of them, including DOES 1 through 200, inclusive, assert as follows:

CIT/CASE: BC408153 LEA/REF#:
RECEIPT #: CCH1187920002
DATE PAID: 02/23/09 08:30:34 AM
PAYMENT: 350.00
RECEIVED:
CHK#:
CASH:
CHANGE:
CARD#: 350.00
0310

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GENERAL ALLEGATIONS

1. Plaintiffs assert that a defendant named in this Complaint, TOYOTA MOTOR SALES USA, INC., resides in the County of Los Angeles, State of California. Venue of this action against all private party defendants herein, whether corporate or individual, is proper in Los Angeles County.

2. Plaintiffs assert that all of the personal injuries, harm, losses and other damages alleged herein were incurred, suffered and took place outside the County of Los Angeles, in the County of San Luis Obispo, State of California. Pursuant to Rule 2.0 of the Los Angeles County Court Rules, the filing of this action against the private party defendants herein is proper in the Central District of the Los Angeles County Superior Court.

3. Plaintiff BULENT EZAL is, and at all times relevant herein was a resident of the County of Bakersfield, State of California, with his place of residence located at 7901 Calle Nobleza, Bakersfield, California.

4. Plaintiff KENAN EZAL is, and at all times relevant herein was a resident of the County of Santa Barbara, State of California, with his place of residence located at 1109 North Patterson, Santa Barbara, California.

5. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

6. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

7. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

TOY-RQ-05E-00004496

8. Plaintiffs assert that defendant MARTIN RESORTS, INC. is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant MARTIN RESORTS, INC. will be referred to as "MARTIN RESORTS.")

9. Plaintiffs assert that defendant MARTIN RESORTS is and at all times herein relevant was a resident of the County of San Luis Obispo, State of California, with its principal place of business in the State of California located at 1201 Palm Street, San Luis Obispo, California, 93401.

10. Plaintiffs assert that defendant TOYOTA MOTOR SALES USA, INC., is a California corporation, licensed to do business and doing business in the State of California. (Hereinafter defendant TOYOTA MOTOR SALES USA, INC. will be referred to as "TOYOTA.")

11. Plaintiffs assert that defendant TOYOTA is and at all times herein relevant was a resident of the County of Los Angeles, State of California, with its principal place of business in the State of California located at 19001 South Western Avenue, Torrance, California 90501.

12. Plaintiffs further assert that DOES 1 through 200, and each of them, are individuals corporations, partnerships, limited partnerships, associations, trusts, parent companies and/or subsidiaries who together with the aforementioned other defendants are individuals or entities duly authorized to do and doing business in the State of California.

13. The true names and capacities, whether individual, corporate, associates, agents or otherwise of defendants, DOES 1 through 200, inclusive, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names, and will ask leave of this Court to amend this Complaint when the identities of such individuals have been ascertained. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated herein as a DOE is responsible in some manner and liable herein by reason of negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and conscious disregard, and said defendants directly, legally and proximately caused the injuries and damages asserted in this Complaint by such wrongful conduct.

14. The acts, conduct, and nonfeasance herein carried out by each and every representative, employee or agent of each and every corporate or business defendant, were authorized, ordered, and directed by the respective defendant's corporate or business employers, officers, directors and/or managing agents; that in addition thereto, said corporate or business employers,

TOY-RQ-05E-00004497

officers, directors and/or managing agents had advance knowledge of, authorized, and participated in the herein described acts, conduct and nonfeasance of their representatives, employees, agents and each of them; and that in addition thereto, upon the completion of the aforesaid acts, conduct and nonfeasance of the employees and agents, the aforesaid corporate and business employers, officers, directors and/or managing agents respectively ratified, accepted the benefits of, condoned and approved of each and all of said acts, conduct or nonfeasance of their co-employees, employers, and agents.

15. In addition, at all times herein relevant, each defendant, whether named herein or designated as a DOE, was a principal, master, employer and joint venturer of every other defendant, and every defendant was acting within the scope of said agency authority, employment and joint venture.

16. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 owned, leased, licensed, operated, maintained and controlled the Pelican Point Restaurant in Pismo Beach, California, together with a parcel of land located at 2555 Price Street, Pismo Beach, California, which serves as a parking lot intended for use by patrons of the Pelican Point Restaurant. (Hereinafter the subject parcel of land used as a parking lot will be referred to as the "SUBJECT PARKING LOT.")

17. The SUBJECT PARKING LOT is located at the top of a bluff overlooking the Pacific Ocean. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were responsible for and had control over any design, development, planning, mapping, inspecting, installing, placing, maintaining, landscaping, surveying, contracting, subcontracting, building, erecting, constructing, excavating, trenching, filling and repairing of the SUBJECT PARKING LOT, including all curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers or lack thereof surrounding the SUBJECT PARKING LOT.

18. At all times herein relevant, plaintiff BULENT EZAL was the registered owner of a 2005 model Toyota Camry motor vehicle, California license no. 5LJU783. (Hereinafter the subject Toyota Camry motor vehicle will be referred to as the "SUBJECT CAMRY.")

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TOY-RQ-05E-00004498

19. Defendant TOYOTA and DOES 101-200, inclusive, sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, provided, warranted, repaired, maintained, marketed, labeled, promoted, advertised, furnished, analyzed, inspected, supplied and placed into the stream of commerce the SUBJECT CAMRY, including its component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same.

20. On or about February 25, 2005, at approximately 1:05 P.M., plaintiff BULENT EZAL was driving the SUBJECT CAMRY in the SUBJECT PARKING LOT of the Pelican Point Restaurant owned, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100. While driving the SUBJECT CAMRY, plaintiff BULENT EZAL was seated in the left front seat of the SUBJECT CAMRY and was properly wearing his seat belt and shoulder harness.

21. At that time, decedent ANNE EZAL was riding as a passenger in the SUBJECT CAMRY. While riding as a passenger in the SUBJECT CAMRY, decedent ANNE EZAL was seated in the right front seat of the SUBJECT CAMRY and was properly wearing her seat belt and shoulder harness.

22. At that time, plaintiff BULENT EZAL was driving the SUBJECT CAMRY in an intended and foreseeable manner, at a safe legal speed, in accordance with all applicable traffic laws and regulations.

23. At that time, and at all times herein relevant, the SUBJECT PARKING LOT lacked any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

24. At that time, and at all times herein relevant, there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

25. At that time, and at all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the premises.

TOY-RQ-05E-00004499

26. On or about February 25, 2005, at approximately 1:05 P.M., as plaintiff BULENT EZAL was in the process of parking the SUBJECT CAMRY in the SUBJECT PARKING LOT, the SUBJECT CAMRY malfunctioned, went out of control and accelerated uncontrollably.

27. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY, the SUBJECT CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

28. Plaintiffs assert that the sudden malfunction, loss of control and uncontrolled acceleration of the SUBJECT CAMRY was an imminent peril. Thus, plaintiff BULENT EZAL through no fault of his own was suddenly and unexpectedly confronted with the emergency herein described and had no time for any deliberate or considered choice of alternatives.

29. On or about February 25, 2005, at approximately 1:05 P.M., as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, plaintiff BULENT EZAL and decedent ANNE EZAL were severely and grievously injured.

30. At that time, as a result of the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, decedent ANNE EZAL sustained injuries from which she ultimately died.

31. At the time that the SUBJECT CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed, plaintiff BULENT EZAL perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injury to decedent ANNE EZAL.

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TOY-RQ-05E-00004500

32. Plaintiff BULENT EZAL contemporaneously perceived and was aware that the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY, were causes of traumatic injuries to decedent ANNE EZAL at the time that decedent ANNE EZAL suffered those injuries, and of the immediate consequences thereof.

33. Plaintiff BULENT EZAL simultaneously perceived and was aware of traumatic injuries to decedent ANNE EZAL at the same time that plaintiff BULENT EZAL himself suffered severe and grievous injuries caused by the the unreasonably dangerous condition of the SUBJECT PARKING LOT and the unreasonable risk of harm posed to persons using the premises, and the sudden malfunction, loss of control, uncontrolled acceleration and crash of the SUBJECT CAMRY.

34. As a consequence of all of the foregoing, plaintiff BULENT EZAL suffered serious emotional distress beyond that which would be anticipated in a disinterested witness.

FIRST CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE (Premises Liability)

35. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

36. At all times herein relevant, the condition of the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100 was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT

37. At all times herein relevant, as the owners and operators of a parking lot open to the general public, defendant MARTIN RESORTS and DOES 1-100 had a duty to exercise due care in the ownership, operation, and maintenance of the SUBJECT PARKING LOT to ensure that persons using the SUBJECT PARKING LOT were not subject to any unreasonable risk of harm posed by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004501

38. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

39. At all times herein relevant, the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

40. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 knew or should have known of the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

41. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

42. At all times herein relevant, as the owners and operators of the SUBJECT PARKING LOT, defendant MARTIN RESORTS and DOES 1-100 owed a duty of care to persons using the SUBJECT PARKING LOT to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

43. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

TOY-RQ-05E-00004502

44. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 negligently and carelessly failed to take reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

45. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT lacked any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

46. Further also, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because there were no warnings, caution signs or other indications posted, marked or made known to users of the SUBJECT PARKING LOT regarding the lack of any adequate and necessary curbs, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

47. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

TOY-RQ-05E-00004503

48. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

49. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant MARTIN RESORTS and DOES 1-100, inclusive, regarding the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT, moved upward through the structure of management to a point where corporate policy was formulated.

50. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, were in fact aware of risks to the safety of others posed the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT, and consciously and deliberately chose not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

51. The entire corporate organization of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant MARTIN RESORTS and DOES 1-100, inclusive, wherein corporate policy was formulated decided not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, despite knowledge of the risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

TOY-RQ-05E-00004504

52. Authorized persons within the corporate hierarchy of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, did in fact compromise public safety by reducing costs and/or expediting operation and maintenance of the SUBJECT PARKING LOT in willful and conscious disregard of risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to the lack of any adequate and necessary curbs, poles, parking lot wheel stops, fencing, rails, guard walls, and/or other protective barriers surrounding the SUBJECT PARKING LOT.

53. As a direct, legal and proximate result of the negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the SUBJECT PARKING LOT, onto the bluff, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

54. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

55. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

56. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

TOY-RQ-05E-00004505

57. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

58. The aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others of defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

59. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SECOND CAUSE OF ACTION

AGAINST DEFENDANTS MARTIN RESORTS, INC. AND DOES 1-100

FOR NEGLIGENCE *PER SE*

60. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

61. At all times herein relevant, the City of Pismo Beach is and was a lawfully incorporated California public entity. The City of Pismo Beach has adopted and promulgated the Pismo Beach Municipal Code.

62. At all times herein relevant, the Pismo Beach Municipal Code sets forth statutes and ordinances including those contained in Title 17, Chapter 17.34, which regulate zoning and parking in the City of Pismo Beach.

TOY-RQ-05E-00004506

63. Title 17, Chapter 17.34, section 17.34.070 of the Pismo Beach Municipal Code sets forth standards for off-street parking. Off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, are required to be in compliance with this section.

64. Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code sets forth standards for Wheel Stops and Curbing applicable to off-street parking areas in the City of Pismo Beach, including the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100.

65. Standards set forth under Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, applicable to the SUBJECT PARKING LOT owned, leased, licensed, operated, maintained and controlled by defendant MARTIN RESORTS and DOES 1-100, require that "Continuous concrete curbing at least six inches high and six inches wide shall be provided for all parking spaces located adjacent to walls, fences, property lines and structures."

66. At all times herein relevant, defendant MARTIN RESORTS and DOES 1-100 were in violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code.

67. At all time herein relevant, the SUBJECT PARKING LOT did not have the required concrete curbing at least six inches high provided for parking spaces located adjacent to the property line of the SUBJECT PARKING LOT, including those parking spaces at the edge of the bluff overlooking the Pacific Ocean.

68. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL.

69. Title 17, Chapter 17.34, section 17.34.010, subdivision (D) of the Pismo Beach Municipal Code states that the off-street parking standards of Chapter 17.34 are intended to reduce traffic hazards.

70. Accordingly, the injuries caused to plaintiff BULENT EZAL and the injuries and death caused to decedent ANNE EZAL, that resulted from the aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code, were of the nature that the standards

TOY-RQ-05E-00004507

for Wheel Stops and Curbing set forth in Section 17.34.070, subdivision (K), were designed to prevent.

71. Title 17, Chapter 17.01, section 17.01.010 of the Pismo Beach Municipal Code states that the statutes and ordinances under Title 17 are "adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, and businesses in the city."

72. Accordingly, as users of the SUBJECT PARKING LOT that was open to the public and intended for use by patrons of defendants' Pelican Point Restaurant, plaintiff BULENT EZAL and decedent ANNE EZAL were members of the class of persons for whose protection Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code was adopted.

73. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code that directly and proximately caused injuries to plaintiff BULENT EZAL and injuries and death to decedent ANNE EZAL was not reasonable under the circumstances of this case.

74. The aforesaid violation of Section 17.34.070, subdivision (K) of the Pismo Beach Municipal Code by defendant MARTIN RESORTS, INC. and DOES 1-100 was not what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.

75. Further, defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, knew or in the exercise of reasonable care should have known that the condition of the SUBJECT PARKING LOT was unreasonably dangerous and posed an unreasonable risk of harm to persons using the SUBJECT PARKING LOT, because the SUBJECT PARKING LOT failed to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to take any adequate or reasonable steps to eliminate the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

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76. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

77. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

78. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant MARTIN RESORTS and DOES 1-100, inclusive, regarding the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code, moved upward through the structure of management to a point where corporate policy was formulated.

79. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, were in fact aware of risks to the safety of others posed the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code, and consciously and deliberately chose not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT.

80. The entire corporate organization of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant MARTIN RESORTS and DOES 1-100, inclusive, wherein corporate policy was formulated decided not to take any corrective action to eliminate, warn or guard against the unreasonable risk of harm posed to persons using the

TOY-RQ-05E-00004509

SUBJECT PARKING LOT by the condition of the SUBJECT PARKING LOT, despite knowledge of the risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code.

81. Authorized persons within the corporate hierarchy of defendant MARTIN RESORTS and DOES 1-100, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant MARTIN RESORTS and DOES 1-100, inclusive, did in fact compromise public safety by reducing costs and/or expediting operation and maintenance of the SUBJECT PARKING LOT in willful and conscious disregard of risks to the safety of others posed by the condition of the SUBJECT PARKING LOT, including but not limited to failure to conform to standards for Wheel Stops and Curbing applicable to off-street parking areas set forth in the Pismo Beach Municipal Code.

82. As a direct, legal and proximate result of the aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by MARTIN RESORTS and DOES 1-100, inclusive, and each of them, described above, the subject TOYOTA CAMRY traveled through the fencing of the SUBJECT PARKING LOT, onto the bluff outside, over the edge of the bluff, careened more than 70 feet down, and crashed into the Pacific Ocean beach below.

83. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

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84. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

85. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

86. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

87. The aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

88. Plaintiffs further assert that the aforementioned violation of the Pismo Beach Municipal Code, negligence *per se*, despicable conduct, malice and conscious disregard for the safety of others by defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant MARTIN RESORTS and DOES 1-100, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

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THIRD CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR STRICT LIABILITY (Product Defect)

89. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

90. The aforementioned SUBJECT CAMRY and its component parts, ingredients, packaging, mounting, associated warnings, and constituents thereof, or lack of same, were defectively sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, leased, rented, vended, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce by defendant TOYOTA and DOES 101-200, inclusive.

91. At all times herein relevant, the SUBJECT CAMRY failed to perform as safely as an ordinary consumer of said equipment would have expected when used in a manner reasonably foreseeable by the aforesaid defendants, and each of them. In addition, the benefits of the design of the SUBJECT CAMRY did not outweigh the risks inherent in the design of said vehicle.

92. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, failed to warn purchasers and users of the SUBJECT CAMRY and the general public, including plaintiffs herein, that the SUBJECT CAMRY as sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, installed, handled, labeled, promoted, furnished, analyzed, inspected, supplied, and placed into the stream of commerce, was defective and unsafe, and prone to sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects

93. The aforementioned defects existed at the time that the SUBJECT CAMRY was tested, manufactured, distributed and sold by defendant TOYOTA and DOES 101-200, inclusive, and the SUBJECT CAMRY reached plaintiffs without substantial change in the condition in which the SUBJECT CAMRY was manufactured, distributed and sold by defendant TOYOTA and DOES 101-

200, inclusive. Defendant TOYOTA and DOES 101-200, inclusive, knew that the SUBJECT CAMRY was to be used without inspection for defects by plaintiffs.

94. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

95. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

96. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was knowable by means of scientific knowledge available to defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

97. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew, or by means of available scientific knowledge should have known, of the numerous other earlier deaths, injuries, consumer complaints, warranty claims and lawsuits caused by vehicles substantially similar to the SUBJECT CAMRY in substantially similar crashes, including earlier versions and similar products, due to the inadequate and improper design, defective manufacturing and lack of proper warnings, as specifically described herein, and yet, in conscious disregard of the rights and

TOY-RQ-05E-00004513

safety of others, including plaintiffs and decedents herein, defendant TOYOTA and DOES 101-200, inclusive, chose not to design or redesign the SUBJECT CAMRY with defective-free components and materials, or proper instructions and warnings, or conduct a proper, timely and reasonable recall of the SUBJECT CAMRY.

98. Defendant TOYOTA and DOES 101-200, inclusive, had unfettered ability, after years of extensive in-house, government and independent testing, to minimize the substantial risk of serious bodily harm or death caused by the SUBJECT CAMRY by redesigning or warning of the potential for serious risk or harm, thereby minimizing or eliminating said potential. Defendant TOYOTA and DOES 101-200, inclusive, consciously chose not to take such steps, including, but not limited to, not providing proper design and manufacturing provisions, all of which allowed defendant TOYOTA and DOES 101-200, inclusive, to save money, increase profit margin and avoid loss of sales. These acts by defendant TOYOTA and DOES 101-200 prevented the public from becoming aware that the SUBJECT CAMRY was unsafe, dangerous and defective.

99. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or by means of available scientific knowledge should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

100. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

TOY-RQ-05E-00004514

101. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

102. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

103. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

104. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

105. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

106. As a direct, legal and proximate result of the aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

107. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

108. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

109. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

110. The aforementioned design, manufacturing and marketing defects, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

111. The aforementioned design, manufacturing and marketing defects. malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

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112. Plaintiffs further assert that the aforementioned design, manufacturing and marketing defects, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR NEGLIGENCE (Product Defect)

113. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

114. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, were and are engaged in the business of selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, providing, warranting, repairing, maintaining, marketing, leasing, installing, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying and placing into the stream of commerce, certain products and their component parts, ingredients, packaging, attachments, associated warnings and constituents thereof, or lack of the same, known as the SUBJECT CAMRY and substantially similar motor vehicles.

115. Defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, had a legal duty to adequately and properly manage and operate their business and their manufacturing, distribution, and retail operations; to adequately and properly train and supervise their employees and agents, including their designers, inspectors, quality control agents and other manufacturing, testing, distribution and delivery personnel; and to act without negligence, conscious disregard or other wrongful conduct.

116. Defendant TOYOTA and DOES101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, failed to adequately and properly manage and operate their business and their design, manufacturing and distribution centers; failed to adequately and properly train and supervise their employees and agents, including designers, inspectors, quality control agents and other manufacturing, distribution and delivery personnel; failed to act without negligence, conscious disregard or other wrongful conduct in that, among other things to be discovered, said defendants failed to properly conduct themselves, adequately interact and coordinate business matters with others; and failed to properly train and supervise their employees and agents regarding employment duties, and the design, test manufacture, inspection, delivery, demonstration and advertising of their merchandise, including, but not limited to the SUBJECT CAMRY and other related business matters.

117. Said failures by the aforementioned defendants including the defendant designers, manufacturers, distributors and retailers, known as defendant TOYOTA and DOES 101-200, inclusive, constituted a breach of the aforementioned duties that in a foreseeable manner, legally and proximately caused the serious and permanent injuries and other damage to plaintiffs herein asserted.

118. In addition, defendant TOYOTA and DOES 101-200, inclusive, negligently and carelessly sold, designed, manufactured, fabricated, distributed, retailed, wholesaled, recommended, tested, modified, controlled, advertised, created, processed, prepared, constructed, packaged, utilized, provided, warranted, repaired, maintained, marketed, bought, leased, rented, vended, installed, handled, labeled, compounded, promoted, furnished, analyzed, inspected, supplied, and place into the stream of commerce, the aforementioned SUBJECT CAMRY including, but not limited to, its component parts, ingredients, packaging, attachments, associated warnings, and constituents thereof, and lack of the same. Said negligence included, but was not limited to, supplying inadequate and improper on-product and other warnings and instructions regarding the defects and dangerous propensities of the aforementioned SUBJECT CAMRY.

119. Defendant TOYOTA and DOES 101-200, inclusive, as asserted above, negligently and carelessly failed to inform purchasers and users of said TOYOTA CAMRY and others, including plaintiff BULENT EZAL, that the SUBJECT CAMRY was defective and unsafe, and prone to

sudden malfunction, loss of control, uncontrolled acceleration and crash, due to the aforementioned defects.

120. In conducting their business, and in selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling, advertising, creating, processing, preparing, constructing, packaging, utilizing, providing, warranting, repairing, maintaining, marketing, installing, handling, labeling, promoting, advertising, furnishing, analyzing, inspecting, supplying, and placing into the stream of commerce the SUBJECT CAMRY, defendant TOYOTA and DOES 101-200, inclusive, including their employees, agents, directors, officers, stockholders, partners and associates, and each of them, either lacked or failed to use the knowledge and skill ordinarily possessed by similarly-situated persons, companies, designers, manufacturers, testers, assemblers, inspectors, distributors, retailers and suppliers of such products.

121. On or about February 25, 2007, plaintiff BULENT EZAL was using the SUBJECT CAMRY in an intended and foreseeable manner. The SUBJECT CAMRY which was being used by plaintiff BULENT EZAL suddenly and without warning malfunctioned, went out of control and accelerated uncontrollably.

122. Uncontrolled acceleration such as occurred in this case is a condition where a vehicle accelerates, typically as if someone is stepping on the accelerator pedal almost fully, even though no pedal application is being made by the driver. This circumstance is commonly referred to and known as "unwanted acceleration," "uncommanded acceleration" and/or "sudden acceleration." Complaints of sudden, unwanted, and/or uncommanded acceleration have been made about a variety of vehicles, including Toyota Camry and substantially-similar vehicles. There have been numerous complaints reported to the National Highway Transportation Safety Administration ("NHTSA") documenting unwanted accelerations of Toyota Camry vehicles and other vehicles substantially similar to the SUBJECT CAMRY.

123. The defective and dangerous design, manufacture and performance of the SUBJECT CAMRY and the fact that it was unsafe for its intended use and purpose when employed in a reasonable and foreseeable manner was known to defendant TOYOTA and DOES 101-200, inclusive, and each of them, or in the exercise of reasonable care should have been known and discovered by

TOY-RQ-05E-00004519

defendant TOYOTA and DOES 101-200, inclusive, and each of them. Further, the defective and dangerous condition of the SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, were not made known to plaintiffs by defendant TOYOTA and DOES 101-200, inclusive, and each of them.

124. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew of the danger of serious injury or death from the SUBJECT CAMRY due to its defectively designed and manufactured nature. Defendant TOYOTA and DOES 101-200, inclusive, consciously decided to design, manufacture, distribute and sell the SUBJECT CAMRY in its defective state without adequate warning or proper instructions to owners and users of said vehicle in order to save money, increase profits and prevent loss of sales. These despicable acts by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done to deliberately prevent the general public from becoming aware that the SUBJECT CAMRY and substantially similar vehicles were and continue to be unsafe, dangerous and defective.

125. Further, defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or in the exercise of reasonable care should have known of the many other earlier deaths, injuries, consumer complaints and lawsuits involving substantially similar sudden malfunctions, losses of control, uncontrolled accelerations and crashes caused by the vehicles substantially similar to the SUBJECT CAMRY, including earlier versions and similar products, due to the inadequate and improper warnings and instructions and said design and manufacturing defects; but in conscious disregard of the rights and safety of others, including the plaintiffs and decedent herein, said defendants chose not to design or redesign the SUBJECT CAMRY in a proper and defect free manner, properly recall the SUBJECT CAMRY, in a timely manner, and/or adequately warn of said defects and dangers.

126. In addition, the aforementioned acts, omissions, negligence, malfeasance, nonfeasance, despicable conduct, and conscious disregard by defendant TOYOTA and DOES 101-200, inclusive, and each of them, were done by employees of said defendants, and each of them with the advance knowledge, authorization, approval, participation or ratification of the officers, directors and/or managing agents of defendants, and each of them.

TOY-RQ-05E-00004520

127. The aforementioned acts, omissions, despicable conduct, and malfeasance were done by defendant TOYOTA and DOES 101-200, inclusive, and each of them, with malice and in conscious disregard of the rights and safety of others.

128. Plaintiffs are informed and believe and thereupon allege that information in the possession of defendant TOYOTA and DOES 101-200, inclusive, regarding the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, moved upward through the structure of management to a point where corporate policy was formulated.

129. The corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy on behalf of defendant TOYOTA and DOES 101-200, inclusive, were in fact aware of risks to the safety of others posed by the defective and dangerous condition of the SUBJECT CAMRY, including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash, and consciously and deliberately chose not to take any corrective action.

130. The entire corporate organization of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that persons in the management structure of defendant TOYOTA and DOES 101-200, inclusive, wherein corporate policy was formulated decided to proceed with the design, production, manufacture and marketing of the SUBJECT CAMRY, despite knowledge of the defective and dangerous condition of said SUBJECT CAMRY including but not limited to the vehicle's defective propensity for sudden malfunction, loss of control, uncontrolled acceleration and crash.

131. Authorized persons within the corporate hierarchy of defendant TOYOTA and DOES 101-200, inclusive, acted despicably, with malice and in willful and conscious disregard of the rights and safety of others, in that corporate policymakers and other persons who exercised discretionary authority and were authorized to make corporate policy decisions on behalf of defendant TOYOTA and DOES 101-200, inclusive, did in fact compromise consumer safety by reducing costs and/or expediting production of the SUBJECT CAMRY in willful and conscious disregard of consumer safety.

132. As a direct, legal and proximate result of the negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

133. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

134. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

135. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

136. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

137. The aforementioned negligence, carelessness, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

138. Plaintiffs further assert that the aforementioned negligence, carelessness, despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by

TOY-RQ-05E-00004522

plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive, and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

FIFTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF EXPRESS WARRANTIES

139. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

140. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted to plaintiffs and decedent herein and the general consuming public, through print, media and television advertising and other express means, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, expressly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

141. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

142. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

143. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

TOY-RQ-05E-00004523

144. As a direct, legal and proximate result of the aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

145. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

146. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

147. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

148. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

149. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

150. Plaintiffs further assert that the aforementioned despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive,

TOY-RQ-05E-00004524

and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SIXTH CAUSE OF ACTION

AGAINST DEFENDANTS TOYOTA MOTOR SALES USA, INC. AND DOES 101-200

FOR BREACH OF IMPLIED WARRANTIES

151. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

152. At all times herein relevant, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted to purchasers and owners of the SUBJECT CAMRY, including plaintiffs and decedent herein, that the SUBJECT CAMRY was of merchantable quality and was safe for its ordinary, intended, foreseeable and expected use, and that such use would not cause injuries, losses, damages and deaths of the nature herein-described. In addition, defendant TOYOTA and DOES 101-200, inclusive, and each of them, impliedly warranted that there was no substantial risk of inherent failures or defects in the SUBJECT CAMRY.

153. The SUBJECT CAMRY was not of merchantable quality and was not as warranted by defendant TOYOTA and DOES 101-200, inclusive, thus constituting a breach of said warranty; and as a direct, legal and proximate result of reliance by plaintiffs and decedent on said warranties and the breach of said warranties, plaintiffs have sustained the herein-described losses and damages.

154. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, received timely notice of said breach of warranties.

155. Defendant TOYOTA and DOES 101-200, inclusive, and each of them, knew or, in the exercise of reasonable care, should have known of the dangerous, defective, unfit and unsafe condition of the SUBJECT CAMRY and the fact that said vehicle was not safe or suitable for this intended use, nor of merchantable, safe or operational quality.

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156. As a direct, legal and proximate result of the aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, described above, the subject TOYOTA CAMRY malfunctioned, went out of control, accelerated uncontrollably and crashed.

157. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused severe and grievous personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL.

158. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur past and future medical, hospital and incidental expenses incurred on behalf of ANNE EZAL and BULENT EZAL.

159. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused loss to plaintiff BULENT EZAL of past and future pension and retirement benefits.

160. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiffs to incur funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

161. The aforementioned breaches of warranties, malice, conscious disregard for the safety of others and despicable conduct on the part of defendant TOYOTA and DOES 101-200, inclusive, and each of them, directly, legally and proximately caused plaintiff BULENT EZAL to incur and suffer loss and damage to valuable tangible items of personal property.

162. Plaintiffs further assert that the aforementioned despicable conduct, malice and conscious disregard for the safety of others by defendant TOYOTA and DOES 101-200, inclusive, and each of them, the injuries, losses and damages incurred and suffered by plaintiff BULENT EZAL, justifies an award of exemplary damages against defendant TOYOTA and DOES 101-200, inclusive,

TOY-RQ-05E-00004526

and each of them, and in favor of plaintiff BULENT EZAL, in an amount properly calculated to punish said defendants for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

FOR WRONGFUL DEATH

163. Plaintiffs incorporate here by reference all of the foregoing paragraphs of this Complaint, and repeat all assertions and allegations of said paragraphs as though set forth here in full.

164. Plaintiff BULENT EZAL and decedent ANNE EZAL were legally married, and at all times herein relevant prior to the death of ANNE EZAL were lawfully wedded husband and wife, respectively.

165. Plaintiff KENAN EZAL was born on June 4, 1966, and is the lawful issue of plaintiff BULENT EZAL and decedent ANNE EZAL.

166. Decedent ANNE EZAL died of her injuries as alleged herein on February 25, 2007, in San Luis Obispo County, State of California. Plaintiff BULENT EZAL is the surviving spouse of decedent ANNE EZAL and plaintiff KENAN EZAL is the only surviving child of decedent ANNE EZAL. Pursuant to the operation of Code of Civil Procedure section 377.60, plaintiffs BULENT EZAL and KENAN EZAL are all of the persons lawfully entitled to assert a cause of action for the wrongful death of decedent ANNE EZAL. No other person has any claim, right or interest in the cause of action for the wrongful death of decedent ANNE EZAL.

167. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, loyal, dutiful and devoted spouse to her lawful husband, plaintiff BULENT EZAL.

168. At all relevant times prior to her death on February 25, 2007, decedent ANNE EZAL was a loving, kindly and affectionate mother to her son, plaintiff KENAN EZAL.

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TOY-RQ-05E-00004527

169. On or about February 25, 2007, as a direct, proximate and legal result of the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, decedent ANNE EZAL was fatally injured and died.

170. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff BULENT EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society and services of his lawful spouse, decedent ANNE EZAL.

171. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiff KENAN EZAL has suffered and will continue to suffer loss of the love, companionship, comfort, care, assistance, protection, affection, society, education and moral training of his mother, decedent ANNE EZAL.

172. As a direct, legal and proximate result of the death of ANNE EZAL wrongfully caused by the aforementioned defects, failure to maintain, failure to warn, breaches of express warranty, breaches of implied warranty, acts, omissions, negligence, carelessness, malfeasance and nonfeasance by all defendants, and each of them, plaintiffs BULENT EZAL and KENAN EZAL have suffered and incurred funeral, burial and incidental expenses on behalf of decedent ANNE EZAL.

WHEREFORE, plaintiffs herein pray for judgment as follows:

Against all defendants, and each of them:

1. For general damages, including personal injuries, physical suffering and severe mental and emotional pain and distress to plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

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TOY-RQ-05E-00004528

2. For further general damages, including loss to plaintiff BULENT EZAL of the society, comfort, companionship, attention, services and support of his lawful spouse, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

3. For further general damages, including loss to plaintiff KENAN EZAL of the society, comfort, companionship, attention, services, support, education and moral training of his mother, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

4. For further general damages, including all other damages for the wrongful death of decedent ANNE EZAL that under all of the circumstances of this case may be just;

5. For special damages, including past and future medical, hospital and incidental expenses incurred on behalf of decedent ANNE EZAL and plaintiff BULENT EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

6. For further special damages, including loss to plaintiff BULENT EZAL of past and future pension and retirement benefits, in amounts exceeding the jurisdictional limits of this Court and according to proof at trial;

7. For further special damages, including loss and damage to valuable tangible items of personal property, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

8. For further special damages, including funeral, burial and incidental expenses incurred on behalf of decedent ANNE EZAL, in an amount exceeding the jurisdictional limits of this Court and according to proof at trial;

9. For costs of suit incurred herein;

10. For interest as provided by law;

11. For such other and further relief, including but not limited to attorney's fees, as the Court may deem just and proper.

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TOY-RQ-05E-00004529

Against defendants MARTIN RESORTS, INC. and DOES 1-100, inclusive:

12. For an award of exemplary damages, in an amount properly calculated to punish defendants MARTIN RESORTS, INC. and DOES 1-100, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

Against defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, inclusive:

13. For an award of exemplary damages, in an amount properly calculated to punish defendants TOYOTA MOTOR SALES USA, INC. and DOES 101-200, and each of them, for their malice, conscious disregard for the safety of others and despicable conduct, and to deter any such malice, conscious disregard for the safety of others and despicable conduct in the future.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL IN THIS ACTION.

DATED: February 19, 2009

RAYMOND PAUL JOHNSON, A LAW CORPORATION

AND

HABUSH HABUSH & ROTTIER S.C.

By: _____
Raymond Paul Johnson ✦ Donald V. Slavik
Cory G. Lee
Attorneys for Plaintiffs

TOY-RQ-05E-00004530

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Raymond Paul Johnson (SBN 1[illegible]84) / Cory G. Lee (SBN 216921) Raymond Paul Johnson, A Law Corporation 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245 TELEPHONE NO.: (310) 246-9300 FAX NO.: (310) 640-1900 ATTORNEY FOR (Name): Plaintiffs BLUENT EZAL and KENAN EZAL	FOR COURT USE ONLY **FILED** **LOS ANGELES SUPERIOR COURT** FEB 20 2009 JOHN A. CLARKE, CLERK BY D.M. SWAIN, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 NORTH HILL STREET MAILING ADDRESS: 111 NORTH HILL STREET CITY AND ZIP CODE: LOS ANGELES, CALIFORNIA 90012 BRANCH NAME: CENTRAL JUDICIAL DISTRICT	
CASE NAME:	CASE NUMBER: BC408153

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] Counter [ ] Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [X] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action *(specify)*: Seven (7) Negligence (Premises Liability); Negligence Per Se; Strict Liability (Product Defect); Negligence (Product Defe Breach of Express Warranties; Breach of Implied Warranties; Wrongful Death
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: February 19, 2009

Raymond Paul Johnson, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov
LexisNexis® Automated California Judicial Council Forms

TOY-RQ-05E-00004531

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

TOY-RQ-05E-00004532

SHORT TITLE:	CASE NUMBER
EZAL, et al. v. MARTIN RESORTS, INC., et al.	

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☑ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 25 ☐ HOURS/ ☑ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check **one** Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	☐ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☑ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., (2.), 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	☐ A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.

TOY-RQ-05E-00004533

SHORT TITLE:	CASE NUMBER
EZAL, et al. v. MARTIN RESORTS, INC., et al.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.)	Professional Negligence (25)	☐ A6017 Legal Malpractice ☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment	Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	☐ A6024 Other Employment Complaint Case ☐ A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) ☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) ☐ A6019 Negligent Breach of Contract/Warranty (no fraud) ☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	☐ A6002 Collections Case-Seller Plaintiff ☐ A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	☐ A6009 Contractual Fraud ☐ A6031 Tortious Interference ☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2.
	Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	☐ A6018 Mortgage Foreclosure ☐ A6032 Quiet Title ☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review	Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

TOY-RQ-05E-00004534

SHORT TITLE:	CASE NUMBER
EZAL, et al. v. MARTIN RESORTS, INC., et al.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus ☐ A6152 Writ - Mandamus on Limited Court Case Matter ☐ A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment ☐ A6160 Abstract of Judgment ☐ A6107 Confession of Judgment (non-domestic relations) ☐ A6140 Administrative Agency Award (not unpaid taxes) ☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax ☐ A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only ☐ A6040 Injunctive Relief Only (not domestic/harassment) ☐ A6011 Other Commercial Complaint Case (non-tort/non-complex) ☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment ☐ A6123 Workplace Harassment ☐ A6124 Elder/Dependent Adult Abuse Case ☐ A6190 Election Contest ☐ A6110 Petition for Change of Name ☐ A6170 Petition for Relief from Late Claim Law ☐ A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

TOY-RQ-05E-00004535

SHORT TITLE: EZAL, et al. v. MARTIN RESORTS, INC., et al.	CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☐1. ☑2. ☐3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			ADDRESS: 1201 Palm Street
CITY: San Luis Obispo	STATE: CA	ZIP CODE: 93408	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the SUPERIOR courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: February 19, 2009

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

TOY-RQ-05E-00004536

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Wausau: 715/842-4444
•D. James Weis
•David E. Sunby
Brenda K. Sunby
Theresa B. Laughlin
Peter M. Young

February 26, 2010

RECEIVED

MAR 03 2010

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Los Angeles, CA 90012

RE: ***Bulent Ezal, et al. v. Martin Resorts, Inc. et al.***
San Luis Obispo Superior Court Case No: CV 090425

Dear Counsel:

You have recently received our Third Set of Document Requests which specifically asks for items produced to Congress in regard to the sudden acceleration issue. For this set, as well as any other sets that may specifically designate documents that were produced to Congress, thirty (30) days is the correct deadline since there is no burden, other than photocopying. The ninety (90) days we previously discussed applies only to new searches that require getting materials from Japan that are not already compiled.

Should you have any questions, please feel free to contact me.

Sincerely,

HABUSH HABUSH & ROTTIER, S.C.

Donald H. Slavik

Donald H. Slavik

TOY-RQ-05E-00004537

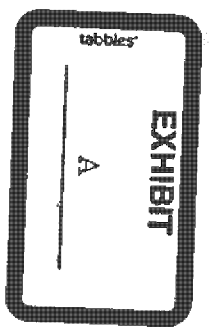
TOYOTA

2005 Owner's Manual

For your safety and comfort,

read carefully and keep in the vehicle.

CAMRY



TOY-RQ-05E-00004538

Accessories, spare parts and modification of your Toyota

A wide variety of non-genuine spare parts and accessories for Toyota vehicles are currently available in the market. You should know that Toyota does not warrant these products and is not responsible for their performance, repair, or replacement, or for any damage they may cause to, or adverse effect they may have on, your Toyota vehicle.

This vehicle should not be modified with non-genuine Toyota products. Modification with non-genuine Toyota products could affect its performance, safety or durability, and may even violate governmental regulations. In addition, damage or performance problems resulting from the modification may not be covered under warranty.

Spark ignition system of your Toyota

The spark ignition system in your Toyota meets all requirements of the Canadian Interference-Causing Equipment Standard.

Installation of a mobile two-way radio system

As the installation of a mobile two-way radio system in your vehicle could affect electronic systems such as multiport fuel injection system/sequential multiport fuel injection system, electronic throttle control system, cruise control system, anti-lock brake system, traction control system, vehicle skid control system, SRS airbag system and seat belt pretensioner system, be sure to check with your Toyota dealer for precautionary measures or special instructions regarding installation.

TOY-RQ-05E-00004539

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Attorneys for Plaintiffs

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FEB 26 2010

BOWMAN AND BROOKE LLP
LOS ANGELES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION SET FOUR** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Corporation

SET NO.: FOUR

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Corporation pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their

attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 23, 2010 at 10:00am at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before the above date.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. ETCS-i VEHICLES refers to the 2002-2006 Toyota Camry, 2002-2006 Lexus ES300 and ES330, 2002-2009 Toyota Solara, 2004-2010 Toyota Sienna, and the 2004-2010 Lexus RX 330 and RX350.

REQUESTS

REQUEST NO. 79:

All materials supplied to Congress by any Toyota entity related to the February, 2010 hearings pertaining to the Toyota sudden acceleration issue.

DATED: February 24, 2010

HABUSH HABUSH & ROTTIER, S.C.

BY: Timothy S. Trecek

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Donald H. Slavik *Admitted Pro Hac Vice*
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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On February 24, 2010, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET FOUR

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[X] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 24th day of February, 2010, at Milwaukee, Wisconsin.

Helen Kerlin

TOY-RQ-05E-00004543

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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TOY-RQ-05E-00004544

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Attorneys for Plaintiffs

RECEIVED

FEB 26 2010

BOWMAN AND BROOKE LLP
LOS ANGELES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, USA, INC., SET FOUR** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Sales USA, Inc.

SET NO.: FOUR

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Sales USA, Inc., (Toyota) pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their

attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 23, 2010 at 10:00am at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before the above date.

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REQUESTS

REQUEST NO. 79:

All materials supplied to Congress by any Toyota entity related to the February, 2010 hearings pertaining to the Toyota sudden acceleration issue.

DATED: February 24, 2010

HABUSH HABUSH & ROTTIER, S.C.

BY: Timothy S. Trecek

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On February 24, 2010, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES USA, INC., SET FOUR

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[X] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 24th day of February, 2010, at Milwaukee, Wisconsin.

Helen Kuhn

TOY-RQ-05E-00004548

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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TOY-RQ-05E-00004549

RECEIVED
MAR 10 2010
BOWMAN & BROOKE, LLP
LOS ANGELES

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Timothy Trecek – WI State Bar No. 0121161
(California Pro Hac Vice pending)
Donald H. Slavik – WI State Bar No. 1014653
(California Pro Hac Vice pending)
Colleen B. Beaman – WI State Bar No. 1000877
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES, U.S.A., INC., a California corporation; and DOES 1-200, Defendants.	CASE NO.: CV090425 [Assigned for all purposes to: Hon. Martin J. Tangeman / Dept. 2] **PLAINTIFF BULENT EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC., SET FOUR** Complaint Filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiff BULENT EZAL

RESPONDING PARTY: Defendant TOYOTA MOTOR SALES, U.S.A., INC.

SET NO.: FOUR (4)

Plaintiff Bulent Ezal requests that defendant Toyota Motor Sales, U.S.A., Inc., (Toyota) pursuant to Code of Civil Procedure, Section 2030.020, identify all the materials within the requests stated below that are in their possession, custody, or control, their attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials within

TOY-RQ-05E-00004550

the requests specified on April 12, 2010 at 10:00 a.m. at Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245.

DEFINITIONS

1. WEBCAST refers to the Webcast broadcast March 8, 2010, regarding testing and analysis of Toyota and Lexus vehicles and Toyota and Lexus Electronic Throttle Control systems.

REQUESTS

REQUEST NO. 79:

Produce all testing documents including written reports and videotapes related to the WEBCAST.

REQUEST NO. 80:

Produce all testing protocols including drafts and final protocols related to the WEBCAST.

REQUEST NO. 81:

Produce any and all videos, including digital recordings, of the WEBCAST, whether broadcast or not.

REQUEST NO. 82:

Produce any and all photographs taken during the WEBCAST.

REQUEST NO. 83:

Produce all schematic drawings, design drawings, internal design specifications, blueprints or sketches relating to any WEBCAST testing or analysis.

REQUEST NO. 84:

Produce all documents including sales, repair and registration documents, related to any vehicles referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 85:

Produce any and all service and maintenance documents relating to any vehicles referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 86:

Produce any and all documents relating to modification of any vehicles referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 87:

All documents sent to and received from the United States Congress relating to the WEBCAST.

REQUEST NO. 88:

All testing reports relating to the WEBCAST.

REQUEST NO. 89:

All testing data relating to the WEBCAST.

REQUEST NO. 90:

All testing analysis relating to the WEBCAST.

REQUEST NO. 91:

All testing equipment and apparatus related to testing or analysis of any vehicle referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 92:

All vehicles referred to, tested or analyzed during the WEBCAST including but not limited to Mercedes E350, BMW 325i, Subaru Outback, Honda Accord, Chrysler Crossfire, and Toyota Avalon, in the same condition as they existed immediately upon conclusion of the WEBCAST.

DATED: March 8, 2010

RAYMOND PAUL JOHNSON, A LAW CORPORATION

and

HABUSH HABUSH & ROTTIER S.C.

By: _____

Raymond Paul Johnson ✦ Donald H. Slavik
Cory G. Lee ✦ Timothy Trecek
Colleen Beaman
Attorneys for Plaintiffs

PROOF OF SERVICE
(Section 1013a, Section 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I , Kellie A. Baker, am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245.

On March 8, 2010, I served the foregoing document described as **PLAINTIFF BULENT EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC., SET FOUR** on the interested parties in said action, listed on the attached service list, by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

See Attached Service List

_X_ **BY MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

___ **BY OVERNIGHT:** By sealing the envelope and placing it for collection and overnight delivery in a box regularly maintained by the overnight carrier with delivery fees paid or provided for in accordance with ordinary business practices.

___ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to each of the individuals listed on the attached Service List.

___ **BY ELECTRONIC TRANSFER/VIA FACSIMILE:** I caused all of the pages of the above-entitled document(s) to be sent to the recipients noted above via electronic transfer (FAX) at the respective telephone numbers indicated above. A courtesy copy was also emailed to them on this date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2010 at Los Angeles, California.

Kellie A. Baker

Ezal v. Toyota Motor Sales USA, Inc., et al.
LASC Case No. CV090425

Donald H. Slavik, Esq. Timothy Trecek, Esq. Colleen B. Beaman, Esq. Habush Habush & Rottier S.C. 777 E. Wisconsin Ave, Suite 2300 Milwaukee, Wisconsin 53202	Tel.: (414) 271-0900 Fax: (414) 271-6854 Attorneys for *Plaintiffs BULENT EZAL and KENAN EZAL*
H. Franklin Hostetler, Esq. Mike H. Madokoro, Esq. Bowman and Brooke, L.L.P. 879 West 190th Street, Suite 700 Gardena, California 90248	Tel.: (310) 768-3068 Direct: (310) 380-6515 Fax: (310) 719-1019 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Louis E. DeStefano, Esq. Lewis, Brisbois, Bisgaard & Smith, LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, California 90012	Tel.: (213) 250-1800 Fax: (213) 250-7900 Attorneys for *Defendant MARTIN RESORTS, INC.*
John Randolph Bibb, Jr. Waller Lansden Dortch & Davis, LLP Nashville Center 511 Union Street, Suite 2700 Nashville, TN 37219	Tel.: (615) 850-8552 Fax: (615) 244-6804 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Mark B. Connely, Esq. Hall, Hieatt & Connely, LLP 1319 Marsh Street San Luis Obispo, CA 93401	Tel.: (805) 544-3830 Fax: (805) 544-5329 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Don A. Ernst, Esq. Ernst Mattison 1020 Palm Street San Luis Obispo, CA 93401-3284	Tel.: (805) 541-0300 Fax: (805) 541-5168 Attorneys for *Plaintiffs BULENT EZAL and KENAN EZAL*

RECEIVED
MAR 10 2010
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LOS ANGELES

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(California Pro Hac Vice pending)
Donald H. Slavik – WI State Bar No. 1014653
(California Pro Hac Vice pending)
Colleen B. Beaman – WI State Bar No. 1000877
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES, U.S.A., INC., a California corporation; and DOES 1-200, Defendants.	CASE NO.: CV090425 [Assigned for all purposes to: Hon. Martin J. Tangeman / Dept. 2] **PLAINTIFF BULENT EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET FOUR** Complaint Filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiff BULENT EZAL

RESPONDING PARTY: Defendant TOYOTA MOTOR CORPORATION

SET NO.: FOUR (4)

Plaintiff Bulent Ezal requests that defendant Toyota Motor Corporation, (Toyota) pursuant to Code of Civil Procedure, Section 2030.020, identify all the materials within the requests stated below that are in their possession, custody, or control, their attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials within

TOY-RQ-05E-00004555

the requests specified on April 12, 2010 at 10:00 a.m. at Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245.

DEFINITIONS

1. WEBCAST refers to the Webcast broadcast March 8, 2010, regarding testing and analysis of Toyota and Lexus vehicles and Toyota and Lexus Electronic Throttle Control systems.

REQUESTS

REQUEST NO. 79:

Produce all testing documents including written reports and videotapes related to the WEBCAST.

REQUEST NO. 80:

Produce all testing protocols including drafts and final protocols related to the WEBCAST.

REQUEST NO. 81:

Produce any and all videos, including digital recordings, of the WEBCAST, whether broadcast or not.

REQUEST NO. 82:

Produce any and all photographs taken during the WEBCAST.

REQUEST NO. 83:

Produce all schematic drawings, design drawings, internal design specifications, blueprints or sketches relating to any WEBCAST testing or analysis.

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Produce any and all service and maintenance documents relating to any vehicles referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 86:

Produce any and all documents relating to modification of any vehicles referred to, tested or analyzed during the WEBCAST.

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All documents sent to and received from the United States Congress relating to the WEBCAST.

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All testing reports relating to the WEBCAST.

REQUEST NO. 89:

All testing data relating to the WEBCAST.

REQUEST NO. 90:

All testing analysis relating to the WEBCAST.

REQUEST NO. 91:

All testing equipment and apparatus related to testing or analysis of any vehicle referred to, tested or analyzed during the WEBCAST.

REQUEST NO. 92:

All vehicles referred to, tested or analyzed during the WEBCAST including but not limited to Mercedes E350, BMW 325i, Subaru Outback, Honda Accord, Chrysler Crossfire, and Toyota Avalon, in the same condition as they existed immediately upon conclusion of the WEBCAST.

DATED: March 8, 2010

RAYMOND PAUL JOHNSON, A LAW CORPORATION

and

HABUSH HABUSH & ROTTIER S.C.

By: _____

Raymond Paul Johnson ✦ Donald H. Slavik
Cory G. Lee ✦ Timothy Trecek
Colleen Beaman
Attorneys for Plaintiffs

PROOF OF SERVICE
(Section 1013a, Section 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I , Kellie A. Baker, am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is 2121 Rosecrans Avenue, Suite 3400, El Segundo, California 90245.

On March 8, 2010, I served the foregoing document described as **PLAINTIFF BULENT EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET FOUR** on the interested parties in said action, listed on the attached service list, by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

See Attached Service List

_X_ **BY MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

___ **BY OVERNIGHT:** By sealing the envelope and placing it for collection and overnight delivery in a box regularly maintained by the overnight carrier with delivery fees paid or provided for in accordance with ordinary business practices.

___ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to each of the individuals listed on the attached Service List.

___ **BY ELECTRONIC TRANSFER/VIA FACSIMILE:** I caused all of the pages of the above-entitled document(s) to be sent to the recipients noted above via electronic transfer (FAX) at the respective telephone numbers indicated above. A courtesy copy was also emailed to them on this date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2010 at Los Angeles, California.

Kellie A. Baker

Ezal v. Toyota Motor Sales USA, Inc., et al.
LASC Case No. CV090425

Donald H. Slavik, Esq. Timothy Trecek, Esq. Colleen B. Beaman, Esq. Habush Habush & Rottier S.C. 777 E. Wisconsin Ave, Suite 2300 Milwaukee, Wisconsin 53202	Tel.: (414) 271-0900 Fax: (414) 271-6854 Attorneys for *Plaintiffs BULENT EZAL and KENAN EZAL*
H. Franklin Hostetler, Esq. Mike H. Madokoro, Esq. Bowman and Brooke, L.L.P. 879 West 190th Street, Suite 700 Gardena, California 90248	Tel.: (310) 768-3068 Direct: (310) 380-6515 Fax: (310) 719-1019 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Louis E. DeStefano, Esq. Lewis, Brisbois, Bisgaard & Smith, LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, California 90012	Tel.: (213) 250-1800 Fax: (213) 250-7900 Attorneys for *Defendant MARTIN RESORTS, INC.*
John Randolph Bibb, Jr. Waller Lansden Dortch & Davis, LLP Nashville Center 511 Union Street, Suite 2700 Nashville, TN 37219	Tel.: (615) 850-8552 Fax: (615) 244-6804 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Mark B. Connely, Esq. Hall, Hieatt & Connely, LLP 1319 Marsh Street San Luis Obispo, CA 93401	Tel.: (805) 544-3830 Fax: (805) 544-5329 Attorneys for *Defendants, TOYOTA MOTOR SALES USA, INC. and TOYOTA MOTOR CORPORATION*
Don A. Ernst, Esq. Ernst Mattison 1020 Palm Street San Luis Obispo, CA 93401-3284	Tel.: (805) 541-0300 Fax: (805) 541-5168 Attorneys for *Plaintiffs BULENT EZAL and KENAN EZAL*

Timothy Trecek – WI State Bar No. 0121161
Admitted Pro Hac Vice
Donald H. Slavik - WI State Bar No. 1014653
Admitted Pro Hac Vice
Colleen B. Beaman – WI State Bar No. 1000877
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Raymond Paul Johnson - SBN 110784
Cory G. Lee - SBN 216921
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, USA, INC., SET THREE** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Sales USA, Inc.

SET NO.: THREE

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Sales USA, Inc., (Toyota) pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their

TOY-RQ-05E-00004560

attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 21, 2010 at 10:00am at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before the above date.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. ETCS-i VEHICLES refers to the 2002-2006 Toyota Camry, 2002-2006 Lexus ES300 and ES330, 2002-2009 Toyota Solara, 2004-2010 Toyota Sienna, and the 2004-2010 Lexus RX 330 and RX350.

REQUESTS

REQUEST NO. 69:

All "Electromagnetic Compatibility/Electromagnetic Interference (EMI/EMC) studies that pertain to the SUBJECT VEHICLE."

REQUEST NO. 70:

All documents which set forth the identification of all individuals who were responsible for the final decision to install a brake override system as one of the safety remedies as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 71:

All documents which set forth the identification of all individuals who were responsible

TOY-RQ-05E-00004561

for the final decision to install a brake override system as standard equipment in various Toyota and Lexus vehicles starting with January, 2010 as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 72:

All training materials which will be made available to dealers in order to make the necessary installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 73:

All documents which explain how modifications are to be made to the existing vehicle software, and/or which explain how and what new software will be implemented, in order to accomplish the installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 74:

All documents, including but not limited to emails, generated which address the brake override system and which were dated or created between the date of the Toyota owner letter of November 2, 2009 and the date of the Toyota announcement of November 25, 2009.

REQUEST NO. 75:

All documents, including but not limited to emails, generated which address the brake override system and which were dated or created prior to the date of the Toyota owner letter of November 2, 2009.

REQUEST NO. 76:

All documents, including but not limited to emails, generated which address the brake

override system and which were dated or created on or after the Toyota announcement of November 25, 2009

REQUEST NO. 77:

All documents, including but not limited to emails, which set forth the material and labor costs associated with the installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 78:

All documents which set forth all reasons and discussions why it was decided that the brake override system will be installed only in those specific Toyota vehicle models indicated in the November 25, 2009 announcement, and not installed in the 2005 Toyota Camry.

DATED: December 22nd, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: Donald H. Slavik

Timothy S. Trecek *Admitted Pro Hac Vice*
Donald H. Slavik *Admitted Pro Hac Vice*
Colleen B. Beaman *Admitted Pro Hac Vice*
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AND

Raymond Paul Johnson - SBN 110784
Cory G. Lee - SBN 216921
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TOY-RQ-05E-00004563

CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On December 22, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET THREE

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

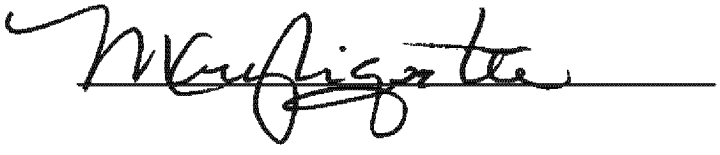
SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[XX] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 22ND day of December, 2009, at Milwaukee, Wisconsin.



SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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Email: DAE@emlaw.us

TOY-RQ-05E-00004565

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
Timothy S. Trecek (Admitted PHV) WI State Bar No. 0121161; Donald H. Slavik (Admitted PHV 1014653) WI 1014653
Habush Habush & Rottier, S.C.
777 E. Wisconsin Avenue, Suite 2300
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TELEPHONE NO.: 414.271.0900
FAX NO. *(Optional)*: 414.271.6854
E-MAIL ADDRESS *(Optional)*: ttrecek@habush.com; slavik@habush.com
ATTORNEY FOR *(Name)*: Bulent Ezal and Kenan Ezal

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo

SHORT TITLE OF CASE:
Bulent Ezal and Kenan Ezal v Martin Resorts, Inc. and Toyota Motor Sales U.S.A., Inc., et al

FORM INTERROGATORIES—GENERAL
Asking Party: Bulent Ezal and Kenan Ezal
Answering Party: Toyota Motor Corporation
Set No.: One

CASE NUMBER:
CV090425

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds $25,000. Separate interrogatories, Form *Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is $25,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions–Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE) *(SIGNATURE)*

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) *(Check one of the following):*

☑ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

Form Approved for Optional Use
Judicial Council of California
DISC-001 [Rev. January 1, 2008]

Code of Civil Procedure,
§§ 2030.010-2030.410, 2033.710
www.courtinfo.ca.gov

American LegalNet, Inc.
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☐ (2) **INCIDENT** means *(insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)"):*

(b) YOU OR ANYONE ACTING ON YOUR BEHALF includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information—Individual
3.0 General Background Information—Business Entity
4.0 Insurance
5.0 *[Reserved]*
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
8.0 Loss of Income or Earning Capacity
9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation—General
13.0 Investigation—Surveillance
14.0 Statutory or Regulatory Violations
15.0 Denials and Special or Affirmative Defenses
16.0 Defendant's Contentions Personal Injury
17.0 Responses to Request for Admissions
18.0 *[Reserved]*
19.0 *[Reserved]*
20.0 How the Incident Occurred—Motor Vehicle
25.0 *[Reserved]*
30.0 *[Reserved]*
40.0 *[Reserved]*
50.0 Contract
60.0 *[Reserved]*
70.0 Unlawful Detainer *[See separate form DISC-003]*
101.0 Economic Litigation *[See separate form DISC-004]*
200.0 Employment Law *[See separate form DISC-002]*
Family Law *[See separate form FL-145]*

1.0 Identity of Persons Answering These Interrogatories

☑ 1.1 State the name, **ADDRESS,** telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. *(Do not identify anyone who simply typed or reproduced the responses.)*

2.0 General Background Information—Individual

☐ 2.1 State:
(a) your name;
(b) every name you have used in the past; and
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 At the time of the **INCIDENT,** did you have a driver's license? If so state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.4 At the time of the **INCIDENT,** did you have any other permit or license for the operation of a motor vehicle? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.5 State:
(a) your present residence **ADDRESS;**
(b) your residence **ADDRESSES** for the past five years; and
(c) the dates you lived at each **ADDRESS.**

☐ 2.6 State:
(a) the name, **ADDRESS,** and telephone number of your present employer or place of self-employment; and
(b) the name, **ADDRESS,** dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

☐ 2.7 State:
(a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed; and
(d) the degrees received.

☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
(a) the city and state where you were convicted;
(b) the date of conviction;
(c) the offense; and
(d) the court and case number.

☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?

☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?

TOY-RQ-05E-00004567

☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON?** If so, state:
(a) the name, **ADDRESS**, and telephone number of that **PERSON:** and
(b) a description of your duties.

☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT?** If so, for each person state:
(a) the name, **ADDRESS,** and telephone number;
(b) the nature of the disability or condition; and
(c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT.**

☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
(a) the name, **ADDRESS,** and telephone number;
(b) the nature or description of each substance;
(c) the quantity of each substance used or taken;
(d) the date and time of day when each substance was used or taken;
(e) the **ADDRESS** where each substance was used or taken;
(f) the name, **ADDRESS,** and telephone number of each person who was present when each substance was used or taken; and
(g) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information—Business Entity

☑ 3.1 Are you a corporation? If so, state:
(a) the name stated in the current articles of incorporation;
(b) all other names used by the corporation during the past 10 years and the dates each was used;
(c) the date and place of incorporation;
(d) the **ADDRESS** of the principal place of business; and
(e) whether you are qualified to do business in California.

☑ 3.2 Are you a partnership? If so, state:
(a) the current partnership name;
(b) all other names used by the partnership during the past 10 years and the dates each was used;
(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
(d) the name and **ADDRESS** of each general partner; and
(e) the **ADDRESS** of the principal place of business.

☑ 3.3 Are you a limited liability company? If so, state:
(a) the name stated in the current articles of organization;
(b) all other names used by the company during the past 10 years and the date each was used;
(c) the date and place of filing of the articles of organization;
(d) the **ADDRESS** of the principal place of business; and
(e) whether you are qualified to do business in California.

☐ 3.4 Are you a joint venture? If so, state:
(a) the current joint venture name;
(b) all other names used by the joint venture during the past 10 years and the dates each was used;
(c) the name and **ADDRESS** of each joint venturer; and
(d) the **ADDRESS** of the principal place of business.

☐ 3.5 Are you an unincorporated association? If so, state:
(a) the current unincorporated association name;
(b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
(c) the **ADDRESS** of the principal place of business.

☐ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
(a) the name;
(b) the dates each was used;
(c) the state and county of each fictitious name filing; and
(d) the **ADDRESS** of the principal place of business.

☐ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
(a) identify the license or registration;
(b) state the name of the public entity; and
(c) state the dates of issuance and expiration.

4.0 Insurance

☑ 4.1 At the time of the **INCIDENT,** was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT?** If so, for each policy state:
(a) the kind of coverage;
(b) the name and **ADDRESS** of the insurance company;
(c) the name, **ADDRESS,** and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
(g) the name, **ADDRESS,** and telephone number of the custodian of the policy.

☑ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT?** If so, specify the statute.

5.0 *[Reserved]*

6.0 Physical, Mental, or Emotional Injuries

☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT?** *(If your answer is "no," do not answer interrogatories 6.2 through 6.7).*

☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

TOY-RQ-05E-00004568

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT?** If so, for each complaint state:
(a) a description;
(b) whether the complaint is subsiding, remaining the same, or becoming worse; and
(c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT?** If so, for each **HEALTH CARE PROVIDER** state:
(a) the name, **ADDRESS,** and telephone number;
(b) the type of consultation, examination, or treatment provided;
(c) the dates you received consultation, examination, or treatment; and
(d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT?** If so, for each medication state:
(a) the name;
(b) the **PERSON** who prescribed or furnished it;
(c) the date it was prescribed or furnished;
(d) the dates you began and stopped taking it; and
(e) the cost to date.

☐ 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
(a) the nature;
(b) the date;
(c) the cost; and
(d) the name, **ADDRESS,** and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT?** If so, for each injury state:
(a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER;**
(b) the complaints for which the treatment was advised; and
(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT?** If so, for each item of property:
(a) describe the property;
(b) describe the nature and location of the damage to the property;
(c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
(d) if the property was sold, state the name, **ADDRESS,** and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
(a) the name, **ADDRESS,** and telephone number of the **PERSON** who prepared it and the date prepared;
(b) the name, **ADDRESS,** and telephone number of each **PERSON** who has a copy of it; and
(c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
(a) the date repaired;
(b) a description of the repair;
(c) the repair cost;
(d) the name, **ADDRESS,** and telephone number of the **PERSON** who repaired it;
(e) the name, **ADDRESS,** and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT?** *(If your answer is "no," do not answer interrogatories 8.2 through 8.8).*

☐ 8.2 State:
(a) the nature of your work;
(b) your job title at the time of the **INCIDENT;** and
(c) the date your employment began.

☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT.**

☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT.**

☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

☐ 8.8 Will you lose income in the future as a result of the **INCIDENT?** If so, state:
(a) the facts upon which you base this contention;
(b) an estimate of the amount;
(c) an estimate of how long you will be unable to work; and
(d) how the claim for future income is calculated.

TOY-RQ-05E-00004569

9.0 Other Damages

☐ 9.1 Are there any other damages that you attribute to the **INCIDENT?** If so, for each item of damage state:
(a) the nature;
(b) the date it occurred;
(c) the amount; and
(d) the name, **ADDRESS,** and telephone number of each **PERSON** to whom an obligation was incurred.

☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

10.0 Medical History

☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT?** If so, for each state:
(a) a description of the complaint or injury;
(b) the dates it began and ended; and
(c) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT.** *(You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT.**)*

☐ 10.3 At any time after the **INCIDENT,** did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
(a) the date and the place it occurred;
(b) the name, **ADDRESS,** and telephone number of any other **PERSON** involved;
(c) the nature of any injuries you sustained;
(d) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
(e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
(a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
(b) the name, **ADDRESS,** and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;
(c) the court, names of the parties, and case number of any action filed;
(d) the name, **ADDRESS,** and telephone number of any attorney representing you;
(e) whether the claim or action has been resolved or is pending; and
(f) a description of the injury.

☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
(a) the date, time, and place of the **INCIDENT** giving rise to the claim;
(b) the name, **ADDRESS,** and telephone number of your employer at the time of the injury;
(c) the name, **ADDRESS,** and telephone number of the workers' compensation insurer and the claim number;
(d) the period of time during which you received workers' compensation benefits;
(e) a description of the injury;
(f) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
(g) the case number at the Workers' Compensation Appeals Board.

12.0 Investigation—General

☑ 12.1 State the name, **ADDRESS,** and telephone number of each individual:
(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT;**
(b) who made any statement at the scene of the **INCIDENT;**
(c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

☑ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT?** If so, for each individual state:
(a) the name, **ADDRESS,** and telephone number of the individual interviewed;
(b) the date of the interview; and
(c) the name, **ADDRESS,** and telephone number of the **PERSON** who conducted the interview.

☑ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT?** If so, for each statement state:
(a) the name, **ADDRESS,** and telephone number of the individual from whom the statement was obtained;
(b) the name, **ADDRESS,** and telephone number of the individual who obtained the statement;
(c) the date the statement was obtained; and
(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original statement or a copy.

TOY-RQ-05E-00004570

☑ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:

(a) the number of photographs or feet of film or videotape;
(b) the places, objects, or persons photographed, filmed, or videotaped;
(c) the date the photographs, films, or videotapes were taken;
(d) the name, **ADDRESS,** and telephone number of the individual taking the photographs, films, or videotapes; and
(e) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

☑ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the **INCIDENT?** If so, for each item state:

(a) the type (i.e., diagram, reproduction, or model);
(b) the subject matter; and
(c) the name, **ADDRESS,** and telephone number of each **PERSON** who has it.

☑ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT?** If so, state:

(a) the name, title, identification number, and employer of the **PERSON** who made the report;
(b) the date and type of report made;
(c) the name, **ADDRESS,** and telephone number of the **PERSON** for whom the report was made; and
(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy of the report.

☑ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT?** If so, for each inspection state:

(a) the name, **ADDRESS,** and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and
(b) the date of the inspection.

13.0 Investigation—Surveillance

☑ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:

(a) the name, **ADDRESS,** and telephone number of the individual or party;
(b) the time, date, and place of the surveillance;
(c) the name, **ADDRESS,** and telephone number of the individual who conducted the surveillance; and
(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

☑ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:

(a) the title;
(b) the date;
(c) the name, **ADDRESS,** and telephone number of the individual who prepared the report; and
(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

☑ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT?** If so, identify the name, **ADDRESS,** and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

☑ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT?** If so, for each **PERSON** state:

(a) the name, **ADDRESS,** and telephone number of the **PERSON;**
(b) the statute, ordinance, or regulation allegedly violated;
(c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
(d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

☑ 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

(a) state all facts upon which you base the denial or special or affirmative defense;
(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of those facts; and
(c) identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

16.0 Defendant's Contentions—Personal Injury

☑ 16.1 Do you contend that any **PERSON,** other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON:**

(a) state the name, **ADDRESS,** and telephone number of the **PERSON;**
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☑ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT?** If so:

(a) state all facts upon which you base your contention;
(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

TOY-RQ-05E-00004571

☑ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
(a) identify it;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☑ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
(a) identify each service;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☑ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
(a) identify each cost;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
(a) identify each part of the loss;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:
(a) identify each item of property damage;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
(a) identify each cost item;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☑ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
(a) the source of each **DOCUMENT;**
(b) the date each claim arose;
(c) the nature of each claim; and
(d) the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

☑ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310)? If so, for each plaintiff state:
(a) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER;**
(b) a description of each **DOCUMENT;** and
(c) the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

17.0 Responses to Request for Admissions

☐ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
(a) state the number of the request;
(b) state all facts upon which you base your response;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of those facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 *[Reserved]*

19.0 *[Reserved]*

20.0 How the Incident Occurred—Motor Vehicle

☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).

☐ 20.2 For each vehicle involved in the **INCIDENT**, state:
(a) the year, make, model, and license number;
(b) the name, ADDRESS, and telephone number of the driver;

TOY-RQ-05E-00004572

(c) the name, **ADDRESS,** and telephone number of each occupant other than the driver;
(d) the name, **ADDRESS,** and telephone number of each registered owner;
(e) the name, **ADDRESS,** and telephone number of each lessee;
(f) the name, **ADDRESS,** and telephone number of each owner other than the registered owner or lien holder; and
(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT,** and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT.**

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT.**

☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT?** If so, state:
(a) your location when you first saw it;
(b) the color;
(c) the number of seconds it had been that color; and
(d) whether the color changed between the time you first saw it and the **INCIDENT.**

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
(a) just before the **INCIDENT;**
(b) at the time of the **INCIDENT;** and (c) just after the **INCIDENT.**

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT?** If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS,** and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
(d) state the name, **ADDRESS,** and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT?** If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS,** and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
(d) state the name, **ADDRESS,** and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS,** and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT.**

25.0 *[Reserved]*

30.0 *[Reserved]*

40.0 *[Reserved]*

50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:
(a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(b) state each part of the agreement not in writing, the name, **ADDRESS,** and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
(c) identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(d) identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(e) state each modification not in writing, the date, and the name, **ADDRESS,** and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
(f) identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT.**

☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 *[Reserved]*

TOY-RQ-05E-00004573

CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
San Luis Obispo Case No. CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On November 17, 2009, I served the following documents(s):

PLAINTIFFS' FORM INTERROGATORIES TO DEFENDANT TOYOTA MOTOR CORPORATION

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[xx] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

[ ] (BY FAX TRANSMISSION) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission containing the time, date, and sending fax machine telephone number, which I printed out is attached.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 17th day of November, 2009, at Milwaukee, WI.

Mary Niquette

TOY-RQ-05E-00004574

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
San Luis Obispo Case No. CV090425

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TOY-RQ-05E-00004575

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; and DOES 1-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes- Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET ONE** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Corporation, Inc.

SET NO.: ONE

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Corporation, (TMC) pursuant to Code of Civil Procedure, Section 2031.020, identify all the materials within the requests stated below that are in their possession, custody, or control, their attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all

TOY-RQ-05E-00004576

materials with the requests specified on February 9, 2010 at 10:00 a.m. at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before on or before February 9, 2010.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

REQUESTS

REQUEST NO. 1:

Produce all brochures and product literature distributed, printed, or circulated by Toyota containing photographs, diagrams or descriptions of the 2005 Toyota Camry.

REQUEST NO. 2:

Produce any and all documents or writings prepared for accompaniment with the SUBJECT VEHICLE containing warnings or instructions including, but not limited to, the Operator's Manual.

REQUEST NO. 3:

Produce any and all photographs or videotapes of the SUBJECT VEHICLE and accident scene taken after the SUBJECT INCIDENT.

REQUEST NO. 4:

Produce all schematic drawings, design drawings, internal design specifications, blueprints or sketches pertaining to the SUBJECT VEHICLE'S throttle control system and its component parts, to include the cruise control system.

TOY-RQ-05E-00004577

REQUEST NO. 5:

Produce a list of all components of the fuel system and throttle control system that are used on the SUBJECT VEHICLE.

REQUEST NO. 6:

Produce any and all sales documents including invoices, purchase orders, bills of lading, and shipping invoices relating to the SUBJECT VEHICLE.

REQUEST NO. 7:

Produce any and all service and maintenance documents relating to the SUBJECT VEHICLE.

REQUEST NO. 8:

Produce any and all copies of documents generated evidencing consumer complaints or claims, (whether such complaints or claims were reported in writing, by email or verbally), or any documents or records reflecting incidents, including police reports, which have occurred to users of model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 vehicles which claim or allege or reference sudden acceleration, unintended acceleration or unexpected acceleration of the vehicle. Include with this response the search criteria used by Toyota to identify the claims, as well as a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions.

REQUEST NO. 9:

For any such complaint identified in response to Request No. 8 where a crash occurred, whether or not an injury occurred, produce the entire file in your possession, custody or control pertaining to such crash.

REQUEST NO. 10.

For any such complaint identified in response to Request No. 8 produce documents which

set forth the name and address of the current vehicle's registered owner or lessee for each of the complaint vehicles.

REQUEST NO. 11:

All warranty claims, extended warranty claims, and claims for good will services paid by Toyota pertaining to model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 in which the throttle actuator, or any other component of the throttle control system, was referenced, including but not limited to the 3546 warranty replacement documents produced by Toyota in response to the NHTSA's inquiry related to DP 06-003. Include with this response the search criteria used by Toyota to identify the claims, as well as a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions.

REQUEST NO. 12:

Any and all copies of legal complaints pertaining to personal injury or death lawsuits currently or formerly pending against Toyota claiming any injury, death, or damage due to any alleged defective condition, defect in, or problems regarding the model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 wherein it was alleged that the injury or death was associated with sudden acceleration, unintended acceleration or unexpected acceleration of the vehicle. This list should include the following:

(a) The filing date of the lawsuit;

(b) The Court in which the lawsuit was filed;

(c) The action or court number of the lawsuit;

(d) The name and address and designation of each party involved;

(e) A full and complete statement of the substance of all claims and allegations;

(f) The disposition of the lawsuit;

(g) The complaint.

REQUEST NO. 13:

Produce a copy of any and all recalls or service campaigns applicable to model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 related to the vehicle fuel and throttle control systems.

REQUEST NO. 14:

Produce a copy of any and all service bulletins or any other engineering bulletins or documents pertaining to the model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 relating to the throttle control system or any of its component parts, including but not limited to the nine (9) service bulletins produced to the NHTSA in response to DP04-003/PE04-021.

REQUEST NO. 15:

Produce a copy of the policies and/or procedures for document retention related to the model year 2005 Toyota Camry design, development and testing documents.

REQUEST NO. 16:

Produce any and all documents relating to the prototype development program for the Toyota Camry, including but not limited to, testing and design changes pertaining to the fuel system and throttle control system, prior to production of the 2005 Toyota Camry.

REQUEST NO. 17:

Produce all developmental and compliance sled and crash testing documents including written reports and videotapes pertaining to model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 where the throttle control system was evaluated or referenced in any test report.

REQUEST NO. 18:

Produce copies of the current resumes and prior depositions on the issues involved in this

action of any experts this defendant intends to call at the trial of this case and copies of all draft and final reports prepared by or for any such experts.

REQUEST NO. 19:

Produce each document which is necessary to identify, access, read, verify and interpret the data in any device in the 2005 Toyota Camry which records any data of any type including, but not limited to, pre-collision, near collision, collision and post-collision data, vehicle performance data, vehicle condition data, component performance and condition data, occupant classification data, seat use and position data, electronic stability control data, brake operation data, throttle operation data, driver control data, fault data, diagnostic data, kinematics data, and restraint use and performance data. This applies to any recorded data regardless of the means used to record it. This includes but is not limited to the following types of documents;

(a) All documents which identify every device which records any data related to the performance, condition, and operation of the vehicle and any component in the 2005 Camry. This includes but is not limited to event data recorders, restraint system performance data, "On Board Diagnostic" devices, ABS systems, Transmission Systems, Occupant Detection or Classification Systems, Back Up Sensors, Crash Avoidance Systems and Powertrain Control Modules.

(b) The memory map, template or other document, regardless of the terminology used to name it, which identifies the type of data in every address and location in all devices which store data.

(c) The documents necessary to read and interpret the data in every address and location in every device which records any data in the vehicle.

(d) The documents necessary to identify the actual conditions which determine each item of data that will be written to each address and location in every device which records any data in the vehicle. An example of an "actual condition" would be the actual voltage measurements related to throttle position which would cause a fault code to be set.

(e) The flow chart for the operating software in every device which records any data in the vehicle.

(f) The specifications for every device which records any data in the vehicle. This includes the specifications for computer chips.

(g) The specifications for all devices used by the defendant or its suppliers to download and interpret all data in every device which records any data in the vehicle.

(h) The software used by the defendant or its supplier to read and decode data.

(i) The flow chart for the software used in the instrument used to download and interpret the data in the devices which record data.

(j) The sections of the Service Manual which cover each data recording device.

(k) The operator's manual for all devices used by the defendant or its suppliers to download and interpret all data in every device which records any data in the vehicle.

(l) The worksheets and decoding documents used by the defendant and its suppliers to decode the downloaded data from any data storage or recording device in the vehicle.

(m) The manual for the instruments used to download and read the On Board Diagnostic System.

(n) The documents which describe the differences, if any, in the reliability of diagnostic trouble codes versus fault codes.

(o) The documents which identify the diagnostic trouble codes and their meaning.

(p) The documents which identify the OBD-II protocol used in the vehicle.

(q) The Failure Modes and Effects Analysis (FMEA) for each component in each device which stores data in this vehicle.

(r) The documents required to determine the time and order in which any specific item of data is written to any form of memory, including buffers.

(s) All documents which encompass, embody, record or refer to any information regarding the potential for one or more items of recorded data to be incorrect. For clarification, an example would be any document which indicates that data relating to brake application could be inaccurate or unreliable.

(t) All documents which encompass, embody, record or refer to any information regarding the potential to alter, distort, erase or overwrite any data in any device which records data in the vehicle.

REQUEST NO. 20:

All documents sent to and received from the National Highway Traffic Safety Administration (the NHTSA) pertaining to DP04-003.

REQUEST NO. 21:

All documents sent to and received from the NHTSA pertaining to PE04-021.

REQUEST NO. 22:

All documents sent to and received from the NHTSA pertaining to DP05-022.

REQUEST NO. 23:

All documents sent to and received from the NHTSA pertaining to DP06-003.

REQUEST NO. 24:

All Vehicle Owner Questionnaires (VOQ) in the possession of Toyota pertaining to a claim alleging sudden acceleration, unintended acceleration or unexpected acceleration of a model year 2002-2006 Toyota Camry, Toyota Solara, or Lexus ES300 and ES330 vehicle.

REQUEST NO. 25:

All documents sent to the NHTSA pertaining to DP04-003, PE 04-021, DP05-002 and DP06-003 and designated as confidential by Toyota.

REQUEST NO. 26:

All documents generated as a result of the investigations by Toyota on two vehicles alleging unintended acceleration as referenced in Toyota's response of June 1, 2004 to the NHTSA pertaining to DP04-003/PE04-021.

REQUEST NO. 27:

All documents which describe modifications or changes made by or on behalf of Toyota in the design, material, composition, manufacture, quality control, supply, or installation of the throttle control system in model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 vehicles, including the accelerator pedal assembly (with pedal position sensors), the throttle body assembly (with throttle valve position sensors and throttle control motor), all interconnecting wiring and harnessing, any electronic control unit(s) involved in the throttle

control process, and any other devices which may have an impact on the throttle control system or its operation.

REQUEST NO. 28:

At plaintiffs' expense, produce a 2005 Toyota Camry exemplar,

(a) Accelerator pedal assembly (with sensors), and

(b) An exemplar throttle body assembly (with sensors and throttle valve control motor).

REQUEST NO. 29:

Documents which set forth the number of each of the following replacement parts that Toyota has sold that may be used in the subject vehicle, by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used, and month/year of sale (including the cut-off date for sales, if applicable):

(a) Accelerator pedal assembly (or sensor if serviced separately from assembly);

(b) Throttle body assembly;

(c) Throttle valve position sensor (if serviced separately from the throttle body assembly); and

(d) Throttle valve control motor (if serviced separately from the throttle body assembly).

For each component parts number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also identify the make, model and model year, for any other vehicles of which Toyota is aware that contain the identical component, whether installed in production or service, and state the applicable dates of production or service usage.

REQUEST NO. 30:

All documents submitted by Toyota to the NHTSA which contain Toyota's assessment of the alleged defect in response to the NHTSA's inquiry pertaining to DP04–003/PE 04- 021, DP05-002, and DP06-003.

REQUEST NO. 31:

All communications received from Toyota dealers referencing diagnostic trouble codes (DTC) involving the throttle control system or any components thereof, in model year 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 vehicles.

REQUEST NO. 31:

All consumer complaints, legal complaints, warranty documents and recall information associated with the placement of floor mats in Toyota vehicles

DATED: November 10th, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: _____

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On November 17th, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET ONE

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[X] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 17th day of November, 2009, at Milwaukee, WI.

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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TOY-RQ-05E-00004587

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET THREE** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Corporation

SET NO.: THREE

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Corporation, (TMC) pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their attorneys

TOY-RQ-05E-00004588

or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 21, 2010 at 10:00am at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before the above date.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. ETCS-i VEHICLES refers to the 2002-2006 Toyota Camry, 2002-2006 Lexus ES300 and ES330, 2002-2009 Toyota Solara, 2004-2010 Toyota Sienna, and the 2004-2010 Lexus RX 330 and RX350.

REQUESTS

REQUEST NO. 69:

All "Electromagnetic Compatibility/Electromagnetic Interference (EMI/EMC) studies that pertain to the SUBJECT VEHICLE."

REQUEST NO. 70:

All documents which set forth the identification of all individuals who were responsible for the final decision to install a brake override system as one of the safety remedies as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 71:

All documents which set forth the identification of all individuals who were responsible

for the final decision to install a brake override system as standard equipment in various Toyota and Lexus vehicles starting with January, 2010 as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 72:

All training materials which will be made available to dealers in order to make the necessary installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 73:

All documents which explain how modifications are to be made to the existing vehicle software, and/or which explain how and what new software will be implemented, in order to accomplish the installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 74:

All documents, including but not limited to emails, generated which address the brake override system and which were dated or created between the date of the Toyota owner letter of November 2, 2009 and the date of the Toyota announcement of November 25, 2009.

REQUEST NO. 75:

All documents, including but not limited to emails, generated which address the brake override system and which were dated or created prior to the date of the Toyota owner letter of November 2, 2009.

REQUEST NO. 76:

All documents, including but not limited to emails, generated which address the brake

override system and which were dated or created on or after the Toyota announcement of November 25, 2009

REQUEST NO. 77:

All documents, including but not limited to emails, which set forth the material and labor costs associated with the installation of a brake override system as described in the November 25, 2009 Toyota announcement.

REQUEST NO. 78:

All documents which set forth all reasons and discussions why it was decided that the brake override system will be installed only in those specific Toyota vehicle models indicated in the November 25, 2009 announcement, and not installed in the 2005 Toyota Camry.

DATED: December 22nd, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: Donald H. Slavik

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On December 22, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET THREE

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

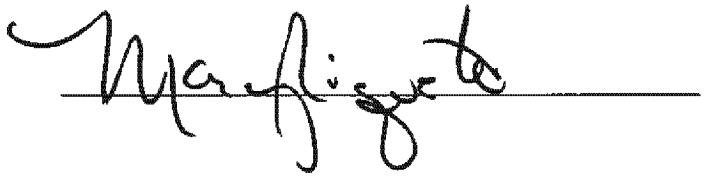
SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[X] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 22nd day of December, 2009, at Milwaukee, Wisconsin.



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Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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TOY-RQ-05E-00004593

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, TOYOTA MOTOR CORPORATION, SET TWO** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Corporation

SET NO.: TWO

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Corporation, (TMc) pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their

TOY-RQ-05E-00004594

attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 11, 2010 at 10:00 a.m. at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before June 15, 2009.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. ETCS-i VEHICLES refers to the 2002-2006 Toyota Camry, 2002-2006 Lexus ES300 and ES330, 2002-2009 Toyota Solara, 2004-2010 Toyota Sienna, and the 2004-2010 Lexus RX 330 and RX350.

REQUESTS

REQUEST NO. 32:

All documents and electronic files containing Failure Mode Effect Analysis (as that term is used in SAE Surface Vehicle Recommended Practice J1739) performed on the electronic throttle control system (ETCS-i) and its various components of the ETCS-i VEHICLES.

REQUEST NO. 33:

All software definition documents applicable to the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 34:

All documents and electronic files containing the programming algorithms of the ETCS-i of the ETCS-i VEHICLES.

TOY-RQ-05E-00004595

REQUEST NO. 35:

All documents and electronic files describing changes made to the programming algorithms of the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 36:

All documents and electronic files containing testing or evaluation of the effects of electromagnetic interference (EMI) on the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 37:

All documents and electronic files supporting the need to provide the warning regarding the installation of two-way radios in the 2005 Toyota Camry Owner's Manual as illustrated on the attached Exhibit A.

REQUEST NO. 38:

All Technical Service Bulletins, as well as all other information provided to Toyota, Lexus and Scion dealers regarding how to deal with reports by customers of "surging," "unwanted acceleration," "sudden acceleration," or other vehicle speed control problems in Toyota and Lexus passenger vehicles utilizing ETCS-i.

REQUEST NO. 39:

All "early warning" or "TREAD Act" data provided to the U.S. Department of Transportation (DOT) pursuant to 49 CFR 579 regarding Toyota, Lexus and Scion vehicles which identifies reports of "surging," "unwanted acceleration," "brake failure," or "sudden acceleration." This meant to include, but not be limited to NHTSA defined category "18-speed control." Please provide the data in a Microsoft Excel spreadsheet format, or in the native format as it was provided to the DOT.

Summary and Introduction Applicable to Request Nos. 40-53

The following list of requests are intended to retrieve all design artifacts for all ASIC designs and FPGA designs that exist in the ETCS-i vehicles produced by Toyota since the 2002 model year that relate to the electronic throttle control and surrounding systems. The ASICs (Application Specific Integrated Circuits) and FPGA(Field Programmable Gate Array) should not be limited to those produced by Toyota, but any ASIC and any FPGA that was in use in the vehicles.

The audience for this document is the original designers of the ASIC or FPGA.

For the sake of brevity, FPGA designs will be referred to as ASIC designs. In the case where an FPGA is used, the following should be added and/or considered:

1. ASIC tapeouts are equivalent to FPGA bitstreams.
2. FPGA information instead of foundry and process should list the manufacture of the FPGA including family, device, and timing class.

Creation of Compressed Files for Transfer

It is assumed that each request can be honored by delivering a set of artifacts. It is also assumed that the artifacts exist as files and lie in a directory structure inside a Unix, Linux or Windows directory structure or file system. The original directories that contain the artifacts that describe the request should be compressed into a standard format, tar.gz. Note that timestamps of the files contained are expected to reflect the last date of edit, so designs taped out in 2002 should have timestamps earlier than or equal to the date in 2002 when the design was finalized. Designs must not be copied before compression so the timestamp is not lost. The timestamp is important to establish when the file was last edited.

The request files should be in a directory that indicates the model year and vehicle.

Extra artifacts in the directories that contain the requested artifacts must be maintained before transfer.

If all artifacts for a request are contained within one directory:

a. Go to the top level directory that contains all artifacts requested.
b. TAR the directory by using the command "tar cvf <request number>.tar <directory>"
c. Compress the directory using "gzip <request number>.tar" to produce the file <request number>.tar.gz.

Example:

You have a directory named "top" that will contain all artifacts needed to satisfy the requirements of REQUEST NO. 40.

The steps should be:

unix> tar cvf 40.tar top
unix> gzip 40.tar

The resulting filename should be:

40.tar.gz

When unzipped and untarred the directory 'top' should appear.

If all artifacts for a request are contained within multiple directories:

a. Go to the first directory that contains the subset of artifacts requested.
b. TAR the directory by using the command "tar cvf <request number>_<directory>.tar <directory>"
c. Compress the directory using "gzip <request number>_<directory_name>.tar" to produce the file <request number>.tar.gz.
d. Repeat a-c for each directory
e. There should be a top level document named README explaining the mapping

Example:

You have three directories that need to be sent, a, b and c for REQUEST NO. 41.

unix> tar cvf 41_a.tar a
unix> tar cvf 41_b.tar b
unix> tar cvf 41_c.tar c
unix> gzip 41_a.tar
unix> gzip 41_b.tar
unix> gzip 41_c.tar

TOY-RQ-05E-00004598

The resulting filenames will be

41_a.tar.gz
41_b.tar.gz
41_c.tar.gz
README

Where the README file is added to explain the division.

Method of Transfer

To be determined after consultation between the parties.

Requests

Each individual request corresponds to a part of a standard ASIC design flow. In the early requests, top level documentation is requested.

Each request should be repeated for each model year.

Production is defined as a milestone where the design was included in a vehicle that was sold to the general public.

REQUEST NO. 40

A document containing the list of ASICs that exist in that model year. A document should be included that:

- Describes how the ASIC interact at a top level
- Documentation includes block diagrams
- Documentation can be high level, does not need to contain pin level information

Each ASIC should indicate:

- Internal name of the ASIC (part number, engineering name)
- Process used
- Foundry used
- Package used
- Number of tapeouts

TOY-RQ-05E-00004599

For each tapeout of the ASIC:

- Name of the tapeout or unique identifier
- Number of vehicles the ASIC was installed in at the factory of orgin
- Dates of production tapeouts
- Pin description of the ASIC, including inputs, outputs, and power supplies, indicating number, description

The total number of installations should add up to the total number of vehicles produced in that model class for that year.

Example #1 – An ASIC:

Name: ASIC – Throttle controller

Process: 0.35 um
Foundry: TSMC
Package: 688 PQFP
2 tapeouts

ASIC – Throttle controller – tapeout 001

Installed in 1,000,000 vehicles
Tape out date: 1/1/2001

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

ASIC – Throttle controller – tapeout 002

Installed in 3,000,000 vehicles
Tape out date: 1/1/2002

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
AnotherOutput	Output	6	Duplicated output of MyOutput	See functional diagram Fig 4
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

Example #2 – An FPGA:

Name: FPGA – Throttle governor

Manufacturer: Xilinx
Family: V4
Device: FX20
Timing class: -12
2 tapeouts

Name: FPGA – Throttle governor – bitstream 001

Installed in 1,000,000 vehicles
Tape out date: 1/1/2001

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

Name: FPGA – Throttle governor – bitstream 002

Installed in 3,000,000 vehicles
Tape out date: 1/1/2002

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
AnotherOutput	Output	6	Duplicated output of MyOutput	See functional diagram Fig 4
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

REQUEST NO. 41

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Complete functional specification of the design. The functional specification should be such that all information about the design should be contained, and a design team should be able to re-create the design from the provided specification. The specification does not need to contain code or schematics related to the design.
- Complete verification specification of the design. The verification specification should be such that all verification requirements should be contained, and a design team should be able to re-create the verification for the design from the provided specification. The specification does not need to contain code or schematics related to the design.
- Power/Timing Specification – if a power/timing specification is separate, it should be provided.

It is acceptable if the first tapeout contains the full specifications, and then subsequent tapeouts of the same ASIC contain differences from the original specification.

REQUEST NO. 42

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any Microsoft Project or other project management data that would indicate the steps taken to design the ASIC, the amount of time, and the resources used
- Any Powerpoint presentations, Microsoft Word documents or any other artifacts that were used by the designers to communicate design status or design review milestones.
- Any emails exchanged between designers on matters related to the ASICs

REQUEST NO. 43

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All verilog, VHDL or other types of files that contribute to the RTL portion of the design. This artifact would be synthesizable by industry standard synthesizers such as Synopsys DC Shell.
- Each timestamp of each file should be earlier than the tapeout date listed in REQUEST NO. 40.

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 44

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All verilog, VHDL, System Verilog, VERA, C++ or other types of files that contribute to the verification portion of the design.
- Each timestamp of each file should be earlier than the tapeout date listed in REQUEST NO. 40

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 45

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 43 and REQUEST NO. 44 that allows the design to be simulated by one of the following simulators that duplicates the original results: VCS, NC-VERILOG, or Modeltech.
- A single script that allows all simulations to be run. The script may be broken up into multiple scripts if this is easier
- Documentation on how to run the scripts
- The simulation should execute with a final output indicating number of errors and warnings. The output should be explained by the verification document provided by REQUEST NO. 41.

It is expected that all files will be contained to complete the verification. If wrapper scripts are used to run the simulations, they should be removed. The original simulator invocation should be used to invoke the simulator build process.

Example:

If a design contains a.v, b.v and c.v, a vcs a conforming command line would look like

vcs a.v b.v c.v +v2k

a non-conforming wrapped command line would look like

/my/path/vcs –v 2001.06 a.v b.v c.v +v2k

This is of course expecting that a, b and c completely described the design.

REQUEST NO. 46

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All synthesis scripts or other types of files that contribute to synthesizing the design.
- Any documentation that describes the synthesis methodology or strategy

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 47

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 45 and REQUEST NO. 46, that allows the design to be synthesized by Synopsys DC Shell that duplicates the original results. Any libraries used should be included.
- A single script that allows all synthesis to be run. The script may be broken up into multiple scripts if this is easier
- Documentation on how to run the scripts
- The synthesis should execute with a final output including log files, timing and area reports, timing SDFs and gate level verilog.

It is expected that all files will be contained to complete the synthesis and duplicate the original results.

REQUEST NO. 48

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 45 and REQUEST NO. 47, that allows the design to be verified using the gate level netlist using slow, typical and fast timing annotations from the synthesis tool

REQUEST NO. 49

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The results of the place and route function, whose design matches the function of REQUEST NO. 47. All clock structures and reset structures should be included in the design.
- There is no need to reproduce the results, the original results are acceptable as long as the timestamp precedes the tapeout date.

REQUEST NO. 50

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 48 and REQUEST NO. 49, that allows the design to be verified using the place and route level netlist using slow, typical and fast timing annotations (SDF) from the place and route tool using first level parasitic estimates

REQUEST NO. 51

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 48 and REQUEST NO. 49, that allows the design to be verified using the place and route level netlist using slow, typical and fast timing annotations (SDF) that result from the use of a parasitic tool

REQUEST NO. 52

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any scripts used to run gate level static timing analysis
- Any gate level static timing results including log files and reports

REQUEST NO. 53

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any scripts used to run transistor level static timing analysis
- Any transitor level static timing results including log files and reports

REQUEST NO 54:

All documents, including, but not limited to, electronically stored data generated as a result of all inspections and/or testing of the electronic throttle control systems in competitor vehicles prior to 2005, including but not limited to, Mercedes-Benz, BMW, and Volkswagen vehicles.

REQUEST NO. 55:

All documents, including, but not limited to, electronically stored data, generated as a result of each Failure Modes and Effects Analysis performed on the ETCS-i utilized in the first Toyota vehicle model utilizing such system.

REQUEST NO. 56:

All correspondence, including but not limited to, e-mails generated between any design team members for the electronic throttle control system in the 2005 Toyota Camry where the ETCS-i was discussed.

REQUEST NO. 57:

All correspondence, including but not limited to, e-mails generated between any design team members for the electronic throttle control system in the first Toyota vehicle which incorporated such system where the ETCS-i was discussed.

REQUEST NO. 58:

All internal test procedures which Toyota Motor Sales or Toyota Motor Corporation has ever utilized which, in whole or in part, are designed to predict or determine whether or not the ETCS-i in the ETCS-i VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

REQUEST NO. 59:

All documents generated, including but not limited to, test protocols, tests set-up documents, test results, videotaping, and photographs from all tests performed by Toyota Motor Sales, Toyota Motor Corporation, or any outside agency on their behalf, which, in whole or in part, are designed to predict or determine whether or not the ETCS-i in the ETCS-i VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

REQUEST NO. 60:

All documents which identify the person(s) responsible for making the decision to incorporate the warning regarding the installation of two-way radios in the 2005 Toyota Camry Owner's Manual as illustrated on the attached Exhibit A.

REQUEST NO. 61:

All Toyota technical videos which provide details on the ETCS-i for the following vehicles:

1) 1998 Supra;
2) 2002 Toyota Camry (4-cylinder and 6 cylinder);
3) 2005 Toyota Camry (with all engine types); and,
4) All other vehicles contained within the ETCS-i VEHICLES listing.

REQUEST NO. 62:

All special service campaigns addressing accelerator pedal interference in ETCS-i vehicles of Toyota, Lexus and Scion from 2002 to the present.

REQUEST NO. 63:

Produce the manuals, guidelines, protocols, and training and instructional documents associated with each of Toyota's defect and crash surveillance systems, including but not limited to Early Warning Reporting.

REQUEST NO. 64:

Produce an organizational chart or flow chart for each department or division involved with each defect and crash surveillance system.

REQUEST NO. 65:

Produce all documents related to how Toyota assigns the NHTSA defined categories to EWR claims.

REQUEST NO. 66:

Produce all documents or communications related to quotas for the number of claims that can be added to an EWR dataset under a single category.

REQUEST NO. 67:

Produce all documents and communications related to any alert, warning, or other mechanism, which would signify a threshold for the number of claims in any given category.

REQUEST NO. 68:

Toyota's corporate organizational chart or flow chart for the employees, who maintain, manage, organize and distribute EWR data to NHTSA.

DATED: December 10, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: _____

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On DECEMBER 10th, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR CORPORATION, SET TWO

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

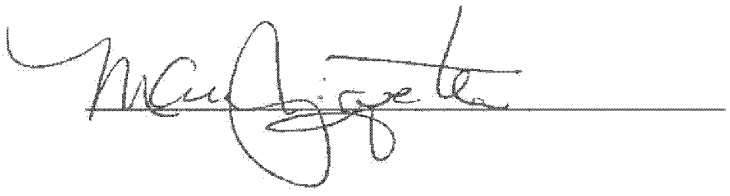
SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[XX] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 10th day of DECEMBER, 2009, at Milwaukee, Wisconsin.



TOY-RQ-05E-00004609

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation; and DOES 1-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S SPECIAL INTERROGATORIES TO DEFENDANT TOYOTA MOTOR CORPORATION, SET ONE** Complaint filed: February 20, 2009 Trial Date: None Assigned

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Corporation

SET NO.: ONE

Plaintiffs Bulent Ezal and Kenan Ezal hereby request that defendant Toyota Motor Corporation, (TMC) pursuant to Code of Civil Procedure, Section 2030.010 et seq., answer fully, separately and under oath, the following interrogatories within thirty (30) days after service.

TOY-RQ-05E-00004611

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. THROTTLE CONTROL SYSTEM refers to all component parts which make up the throttle control system in the SUBJECT VEHICLE.

SPECIAL INTERROGATORIES

SPECIAL INTERROGATORY NO. 1:

Identify the person at Toyota with the most knowledge concerning the design, manufacture and testing of the THROTTLE CONTROL SYSTEM.

SPECIAL INTERROGATORY NO. 2:

Identify the person at Toyota with the most knowledge concerning design changes which have occurred to the THROTTLE CONTROL SYSTEM since 2002.

SPECIAL INTERROGATORY NO. 3:

Identify the person at Toyota with the most engineering knowledge concerning consumer and legal complaints and investigations into alleged sudden acceleration, unintended acceleration, and unwanted acceleration in Toyota vehicles with electronic throttle control systems.

SPECIAL INTERROGATORY NO. 4:

Identify the person at Toyota with the most engineering knowledge concerning communications between Toyota and the NHTSA related to DP04-002, PE04-021, DFP05-002 and DP06-003.

SPECIAL INTERROGATORY NO. 5:

Identify the person at Toyota with the most knowledge concerning U.S. standards, foreign standards, and Toyota's internal guidelines, standards, regulations and specifications applicable to the design and performance of the electronic THROTTLE CONTROL SYSTEM.

SPECIAL INTERROGATORY NO. 6:

Identify the Toyota case engineer assigned to this litigation.

SPECIAL INTERROGATORY NO. 7:

Identify all current and former Toyota representatives who have had their depositions taken in a litigation matter involving alleged sudden acceleration, unwanted acceleration or unintended acceleration involving a Toyota vehicle with electronic throttle control systems.

SPECIAL INTERROGATORY NO. 8:

Identify by make, model and year, all Toyota and Lexus vehicles for which Toyota has ever received a complaint from any source alleging sudden, unwanted or unintended acceleration, or engine surging. For each such make, model and year, set forth if that vehicle has electronic throttle control.

SPECIAL INTERROGATORY NO. 9:

For each make, model and year of vehicle identified in Special Interrogatory No. 8, identify the engineer at Toyota who has most knowledge as to the design of the throttle control system in that vehicle.

DATED: November 16th, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: _____

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On November 17th, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S SPECIAL INTERROGATORIES TO DEFENDANT TOYOTA MOTOR CORPORATION, SET ONE

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

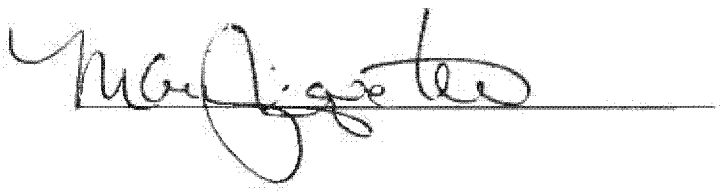
SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[X] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 17th day of November, 2009, at Milwaukee, WI.



TOY-RQ-05E-00004614

SERVICE LIST
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SLO CV090425

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TOY-RQ-05E-00004615

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BULENT EZAL, individually, and KENAN EZAL, individually, Plaintiffs, vs. MARTIN RESORTS, INC., a California corporation; TOYOTA MOTOR SALES USA, INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation; and, DOES 1-100 and 102-200, Defendants.	CASE NO. CV090425 [Assigned for all purposes Honorable T. LaBarbera] **PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, USA, INC., SET TWO** Complaint filed: February 20, 2009 Trial Date: None

PROPOUNDING PARTY: Plaintiffs Bulent Ezal and Kenan Ezal

RESPONDING PARTY: Defendant Toyota Motor Sales USA, Inc.

SET NO.: TWO

Plaintiffs Bulent Ezal and Kenan Ezal request that defendant Toyota Motor Sales USA, Inc., (Toyota) pursuant to Code of Civil Procedure, Section 2031.020 et seq., identify all the materials within the requests stated below that are in their possession, custody, or control, their

TOY-RQ-05E-00004616

attorneys or anyone acting on their behalf and that defendant and their attorneys of record produce all materials with the requests specified on March 11, 2010 at 10:00am at the law offices of Raymond Paul Johnson, A Law Corporation, 2121 Rosecrans Avenue, Suite 3400, El Segundo, CA 90245, or, in the alternative, a copy of each document can be copied and sent to Habush Habush & Rottier, S.C., 777 East Wisconsin Ave. Suite 2300, Milwaukee, WI 53202, on or before June 15, 2009.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2005 Toyota Camry described in plaintiffs' First Amended Complaint.

2. SUBJECT INCIDENT refers to the incident of February 25, 2007 in which Ms. Anne W. Ezal was killed.

3. ETCS-i VEHICLES refers to the 2002-2006 Toyota Camry, 2002-2006 Lexus ES300 and ES330, 2002-2009 Toyota Solara, 2004-2010 Toyota Sienna, and the 2004-2010 Lexus RX 330 and RX350.

REQUESTS

REQUEST NO. 32:

All documents and electronic files containing Failure Mode Effect Analysis (as that term is used in SAE Surface Vehicle Recommended Practice J1739) performed on the electronic throttle control system (ETCS-i) and its various components of the ETCS-i VEHICLES.

REQUEST NO. 33:

All software definition documents applicable to the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 34:

All documents and electronic files containing the programming algorithms of the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 35:

All documents and electronic files describing changes made to the programming algorithms of the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 36:

All documents and electronic files containing testing or evaluation of the effects of electromagnetic interference (EMI) on the ETCS-i of the ETCS-i VEHICLES.

REQUEST NO. 37:

All documents and electronic files supporting the need to provide the warning regarding the installation of two-way radios in the 2005 Toyota Camry Owner's Manual as illustrated on the attached Exhibit A.

REQUEST NO. 38:

All Technical Service Bulletins, as well as all other information provided to Toyota, Lexus and Scion dealers regarding how to deal with reports by customers of "surging," "unwanted acceleration," "sudden acceleration," or other vehicle speed control problems in Toyota and Lexus passenger vehicles utilizing ETCS-i.

REQUEST NO. 39:

All "early warning" or "TREAD Act" data provided to the U.S. Department of Transportation (DOT) pursuant to 49 CFR 579 regarding Toyota, Lexus and Scion vehicles which identifies reports of "surging," "unwanted acceleration," "brake failure," or "sudden acceleration." This meant to include, but not be limited to NHTSA defined category "18-speed control." Please provide the data in a Microsoft Excel spreadsheet format, or in the native format as it was provided to the DOT.

Summary and Introduction Applicable to Request Nos. 40-53

The following list of requests are intended to retrieve all design artifacts for all ASIC designs and FPGA designs that exist in the ETCS-i vehicles produced by Toyota since the 2002 model year that relate to the electronic throttle control and surrounding systems. The ASICs (Application Specific Integrated Circuits) and FPGA(Field Programmable Gate Array) should not be limited to those produced by Toyota, but any ASIC and any FPGA that was in use in the vehicles.

The audience for this document is the original designers of the ASIC or FPGA.

For the sake of brevity, FPGA designs will be referred to as ASIC designs. In the case where an FPGA is used, the following should be added and/or considered:

1. ASIC tapeouts are equivalent to FPGA bitstreams.
2. FPGA information instead of foundry and process should list the manufacture of the FPGA including family, device, and timing class.

Creation of Compressed Files for Transfer

It is assumed that each request can be honored by delivering a set of artifacts. It is also assumed that the artifacts exist as files and lie in a directory structure inside a Unix, Linux or Windows directory structure or file system. The original directories that contain the artifacts that describe the request should be compressed into a standard format, tar.gz. Note that timestamps of the files contained are expected to reflect the last date of edit, so designs taped out in 2002 should have timestamps earlier than or equal to the date in 2002 when the design was finalized. Designs must not be copied before compression so the timestamp is not lost. The timestamp is important to establish when the file was last edited.

The request files should be in a directory that indicates the model year and vehicle.

Extra artifacts in the directories that contain the requested artifacts must be maintained before transfer.

If all artifacts for a request are contained within one directory:

a. Go to the top level directory that contains all artifacts requested.
b. TAR the directory by using the command "tar cvf <request number>.tar <directory>"
c. Compress the directory using "gzip <request number>.tar" to produce the file <request number>.tar.gz.

Example:

You have a directory named "top" that will contain all artifacts needed to satisfy the requirements of REQUEST NO. 40.

The steps should be:

unix> tar cvf 40.tar top
unix> gzip 40.tar

The resulting filename should be:

40.tar.gz

When unzipped and untarred the directory 'top' should appear.

If all artifacts for a request are contained within multiple directories:

a. Go to the first directory that contains the subset of artifacts requested.
b. TAR the directory by using the command "tar cvf <request number>_<directory>.tar <directory>"
c. Compress the directory using "gzip <request number>_<directory_name>.tar" to produce the file <request number>.tar.gz.
d. Repeat a-c for each directory
e. There should be a top level document named README explaining the mapping

Example:

You have three directories that need to be sent, a, b and c for REQUEST NO. 41.

unix> tar cvf 41_a.tar a
unix> tar cvf 41_b.tar b
unix> tar cvf 41_c.tar c
unix> gzip 41_a.tar
unix> gzip 41_b.tar
unix> gzip 41_c.tar

TOY-RQ-05E-00004620

The resulting filenames will be

41_a.tar.gz
41_b.tar.gz
41_c.tar.gz
README

Where the README file is added to explain the division.

Method of Transfer

To be determined after consultation between the parties.

Requests

Each individual request corresponds to a part of a standard ASIC design flow. In the early requests, top level documentation is requested.

Each request should be repeated for each model year.

Production is defined as a milestone where the design was included in a vehicle that was sold to the general public.

REQUEST NO. 40

A document containing the list of ASICs that exist in that model year. A document should be included that:

- Describes how the ASIC interact at a top level
- Documentation includes block diagrams
- Documentation can be high level, does not need to contain pin level information

Each ASIC should indicate:

- Internal name of the ASIC (part number, engineering name)
- Process used
- Foundry used
- Package used
- Number of tapeouts

TOY-RQ-05E-00004621

For each tapeout of the ASIC:

- Name of the tapeout or unique identifier
- Number of vehicles the ASIC was installed in at the factory of orgin
- Dates of production tapeouts
- Pin description of the ASIC, including inputs, outputs, and power supplies, indicating number, description

The total number of installations should add up to the total number of vehicles produced in that model class for that year.

Example #1 – An ASIC:

Name: ASIC – Throttle controller

Process: 0.35 um
Foundry: TSMC
Package: 688 PQFP
2 tapeouts

ASIC – Throttle controller – tapeout 001

Installed in 1,000,000 vehicles
Tape out date: 1/1/2001

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

ASIC – Throttle controller – tapeout 002

Installed in 3,000,000 vehicles
Tape out date: 1/1/2002

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
AnotherOutput	Output	6	Duplicated output of MyOutput	See functional diagram Fig 4
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

Example #2 – An FPGA:

Name: FPGA – Throttle governor

Manufacturer: Xilinx
Family: V4
Device: FX20
Timing class: -12
2 tapeouts

Name: FPGA – Throttle governor – bitstream 001

Installed in 1,000,000 vehicles
Tape out date: 1/1/2001

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

Name: FPGA – Throttle governor – bitstream 002

Installed in 3,000,000 vehicles
Tape out date: 1/1/2002

Pin name	*Direction/Type*	*Pin number*	*Description*	*Comments*
MyInput	Input	1	A general input	See functional diagram Fig 3
MyOutput	Output	2	A general output	See functional diagram Fig 3
AnotherOutput	Output	6	Duplicated output of MyOutput	See functional diagram Fig 4
VDD	Power	3	3.3v power	
GND	Power	4	Ground	

TOY-RQ-05E-00004623

REQUEST NO. 41

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Complete functional specification of the design. The functional specification should be such that all information about the design should be contained, and a design team should be able to re-create the design from the provided specification. The specification does not need to contain code or schematics related to the design.
- Complete verification specification of the design. The verification specification should be such that all verification requirements should be contained, and a design team should be able to re-create the verification for the design from the provided specification. The specification does not need to contain code or schematics related to the design.
- Power/Timing Specification – if a power/timing specification is separate, it should be provided.

It is acceptable if the first tapeout contains the full specifications, and then subsequent tapeouts of the same ASIC contain differences from the original specification.

REQUEST NO. 42

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any Microsoft Project or other project management data that would indicate the steps taken to design the ASIC, the amount of time, and the resources used
- Any Powerpoint presentations, Microsoft Word documents or any other artifacts that were used by the designers to communicate design status or design review milestones.
- Any emails exchanged between designers on matters related to the ASICs

REQUEST NO. 43

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All verilog, VHDL or other types of files that contribute to the RTL portion of the design. This artifact would be synthesizable by industry standard synthesizers such as Synopsys DC Shell.
- Each timestamp of each file should be earlier than the tapeout date listed in REQUEST NO. 40.

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 44

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All verilog, VHDL, System Verilog, VERA, C++ or other types of files that contribute to the verification portion of the design.
- Each timestamp of each file should be earlier than the tapeout date listed in REQUEST NO. 40

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 45

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 43 and REQUEST NO. 44 that allows the design to be simulated by one of the following simulators that duplicates the original results: VCS, NC-VERILOG, or Modeltech.
- A single script that allows all simulations to be run. The script may be broken up into multiple scripts if this is easier
- Documentation on how to run the scripts
- The simulation should execute with a final output indicating number of errors and warnings. The output should be explained by the verification document provided by REQUEST NO. 41.

It is expected that all files will be contained to complete the verification. If wrapper scripts are used to run the simulations, they should be removed. The original simulator invocation should be used to invoke the simulator build process.

Example:

If a design contains a.v, b.v and c.v, a vcs a conforming command line would look like

vcs a.v b.v c.v +v2k

a non-conforming wrapped command line would look like

/my/path/vcs –v 2001.06 a.v b.v c.v +v2k

This is of course expecting that a, b and c completely described the design.

REQUEST NO. 46

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- All synthesis scripts or other types of files that contribute to synthesizing the design.
- Any documentation that describes the synthesis methodology or strategy

It is expected that all files for the tapeout will be provided, differences from the base tapeout is not acceptable.

REQUEST NO. 47

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 45 and REQUEST NO. 46 that allows the design to be synthesized by Synopsys DC Shell that duplicates the original results. Any libraries used should be included.
- A single script that allows all synthesis to be run. The script may be broken up into multiple scripts if this is easier
- Documentation on how to run the scripts
- The synthesis should execute with a final output including log files, timing and area reports, timing SDFs and gate level verilog.

It is expected that all files will be contained to complete the synthesis and duplicate the original results.

REQUEST NO. 48

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 45 and REQUEST NO. 47, that allows the design to be verified using the gate level netlist using slow, typical and fast timing annotations from the synthesis tool

REQUEST NO. 49

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The results of the place and route function, whose design matches the function of REQUEST NO. 47. All clock structures and reset structures should be included in the design.
- There is no need to reproduce the results; the original results are acceptable as long as the timestamp precedes the tapeout date.

REQUEST NO. 50

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 48 and REQUEST NO. 49, that allows the design to be verified using the place and route level netlist using slow, typical and fast timing annotations (SDF) from the place and route tool using first level parasitic estimates

REQUEST NO. 51

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- The composite of REQUEST NO. 48 and REQUEST NO. 49, that allows the design to be verified using the place and route level netlist using slow, typical and fast timing annotations (SDF) that result from the use of a parasitic tool

REQUEST NO. 52

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any scripts used to run gate level static timing analysis
- Any gate level static timing results including log files and reports

REQUEST NO. 53

For each ASIC tapeout in REQUEST NO. 40, the following is required:

- Any scripts used to run transistor level static timing analysis
- Any transitor level static timing results including log files and reports

REQUEST NO 54:

All documents, including, but not limited to, electronically stored data generated as a result of all inspections and/or testing of the electronic throttle control systems in competitor vehicles prior to 2005, including but not limited to, Mercedes-Benz, BMW, and Volkswagen vehicles.

REQUEST NO. 55:

All documents, including, but not limited to, electronically stored data, generated as a result of each Failure Modes and Effects Analysis performed on the ETCS-i utilized in the first Toyota vehicle model utilizing such system.

REQUEST NO. 56:

All correspondence, including but not limited to, e-mails generated between any design team members for the electronic throttle control system in the 2005 Toyota Camry where the ETCS-i was discussed.

REQUEST NO. 57:

All correspondence, including but not limited to, e-mails generated between any design team members for the electronic throttle control system in the first Toyota vehicle which incorporated such system where the ETCS-i was discussed.

REQUEST NO. 58:

All internal test procedures which Toyota Motor Sales or Toyota Motor Corporation has ever utilized which, in whole or in part, are designed to predict or determine whether or not the ETCS-i in the ETCS-i VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

REQUEST NO. 59:

All documents generated, including but not limited to, test protocols, tests set-up documents, test results, videotaping, and photographs from all tests performed by Toyota Motor Sales, Toyota Motor Corporation, or any outside agency on their behalf, which, in whole or in part, are designed to predict or determine whether or not the ETCS-i in the ETCS-i VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

REQUEST NO. 60:

All documents which identify the person(s) responsible for making the decision to incorporate the warning regarding the installation of two-way radios in the 2005 Toyota Camry Owner's Manual as illustrated on the attached Exhibit A.

REQUEST NO. 61:

All Toyota technical videos which provide details on the ETCS-i for the following vehicles:

1) 1998 Supra;
2) 2002 Toyota Camry (4-cylinder and 6 cylinder);
3) 2005 Toyota Camry (with all engine types); and,
4) All other vehicles contained within the ETCS-i VEHICLES listing.

REQUEST NO. 62:

All special service campaigns addressing accelerator pedal interference in ETCS-i vehicles of Toyota, Lexus and Scion from 2002 to the present.

REQUEST NO. 63:

Produce the manuals, guidelines, protocols, and training and instructional documents associated with each of Toyota's defect and crash surveillance systems, including but not limited to Early Warning Reporting.

REQUEST NO. 64:

Produce an organizational chart or flow chart for each department or division involved with each defect and crash surveillance system.

REQUEST NO. 65:

Produce all documents related to how Toyota assigns the NHTSA defined categories to EWR claims.

REQUEST NO. 66:

Produce all documents or communications related to quotas for the number of claims that can be added to an EWR dataset under a single category.

TOY-RQ-05E-00004629

REQUEST NO. 67:

Produce all documents and communications related to any alert, warning, or other mechanism, which would signify a threshold for the number of claims in any given category.

REQUEST NO. 68:

Toyota's corporate organizational chart or flow chart for the employees, who maintain, manage, organize and distribute EWR data to NHTSA.

DATED: December 10, 2009

HABUSH HABUSH & ROTTIER, S.C.

BY: _____

Timothy S. Trecek *Admitted Pro Hac Vice*
Donald H. Slavik *Admitted Pro Hac Vice*
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AND

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CALIFORNIA STATE COURT PROOF OF SERVICE
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 777 East Wisconsin Avenue, Suite 2300, Milwaukee, WI 53202.

On December 10th, 2009, I served the following documents(s):

PLAINTIFFS BULENT EZAL AND KENAN EZAL'S REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT TOYOTA MOTOR SALES, USA, INC., SET TWO

I served the documents on the following persons at the following addressed (including fax numbers and e-mail addresses, if applicable:

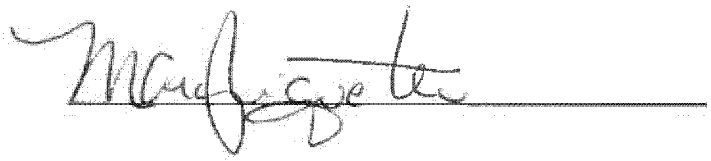
SEE ATTACHED SERVICE LIST

The documents were served by the following means:

[ ] (BY U. S. MAIL) I have enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U. S. Postal Service in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that he above is true and correct.

Executed this 10th day of December, 2009, at Milwaukee, Wisconsin.



TOY-RQ-05E-00004631

SERVICE LIST
Ezal, et al. v. Martin Resorts, Inc., et al.
SLO CV090425

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FILE START

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Attorneys for: Plaintiff, KATHLEEN HEWITT

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 18 2009

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
SHAUNYA WESLEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

UNLIMITED

BC428326

KATHLEEN HEWITT, Plaintiff, vs. TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC, and DOES 1 through 30, inclusive, Defendants.	Case No.: **COMPLAINT FOR STRICT PRODUCT LIABILITY, NEGLIGENCE, AND BREACH OF WARRANTY**

COMES NOW, Plaintiff, KATHLEEN HEWITT, for causes of action against the Defendants, and each of them, alleges as follows based upon information and belief:

GENERAL ALLEGATIONS

1. Plaintiff KATHLEEN HEWITT is an individual. At all times mentioned herein, Plaintiff KATHLEEN HEWITT is and was a resident and citizen of the state of Oregon.

2. At all times mentioned herein, defendant TOYOTA MOTOR NORTH AMERICA, INC. ("Toyota N.A.") is and was a corporation licensed to do business in the State of California, with its principal place of business in Los Angeles County, and at all relevant

TOY-RQ-05E-00004634

times herein sold vehicles to members of the general public as well as designing, testing, manufacturing, inspecting, distributing, recalling them, and warning and instructing users on the safe use of the motor vehicles in exchange for valuable consideration in Los Angeles County.

3. At all times mentioned herein, defendant TOYOTA MOTOR SALES U.S.A., INC. ("Toyota U.S.A.") is and was a corporation, licensed to do business in the State of California, with its principal place of business in Los Angeles County, and at all relevant times herein sold vehicles to members of the general public as well as designing, testing, manufacturing, inspecting, distributing, recalling them, and warning and instructing users on the safe use of the motor vehicles in exchange for valuable consideration in Los Angeles County.

4. Toyota N.A. and Toyota U.S.A. are hereinafter referred to collectively as "TOYOTA."

5. The true names, capacities or involvement, whether individual, corporate, governmental or associate, of the defendants named herein as DOE are unknown to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff prays for leave to amend this Complaint to show their true names and capacities when the same have been finally determined. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the defendants designated herein as DOE is negligently, intentionally, strictly liable or otherwise legally responsible in some manner for the events and happenings herein referred to, and negligently, strictly liable, and intentionally or otherwise caused injury and damages to Plaintiff as hereinafter alleged.

6. At all times herein mentioned, each and every defendant herein was the owner, agent, servant and employee, each of the others and each was acting within the course and scope of his ownership, agency, service and employment.

PLAINTIFF'S CAR ACCIDENT

7. Plaintiff KATHLEEN HEWITT is the owner of a 2006 Toyota Highlander (the "Subject Vehicle").

8. On or about March 16, 2009 Plaintiff was driving the Subject Vehicle in the city of Yuma, state of Arizona. Her 89-year-old mother was sitting in the passenger seat. Plaintiff

TOY-RQ-05E-00004635

KATHLEEN HEWITT placed the Subject Vehicle into reverse and it suddenly, unexpectedly, and unintentionally accelerated backwards. The Subject Vehicle hit a tree but was not damaged. Then, from a dead stop, Plaintiff put the Subject Vehicle in drive and slowly moved it forward while at all times maintaining contact with and applying pressure to the Subject Vehicle's brake pedal. After moving forward for no more than two car lengths the Subject Vehicle's engine suddenly and unintentionally revved and the Subject Vehicle accelerated forward at maximum power. Plaintiff repeatedly and forcefully pressed down on the brake pedal in an attempt to bring the Subject vehicle to a stop but was unable to.

9. The Subject Vehicle continued accelerating forward as fast as it was capable despite Plaintiff's diligent efforts to bring it to a stop. After traveling forward approximately fifty feet the Subject Vehicle hit an eight-foot high berm surrounding the side of a water canal with cement walls. The Subject Vehicle climbed the eight-foot high berm and launched itself into the air, the engine still revving and accelerating uncontrollably. After flying into the air the Subject Vehicle crashed front first into the cement wall on the opposite side of the canal.

10. Plaintiff did not have any contact whatsoever with the Subject Vehicle's gas pedal while it was suddenly and unintentionally accelerating. Plaintiff was at all times relevant stepping on and applying pressure to the Subject's Vehicle's brake pedal in an attempt to stop the Subject Vehicle but the Subject Vehicle would not stop or even slow down.

11. As a result of the Subject Vehicle's sudden and unintended acceleration, Plaintiff's 89-year-old mother, who was at all times sitting in the Subject Vehicle's passenger seat, suffered a broken leg and a broken knee. She spent five days in the hospital, twenty days undergoing physical rehabilitation therapy, and tens of thousands of dollars in medical fees.

12. As a result of the Subject Vehicle's sudden and unintended acceleration, Plaintiff, who was at all times driving the Subject Vehicle, has suffered and continues to suffer substantial aches and pains all over her body, including her hip and back. Plaintiff has also suffered, and continues to suffer, severe mental and emotional distress, including Post Traumatic Stress Syndrome. Specifically, as an actual and proximate result of the above described events, Plaintiff often cries uncontrollably and is afraid to drive, so much so that she is currently unable

TOY-RQ-05E-00004636

to drive herself at all. She often re-lives the accident and experiences a frightening sense of flying through the air with no control and has uncontrollable visions of car accidents.

TOYOTA'S DEFECTIVE ELECTRONIC THROTTLE CONTROL SYSTEM

13. On or before Plaintiff purchased the Subject Vehicle TOYOTA began manufacturing and selling vehicles with defective electronic throttle control systems. TOYOTA's electronic throttle control systems electronically control the speed of a vehicle's engine and thus control the rate at which a vehicle accelerates. These systems were defectively designed and/or manufactured in that they cause Toyota vehicles to suddenly and unintentionally accelerate without warning or driver control.

14. TOYOTA manufactured and installed such a defective electronic throttle control system in the Subject Vehicle.

15. Prior to March 16, 2009 and since it began manufacturing and selling vehicles with the defective electronic ignition systems TOYOTA received thousands of complaints that its vehicles suddenly, unintentionally and uncontrollably accelerate.

16. TOYOTA was at all times aware that the defective electronic throttle control systems that it manufactured, installed, and sold in Toyota vehicles could cause, and would cause, sudden unintended acceleration. Despite this knowledge, TOYOTA intentionally failed to install safeguards in their vehicles to protect against sudden unintended and uncontrollable acceleration. Specifically, TOYOTA failed to install either a manual or electronic fail-safe device that would allow a driver to stop a Toyota vehicle's engine from revving and accelerating by pressing the brake pedal. Such a fail-safe device would be easy and cheap to install and would not alter the nature or fundamental characteristics of Toyota vehicles or make them significantly more expensive.

17. TOYOTA did not warn purchasers of Toyota vehicles, including Plaintiff, of the likelihood or even possibility that its electronic throttle control systems could and would cause Toyota vehicles to suddenly, unintentionally, and uncontrollably accelerate.

TOY-RQ-05E-00004637

TOYOTA'S DEFECTIVE FLOOR MATS

18. On or before Plaintiff purchased the Subject Vehicle TOYOTA began manufacturing and selling vehicles with defective floor mats. These floor mats were placed on the drivers' side floor of Toyota vehicles and were defectively designed and/or manufactured in that they have a tendency to become lodged against the vehicles' gas pedals causing the vehicles to suddenly accelerate without warning or driver control.

19. TOYOTA manufactured and installed such a defective floor mat in the Subject Vehicle.

20. Prior to March 16, 2009 and since it began manufacturing and selling vehicles with the defective floor mats TOYOTA received thousands of complaints that its vehicles suddenly, unintentionally and uncontrollably accelerate.

21. TOYOTA was at all times aware that the defective floor mats that it manufactured, installed, and sold in Toyota vehicles could cause, and would cause, sudden unintended acceleration. Despite this knowledge, TOYOTA intentionally failed to install safeguards in their vehicles to protect against sudden unintended and uncontrollable acceleration. Specifically, TOYOTA failed to install either a manual or electronic fail-safe device that would allow a driver to stop a Toyota vehicle's engine from revving and accelerating by pressing the brake pedal. Such a fail-safe device would be easy and cheap to install and would not alter the nature or fundamental characteristics of Toyota vehicles or make them significantly more expensive.

22. TOYOTA did not warn purchasers of Toyota vehicles, including Plaintiff, of the likelihood or even possibility that its floor mats could and would cause Toyota vehicles to suddenly, unintentionally, and uncontrollably accelerate.

FIRST CAUSE OF ACTION FOR STRICT PRODUCT LIABILITY

(AGAINST ALL DEFENDANTS)

23. Plaintiff refers to paragraphs 1 through 22 and by reference to said paragraphs incorporates them herein as though fully set forth at length.

TOY-RQ-05E-00004638

24. Plaintiff is informed and believes and based thereon alleges, that at all times herein mentioned TOYOTA manufactured, fabricated, planned, designed, assembled, distributed, leased, bought, sold, rented, recalled, inspected, repaired, imported, marketed, warranted, tested, serviced, and advertised the Subject Vehicle and/or its parts, with instructions and warnings, in said vehicle and/or its parts, as well as other models in that series all of which contained product defects, both in manufacturing, design and failure to warn in various components, including but not limited to the electronic throttle control system and floor mats.

25. The above referenced product defects rendered the Subject Vehicle defective under California Law.

26. Plaintiff was not aware of the above referenced defects at any time prior to March 16, 2009 and said defects were not detectable by normal inspection prior to use.

27. On or about March 16, 2009, said product defects were the direct, proximate, and legal causes of the damages sustained by Plaintiff. Plaintiff has incurred damages, including physical injury, financial injury, and severe mental and emotional distress, in an amount subject to proof at trial.

SECOND CAUSE OF ACTION FOR NEGLIGENCE

(AGAINST ALL DEFENDANTS)

28. Plaintiff refers to paragraphs 1 through 27 and by reference to said paragraphs incorporates them herein as though fully set forth at length.

29. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned TOYOTA had a duty to provide a reasonably safe vehicle that would not suddenly, unintentionally, and uncontrollably accelerate, causing injury. TOYOTA also owed Plaintiff a duty to warn of dangers and perform repairs to and maintain the Subject Vehicle in a proper and safe manner and to inspect the vehicle for safety, and to actually warn Plaintiff of dangers known to Defendants, including the likelihood that the Subject Vehicle would experience sudden, unintended, and uncontrollable acceleration.

30. TOYOTA breached its duty in the manner described and alleged above, namely by manufacturing and selling vehicles, including the Subject Vehicle, with defective electronic

TOY-RQ-05E-00004639

throttle control systems and defective floor mats and failing to properly or adequately warn buyers of Toyota vehicles, including Plaintiff, of the likelihood of sudden, unintentional, and uncontrollable acceleration.

31. On or about March 16, 2009, the negligence of defendants and each of them was the actual, proximate, and legal cause of the damages sustained by Plaintiff as alleged above. Plaintiff has incurred damages, including physical pain and suffering, financial loss, and severe emotional and mental distress, especially from witnessing the injury and suffering of her 89 year old mother, to be shown by proof at trial.

THIRD CAUSE OF ACTION FOR BREACH OF WARRANTY

(AGAINST ALL DEFENDANTS)

32. Plaintiff refers to paragraphs 1 through 31 and by reference to said paragraphs incorporates them herein as though fully set forth at length.

33. TOYOTA is a worldwide leader in the design, manufacture and sale of vehicles, including the Subject Vehicle. For at least the last several years TOYOTA has manufactured and sold vehicles, including the Subject Vehicle, with defective parts as alleged above. TOYOTA at all times knew that the vehicles it manufactured and sold to the public, including the Subject Vehicle, would be used by buyers such as Plaintiff for transportation and that such buyers relied on TOYOTA's skill, judgment, and expertise to provide a suitable product.

34. At all times herein mentioned, TOYOTA impliedly and expressly warranted that Toyota vehicles, including the Subject Vehicle, were not unreasonably dangerous and were safe when used as designed by TOYOTA.

35. At all times herein mentioned, TOYOTA impliedly and expressly warranted that its products, including the Subject Vehicle, are fit for the particular purpose of being used as a motor vehicle. Specifically, TOYOTA impliedly and expressly warranted that Toyota vehicles, including the Subject Vehicle, are safe for their particular use and purpose.

36. TOYOTA breached said warranties in that the Subject Vehicle was not safe for its expected and intended use and was not merchantable.

37. The acts and omissions of TOYOTA as described above constitute a breach of the Song-Beverly Consumer Warranty Act, California Civil Code sections 1792 and 1792.2.

38. As the actual, proximate, and legal result of said breach of said implied and express warranties, Plaintiff has been damaged in the manner alleged above. Plaintiff has incurred damages, including physical pain and suffering, financial loss, and severe emotional and mental distress, to be shown by proof at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages according to proof;
2. For economic damages according to proof pursuant to Cal. Civ. Code §§ 1790 et seq.;
3. For punitive damages pursuant to Cal. Civ. Code § 1780;
4. For reasonable attorneys' fees and costs to the extent permitted by California law;
5. For prejudgment interest to the extent permitted by California law;
6. For costs of suit incurred herein; and
7. For such other and further relief as the Court deems appropriate.

DATED: November 17, 2009

ROBERT C. BURLISON, JR.
A Member of BURLISON & LUOSTARI

By: _____
ROBERT C. BURLISON, JR.
Attorney for Plaintiff, KATHLEEN HEWITT

TOY-RQ-05E-00004641

FILE START

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUL 21 2009
ALAN CARLSON, Clerk of the Court
BY: N. DOREMAN, DEPUTY

Jay F. Stocker, Esq. (State Bar #131418)
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Attorneys for Plaintiff
ELIZABETH KISS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

30-2009
00126352

ELIZABETH KISS, Plaintiff, vs. TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA OF RANCHO SANTA MARGARITA; PENSKE TOYOTA OF RANCHO SANTA MARGARITA; and DOES 1 through 20, inclusive, Defendants.	Case No.: JUDGE WILLIAM M. MONROE DEPT. C16 COMPLAINT FOR: 1) PRODUCT LIABILTY; 2) NEGLIGENCE; 3) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Plaintiffs allege:

GENERAL ALLEGATIONS

1. Plaintiff, ELIZABETH KISS ("Plaintiff"), was at all times relevant to this action an adult resident of the County of Orange, State of California.

2. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota"), was a business entity of unknown form duly authorized to and conducting business in the County of Orange, State of California.

TOY-RQ-05E-00004643

3. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, Defendant TOYOTA OF RANCHO SANTA MARGARITA ("Toyota RSM"), was a business entity of unknown form duly authorized to and conducting business in the County of Orange, State of California.

4. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, Defendant PENSKE TOYOTA OF RANCHO SANTA MARGARITA (also referred to as Toyota RSM"), was a business entity of unknown form duly authorized to and conducting business in the County of Orange, State of California.

5. Defendants DOES 1 through 20 are sued herein under fictitious names. Their true names and capacities are presently unknown. When their true names and capacities are ascertained, Plaintiffs will seek to amend this Complaint by inserting their true names and capacities herein. Each allegation asserted against an individually named defendant is hereby alleged and asserted against the fictitiously named defendants.

6. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, each defendant, including the fictitiously named defendants is; and at all times herein mentioned was, the agent, servant, employee, partner, trustee, co-venturer, subsidiary, or fiduciary, of each remaining defendant and, in doing the things herein alleged, was acting within the course and scope of one or more of the aforementioned relationships.

7. No part of this action is governed by Civil Code sections 1812.10 or 2984.4. Venue in this action is proper for this Court because Defendant is a resident of this judicial district, the injuries were sustained within this judicial district, and the property which suffered damage is located within this judicial district.

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TOY-RQ-05E-00004644

FIRST CAUSE OF ACTION

(PRODUCTS LIABILITY AGAINST ALL DEFENDANTS)

8. Plaintiff realleges the General Allegations and reincorporates said allegations hereat as though fully set forth.

9. At all times herein relevant, defendant Toyota engaged in the business of designing, manufacturing, assembling and disseminating into the stream of commerce various models of automobiles, including the Toyota RAV 4, for sale to and use by members of the general public.

10. At all times herein relevant, defendant Toyota RSM engaged in the business of selling at retail to members of the general public in Orange County, California certain Toyota automobiles including the vehicle that is the subject of this action.

11. Defendant Toyota intended that the Toyota RAV 4 manufactured, designed, and assembled by it and purchased by Plaintiff would be used by the eventual purchaser for all uses normally intended by owners of automobiles and would be used for such purposes.

12. At all times mentioned, defendants knew and intended that the automobiles designed, manufactured, assembled, marketed and sold would be purchased by members of the public and used by the purchasers without inspection for defects.

13. About April 3, 2004, Plaintiff purchased a 2004 Toyota RAV 4 from Toyota of Rancho Santa Margarita, and manufactured by Toyota ("Subject Automobile").

14. The Subject Automobile was, at the time Plaintiff purchased it as herein alleged, defective and unsafe for its intended purpose in that the accelerator mechanism and related parts and system were prone to sticking or to otherwise causing unexpected and unintentional engine acceleration which would make the Subject Automobile to race out of control, and the airbag system was defectively designed, manufactured, and assembled to cause the airbag system to fail to engage and deploy upon a violent impact.

15. On October 23, 2007, Plaintiff started the Subject Automobile and when she shifted into gear the accelerator raced and stuck and the unintended acceleration forced Plaintiff into a high speed violent impact, which flipped the Subject Automobile and caused severe injuries to Plaintiff including a compound fracture of her leg. At no time during the violent collision, including a

TOY-RQ-05E-00004645

collision with a structure and the flipping of the vehicle did any of the airbags equipped in the Subject Automobile engage or deploy.

16. As a proximate result of the existing product defects resulting in the collision as previously alleged, Plaintiff was injured in her health, strength, and activity, sustained injuries to her body and shock and injury to her nervous system and person, which injuries included but are not limited to leaving Plaintiff with permanent disabilities, and all of which injuries have caused and continue to cause Plaintiff great mental, physical, and nervous pain and suffering. These injuries will result in some permanent disability to Plaintiff, all to her general damage..

17. As a further proximate result of the defects and the resulting collision as herein alleged, Plaintiff necessarily employed physicians and surgeons for medical examinations, treatment, and care for these injuries, and incurred medical and incidental expenses and will have to incur additional like expenses in the future, all in amounts presently unknown to him. Plaintiff does not know the exact amount of expenses that have been incurred and that will be incurred in the future. When Plaintiff has ascertained this amount, Plaintiff will seek leave of court, orally or in writing, to amend this Complaint to insert this amount, or to conform to proof at trial.

18. As a further proximate result of the defects and the resulting collision as herein alleged, Plaintiff was disabled and may be disabled in the future and thereby be prevented from attending to the duties of Plaintiff's usual occupation. Plaintiff has therefore lost earnings and may continue to lose earnings in the future, all in amounts presently unknown to her. When Plaintiff has ascertained this amount, Plaintiff will seek leave of court, orally or in writing, to amend this Complaint to insert this amount, or to conform to proof at trial.

19. Immediately prior to and at the time of the collision Plaintiff's automobile was in good condition except for the unknown mechanical defects herein complained of and Plaintiff paid good value for the vehicle as represented and warranted and therefore believed to have value to her vehicle. As a proximate result of the negligence and carelessness of Defendants, Plaintiff's vehicle was totally damaged; and Plaintiff was thereafter denied the use of the vehicle, to Plaintiff's future damage, all in amounts which will be shown according to proof at trial.

TOY-RQ-05E-00004646

SECOND CAUSE OF ACTION

(NEGLIGENCE AGAINST ALL DEFENDANTS)

20. Plaintiff realleges the General Allegations and the allegations of the First Cause of Action, and reincorporates said allegations hereat as though fully set forth.

21. Defendants negligently, carelessly, and recklessly designed, manufactured, assembled, marketed and sold the Subject Automobile so as to proximately cause the violent collision by Plaintiff and to proximately cause the herein described injuries and damages to Plaintiff.

22. As a proximate result of this negligence, carelessness, recklessness, and/or unlawfulness of Defendants and the resulting collision as previously alleged, Plaintiff was injured in her health, strength, and activity, sustained injuries to her body and shock and injury to her nervous system and person, which injuries included but are not limited to leaving Plaintiff with a permanent disability, and all of which injuries have caused and continue to cause Plaintiff great mental, physical, and nervous pain and suffering. These injuries will result in some permanent disability to Plaintiff, all to her general damage.

23. As a proximate result of this negligence, carelessness, recklessness, and/or unlawfulness of Defendants, Plaintiff necessarily employed physicians and surgeons for medical examinations, treatment, and care for these injuries, and incurred medical and incidental expenses and will have to incur additional like expenses in the future, all in amounts presently unknown to her. Plaintiff does not know the exact amount of expenses that have been incurred and that will be incurred in the future. When Plaintiff has ascertained this amount, Plaintiff will seek leave of court, orally or in writing, to amend this Complaint to insert this amount, or to conform to proof at trial.

24. As a proximate result of this negligence, carelessness, recklessness, and/or unlawfulness of Defendants, Plaintiff was disabled and may be disabled in the future and thereby be prevented from attending to the duties of Plaintiff's usual occupation. Plaintiff has therefore lost earnings and may continue to lose earnings in the future, all in amounts presently unknown to her. When Plaintiff has ascertained this amount, Plaintiff will seek leave of court, orally or in writing, to amend this Complaint to insert this amount, or to conform to proof at trial.

TOY-RQ-05E-00004647

25. Immediately prior to and at the time of the collision Plaintiff's automobile was in good condition except for the unknown mechanical defects herein complained of and Plaintiff paid good value for the vehicle as represented and warranted and therefore believed to have value to her vehicle. As a proximate result of the negligence and carelessness of Defendants, Plaintiff's vehicle was totally damaged; and Plaintiff was thereafter denied the use of the vehicle, to Plaintiff's future damage, all in amounts which will be shown according to proof at trial.

THIRD CAUSE OF ACTION

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS)

26. Plaintiff realleges the General Allegations and the allegations of the First and Second Causes of Action, and reincorporates said allegations hereat as though fully set forth.

27. Plaintiff is informed and believes and thereon alleges that at the time Defendants committed the acts set forth herein, Defendants knew or should have known that his conduct would cause Plaintiff to suffer serious emotional and mental anguish.

28. As a direct and proximate result of the aforementioned acts of Defendants, Plaintiff has suffered severe and extreme humiliation, mental anguish, and emotional distress and has otherwise been injured in mind, body, and/or spirit and suffered damages in an amount not yet ascertained but in excess of the minimum jurisdiction of this Court. Plaintiff will amend this Complaint to reflect the exact amount of these damages when ascertained, or to conform to proof at trial.

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TOY-RQ-05E-00004648

WHEREFORE, Plaintiff prays judgment against defendants, and each of them, as follows:

1. For general damages against defendants, and each of them, in a sum be determined at trial, with interest thereon at the maximum legal rate from the date of such indebtedness to the date of judgment herein;

2. For special damages according to proof;

3. For medical and related expenses according to proof;

4. For loss of earnings according to proof;

5. For costs of suit herein incurred; and,

6. For such other and further relief as the court may deem just and proper.

DATED: July 21, 2009

STOCKER & LANCASTER, LLP

By: _____
Jay F. Stocker, Attorneys for Plaintiff
ELIZABETH KISS

TOY-RQ-05E-00004649

FILE START

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

09-91973NP

Plaintiff,

v.

ARCHIE L. HAYMAN
P-37516

TOYOTA MOTOR NORTH AMERICA, INC., a California corporation; and **DENSO INTERNATIONAL AMERICA,** a Michigan corporation,

Defendants.

TRUE COPY
Michael J. Carr, Clerk

GEORGE. HILBORN (P14995)
Attorney for Plaintiff
Hilborn & Hilborn, P.C.
999 Haynes Street, Suite 205
Birmingham, MI 48009
(248) 642-8350

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, LILIA ALBERTO, as Personal Representative of the ESTATE OF GUADALUPE ALBERTO, Deceased, by and through her counsel, HILBORN & HILBORN, P.C., and for her Complaint against Defendants, and each of them, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Lilia Alberto, is the duly-qualified Personal Representative of the Estate of Guadalupe Alberto, Deceased, having been appointed in the Probate Court of Genesee County, Michigan, which was the County of residence of the Decedent at the time of her death.

2. Plaintiff, Lilia Alberto, resides in Flint, Genesee County, Michigan.

3. Defendant Toyota Motor North America Inc., ("Toyota") is a foreign corporation incorporated under the laws of the State of California, with a registered office address at 30600 Telegraph Road, Suite 2345, Bingham Farms, MI 48025. Toyota is the holding company for all other Toyota companies in North America. Toyota markets, distributes and sells automobiles in the United States and in Genesee County, Michigan, including the 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action, through its wholly-owned subsidiary, Toyota Motor Sales, U.S.A., Inc., and its franchisees and dealerships.

4. Toyota has constructed and maintains research and engineering facilities in the State of Michigan.

5. Defendant Denso International America, Inc., ("Denso International"), although incorporated under the laws of Delaware, is domiciled in Michigan, with its headquarters located at 24777 Denso Drive, Southfield, Michigan. Denso International is the parent company of wholly-owned subsidiaries, including, but not limited to, Denso Manufacturing Michigan, Inc., and Denso Manufacturing Kentucky, Inc., and is engaged in the business of designing, manufacturing and/or selling electronic systems and components utilized in Toyota vehicles, including, but not limited to, electronic engine control systems and cruise control systems. Upon information and belief, Denso International designed, manufactured and/or sold the electronic

engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

6. The automotive products of Defendants, and each of them, are advertised, marketed, inspected, distributed, and sold throughout the United States, including the State of Michigan, and Defendants have purposefully availed themselves of the Michigan market for the sale and distribution of their products.

7. This claim arises out of defects in Defendants' products, as hereinafter set forth, which were manifest in a motor vehicle accident that occurred on April 19, 2008, in Genesee County, Michigan and resulted in the death of GUADALUPE ALBERTO.

8. On April 19, 2008, shortly after 2:00 in the afternoon, Plaintiff's Decedent GUADALUPE ALBERTO was driving the subject 2005 Toyota Camry on Copeman Boulevard in Flint, Genesee County, Michigan, when the vehicle experienced a sudden, unintended acceleration. The vehicle accelerated from an intended speed of less than twenty-five (25) miles per hour to a speed of approximately 80 miles per hour, despite Guadalupe Alberto's having vigorously and desperately applied her brakes, and traveled at that high speed for approximately one-fourth (1/4) of a mile, collided with a tree, went airborne, and then collided with another tree. Plaintiff's Decedent, despite having been properly secured in her seat belt restraint system, sustained fatal injuries in the accident.

9. Plaintiff brings this cause of action under the Michigan Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

COUNT I - NEGLIGENCE

10. Plaintiff incorporates by reference the preceding paragraphs.

11. Defendant Toyota had a duty to design Plaintiffs' Decedent's 2005 Toyota Camry in a manner that was reasonably safe for its foreseeable and/or intended uses.

12. Defendant Denso had a duty to design the components of the electronic engine control, cruise control and braking systems in Plaintiffs' Decedent's 2005 Toyota Camry in a manner that ensured that such systems were reasonably safe for their foreseeable and/or intended uses and/or to ensure that such systems as sold to its customer, Toyota, were reasonably safe for their foreseeable and/or intended uses.

13. In breach of their duties, Defendants Toyota and Denso, and each of them, manufactured, sold and/or marketed the electronic engine control, cruise control and braking systems in the 2005 Toyota Camry in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the vehicle's propensity for sudden and unwanted acceleration against the intentions and actions of the driver.

14. At the time the subject vehicle left the control of Defendant Toyota, it was defective and unreasonably dangerous to a person who might be expected to use it. The negligence of Defendants, and each of them, consists of, among other things, the following acts and omissions:

a. On the part of each Defendant, failure properly and adequately to design the Camry and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Camry that would ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Camry, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, Defendants Toyota and Denso, and each of them, knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the the electronic engine control, the cruise control and other components of the Engine Control Module, and the braking system in the 2005 Camry;

15. Prior to the fatal collision at issue and thereafter, Toyota had actual knowledge of sudden, unintended acceleration events that actually occurred in Toyota Camrys and other

Toyota vehicles utilizing electronic engine control, cruise control and other components of the Engine Control Module substantially similar to those utilized in the 2005 Camry, such that Defendants, and each of them, were on notice of the defects in the vehicle design and the resulting risk and consequences.

16. As a direct and proximate result of negligence of Defendants, and each of them, Plaintiff's decedent was fatally injured, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty-Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law, and such other relief as the Court deems just and appropriate.

COUNT II - BREACH OF EXPRESS AND IMPLIED WARRANTIES

17. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

18. At all relevant times, Defendants Toyota Entities and Denso Entities, and each of them, represented that the Camry was safe for use, fit for purposes intended, and of merchantable quality.

19. At all relevant times, Defendants Toyota Entities and Denso, and each of them, warranted by implication that the Camry was reasonably safe for use, fit for purposes intended, and of merchantable quality.

20. Those representations and warranties were false, and the Defendants Toyota and Denso, and each of them, breached each of said warranties.

21. As a direct and proximate result of these false representations and breach of warranties, Plaintiff's Decedent suffered injury and death, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate.

COUNT III - GROSS NEGLIGENCE

22. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

23. The Camry was defective at the time it was manufactured and distributed.

24. Defendants, and each of them, had actual knowledge of the defects and of the substantial likelihood that the defects would cause injuries and/or fatalities.

25. Defendants, and each of them, willfully disregarded that actual knowledge and each was thereby grossly negligent.

26. The gross negligence of Defendants, and each of them, was the direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate.

COUNT V - WRONGFUL DEATH

27. Plaintiff relies upon each and every preceding and succeeding allegation of

this Complaint and incorporates same herein by reference.

28. Plaintiff hereby brings a cause of action under the Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

29. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Decedent's surviving next of kin have suffered and will in the future suffer the loss of Decedent's love, society, companionship, affection, services and support.

30. Decedent's Estate has suffered damages for the reasonable medical, hospital, funeral and burial expenses for which it is liable and the reasonable damages for Decedent's fatal injury.

31. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Plaintiff's Decedent was caused to die.

WHEREFORE, Plaintiff, Lilia Alberto, as Personal Representative for the ESTATE OF GUADALUPE ALBERTO, Deceased, prays for an award of damages against Defendants, and each of them, to be fixed by the trier of fact based upon the evidence presented at trial in such amount in excess of Twenty Five Thousand Dollars ($25,000.00) as is fair and just. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law and such other relief as the court deems just and appropriate.

COUNT VI - PRODUCTS LIABILITY - FAILURE TO WARN

32. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

33. The Defendants, and each of them, knew, or in the exercise of reasonable care should have known, that the 2005 Camry could suddenly accelerate without driver input and against the intentions of the driver.

34. The Defendants, and each of them, had a duty to warn their consumers that the 2005 Toyota Camry was capable of suddenly accelerating without driver input and against the driver's intentions and actions and to advise of the measures to take to reduce the possibility of a crash.

35. In breach of that duty to warn, Defendants, and each of them, failed to warn Plaintiffs' Decedent of the propensity for sudden, unintended acceleration in the subject vehicle.

36. As a direct and proximate result of Defendants' failure to warn, Plaintiff's Decedent lost control of her vehicle, causing her to crash, and resulting in her wrongful death. The negligent failure of Defendants, and each of them, to warn was a direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and

post-judgment interest as provided by law, and such other relief as the court deems just and appropriate.

Respectfully submitted,

George A. Hilborn (P14955)
Craig E. Hilborn (P43661)
Attorneys for Plaintiff
999 Haynes, Suite 205
Birmingham MI 48009
(248) 642-8350

Dated: August 14, 2009

Approved, SCAO | Original - Court, 1st copy - Defendant | opy - Plaintiff, 3rd copy - Return

STATE OF MICHIGAN 7th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 09-91973

Court address: 900 S. Saginaw St., Flint, MI 48502 | Court telephone no.: 810-257-3220

Plaintiff's name(s), address(es) and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s)
Lilia Alberto, as Personal Representative of Guadalupe Alberto, Deceased		Toyota Motor Corporation, a corporation domiciled in Japan
Plaintiff's attorney, bar no., address, and telephone no. Craig E. Hilborn (P43661) George A. Hilborn (P14995) Hilborn & Hilborn, P.C. 999 Haynes, Suite 205 Birmingham, MI 48009 (248) 642-8350		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file an answer with the court** and serve a copy on the other party **or to take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2 111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
FEB - 8 2010	MAY 10 2010	Barb Wenzlick

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
City of Flint, County of Genesee, State of Michigan	Japan
Place where action arose or business conducted City of Flint, County of Genesee, State of Michigan	

2/8/2010
Date

George A. Hilborn
Signature of attorney/plaintiff George A. Hilborn, Esq.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

MC 01 (3/08) **SUMMONS AND COMPLAINT** MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a),(b), MCR 3.206(A)

FEB 12 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

A TRUE COPY
Michael J. Carr, Clerk

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Sandusky, OH 44870
(419) 624-3121

EDWARD M. KRONK
Attorney for Denso Int'l America, Inc.
Butzel Long PC
150 W Jefferson Ave., Suite 100
Detroit, MI 48226

FEB 12 2010

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

PLAINTIFF'S SECOND AMENDED COMPLAINT AND JURY DEMAND AND MOTION FOR INJUNCTIVE RELIEF

NOW COMES Plaintiff, LILIA ALBERTO, as Personal Representative of the ESTATE OF GUADALUPE ALBERTO, Deceased, by and through her counsel, HILBORN & HILBORN, P.C., and for her Complaint against Defendants, and each of them, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Lilia Alberto, is the duly-qualified Personal Representative of the Estate of Guadalupe Alberto, Deceased, having been appointed in the Probate Court of Genesee County, Michigan, which was the County of residence of the Decedent at the time of her death.

2. Plaintiff, Lilia Alberto, resides in Flint, Genesee County, Michigan.

3. Defendant Toyota Motor Corporation., (hereinafter sometimes "TMC") is a Japanese corporation. TMC is the parent corporation of Toyota Motor North America, Inc., which is the holding company for all other Toyota companies in North America and which coordinates the business activities of those corporations. TMC designs, manufactures, markets, distributes and sells automobiles in the United States and in

Genesee County, Michigan, including the 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action.

4. TMC distributes and sells its products through its wholly-owned subsidiary, defendant Toyota Motor Sales, U.S.A., Inc., ("TMS") and its franchisees and dealerships.

5. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., ("TEMA"), headquartered in Erlanger, Kentucky, and with major operations in Michigan, is responsible for Toyota's engineering design, research and development, and manufacturing activities in the United States, Mexico and Canada.

6. Defendant Toyota Motor Manufacturing Kentucky, Inc. ("TMMK"), was involved, directly or indirectly in the manufacture and assembly of the subject 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action. TMC, TMS, TEMA and TMMK are at times hereinafter in this Complaint collectively referred to as the "Toyota Defendants."

7. One or more of the above-named Toyota Defendants have constructed and maintain research and engineering facilities in the State of Michigan.

8. Defendant Denso International America, Inc., ("Denso International"), although incorporated under the laws of Delaware, is domiciled in Michigan, with its headquarters located at 24777 Denso Drive, Southfield, Michigan. Denso International is the parent company of wholly-owned subsidiaries, including, defendant Denso Manufacturing Tennessee, Inc. (the Denso entities are hereinafter sometimes collectively referred to as the "Denso Defendants") and is engaged in the business of designing, manufacturing and/or selling electronic systems and components utilized in

Toyota vehicles, including, but not limited to, electronic engine control systems and cruise control systems. Upon information and belief, Denso International and/or Denso Manufacturing Tennessee, Inc., designed, manufactured and/or sold the electronic engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

9. Denso International, Inc., and/or Denso Manufacturing Tennessee, Inc., were involved, directly or indirectly, in the design, manufacture and/or sale of the electronic engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

10. The automotive products of Defendants, and each of them, are advertised, marketed, inspected, distributed, and sold throughout the United States, including the State of Michigan, and Defendants have purposefully availed themselves of the Michigan market for the sale and distribution of their products.

11. This claim arises out of defects in Defendants' products, as hereinafter set forth, which were manifest in a motor vehicle accident that occurred on April 19, 2008, in Genesee County, Michigan and resulted in the death of GUADALUPE ALBERTO.

12. On April 19, 2008, shortly after 2:00 in the afternoon, Plaintiff's Decedent GUADALUPE ALBERTO was driving the subject 2005 Toyota Camry on Copeman Boulevard in Flint, Genesee County, Michigan, when the vehicle experienced a sudden, unintended acceleration. The vehicle accelerated from an intended speed of less than twenty-five (25) miles per hour to a speed of approximately 80 miles per hour, despite Guadalupe Alberto's having vigorously and desperately applied her brakes, and traveled at that high speed for approximately one-fourth (1/4) of a mile, collided with a

tree, went airborne, and then collided with another tree. Plaintiff's Decedent, despite having been properly secured in her seat belt restraint system, sustained fatal injuries in the accident.

13. Plaintiff brings this cause of action under the Michigan Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

COUNT I - NEGLIGENCE

14. Plaintiff incorporates by reference the preceding paragraphs.

15. The Toyota Defendants, and each of them, had a duty to design Plaintiffs' Decedent's 2005 Toyota Camry in a manner that was reasonably safe for its foreseeable and/or intended uses.

16. The Denso Defendants, and each of them, had a duty to design and manufacture the components of the electronic engine control, cruise control and braking systems in Plaintiffs' Decedent's 2005 Toyota Camry in a manner that ensured that such systems were reasonably safe for their foreseeable and/or intended uses and/or to ensure that such systems as sold to its customer, Toyota, were reasonably safe for their foreseeable and/or intended uses.

17. In breach of their duties, the Toyota Defendants and Denso Defendants, and each of them, manufactured, sold and/or marketed the electronic throttle control system known as the ETCS-Intelligent ("ETCS-i") and braking systems in the 2005 Toyota Camry, in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the vehicle's propensity for confusion in the sensors and electronics processors employed in the ETCS-I as the result of transient electronic

signals, producing sudden and unwanted acceleration against the intentions and actions of the driver.

18. In further breach of their duties, the Toyota Defendants and Denso Defendants, and each of them, manufactured, sold and/or marketed the electronic throttle control system, also known as the ETCS-Intelligent ("ETCS-i") and braking systems in the 2005 Toyota Camry, in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the absence of a failsafe system or brake override system that would enable the driver, by the application of brakes, to overcome sudden and unwanted accelerations that occur against the intentions and actions of the driver. Such failsafe systems and/or brake override systems have been employed in motor vehicles sold in the United States by other manufacturers for many years and were feasible, safer designs available to the Toyota Defendants and Denso Defendants; however, said defendants failed to incorporate such feasible, safer alternative designs into the 2005 Camry in which Guadalupe Alberto lost her life.

19. At the time the subject vehicle left the control of the Toyota Defendants , it was defective and unreasonably dangerous to a person who might be expected to use it. The negligence of Defendants, and each of them, consists of, among other things, the following acts and omissions:

a. On the part of each Defendant, failure properly and adequately to design the Camry and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle

Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Camry that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Camry, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants and Denso, and each of them, knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the 2005 Camry;

20. Prior to the fatal collision at issue, Toyota had actual knowledge of sudden, unintended acceleration events that actually occurred in Toyota Camrys and other Toyota vehicles utilizing the ETCS-i, cruise control and components of the Engine Control Module substantially similar to those utilized in the 2005 Camry, such that Defendants, and each of them, were on notice of the defects in the vehicle design and the resulting risk and consequences.

21. As a direct and proximate result of negligence of Defendants, and each of them, Plaintiff's decedent was fatally injured, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty-Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law, and such other relief as the Court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT II - BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

23. At all relevant times, the Toyota Defendants and Denso Defendants, and each of them, represented that the Camry was safe for use, fit for purposes intended, and of merchantable quality.

24. At all relevant times, the Toyota Defendants and Denso Defendants, and each of them, warranted by implication that the Camry was reasonably safe for use, fit for purposes intended, and of merchantable quality.

25. Those representations and warranties were false, and the Toyota Defendants and Denso Defendants, and each of them, breached each of said warranties.

26. As a direct and proximate result of these false representations and breach of warranties, Plaintiff's Decedent suffered injury and death, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT III - GROSS NEGLIGENCE

27. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

28. The Camry was defective at the time it was manufactured and distributed.

29. Defendants, and each of them, had actual knowledge of the defects and of the substantial likelihood that the defects would cause injuries and/or fatalities.

30. Defendants, and each of them, willfully disregarded that actual knowledge and each was thereby grossly negligent.

31. The gross negligence of Defendants, and each of them, was the direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT IV - WRONGFUL DEATH

32. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

33. Plaintiff hereby brings a cause of action under the Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

34. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Decedent's surviving next of kin have suffered and will in the future suffer the loss of Decedent's love, society, companionship, affection, services and support.

35. Decedent's Estate has suffered damages for the reasonable medical, hospital, funeral and burial expenses for which it is liable and the reasonable damages for Decedent's fatal injury.

36. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Plaintiff's Decedent was caused to die.

WHEREFORE, Plaintiff, Lilia Alberto, as Personal Representative for the ESTATE OF GUADALUPE ALBERTO, Deceased, prays for an award of damages against Defendants, and each of them, to be fixed by the trier of fact based upon the evidence presented at trial in such amount in excess of Twenty Five Thousand Dollars ($25,000.00) as is fair and just. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT V - PRODUCTS LIABILITY - FAILURE TO WARN

37. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

38. The Defendants, and each of them, knew, or in the exercise of reasonable care should have known, that the 2005 Camry could suddenly accelerate without driver input and against the intentions of the driver.

39. The Defendants, and each of them, had a duty to warn their consumers that the 2005 Toyota Camry was capable of suddenly accelerating without driver input and against the driver's intentions and actions and to advise of the measures to take to reduce the possibility of a crash.

40. In breach of that duty to warn, Defendants, and each of them, failed to warn Plaintiffs' Decedent of the propensity for sudden, unintended acceleration in the subject vehicle.

41. As a direct and proximate result of Defendants' failure to warn, Plaintiff's Decedent lost control of her vehicle, causing her to crash, and resulting in her wrongful death. The negligent failure of Defendants, and each of them, to warn was a direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT VI- UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

43. Plaintiff's decedent's children purchased the subject 2005 Toyota Camry from a Toyota dealer as a gift to her for personal, family and household purposes. The Toyota Defendants, and each of them, are engaged in trade or commerce within the meaning of the Michigan Consumer Protection Act, ("MCPA") §445.902(g).

44. Plaintiff's decedent and her children are consumers and the Toyota Defendants are sellers, as defined by the MCPA and are therefore subject to the terms and provisions of the MCPA.

45. The Toyota Defendants' statements, representations, omissions, and practices made in connection with their sale of the 2005 Camry as alleged herein were in violation of the following sections of the MCPA § 445.903:

a. § 445.903(c) by representing that goods have approval, characteristics, uses or benefits that they do not have;

b. § 445.903(e) by representing that goods are of a particular standard, quality, or grade when they are of another;

c. § 445.903(s) by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;

d. § 445.903(bb) by making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

46. The Toyota Defendants' decision to market the 2005 Toyota Camry when it was defective and unreasonably dangerous to a person who might be expected to use

it amounts to unfair, unconscionable and/or deceptive business practices in violation of the MCPA.

47. The Toyota Defendants' violations of the MCPA proximately caused plaintiff's decedent's fatal accident on April 19, 2008, and the resulting damages.

48. The incident which claimed the life of Guadalupe Alberto is not an isolated event; to the contrary, sudden, unintended accelerations in Toyota vehicles began to take on epidemic proportions almost immediately after the introduction of the ETCS-i in 1998 Lexus models. Sudden, unintended accelerations in Model Years 2002 and 2003 Toyota Camrys (also equipped with the ETCS-i) were numerous enough to cause the National Highway Traffic Safety Administration's (NHTSA) Office of Defects Investigation (ODI) to open investigations of the problem. The safety agency's failure to find the cause and to require Toyota to protect its drivers with a failsafe and adequate warnings makes clear that, without the protection sought by this civil action, the lives and safety of Michigan residents will be at continuous risk from electronic malfunctions in the throttle controls of the subject Toyota models.

49. Sudden acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great.

50. As more cars equipped with electronic engine and cruise control systems came to market, sudden accelerations increased, along with injuries and fatalities. Reports registered with NHTSA represented only 10% of all occurrences known to

manufacturers; and by 1986 runaway cars had been the subject of claims for thousands of serious injuries and hundreds of deaths just in the United States.

51. Upon information and belief by the early 1990s, automakers were modifying their electronics in ways that reduced the potential for a sudden loss of throttle and braking control. This caused a steady downward trend in reports until 2002, when Toyota introduced models with an electronic throttle control system (or ETCS-i), sometimes referred to as "throttle-by-wire" or "drive-by-wire."

52. The ETCS-i had no mechanical linkage between the accelerator pedal and the throttle plate in the engine. It soon became apparent that models with the ETSC-i were experiencing a failure rate significantly greater than other models.

53. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. One such occurrence involved the 2005 Toyota Camry driven by Plaintiff's decedent, Mrs. Guadalupe Alberto, from her home in Flint to the neighborhood grocery store owned by her family. In a matter of seconds, the Camry accelerated from less than 25 mph to a speed of approximately 80 mph, despite Mrs. Alberto's desperate attempts to stop the car with the brakes, and the event ended in a crash that killed Mrs. Alberto.

54. When the NHTSA opened an investigation[1] of MY 2002 and 2003 Camrys, the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed -- both circumstances requiring greater than expected brake pedal

[1] Defect Petition DP04-003; Investigation PE04-021

application force to control or stop the vehicle and where the brake system functioned normally."

55. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

"a. Consumer complaints, including those from fleet operators;

"b. Field reports, including dealer field reports;

"c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

"d. Property damage claims;

"e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

"f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

"For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

56. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the

one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

57. Toyota reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

"(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

"(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

58. Toyota thus *deceptively concealed* from NHTSA and the public an entire universe of potentially relevant customer complaints. For example, the report from a driver who, like Ms. Alberto, had experienced a sudden acceleration which carried her for a quarter-mile (more than 1,300 feet), would not be seen by NHTSA or the public because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he was standing on the brake and could not overcome the open throttle would have had his report excluded from the investigation.

59. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no

[2] "long duration" is defined as lasting longer than one (1) second

testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

60. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floormat as the cause. Of course, the floormat cannot explain Ms. Alberto's crash. *The driver's-side floormat had been removed for cleaning prior to the crash and had not been placed back in the vehicle.*

61. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

[3] ODI Resume, PE04-021, Date Closed 07/22/2004

62. The section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action pursuant to Michigan's Consumer Protection Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive.* (Emphasis supplied).

63. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. This required brake pedal force is beyond the physical capabilities of most drivers.

64. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats.* The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control. Since the floor mats had been removed from Mrs. Alberto's Camry, the instant case demonstrates that the advisory is inaccurate or incomplete.
- The advisory also misleads owners with a driver's side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal.

65. Without the remedies provided by Michigan's Consumer Protection Act, there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of; (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions

which produce an unintended acceleration and prevents such an occurrence. The Toyota models at risk include, *but are not limited to*, the following:

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

66. For the reasons hereinabove set forth, therefore, Plaintiff requests judgment in her favor and against each Toyota Defendant jointly and severally, and prays for the following relief:

a. A declaratory judgment that defendants' marketing of the 2005 Camry is unlawful under § 445.903;

b. The issuance of an injunction ordering and requiring Toyota to provide the following to all owners of Toyota vehicles equipped with the ETCS-i: (1) a warning as to dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent

instructions to the drivers of those vehicles as to the steps to be taken in the event a sudden, unintended acceleration occurs, (3) implementation of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation of an electronic component that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

c. Compensatory damages to be determined at trial, including but not limited an amount sufficient to compensate plaintiff's estate for:

1. Pre-crash terror suffered by Guadalupe Alberto;
2. Medical, funeral, and burial expenses;
3. Loss of society and companionship of Plaintiff's decedent; and
4. The fair market value of Ms. Alberto's 2005 Camry that was destroyed in the accident.

d. Pain and suffering; and all other compensation and damages that are fair and just and that bear on the circumstances of this loss, including, but not limited to, reasonable attorneys' fees and costs of litigation, including payments to experts; and

e. An order barring and enjoining the Toyota defendants from marketing in Michigan the Toyota Camry and such other Toyota and Lexus vehicles as employ the Electronic Throttle Control System – Intelligent (ETCS-i); and

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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EDWARD M. KRONK
Attorney for Denso Int'l America, Inc.
Butzel Long PC
150 W Jefferson Ave., Suite 100
Detroit, MI 48226

JURY DEMAND

NOW COMES Plaintiff, Lilia Alberto, Personal Representative of the Estate of Guadalupe Alberto, Deceased, by and through her attorneys, HILBORN & HILBORN, P.C., and hereby demands a trial by jury as to all issues in this action.

Respectfully submitted,

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Dated: January 27, 2010

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN 7th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 09-91973

Court address
900 S. Saginaw St., Flint, MI 48502

Court telephone no.
810-257-3220

Plaintiff's name(s), address(es) and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s)
Lilia Alberto, as Personal Representative of Guadalupe Alberto, Deceased		Toyota Motor Corporation, a corporation domiciled in Japan
Plaintiff's attorney, bar no., address, and telephone no. Craig E. Hilborn (P43661) George A. Hilborn (P14995) Hilborn & Hilborn, P.C. 999 Haynes, Suite 205 Birmingham, MI 48009 (248) 642-8350		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file an answer with the court** and serve a copy on the other party **or to take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2 111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
FEB - 8 2010	MAY 10 2010	Barb Wenzlick

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
City of Flint, County of Genesee, State of Michigan	Japan
Place where action arose or business conducted	
City of Flint, County of Genesee, State of Michigan	

2/8/2010
Date

George A. Hilborn
Signature of attorney/plaintiff George A. Hilborn, Esq.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

FEB 12 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

A TRUE COPY
Michael J. Carr, Clerk

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FEB 12 2010

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

PLAINTIFF'S SECOND AMENDED COMPLAINT AND JURY DEMAND AND MOTION FOR INJUNCTIVE RELIEF

NOW COMES Plaintiff, LILIA ALBERTO, as Personal Representative of the ESTATE OF GUADALUPE ALBERTO, Deceased, by and through her counsel, HILBORN & HILBORN, P.C., and for her Complaint against Defendants, and each of them, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Lilia Alberto, is the duly-qualified Personal Representative of the Estate of Guadalupe Alberto, Deceased, having been appointed in the Probate Court of Genesee County, Michigan, which was the County of residence of the Decedent at the time of her death.

2. Plaintiff, Lilia Alberto, resides in Flint, Genesee County, Michigan.

3. Defendant Toyota Motor Corporation., (hereinafter sometimes "TMC") is a Japanese corporation. TMC is the parent corporation of Toyota Motor North America, Inc., which is the holding company for all other Toyota companies in North America and which coordinates the business activities of those corporations. TMC designs, manufactures, markets, distributes and sells automobiles in the United States and in

Genesee County, Michigan, including the 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action.

4. TMC distributes and sells its products through its wholly-owned subsidiary, defendant Toyota Motor Sales, U.S.A., Inc., ("TMS") and its franchisees and dealerships.

5. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., ("TEMA"), headquartered in Erlanger, Kentucky, and with major operations in Michigan, is responsible for Toyota's engineering design, research and development, and manufacturing activities in the United States, Mexico and Canada.

6. Defendant Toyota Motor Manufacturing Kentucky, Inc. ("TMMK"), was involved, directly or indirectly in the manufacture and assembly of the subject 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action. TMC, TMS, TEMA and TMMK are at times hereinafter in this Complaint collectively referred to as the "Toyota Defendants."

7. One or more of the above-named Toyota Defendants have constructed and maintain research and engineering facilities in the State of Michigan.

8. Defendant Denso International America, Inc., ("Denso International"), although incorporated under the laws of Delaware, is domiciled in Michigan, with its headquarters located at 24777 Denso Drive, Southfield, Michigan. Denso International is the parent company of wholly-owned subsidiaries, including, defendant Denso Manufacturing Tennessee, Inc. (the Denso entities are hereinafter sometimes collectively referred to as the "Denso Defendants") and is engaged in the business of designing, manufacturing and/or selling electronic systems and components utilized in

Toyota vehicles, including, but not limited to, electronic engine control systems and cruise control systems. Upon information and belief, Denso International and/or Denso Manufacturing Tennessee, Inc., designed, manufactured and/or sold the electronic engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

9. Denso International, Inc., and/or Denso Manufacturing Tennessee, Inc., were involved, directly or indirectly, in the design, manufacture and/or sale of the electronic engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

10. The automotive products of Defendants, and each of them, are advertised, marketed, inspected, distributed, and sold throughout the United States, including the State of Michigan, and Defendants have purposefully availed themselves of the Michigan market for the sale and distribution of their products.

11. This claim arises out of defects in Defendants' products, as hereinafter set forth, which were manifest in a motor vehicle accident that occurred on April 19, 2008, in Genesee County, Michigan and resulted in the death of GUADALUPE ALBERTO.

12. On April 19, 2008, shortly after 2:00 in the afternoon, Plaintiff's Decedent GUADALUPE ALBERTO was driving the subject 2005 Toyota Camry on Copeman Boulevard in Flint, Genesee County, Michigan, when the vehicle experienced a sudden, unintended acceleration. The vehicle accelerated from an intended speed of less than twenty-five (25) miles per hour to a speed of approximately 80 miles per hour, despite Guadalupe Alberto's having vigorously and desperately applied her brakes, and traveled at that high speed for approximately one-fourth (1/4) of a mile, collided with a

tree, went airborne, and then collided with another tree. Plaintiff's Decedent, despite having been properly secured in her seat belt restraint system, sustained fatal injuries in the accident.

13. Plaintiff brings this cause of action under the Michigan Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

COUNT I - NEGLIGENCE

14. Plaintiff incorporates by reference the preceding paragraphs.

15. The Toyota Defendants, and each of them, had a duty to design Plaintiffs' Decedent's 2005 Toyota Camry in a manner that was reasonably safe for its foreseeable and/or intended uses.

16. The Denso Defendants, and each of them, had a duty to design and manufacture the components of the electronic engine control, cruise control and braking systems in Plaintiffs' Decedent's 2005 Toyota Camry in a manner that ensured that such systems were reasonably safe for their foreseeable and/or intended uses and/or to ensure that such systems as sold to its customer, Toyota, were reasonably safe for their foreseeable and/or intended uses.

17. In breach of their duties, the Toyota Defendants and Denso Defendants, and each of them, manufactured, sold and/or marketed the electronic throttle control system known as the ETCS-Intelligent ("ETCS-i") and braking systems in the 2005 Toyota Camry, in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the vehicle's propensity for confusion in the sensors and electronics processors employed in the ETCS-I as the result of transient electronic

signals, producing sudden and unwanted acceleration against the intentions and actions of the driver.

18. In further breach of their duties, the Toyota Defendants and Denso Defendants, and each of them, manufactured, sold and/or marketed the electronic throttle control system, also known as the ETCS-Intelligent ("ETCS-i") and braking systems in the 2005 Toyota Camry, in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the absence of a failsafe system or brake override system that would enable the driver, by the application of brakes, to overcome sudden and unwanted accelerations that occur against the intentions and actions of the driver. Such failsafe systems and/or brake override systems have been employed in motor vehicles sold in the United States by other manufacturers for many years and were feasible, safer designs available to the Toyota Defendants and Denso Defendants; however, said defendants failed to incorporate such feasible, safer alternative designs into the 2005 Camry in which Guadalupe Alberto lost her life.

19. At the time the subject vehicle left the control of the Toyota Defendants , it was defective and unreasonably dangerous to a person who might be expected to use it. The negligence of Defendants, and each of them, consists of, among other things, the following acts and omissions:

a. On the part of each Defendant, failure properly and adequately to design the Camry and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle

Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Camry that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Camry, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants and Denso, and each of them, knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the 2005 Camry;

20. Prior to the fatal collision at issue, Toyota had actual knowledge of sudden, unintended acceleration events that actually occurred in Toyota Camrys and other Toyota vehicles utilizing the ETCS-i, cruise control and components of the Engine Control Module substantially similar to those utilized in the 2005 Camry, such that Defendants, and each of them, were on notice of the defects in the vehicle design and the resulting risk and consequences.

21. As a direct and proximate result of negligence of Defendants, and each of them, Plaintiff's decedent was fatally injured, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty-Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law, and such other relief as the Court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT II - BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. Plaintiff relies upon each and every preceding and succeeding allegation of

this Complaint and incorporates the same herein by reference.

23. At all relevant times, the Toyota Defendants and Denso Defendants, and each of them, represented that the Camry was safe for use, fit for purposes intended, and of merchantable quality.

24. At all relevant times, the Toyota Defendants and Denso Defendants, and each of them, warranted by implication that the Camry was reasonably safe for use, fit for purposes intended, and of merchantable quality.

25. Those representations and warranties were false, and the Toyota Defendants and Denso Defendants, and each of them, breached each of said warranties.

26. As a direct and proximate result of these false representations and breach of warranties, Plaintiff's Decedent suffered injury and death, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT III - GROSS NEGLIGENCE

27. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

28. The Camry was defective at the time it was manufactured and distributed.

29. Defendants, and each of them, had actual knowledge of the defects and of the substantial likelihood that the defects would cause injuries and/or fatalities.

30. Defendants, and each of them, willfully disregarded that actual knowledge and each was thereby grossly negligent.

31. The gross negligence of Defendants, and each of them, was the direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT IV - WRONGFUL DEATH

32. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

33. Plaintiff hereby brings a cause of action under the Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

34. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Decedent's surviving next of kin have suffered and will in the future suffer the loss of Decedent's love, society, companionship, affection, services and support.

35. Decedent's Estate has suffered damages for the reasonable medical, hospital, funeral and burial expenses for which it is liable and the reasonable damages for Decedent's fatal injury.

36. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Plaintiff's Decedent was caused to die.

WHEREFORE, Plaintiff, Lilia Alberto, as Personal Representative for the ESTATE OF GUADALUPE ALBERTO, Deceased, prays for an award of damages against Defendants, and each of them, to be fixed by the trier of fact based upon the evidence presented at trial in such amount in excess of Twenty Five Thousand Dollars ($25,000.00) as is fair and just. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT V - PRODUCTS LIABILITY - FAILURE TO WARN

37. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

38. The Defendants, and each of them, knew, or in the exercise of reasonable care should have known, that the 2005 Camry could suddenly accelerate without driver input and against the intentions of the driver.

39. The Defendants, and each of them, had a duty to warn their consumers that the 2005 Toyota Camry was capable of suddenly accelerating without driver input and against the driver's intentions and actions and to advise of the measures to take to reduce the possibility of a crash.

40. In breach of that duty to warn, Defendants, and each of them, failed to warn Plaintiffs' Decedent of the propensity for sudden, unintended acceleration in the subject vehicle.

41. As a direct and proximate result of Defendants' failure to warn, Plaintiff's Decedent lost control of her vehicle, causing her to crash, and resulting in her wrongful death. The negligent failure of Defendants, and each of them, to warn was a direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT VI- UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

43. Plaintiff's decedent's children purchased the subject 2005 Toyota Camry from a Toyota dealer as a gift to her for personal, family and household purposes. The Toyota Defendants, and each of them, are engaged in trade or commerce within the meaning of the Michigan Consumer Protection Act, ("MCPA") §445.902(g).

44. Plaintiff's decedent and her children are consumers and the Toyota Defendants are sellers, as defined by the MCPA and are therefore subject to the terms and provisions of the MCPA.

45. The Toyota Defendants' statements, representations, omissions, and practices made in connection with their sale of the 2005 Camry as alleged herein were in violation of the following sections of the MCPA § 445.903:

a. § 445.903(c) by representing that goods have approval, characteristics, uses or benefits that they do not have;

b. § 445.903(e) by representing that goods are of a particular standard, quality, or grade when they are of another;

c. § 445.903(s) by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;

d. § 445.903(bb) by making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

46. The Toyota Defendants' decision to market the 2005 Toyota Camry when it was defective and unreasonably dangerous to a person who might be expected to use

it amounts to unfair, unconscionable and/or deceptive business practices in violation of the MCPA.

47. The Toyota Defendants' violations of the MCPA proximately caused plaintiff's decedent's fatal accident on April 19, 2008, and the resulting damages.

48. The incident which claimed the life of Guadalupe Alberto is not an isolated event; to the contrary, sudden, unintended accelerations in Toyota vehicles began to take on epidemic proportions almost immediately after the introduction of the ETCS-i in 1998 Lexus models. Sudden, unintended accelerations in Model Years 2002 and 2003 Toyota Camrys (also equipped with the ETCS-i) were numerous enough to cause the National Highway Traffic Safety Administration's (NHTSA) Office of Defects Investigation (ODI) to open investigations of the problem. The safety agency's failure to find the cause and to require Toyota to protect its drivers with a failsafe and adequate warnings makes clear that, without the protection sought by this civil action, the lives and safety of Michigan residents will be at continuous risk from electronic malfunctions in the throttle controls of the subject Toyota models.

49. Sudden acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great.

50. As more cars equipped with electronic engine and cruise control systems came to market, sudden accelerations increased, along with injuries and fatalities. Reports registered with NHTSA represented only 10% of all occurrences known to

manufacturers; and by 1986 runaway cars had been the subject of claims for thousands of serious injuries and hundreds of deaths just in the United States.

51. Upon information and belief by the early 1990s, automakers were modifying their electronics in ways that reduced the potential for a sudden loss of throttle and braking control. This caused a steady downward trend in reports until 2002, when Toyota introduced models with an electronic throttle control system (or ETCS-i), sometimes referred to as "throttle-by-wire" or "drive-by-wire."

52. The ETCS-i had no mechanical linkage between the accelerator pedal and the throttle plate in the engine. It soon became apparent that models with the ETSC-i were experiencing a failure rate significantly greater than other models.

53. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. One such occurrence involved the 2005 Toyota Camry driven by Plaintiff's decedent, Mrs. Guadalupe Alberto, from her home in Flint to the neighborhood grocery store owned by her family. In a matter of seconds, the Camry accelerated from less than 25 mph to a speed of approximately 80 mph, despite Mrs. Alberto's desperate attempts to stop the car with the brakes, and the event ended in a crash that killed Mrs. Alberto.

54. When the NHTSA opened an investigation[1] of MY 2002 and 2003 Camrys, the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed -- both circumstances requiring greater than expected brake pedal

[1] Defect Petition DP04-003; Investigation PE04-021

application force to control or stop the vehicle and where the brake system functioned normally."

55. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

"a. Consumer complaints, including those from fleet operators;

"b. Field reports, including dealer field reports;

"c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

"d. Property damage claims;

"e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

"f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

"For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

56. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the

one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

57. Toyota reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

"(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

"(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

58. Toyota thus *deceptively concealed* from NHTSA and the public an entire universe of potentially relevant customer complaints. For example, the report from a driver who, like Ms. Alberto, had experienced a sudden acceleration which carried her for a quarter-mile (more than 1,300 feet), would not be seen by NHTSA or the public because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he was standing on the brake and could not overcome the open throttle would have had his report excluded from the investigation.

59. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no

[2] "long duration" is defined as lasting longer than one (1) second

testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

60. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floormat as the cause. Of course, the floormat cannot explain Ms. Alberto's crash. *The driver's-side floormat had been removed for cleaning prior to the crash and had not been placed back in the vehicle.*

61. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

[3] ODI Resume, PE04-021, Date Closed 07/22/2004

62. The section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action pursuant to Michigan's Consumer Protection Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

63. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. This required brake pedal force is beyond the physical capabilities of most drivers.

64. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control. Since the floor mats had been removed from Mrs. Alberto's Camry, the instant case demonstrates that the advisory is inaccurate or incomplete.
- The advisory also misleads owners with a driver's side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal.

65. Without the remedies provided by Michigan's Consumer Protection Act, there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of; (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions

which produce an unintended acceleration and prevents such an occurrence. The Toyota models at risk include, *but are not limited to*, the following:

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

66. For the reasons hereinabove set forth, therefore, Plaintiff requests judgment in her favor and against each Toyota Defendant jointly and severally, and prays for the following relief:

a. A declaratory judgment that defendants' marketing of the 2005 Camry is unlawful under § 445.903;

b. The issuance of an injunction ordering and requiring Toyota to provide the following to all owners of Toyota vehicles equipped with the ETCS-i: (1) a warning as to dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent

instructions to the drivers of those vehicles as to the steps to be taken in the event a sudden, unintended acceleration occurs, (3) implementation of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation of an electronic component that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

c. Compensatory damages to be determined at trial, including but not limited an amount sufficient to compensate plaintiff's estate for:

1. Pre-crash terror suffered by Guadalupe Alberto;
2. Medical, funeral, and burial expenses;
3. Loss of society and companionship of Plaintiff's decedent; and
4. The fair market value of Ms. Alberto's 2005 Camry that was destroyed in the accident.

d. Pain and suffering; and all other compensation and damages that are fair and just and that bear on the circumstances of this loss, including, but not limited to, reasonable attorneys' fees and costs of litigation, including payments to experts; and

e. An order barring and enjoining the Toyota defendants from marketing in Michigan the Toyota Camry and such other Toyota and Lexus vehicles as employ the Electronic Throttle Control System – Intelligent (ETCS-i); and

f. Reasonable attorneys' fees and costs incurred by Plaintiff in pursuance of this civil action; and

Such other relief as may be just, necessary or appropriate under the circumstances.

Respectfully submitted,

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Dated: January 27, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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JURY DEMAND

NOW COMES Plaintiff, Lilia Alberto, Personal Representative of the Estate of Guadalupe Alberto, Deceased, by and through her attorneys, HILBORN & HILBORN, P.C., and hereby demands a trial by jury as to all issues in this action.

Respectfully submitted,

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Dated: January 27, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

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TOYOTA MOTOR NORTH AMERICA, INC., a California corporation; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation, **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation, and **DENSO INTERNATIONAL AMERICA,** a Michigan corporation,

A TRUE COPY
Michael J. Carr, Clerk

Defendants.

/

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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND AND MOTION FOR INJUNCTIVE RELIEF

NOW COMES Plaintiff, LILIA ALBERTO, as Personal Representative of the ESTATE OF GUADALUPE ALBERTO, Deceased, by and through her counsel, HILBORN & HILBORN, P.C., and for her Complaint against Defendants, and each of them, states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Lilia Alberto, is the duly-qualified Personal Representative of the Estate of Guadalupe Alberto, Deceased, having been appointed in the Probate Court of Genesee County, Michigan, which was the County of residence of the Decedent at the time of her death.

2. Plaintiff, Lilia Alberto, resides in Flint, Genesee County, Michigan.

3. Defendant Toyota Motor North America Inc., (hereinafter sometimes "TNA") is a foreign corporation incorporated under the laws of the State of California, with a registered office address at 30600 Telegraph Road, Suite 2345, Bingham Farms, MI 48025. TNA is the holding company for all other Toyota companies in North America. TNA markets, distributes and sells automobiles in the United States and in Genesee County, Michigan, including the 2005 Toyota Camry bearing VIN No. 4T1BE32K95U424864 that is the subject of this action, through its wholly-owned subsidiary, defendant Toyota Motor Sales, U.S.A., Inc., ("TMS") and its franchisees and dealerships. Defendant Toyota Motor Engineering & Manufacturing North

TOY-RQ-05E-00004716

America, Inc., ("TEMA"), headquartered in Erlanger, Kentucky, and with major operations in Michigan, is responsible for Toyota's engineering design and development, research and development, and manufacturing activities in the United States, Mexico and Canada.

4. One or more of the above-named Toyota Defendants have constructed and maintain research and engineering facilities in the State of Michigan.

5. Defendant Denso International America, Inc., ("Denso International"), although incorporated under the laws of Delaware, is domiciled in Michigan, with its headquarters located at 24777 Denso Drive, Southfield, Michigan. Denso International is the parent company of wholly-owned subsidiaries, including, but not limited to, Denso Manufacturing Michigan, Inc., and Denso Manufacturing Kentucky, Inc., and is engaged in the business of designing, manufacturing and/or selling electronic systems and components utilized in Toyota vehicles, including, but not limited to, electronic engine control systems and cruise control systems. Upon information and belief, Denso International designed, manufactured and/or sold the electronic engine control system and cruise control system installed in the Electronic Control Module of the 2005 Toyota Camry that is the subject of this civil action.

6. The automotive products of Defendants, and each of them, are advertised, marketed, inspected, distributed, and sold throughout the United States, including the State of Michigan, and Defendants have purposefully availed themselves of the Michigan market for the sale and distribution of their products.

7. This claim arises out of defects in Defendants' products, as hereinafter set forth, which were manifest in a motor vehicle accident that occurred on April 19, 2008, in Genesee County, Michigan and resulted in the death of GUADALUPE ALBERTO.

TOY-RQ-05E-00004717

8. On April 19, 2008, shortly after 2:00 in the afternoon, Plaintiff's Decedent GUADALUPE ALBERTO was driving the subject 2005 Toyota Camry on Copeman Boulevard in Flint, Genesee County, Michigan, when the vehicle experienced a sudden, unintended acceleration. The vehicle accelerated from an intended speed of less than twenty-five (25) miles per hour to a speed of approximately 80 miles per hour, despite Guadalupe Alberto's having vigorously and desperately applied her brakes, and traveled at that high speed for approximately one-fourth (1/4) of a mile, collided with a tree, went airborne, and then collided with another tree. Plaintiff's Decedent, despite having been properly secured in her seat belt restraint system, sustained fatal injuries in the accident.

9. Plaintiff brings this cause of action under the Michigan Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

COUNT I - NEGLIGENCE

10. Plaintiff incorporates by reference the preceding paragraphs.

11. The Toyota Defendants, and each of them, had a duty to design Plaintiffs' Decedent's 2005 Toyota Camry in a manner that was reasonably safe for its foreseeable and/or intended uses.

12. Defendant Denso had a duty to design and manufacture the components of the electronic engine control, cruise control and braking systems in Plaintiffs' Decedent's 2005 Toyota Camry in a manner that ensured that such systems were reasonably safe for their foreseeable and/or intended uses and/or to ensure that such systems as sold to its customer, Toyota, were reasonably safe for their foreseeable and/or intended uses.

13. In breach of their duties, the Toyota Defendants and Denso, and each of them, manufactured, sold and/or marketed the Electronic Throttle Control System known as the ETCS-

TOY-RQ-05E-00004718

Intelligent ("ETCS-I") and braking systems in the 2005 Toyota Camry, in a condition that rendered the vehicle unreasonably dangerous by virtue of its design, namely: the vehicle's propensity for confusion in the sensors and electronics processors employed in the ETCS-I as the result of transient signals, producing sudden and unwanted acceleration against the intentions and actions of the driver.

14. At the time the subject vehicle left the control of Defendant Toyota, it was defective and unreasonably dangerous to a person who might be expected to use it. The negligence of Defendants, and each of them, consists of, among other things, the following acts and omissions:

a. On the part of each Defendant, failure properly and adequately to design the Camry and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Camry that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Camry and the systems, components, and parts thereof, specifically

TOY-RQ-05E-00004719

including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Camry and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Camry, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants and Denso, and each of them, knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the 2005 Camry;

15. Prior to the fatal collision at issue, Toyota had actual knowledge of sudden, unintended acceleration events that actually occurred in Toyota Camrys and other Toyota vehicles utilizing the ETCS-i, cruise control and components of the Engine Control Module substantially similar to those utilized in the 2005 Camry, such that Defendants, and each of them, were on notice of the defects in the vehicle design and the resulting risk and consequences.

16. As a direct and proximate result of negligence of Defendants, and each of them, Plaintiff's decedent was fatally injured, and her estate has suffered the following injuries and damages, among others:

TOY-RQ-05E-00004720

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty-Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law, and such other relief as the Court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT II - BREACH OF EXPRESS AND IMPLIED WARRANTIES

17. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

18. At all relevant times, Defendants Toyota Entities and Denso Entities, and each of them, represented that the Camry was safe for use, fit for purposes intended, and of merchantable quality.

19. At all relevant times, Defendants Toyota Entities and Denso, and each of them, warranted by implication that the Camry was reasonably safe for use, fit for purposes intended, and of merchantable quality.

TOY-RQ-05E-00004721

20. Those representations and warranties were false, and the Defendants Toyota and Denso, and each of them, breached each of said warranties.

21. As a direct and proximate result of these false representations and breach of warranties, Plaintiff's Decedent suffered injury and death, and her estate has suffered the following injuries and damages, among others:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of Twenty Five Thousand Dollars ($25,000.00) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT III - GROSS NEGLIGENCE

22. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

23. The Camry was defective at the time it was manufactured and distributed.

24. Defendants, and each of them, had actual knowledge of the defects and of the substantial likelihood that the defects would cause injuries and/or fatalities.

TOY-RQ-05E-00004722

25. Defendants, and each of them, willfully disregarded that actual knowledge and each was thereby grossly negligent.

26. The gross negligence of Defendants, and each of them, was the direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT IV - WRONGFUL DEATH

27. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

28. Plaintiff hereby brings a cause of action under the Wrongful Death Act, MCLA 600.2922 and MCLA 600.2921.

TOY-RQ-05E-00004723

29. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Decedent's surviving next of kin have suffered and will in the future suffer the loss of Decedent's love, society, companionship, affection, services and support.

30. Decedent's Estate has suffered damages for the reasonable medical, hospital, funeral and burial expenses for which it is liable and the reasonable damages for Decedent's fatal injury.

31. As a direct and proximate result of the negligence and/or grossly negligent acts and/or omissions and breaches of warranty by Defendants, and each of them, Plaintiff's Decedent was caused to die.

WHEREFORE, Plaintiff, Lilia Alberto, as Personal Representative for the ESTATE OF GUADALUPE ALBERTO, Deceased, prays for an award of damages against Defendants, and each of them, to be fixed by the trier of fact based upon the evidence presented at trial in such amount in excess of Twenty Five Thousand Dollars ($25,000.00) as is fair and just. Additionally, Plaintiff asks for costs of this action, all pre-judgment and post-judgment interest as provided by law and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

COUNT V - PRODUCTS LIABILITY - FAILURE TO WARN

32. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates same herein by reference.

33. The Defendants, and each of them, knew, or in the exercise of reasonable care should have known, that the 2005 Camry could suddenly accelerate without driver input and against the intentions of the driver.

TOY-RQ-05E-00004724

34. The Defendants, and each of them, had a duty to warn their consumers that the 2005 Toyota Camry was capable of suddenly accelerating without driver input and against the driver's intentions and actions and to advise of the measures to take to reduce the possibility of a crash.

35. In breach of that duty to warn, Defendants, and each of them, failed to warn Plaintiffs' Decedent of the propensity for sudden, unintended acceleration in the subject vehicle.

36. As a direct and proximate result of Defendants' failure to warn, Plaintiff's Decedent lost control of her vehicle, causing her to crash, and resulting in her wrongful death. The negligent failure of Defendants, and each of them, to warn was a direct and proximate cause of the fatal injuries to Plaintiff's Decedent, and as a result her estate has suffered the following injuries and damages:

a. pre-crash terror suffered by Guadalupe Alberto;

b. medical, funeral, and burial expenses;

c. loss of society and companionship of Plaintiff's decedent;

d. pain and suffering;

e. all other injuries and damages that are fair and just and that bear on the circumstances of this loss.

WHEREFORE, Plaintiff prays for an award of damages to be fixed by the trier of fact in a reasonable amount in excess of $25,000 (Twenty Five Thousand Dollars) against Defendants, and each of them. Additionally, Plaintiff asks for the costs of this action, all prejudgment and post-judgment interest as provided by law, and such other relief as the court deems just and appropriate, including the injunctive relief hereinafter sought under the Michigan Consumer Protection Act.

TOY-RQ-05E-00004725

COUNT VI- UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

37. Plaintiff relies upon each and every preceding and succeeding allegation of this Complaint and incorporates the same herein by reference.

38. Plaintiff's decedent's children purchased the subject 2005 Toyota Camry from a Toyota dealer as a gift to her for personal, family and household purposes. The Toyota Defendants, and each of them, are engaged in trade or commerce within the meaning of the Michigan Consumer Protection Act, ("MCPA") §445.902(g).

39. Plaintiff's decedent and her children are consumers and the Toyota Defendants are sellers, as defined by the MCPA and are therefore subject to the terms and provisions of the MCPA.

40. The Toyota Defendants' statements, representations, omissions, and practices made in connection with their sale of the 2005 Camry as alleged herein were in violation of the following sections of the MCPA § 445.903:

a. § 445.903(c) by representing that goods have approval, characteristics, uses or benefits that they do not have;

b. § 445.903(e) by representing that goods are of a particular standard, quality, or grade when they are of another;

c. § 445.903(s) by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;

d. § 445.903(bb) by making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

TOY-RQ-05E-00004726

41. The Toyota Defendants' decision to market the 2005 Toyota Camry when it was defective and unreasonably dangerous to a person who might be expected to use it amounts to unfair, unconscionable and/or deceptive business practices in violation of the MCPA.

42. The Toyota Defendants' violations of the MCPA proximately caused plaintiff's decedent's fatal accident on April 19, 2008, and the resulting damages.

43. The incident which claimed the life of Guadalupe Alberto is not an isolated event; to the contrary, sudden, unintended accelerations in Toyota vehicles began to take on epidemic proportions almost immediately after the introduction of the ETCS-i in 1998 Lexus models. Sudden, unintended accelerations in Model Years 2002 and 2003 Toyota Camrys (also equipped with the ETCS-i) were numerous enough to cause the National Highway Traffic Safety Administration's (NHTSA) Office of Defects Investigation (ODI) to open investigations of the problem. The safety agency's failure to find the cause and to require Toyota to protect its drivers with a failsafe and adequate warnings makes clear that, without the protection sought by this civil action, the lives and safety of Michigan residents will be at continuous risk from electronic malfunctions in the throttle controls of the subject Toyota models.

44. Sudden acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great.

45. As more cars equipped with electronic engine and cruise control systems came to market, sudden accelerations increased, along with injuries and fatalities. Reports registered with NHTSA represented only 10% of all occurrences known to manufacturers; and by 1986

TOY-RQ-05E-00004727

runaway cars had been the subject of claims for thousands of serious injuries and hundreds of deaths just in the United States.

46. Upon information and belief by the early 1990s, automakers were modifying their electronics in ways that reduced the potential for a sudden loss of throttle and braking control. This caused a steady downward trend in reports until 2002, when Toyota introduced models with an electronic throttle control system (or ETCS-i), sometimes referred to as "throttle-by-wire" or "drive-by-wire."

47. The ETCS-i had no mechanical linkage between the accelerator pedal and the throttle plate in the engine. It soon became apparent that models with the ETSC-i were experiencing a failure rate significantly greater than other models.

48. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. One such occurrence involved the 2005 Toyota Camry driven by plaintiff, Mrs. Guadalupe Alberto, from her home in Flint to the neighborhood grocery store owned by her family. In a matter of seconds, the Camry accelerated from less than 25 mph to a speed of approximately 80 mph, despite Mrs. Alberto's desperate attempts to stop the car with the brakes, and the event ended in a crash that killed Mrs. Alberto.

49. When the NHTSA opened an investigation[1] of MY 2002 and 2003 Camrys, the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed -- both

[1] Defect Petition DP04-003; Investigation PE04-021

TOY-RQ-05E-00004728

circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

50. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

"a. Consumer complaints, including those from fleet operators;

"b. Field reports, including dealer field reports;

"c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

"d. Property damage claims;

"e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

"f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

"For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

51. Toyota reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

TOY-RQ-05E-00004729

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

"(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

"(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

52. Toyota thus *deceptively concealed* from NHTSA an entire universe of potentially relevant customer complaints. For example, the report from a driver who, like Ms. Alberto, had experienced a sudden acceleration which carried her for a quarter-mile (more than 1,300 feet), would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he was standing on the brake and could not overcome the open throttle would have had his report excluded from the investigation.

53. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

54. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial

[2] "long duration" is defined as lasting longer than one (1) second
[3] ODI Resume, PE04-021, Date Closed 07/22/2004

TOY-RQ-05E-00004730

numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floormat as the cause. Of course, the floormat cannot explain Ms. Alberto's crash. *There were no floormats in the vehicle at the time of the crash.*

55. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

56. The section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action pursuant to Michigan's Consumer Protection Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

57. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping

TOY-RQ-05E-00004731

distances increased from less than 200 feet to more than 1,000 feet. This required brake pedal force is beyond the physical capabilities of most drivers.

58. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control. Since the floor mats had been removed from Mrs. Alberto's Camry, the instant case demonstrates that the advisory is inaccurate or incomplete.
- The advisory also misleads owners with a driver's side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal.

TOY-RQ-05E-00004732

59. Without the remedies provided by Michigan's Consumer Protection Act, there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of; (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence. The Toyota models at risk include, *but are not limited to*, the following:

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

TOY-RQ-05E-00004733

60. For the reasons hereinabove set forth, therefore, Plaintiff requests judgment in her favor and against each Toyota Defendant jointly and severally, and prays for the following relief:

a. A declaratory judgment that defendants' marketing of the 2005 Camry is unlawful under § 445.903;

b. The issuance of an injunction ordering and requiring Toyota to provide the following to all owners of Toyota vehicles equipped with the ETCS-i: (1) a warning as to dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions to the drivers of those vehicles as to the steps to be taken in the event a sudden, unintended acceleration occurs, (3) implementation of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation of an electronic component that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

c. Compensatory damages to be determined at trial, including but not limited an amount sufficient to compensate plaintiff's estate for:

1. Pre-crash terror suffered by Guadalupe Alberto;
2. Medical, funeral, and burial expenses;
3. Loss of society and companionship of Plaintiff's decedent; and
4. The fair market value of Ms. Alberto's 2005 Camry that was destroyed in the accident.

d. Pain and suffering; and all other compensation and damages that are fair and just and that bear on the circumstances of this loss, including, but not

TOY-RQ-05E-00004734

limited to, reasonable attorneys' fees and costs of litigation, including payments to experts; and

e. An order barring and enjoining the Toyota defendants from marketing in Michigan the Toyota Camry and such other Toyota and Lexus vehicles as employ the Electronic Throttle Control System – Intelligent (ETCS-i); and

f. Reasonable attorneys' fees incurred by Plaintiff in pursuance of this civil action; and

Such other relief as may be just, necessary or appropriate under the circumstances.

Respectfully submitted,

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Dated: October 21, 2009

TOY-RQ-05E-00004735

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR NORTH AMERICA, INC., a California corporation; and **DENSO INTERNATIONAL AMERICA,** a Michigan corporation,

Defendants.

/

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/

JURY DEMAND

NOW COMES Plaintiff, Lilia Alberto, Personal Representative of the Estate of

TOY-RQ-05E-00004736

Guadalupe Alberto, Deceased, by and through her attorneys, HILBORN & HILBORN, P.C., and hereby demands a trial by jury as to all issues in this action.

Respectfully submitted,

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Dated: October 21, 2009

TOY-RQ-05E-00004737

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative
of GUADALUPE ALBERTO, Deceased,

Plaintiff,

v.

Case No. 09-91973-NP
Hon. Archie Hayman

TOYOTA MOTOR NORTH AMERICA, INC.,
a California corporation; and DENSO INTERNATIONAL
AMERICA, a Michigan corporation,

Defendants.

GEORGE. HILBORN (P14995)
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DEC 10 2009
BOWMAN AND BROOKE LLP

PROOF OF SERVICE

Kim Chapman deposes and states that she is employed by Hilborn & Hilborn, P.C., and that on the 8th day of December, 2009, she sent Plaintiff's First Amended Complaint and Jury Demand and Motion for Injunctive Relief, via certified mail, to the following:

Lawrence Mann, Esq.
Andrea Moody, Esq.
Bowman and Brooke, LLP
50 W. Big Beaver Rd., Ste. 600
Troy, MI 48084

Clerk of the Court (original proof only)
Genesee County Circuit Court
900 S. Saginaw St.
Flint, MI 48502

Kim Chapman

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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Butzel Long PC
150 W Jefferson Ave., Suite 100
Detroit, MI 48226

RECEIVED
FEB 16 2010
BOWMAN AND BROOKE LLP

NOTICE OF VIDEOTAPED
DEPOSITION OF JIM LENTZ

PLEASE TAKE NOTICE that the Plaintiffs, by counsel, pursuant to the MCR 2.306, and MCR 2.315, hereby give notice that they will take the videotaped deposition of Jim Lentz, at a conference room located at Comfort Inn Airport, 2361 Austin Parkway, Flint, Michigan, 48507 on March 2, and 3, 2010. The deposition of Mr. Lentz will commence at 9:00 am on March 2, 2010 and carry over through March 3, 2010 until completed.

The deposition will take place before a certified court reporter or notary public duly authorized to administer oaths and will continue from day-to-day until complete. You are invited to attend and protect your interests.

PLAINTIFFS

By Counsel

Benjamin L. Bailey *pro hac vice*
Eric B. Snyder *pro hac vice*
Robert P. Lorea *pro hac vice*
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(304) 342-1110 *facsimile*

TOY-RQ-05E-00004741

PROOF OF SERVICE

The undersigned, Eric B. Snyder, Counsel for Plaintiff, hereby declares that on February 15, 2010, he served a copy of the foregoing **Plaintiff's Notice of Videotaped Deposition of Jim Lentz** together with this Proof of Service, via Federal Express upon:

Edward M. Kronk, Esq.
Matthew H. Letzmann, Esq.
150 West Jefferson, Suite 100
Detroit, Michigan 48226-4430
(313) 225-7080
(Attorney for Denso Int'l America, Inc.)

and

Lawrence C. Mann, Esq.
Andrea L. Moody, Esq.
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50 W. Big Beaver Road, Suite 600
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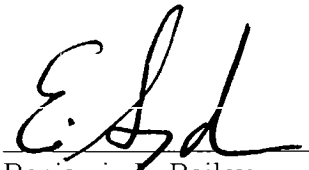
(Attorneys for Toyota Entities)



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Dated: February 15, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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Detroit, MI 48226

RECEIVED
FEB 16 2010
BOWMAN AND BROOKE LLP

NOTICE OF VIDEOTAPED
DEPOSITION OF YOSHIMI INABA

PLEASE TAKE NOTICE that the Plaintiffs, by counsel, pursuant to the MCR 2.306, and MCR 2.315, hereby give notice that they will take the videotaped deposition of Yoshimi Inaba, at a conference room located at Comfort Inn Airport, 2361 Austin Parkway, Flint, Michigan, 48507 on March 3, and 4, 2010. The deposition of Mr. Lentz will commence at 9:00 am on March 3, 2010 and carry over through March 4, 2010 until completed.

The deposition will take place before a certified court reporter or notary public duly authorized to administer oaths and will continue from day-to-day until complete. You are invited to attend and protect your interests.

PLAINTIFFS

By Counsel

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Eric B. Snyder *pro hac vice*
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TOY-RQ-05E-00004744

PROOF OF SERVICE

The undersigned, Eric B. Snyder, Counsel for Plaintiff, hereby declares that on February 15, 2010, he served a copy of the foregoing **Plaintiff's Notice of Videotaped Deposition of Yoshima Inaba** together with this Proof of Service, via Federal Express upon:

Edward M. Kronk, Esq.
Matthew H. Letzmann, Esq.
150 West Jefferson, Suite 100
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(Attorney for Denso Int'l America, Inc.)

and

Lawrence C. Mann, Esq.
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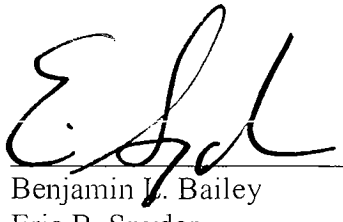
(Attorneys for Toyota Entities)



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Dated: February 15, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

A TRUE COPY
Michael J. Corr, Clerk

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Detroit, MI 48226

FEB 12 2010

ORDER

At a session of said Court held in the
City of Flint, County of Genesee, State of Michigan
on: _____

Present: HON: _____
CIRCUIT COURT JUDGE

The Court having heard Plaintiff's argument on her Motion for an Order Granting Leave to Amend Her First Amended Complaint and to File a Second Amended Complaint adding Toyota Motor Corporation, a Japanese corporation, and Denso Manufacturing Tennessee, Inc., as parties defendant and removing Toyota Motor North America, Inc., as a defendant, and entertained responses from defense; and the Court being advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Motion for an Order Granting Leave to Amend Her First Amended Complaint and to File a Second Amended Complaint adding Toyota Motor Corporation, a Japanese corporation, and Denso Manufacturing Tennessee, Inc. is hereby GRANTED, subject to the following conditions:

1. Toyota Motor Corporation (hereinafter TMC) will voluntarily appear in this case only, in lieu of plaintiff complying with the terms of the Hague Convention and subject to the terms and conditions set forth in this Stipulated Order.

2. The plaintiff shall serve appropriate summons and complaint with respect to TMC upon counsel for TMS in the above captioned lawsuit. TMC, all of the Toyota related entities party to this lawsuit and defendant Denso International America, Inc., shall have thirty (30) days from the date of service within which to file and serve their answers or otherwise respond to Plaintiff's Second Amended Complaint.

3. TMC shall have forty (40) days from the date of service by the Plaintiff of any written discovery within which to file and serve its responses to such written requests, including Requests for Admissions.

4. The plaintiff shall provide TMC seventy-five (75) days notice for any depositions of corporate representative witnesses sought under Michigan Court Rule 2.306. This limitation requiring seventy-five (75) days notice does not apply to any request for deposition of personnel affiliated with Toyota entities other than TMC.

5. TMC, in lieu of plaintiff's compliance with the Hague Convention, will produce corporate representatives for deposition only in Torrance, California. This paragraph is limited to TMC and does not constitute a waiver by any party of the Hague Convention as it applies to the taking of evidence from TMC's employees other than its corporate representatives.

6. Plaintiff shall serve Defendants Denso Manufacturing Tennessee, Inc., and Toyota Motor Manufacturing Kentucky, Inc. in accordance with the applicable MCR, and said defendants may answer or otherwise plead in accordance with the applicable MCR.

7. The limitations on discovery regarding TMC set forth in paragraphs Nos. 3 - 4 shall expire forty-five days prior to the close of discovery.

ARCHIE L. HAYMAN
P-37516

CIRCUIT COURT JUDGE

2/8/10

TOY-RQ-05E-00004748

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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FEB 12 2010

PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT TOYOTA MOTOR CORPORATION

Pursuant to Rule 2.309 of the Michigan Court Rules, Plaintiff requests that defendant Toyota Motor North America, Inc., answer the following Interrogatories. The Answers shall be served on Plaintiff within forty (40) days of service of this notice, pursuant to stipulation by counsel.

DEFINITIONS

1. Toyota Motor Corporation (hereinafter "Toyota") refers to that defendant and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions, including, but not limited to, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on its behalf.

2. "Electronic throttle control system" (sometimes referred to as the "ETCS-i," "electronic engine control unit" or "drive-by-wire" or "throttle-by-wire" system) is a system that uses a computer-controlled electronic means to control the throttle. It includes anything that can affect the speed or power of the engine, including but not limited to, the duration and timing of fuel injection, the idle speed control system, the speed control system, the throttle assembly (including the servo mechanism), accelerator pedal assembly, the associated electronic control modules, the associated wiring for these components, and the diagnostic software and devices. Plaintiffs are aware that the electronic throttle control system installed in the MY 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating

to the "electronic throttle control system or ETCS-i in the MY 2005 Camry," please answer with reference to all such documents and information even if the particular system has been installed in models in addition to the aforesaid MY 2005 Camry.

3. "Unintended acceleration" for the purpose of discovery in this case is defined as either an alleged unexpected increase in engine speed, or the failure of a vehicle to decelerate upon the driver's removal of force from the accelerator pedal, whether the incident be momentary, temporary, or sustained, including any situation where the driver experiences acceleration that could not be controlled, was unexpected, unwanted, unintended, or where the vehicle failed to decelerate. "Unintended acceleration" is also sometimes referred to as "surprise acceleration."

4. "Electromagnetic disturbance" includes, but is not limited to, radiated, conducted and/or induced phenomena, electrostatic discharge, variations and fluctuations in the vehicle's electrical supply, whether transient or continuous, and whether the source of the disturbance is the vehicle itself, the external environment, or passenger-supplied electronic devices. It also includes any combinations of the above.

5. "Electromagnetic compatibility" or "EMC" is a measure of a vehicle's functions to operate safely and without unacceptable degradation of the intended functionality over the anticipated lifetime of the vehicle despite the presence of electromagnetic disturbances.

6. "Toyota vehicle," unless otherwise specified, includes any vehicle designed, manufactured, sold, or marketed by Toyota.

7. "Document" means anything which may be considered to be a document or tangible thing within the meaning of the applicable rules of court and means and includes,

without limitation, any written, printed, typewritten, handwritten, videotaped, recorded or other graphic matter or computer-generated or stored information, whether produced in "hard" copy or other tangible medium or presently stored within the memory of a computer or other data storage device, such as tapes, hard or floppy disc drives, now or at any time in your possession, custody or control; and, includes generally and without limiting the generality of the foregoing definitions, any correspondence, letters, E-mail, telegrams, telexes, cables, transcripts, agreements, contracts, notes, memoranda, jottings, projections, reports, opinions, work papers, diaries, daybooks, notebooks, calendars, address and telephone records, expense records and vouchers, time records, personnel records, minutes, summaries of any communications, reports or summaries of investigations, books of account, journals, ledgers, journal entries, accounting books and records, spread sheets, micro-fiche cards, microfilms, photographs, films, appraisals, surveys, financial statements, financial forecasts, computer programs, computer printouts, manuals, guides, books, magazines, newspapers, publications, and all preliminary versions and drafts, revisions of, or notations on any of the foregoing, including all non-identical copies and drafts of the foregoing, and all summaries, analyses or reports relating or referring in whole or in part to any of the foregoing.

A document shall be deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having possession or custody thereof. If a document is responsive to an Interrogatory and is in your control, but is not in your possession or custody, you are requested to identify the person with possession or custody.

II.

INSTRUCTIONS

1. Where a claim of privilege is asserted in objecting to any Interrogatory, or subpart thereof, and an answer is not provided on the basis of such assertion, for each such Interrogatory or subpart:

State, in the form of a privilege log, the following:

A) Whether the attorney-client privilege, the work-product doctrine, or another form of privilege provides the basis for withholding the answer (*i.e.,* specify the privilege claimed).

B) The type of communication being withheld (letter, e-mail, memo, etc.).

C) The date of the communication.

D) The parties privy to the communication.

E) The relationships of the parties privy to the communication.

F) The nature of the legal advice sought or rendered.

G) The circumstances indicating the confidential nature of the communication.

H) The litigation in which the communication was material.

2. These are continuing requests for answers. A defendant is under a duty seasonably to supplement its answers if it obtains information upon the basis of which it learns or has reason to believe (a) that its answer was incomplete when made, or (b) that it has in its possession, custody or control, information responsive to these requests which has not been produced.

3. Duty to Identify a Document - Requests for identification of a document, for a description of a document, or for a statement of the contents of the document shall be deemed to require a statement of the type of writing (e.g. letter, memorandum, telegram, report, field notes, chart, contract, or the like) and some other means of reasonably identifying the document. As to each document, you are requested to provide

the name of each author, signatory or signatories, their respective addressees, as well as the date of the document, its subject and its present location, identifying the custodian(s) thereof and his, her or their address(es). If any such document was, but no longer is, in the possession of Defendant or subject to its constructive or actual control, please state what disposition was made of that document.

4. Duty to Identify Persons, Witnesses or any Other Individual - Whenever in this discovery there is a request to "identify" a person, a firm, or an entity, please state for each person his or her name and last known residential or employment address and telephone numbers (residential and business), and such person's status and affiliation with the Defendant at all times relevant hereto; and for a firm or other entity, please state its name, last known address, telephone number and relationship with Defendant. The term "person" shall mean and include in singular and plural, any person, partnership, corporation, association or other legal entity.

III.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons who wrote, prepared, designed and/or engineered the technical specifications for the electronic throttle control system in MY 2005 Camry vehicles, including all hardware, firmware (embedded microcode) and software.

ANSWER:

INTERROGATORY NO. 2:

Identify all persons who wrote, prepared, designed and/or engineered all design documents and specifications pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in MY 2005 Camry vehicles, including the following:

- wiring diagrams
- circuit board diagrams and/or schematics, showing board layout on each layer of the board
- microcontroller and software that runs the microcontroller
- parts lists
- bills of materials
- functional block diagrams
- design calculations
- design control procedures governing how Toyota manages its design process
- assembly instructions
- manufacturing processes
- post-sale maintenance procedures
- fault-finding manuals
- systems modeling and simulations
- documents showing what kinds of commands are capable of actuating the throttle
- all applicable source codes

- accelerator pedal assembly, including, but not limited to, wiring diagram, module assembly, circuit board, schematic diagram, board layout (on each layer of the board)

Identify such persons as relate to all iterations of MY 2005 Camry vehicles, from the initial to the final production vehicles, and include all change request histories, including the reasons for the proposed changes (whether or not the change was effected).

ANSWER:

INTERROGATORY NO. 3:

Identify all persons who wrote the documents that show how the technical specifications referred to in Request No. 1 were validated.

ANSWER:

INTERROGATORY NO. 4 :

Identify all persons who wrote, prepared, designed and/or engineered the FMEA's (failure mode and effects analyses), fault tree analyses, Ishikawa diagrams, and other failure analyses, (including, but not limited to, inductive, deductive, and brainstorming analyses) relating to the electronic throttle control system employed in MY 2005 Camry vehicles.

ANSWER:

INTERROGATORY NO. 5:

Identify all present or former employees at Toyota who had responsibility for determining how the electronic throttle control system employed in MY 2005 Camry vehicles and/or its components respond to electromagnetic disturbances reasonably likely to be experienced over the life of the vehicle due to both electromagnetic activity in the vehicle itself and in the external environment.

ANSWER:

INTERROGATORY NO. 6:

Identify all present or former employees at Toyota who had responsibility for maintaining quality control during the EMC manufacturing process, including how the 2005 Camry's EMC specifications were maintained.

ANSWER:

INTERROGATORY NO. 7:

Identify all present or former employees at Toyota who had responsibility for test schedules, test results and sign-offs with respect to the electronic throttle control system employed in MY 2005 Camry vehicles. Include testing done at the component, system and/or vehicle level. Also include testing performed by outside suppliers.

ANSWER:

INTERROGATORY NO. 8:

With respect to the EDR (electronic data recorder, sometimes referred to as the event data recorder or the "black box.") installed in MY 2005 Camry vehicles, identify all present or former employees at Toyota who had responsibility for

- its fault codes and their meanings
- its design and performance specifications
- the specific data captured by the EDR on the subject 2005 Camry.
- all documents interpreting, analyzing and/or reporting the status and performance of the systems monitored during the event that is the subject of this lawsuit

ANSWER:

INTERROGATORY NO. 9:

Identify all present or former employees at Toyota, or agents of, or contractors for Toyota, who had responsibility for collecting, interpreting, analyzing and/or reporting all data retrieved from any data recording device on the Alberto 2005 Camry, including, but not limited to, interpreting all documents which relate to the status and performance of the systems monitored during the event that is the subject of this lawsuit

ANSWER:

INTERROGATORY NO. 10:

Identify all present or former employees at Toyota who had responsibility for all technical service bulletins referring to or discussing the type of electronic throttle control system installed in MY 2005 Camry vehicles.

ANSWER:

INTERROGATORY NO. 11:

Identify all persons who wrote, prepared, designed and/or engineered the shop manual for the type of electronic throttle control system installed in the MY 2005 Camry vehicles.

ANSWER:

INTERROGATORY NO. 12:

Identify all persons who wrote, prepared, compiled and/or maintained all studies, analyses, memoranda and databases relating to alleged unintended acceleration in vehicles equipped with an electronic throttle control system (whether or not such vehicles were manufactured or marketed by Toyota).

ANSWER:

INTERROGATORY NO. 13:

Identify all persons responsible for receiving and/or responding to consumer complaints, dealer contacts, customer hotline complaints and warranty claims that can reasonably be construed as describing incidents or events of unintended acceleration in vehicles equipped with an electronic throttle control system and manufactured or marketed by Toyota.

ANSWER:

INTERROGATORY NO. 14:

Identify all present or former employees at Toyota who, during the period from January 1, 2001, to the present, communicated on behalf of Toyota, whether in writing, via e-mail or telephone, in person or by any other means, with any agent and/or representative of the U.S. National Highway Traffic Safety Administration and/or any governmental agency in the United Kingdom or Canada or any other governmental entity (whether federal, state, local, or in any country other than the U.S.) with respect to alleged unintended acceleration in Toyota vehicles equipped with an electronic engine control system.

ANSWER:

INTERROGATORY NO. 15:

Identify all present or former employees at Toyota who had responsibility for initiating or responding to all recalls, voluntary or otherwise, relating to unintended

acceleration or to malfunctions in the electronic throttle control system in any Toyota vehicle, regardless of the country or region to which the recall pertains.

ANSWER:

INTERROGATORY NO. 16:

If any software upgrades were implemented as to the engine control unit in the subject 2005 Camry, identify all present or former employees at Toyota who had responsibility for authoring documents reflecting or referencing:

- a description of the upgrade(s);
- the reason(s) for the upgrade(s);
- when the upgrade(s) were implemented; and
- whether any of these upgrade(s) were implemented with respect to vehicles that were already in the field (i.e., in the possession of consumers), and if so, their identity.

ANSWER:

INTERROGATORY NO. 17:

Identify all present or former employees at Toyota who had responsibility for composing any written warranties applicable to the vehicle that is the subject of this action, that is, the Alberto 2005 Camry, VIN 4T1BE32K95U424864.

ANSWER:

INTERROGATORY NO. 18:

Identify all present or former employees at Toyota, as well as outside persons, firms or corporations who had responsibility for producing advertising materials promoting or in any way relating to the MY 2005 Camry, including, but not limited to, print advertising and radio and television recordings and scripts thereof.

ANSWER:

INTERROGATORY NO. 19:

Identify all present employees at Toyota who can give reliable testimony as to the service history of the subject 2005 Camry, VIN 4T1BE32K95U424864, that is the subject of this lawsuit.

ANSWER:

INTERROGATORY NO. 20:

Identify all present or former employees at Toyota, as well as all agents, attorneys or contractors who had responsibility, or involvement in, for the investigation of the accident that occurred on April 19, 2008 involving the subject 2005 Camry, including those who took any photos or made drawings, field notes or expert analyses.

ANSWER:

INTERROGATORY NO. 21:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for testing electronic equipment installed in the 2005 Toyota Camry, including, but not limited to, all testing for electrical noise.

ANSWER:

INTERROGATORY NO. 22:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with engineering standards for the bench test methods for electric noise generated by automotive electronic devices installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 23:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test methods for resistance to induction noise generated by automotive electronic devices installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 24:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the life test method for soldering automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 25 :

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test method for static electricity resistance of automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 26:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test methods for electrical disturbances from electrostatic discharges from automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 27:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test criteria for electrical disturbances from electrostatic discharges from automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 28:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test methods for migration of automotive electronic devices installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 30:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench test methods for performance of automotive electronic equipment installed in the 2005 Toyota Camry under fluctuating power supply voltage.

ANSWER:

INTERROGATORY NO. 31:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for all electromagnetic radiation tests relating to the electromagnetic compatibility of automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 32:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the bench measurement method for narrow-band emission noise on EC regulation for automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 33:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the test method for measuring narrow-band emission noise from automotive ESA for which EMC homologation must be obtained, as it relates to automotive electronic devices installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 34:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the criteria for bench measurement method for the effects of narrow-band emission noise on EC regulation of automotive electronic equipment installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 35:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the test methods employed in testing the computers used in the engine control system or unit installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 36:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, promulgating or writing and/or assuring compliance with Toyota's engineering standards for the testing for radio noise interference of electric parts installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 37:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, establishing test schedules and compiling test results, analyses and sign-offs for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities under the standards, methods or tests hereinabove described in Requests Nos. 21 through 36, inclusively, in relation to parts and/or systems installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 38:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, all design documents and specifications pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry that were delivered to defendants Denso International America and Denso Manufacturing Kentucky, or either of them.

ANSWER:

INTERROGATORY NO. 39:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, writing all warranties pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or

engine control module assembly in the subject 2005 Camry that were designed and/or manufactured by defendants Denso International America and Denso Manufacturing Kentucky, or either of them.

ANSWER:

INTERROGATORY NO. 40:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, evaluating, monitoring, analyzing and/or approving testing conducted by or on behalf of defendants Denso International America and Denso Manufacturing Kentucky, or either of them, relative to the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

ANSWER:

INTERROGATORY NO. 41:

Identify all present or former employees at Toyota who had responsibility for, or involvement in, assuring compliance by defendants Denso International America and Denso Manufacturing Kentucky, or either of them, with contracts between such defendants and Toyota for the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

ANSWER:

INTERROGATORY NO. 42:

Identify all present or former employees at Toyota who authored or received letters, memos, e-mails and/or records of communications between any Toyota entity, on the one hand, and defendants Denso International America, Inc., and Denso Manufacturing Kentucky, Inc., or either of them, on the other, referring to the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

ANSWER:

INTERROGATORY NO. 43:

Identify all letters, memos, e-mails and/or records of communications between any Toyota entity, on the one hand, and defendants Denso International America, Inc., and Denso Manufacturing Kentucky, Inc., or either of them, on the other, referring to the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

ANSWER:

INTERROGATORY NO. 44:

Identify all present or former employees at Toyota who authored letters, memos, e-mails and/or records of communications referring to the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

ANSWER:

INTERROGATORY NO. 45:

To the extent not produced in answer to one or more of the foregoing Requests, please identify all letters, memos, e-mails and other records of communications from or to any Toyota and/or Denso engineer reflecting and/or reporting all test schedules, test results, analyses and sign-offs for the testing for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities under the standards, methods or tests hereinabove described in Requests Nos. 21 through 36, inclusively, in relation to parts and/or systems installed in the 2005 Toyota Camry.

ANSWER:

INTERROGATORY NO. 46:

Identify all persons responsible during the period from January 1, 2001, to the present for responding, whether in writing, via e-mail, by telephone or otherwise, to reports, consumer complaints, dealer contacts, customer hotline complaints and/or warranty claims that can reasonably be construed as describing incidents or events of

unintended acceleration in vehicles equipped with an electronic throttle control system and manufactured or marketed by Toyota.

ANSWER:

INTERROGATORY NO. 47:

Identify all persons responsible during the period from January 1, 2001, to the present for training those persons whose job descriptions included responding, whether in writing, via e-mail, by telephone or otherwise, to reports, consumer complaints, dealer contacts, customer hotline complaints and warranty claims that can reasonably be construed as describing incidents or events of unintended acceleration in vehicles equipped with an electronic throttle control system and manufactured or marketed by Toyota.

ANSWER:

INTERROGATORY NO. 48:

Identify all persons who wrote instructional papers, manuals, books, and/or other documents used in training those persons whose job descriptions included responding, whether in writing, via e-mail, by telephone or otherwise, to reports, including consumer complaints, dealer contacts, customer hotline complaints and warranty claims, that can reasonably be construed as describing incidents or events of unintended acceleration in vehicles equipped with an electronic throttle control system and manufactured or marketed by Toyota.

ANSWER:

INTERROGATORY NO. 49:

Identify all present or former employees at Toyota who had sign-off responsibility signifying compliance of the relevant 2005 Camry systems and components tested under the standards, methods or tests hereinabove described in Interrogatories Nos. 21 through 36, inclusively.

ANSWER:

INTERROGATORY NO. 50:

Identify all communications during the period from January 1, 2001, to the present, whether in writing, via e-mail or telephone, in person or by any other means, between present or former employees at Toyota and any agent and/or representative of the U.S. National Highway Traffic Safety Administration and/or any governmental agency in the United Kingdom or Canada or any other governmental entity (whether federal, state, local, or in any country other than the U.S.) with respect to alleged unintended acceleration in Toyota vehicles equipped with an electronic engine control system.

ANSWER:

INTERROGATORY NO. 51:

Identify all employees, officers, agents, attorneys or other persons who, at your request or under your direction or the direction of any of your officers, employees, agents, contractors or attorneys, has physically inspected and/or photographed and/or

videographed the subject 2005 Camry that was involved in the accident that occurred on April 19, 2008 ("Alberto Accident Vehicle").

ANSWER:

INTERROGATORY NO. 52:

Please state each and every date on which each person identified in your Answer to Interrogatory No. 51conducted his/her inspection and/or took photographs and/or videos of the subject 2005 Camry ("Alberto Accident Vehicle").

ANSWER:

INTERROGATORY NO. 53:

Please identify each and every person present at any time during each inspection identified in your Answer to Interrogatory No. 51 or to which reference is made in your Answer to Interrogatory No. 52.

ANSWER:

INTERROGATORY NO. 54:

Identify all inspection protocols, agendas, field notes, photographs, audio recordings and videos and/or other papers, memos or documentation created, taken, recorded and/or maintained by each person identified in your Answer to Interrogatory No. 51 in relation to the Alberto Accident Vehicle or any part, system or component thereof.

ANSWER:

INTERROGATORY NO. 55:

Identify each and every vehicle part and/or component of the Alberto Accident Vehicle touched or handled by each person identified in your Answers to Interrogatories Nos. 51 and 53 during his/her inspection, and describe the purpose for which such part or component was touched and/or handled.

ANSWER:

INTERROGATORY NO. 56:

Identify each and every vehicle part and/or component of the Alberto Accident Vehicle that was disconnected and/or removed by each person identified in your Answers to Interrogatories Nos. 51 and 53 during his/her inspection, and describe the purpose or reason for which such part or component was disconnected and/or removed.

ANSWER:

INTERROGATORY NO. 57:

As to each and every vehicle part and/or component of the Alberto Accident Vehicle that was disconnected and/or removed by each person identified in your Answers to Interrogatories Nos. 51 and 53 during his/her inspection, describe all actions taken with respect to such part and/or component, including, but not limited to, all inspection procedures and testing relating to said part or component, and the disposition of the part or component.

ANSWER:

INTERROGATORY NO. 58:

As to each and every vehicle part and/or component of the Alberto Accident Vehicle that was disconnected and/or removed by each person identified in your Answers to Interrogatories Nos. 51 and 53 during his/her inspection, please identify all persons who have had possession and/or custody of the part or component, including the person presently known to have custody of such part or component.

ANSWER:

INTERROGATORY NO. 59:

As to each and every vehicle part and/or component of the Alberto Accident Vehicle that was disconnected and/or removed by each person identified in your Answers to Interrogatories Nos. 51 and 53 during his/her inspection, please identify the current or last-known location of such part or component.

ANSWER:

INTERROGATORY NO. 60:

Please identify the person who was in charge of Toyota's Customer Relations Department on June 5, 2008.

ANSWER:

INTERROGATORY NO. 61:

Please identify the "engineer" who conducted "a preliminary courtesy inspection of the [Alberto] vehicle", to which inspection reference is made in a letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc., dated June 5, 2008, to Thomas Golen.

ANSWER:

INTERROGATORY NO. 62:

Please state whether anyone on behalf of Toyota, or anyone at the request or direction of any agent, contractor or attorney for Toyota, conducted any inspection in addition to the "preliminary courtesy inspection of the [Alberto] vehicle", to which inspection reference is made in a letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc., dated June 5, 2008, to Thomas Golen.

ANSWER:

INTERROGATORY NO. 63:

Please describe all protocols followed and all steps taken by the "engineer" who conducted "a preliminary courtesy inspection of the [Alberto] vehicle", to which inspection reference is made in the aforesaid letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc.

ANSWER:

INTERROGATORY NO. 64:

Please describe all physical measurements, findings, calculations, computations, comparative analyses, quantitative analyses and/or testing taken, done or made, and identify all vehicle components examined and/or inspected by the "engineer" who conducted "a preliminary courtesy inspection of the [Alberto] vehicle", to which inspection reference is made in the aforesaid letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc., that are intended to support the assertion in the letter that "[t]he steering column deformed rearward as designed...."

ANSWER:

INTERROGATORY NO. 65:

Please describe all physical measurements, findings, calculations, computations, comparative analyses, quantitative analyses and/or testing taken, done or made, and identify all vehicle components examined and/or inspected by the "engineer" who conducted "a preliminary courtesy inspection of the [Alberto] vehicle", to which inspection reference is made in the aforesaid letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc., that are intended to support the assertion in the letter that "no manufacturing or design was identified that caused or contributed to [the Alberto] accident."

ANSWER:

INTERROGATORY NO. 66:

Please identify all "built in sensors" to which reference is made in the aforesaid letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc.

ANSWER:

INTERROGATORY NO. 67:

Please identify all aspects of the "failsafe logic" to which reference is made in the aforesaid letter from Carole A. Hargrave, Claims Manager for Toyota Motor Sales, Inc.

ANSWER:

INTERROGATORY NO. 68:

To the extent not identified in response to one or more of the foregoing Interrogatories, please identify all reports, letters, memos, e-mails and other records of communications from or to any Toyota and/or Denso engineer reflecting and/or reporting all test schedules, test results, analyses and sign-offs for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities to determine the efficacy of braking by the driver of a 2005 Toyota Camry or any substantially similar Toyota or Lexus sedan when the throttle is in a wide-open or substantially wide-open condition.

ANSWER:

INTERROGATORY NO. 69:

To the extent not identified in response to one or more of the foregoing Interrogatories, please identify all supply contracts and/or agreements between defendant Toyota or any other Toyota entity, on the one hand, and Denso International America, Inc., or any other Denso entity, on the other, pursuant to which the electronic engine

control units or modules installed in the Alberto Toyota was designed and/or fabricated and delivered to Toyota.

ANSWER:

INTERROGATORY NO. 70:

Identify all e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between Christopher Santucci and his superiors and/or colleagues at Toyota Motor North America, Inc., Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in which any meeting and/or communication between Mr. Santucci and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA was discussed during the period commencing January 1, 2003, to the present..

ANSWER:

INTERROGATORY NO. 71:

To the extent not provided in response to the preceding requests, please identify all contents of Christopher Santucci's file containing documents, e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between him and his superiors and/or colleagues at Toyota Motor North America, Inc.. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering &

Manufacturing, Inc., in connection with NHTSA's 2004 defect investigation of MY 2003-04 Camry vehicles (PE04-021).

ANSWER:

INTERROGATORY NO. 72:

Identify all e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or minutes of meetings, between Christopher Tinto and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA during the period commencing January 1, 2002, to the present, in which allegations and/or customer complaints, claims, reports and/or dealer concerns regarding sudden, unintended accelerations of Toyota motor vehicles were discussed.

ANSWER:

INTERROGATORY NO. 73:

Identify all e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between Christopher Tinto and his superiors and/or colleagues at Toyota Motor North America, Inc., Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in which any meeting and/or communication between Mr. Tinto and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA was discussed during the period commencing January 1, 2002, to the present..

ANSWER:

INTERROGATORY NO. 74:

To the extent not identified in response to the preceding requests, please identify all contents of Christopher Tinto's file containing documents, e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between him and his superiors and/or colleagues at Toyota Motor North America, Inc.. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in connection with NHTSA's 2004 defect investigation of MY 2003-04 Camry vehicles (PE04-021).

ANSWER:

INTERROGATORY NO. 75:

Organizational charts showing the relationships, functions and operations among the various Toyota corporate entities operating within the United States.

ANSWER:

INTERROGATORY NO. 76:

All press releases, public statements, communiqués, announcements and/or like communications made or issued by any employee of, or spokesperson for, any Toyota entity during the period from July 1, 2009, to the present, referring or in any manner

relating to reports or allegations of incidents of sudden, unintended acceleration in Toyota vehicles.

ANSWER:

INTERROGATORY NO. 77:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or minutes of meetings, between Christopher Santucci, Christopher Tinto and any other representative of Toyota, on the one hand, and any U.S. Senator or Member of the U.S. House of Representatives or any staff member thereof, on the other, during the period commencing July 1, 2009, to the present, in which allegations and/or customer complaints, claims, reports and/or dealer concerns or news reports regarding sudden, unintended accelerations of Toyota motor vehicles were discussed.

ANSWER:

INTERROGATORY NO. 78:

All videos, recordings and/or other demonstrative products (including all outtakes and segments edited out during production) made for the purpose of accompanying or supporting press releases, public statements, communiqués, announcements and/or like communications made or issued by any employee of, or spokesperson for, any Toyota entity during the period from July 1, 2009, to the present, referring or in any manner relating to reports or allegations of incidents of sudden, unintended acceleration in Toyota vehicles.

ANSWER:

INTERROGATORY NO. 79:

Please identify, in a current searchable EXCEL spreadsheet format, each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, sudden unintended, acceleration and/or engine surge in MY 2002 and 2003 Camry vehicles and which were *excluded* from Toyota's Responses to NHTSA's Information Requests for the reason that they were (1) incidents alleging uncontrollable acceleration that occurred for a long duration (more than one second), or (2) incidents in which the driver (or any surviving witness) alleged that he/she could not control the vehicle by applying the brakes, (3) incidents alleging that unintended acceleration occurred when moving the shift lever to the Reverse or Drive position; or (4) incidents that were terminated when the driver turned the ignition off:

a. Consumer complaints, including those from fleet operators;
b. Field reports, including dealer field reports;
c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
d. Property damage claims;
e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts "a" through "d," show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint).

ANSWER:

INTERROGATORY NO. 80:

Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to the foregoing Request No, 79, identify, in a current searchable EXCEL spreadsheet format, the following information:

a. Toyota's file number or other identifier used;
b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. Vehicle's VIN;
e. Vehicle's make, model and model year;
f. Vehicle's mileage at time of incident;
g. Incident date;
h. Report or claim date;
i. The incident type (alleged defect statement, type A, B, or both) alleged in the report;
j. Any retrieved diagnostic trouble code(s) related to the subject component (P codes);
k. Whether a subject component was determined to be the cause of the alleged incident;
l. Whether a subject component(s) was replaced during a service visit which was related to the report;
m. Whether Toyota inspected the vehicle in relation to the report;
n. Whether a crash is alleged;
o. Whether property damage is alleged;
p. Number of alleged injuries, if any;
q. Number of alleged fatalities, if any; and
r. Summary description (request No. 2 items "c" through "f" only).

ANSWER:

INTERROGATORY NO. 81:

Identify, in a current searchable EXCEL spreadsheet format, copies of all documents related to each item within the scope of Request No. 79. Organize the documents separately by category (i.e., consumer complaints, filed reports, etc.) and describe the method Toyota used for further organizing the documents within each category.

ANSWER:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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FEB 12 2010

PLAINTIFF'S FIRST REQUEST TO DEFENDANT TOYOTA MOTOR CORPORATION FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 2.310 of the Michigan Court Rules, Plaintiff requests that defendant Toyota Motor Corporation, produce and permit the undersigned to inspect and copy the documents described herein. The documents shall be produced at the offices of George Hilborn, Esq., within forty (40) days of service of this request, in accordance with the Stipulated Order made and entered into by the respective parties.

DEFINITIONS

1. Toyota Motor Corporation (hereinafter "Toyota") refers to that defendant and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions, including, but not limited to, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on its behalf.

2. "Electronic throttle control system" (sometimes referred to as the "ETCS-i" or "electronic engine control unit" or "drive-by-wire" or "throttle-by-wire" system) is a system that uses a computer-controlled electronic means to control the throttle. It includes anything that can affect the speed or power of the engine, including but not limited to, the duration and timing of fuel injection, the idle speed control system, the cruise control system, the throttle assembly (including the servo mechanism), accelerator pedal assembly, the associated electronic control modules, the associated wiring for these

components, including the CAN bus, and the diagnostic software and devices. Plaintiff is aware that the electronic throttle control system installed in the 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating to the "electronic throttle control system or the ETCS-i in the 2005 Camry," please produce all such documents and information even if the particular system has been installed in models in addition to the aforesaid 2005 Camry.

3. "Unintended acceleration" and "alleged defect" for the purpose of discovery in this case may be used interchangeably, and each term is defined as either an alleged or reported (1) unexpected increase in engine speed (rpms), or (2) failure of the throttle control system to properly control engine speed, resulting in vehicle surge, or (3) failure of a vehicle to decelerate upon the driver's removal of force from the accelerator pedal, whether the incident be momentary, temporary, or sustained, including any situation where the driver experiences acceleration that could not be controlled by braking, was unexpected, unwanted, unintended, or where the vehicle failed to decelerate. "Unintended acceleration" is also sometimes referred to as "surprise acceleration."

4. "Electromagnetic disturbance" includes, but is not limited to, radiated, conducted and/or induced phenomena, electrostatic discharge, variations and fluctuations in the vehicle's electrical supply, whether transient or continuous, and whether the source of the disturbance is the vehicle itself, the external environment, or passenger-supplied electronic devices. It also includes any combinations of the above.

5. "Electromagnetic compatibility" or "EMC" is a measure of a vehicle's functions to operate safely and without unacceptable degradation of the intended

functionality over the anticipated lifetime of the vehicle despite the presence of electromagnetic disturbances.

6. "Toyota vehicle," unless otherwise specified, includes any vehicle designed, manufactured, sold, or marketed by Toyota.

7. "Document" means anything which may be considered to be a document or tangible thing within the meaning of the applicable rules of court and means and includes, without limitation, any written, printed, typewritten, handwritten, videotaped, recorded or other graphic matter or computer-generated or stored information, whether produced in "hard" copy or other tangible medium or presently stored within the memory of a computer or other data storage device, such as tapes, hard or floppy disc drives, now or at any time in your possession, custody or control; and, includes generally and without limiting the generality of the foregoing definitions, any correspondence, letters, E-mail, telegrams, telexes, cables, transcripts, agreements, contracts, notes, memoranda, jottings, projections, reports, opinions, work papers, diaries, daybooks, notebooks, calendars, address and telephone records, expense records and vouchers, time records, personnel records, minutes, summaries of any communications, reports or summaries of investigations, books of account, journals, ledgers, journal entries, accounting books and records, spread sheets, micro-fiche cards, microfilms, photographs, films, appraisals, surveys, financial statements, financial forecasts, computer programs, computer printouts, manuals, guides, books, magazines, newspapers, publications, and all preliminary versions and drafts, revisions of, or notations on any of the foregoing, including all non-identical copies and drafts of the foregoing, and all summaries, analyses or reports relating or referring in whole or in part to any of the foregoing.

A document shall be deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having possession or custody thereof. If a document is responsive to a request for production and is in your control, but is not in your possession or custody, you are requested to identify the person with possession or custody.

II.

INSTRUCTIONS

1. Where a claim of privilege is asserted in objecting to any document demand, or subpart thereof, and a document is not provided on the basis of such assertion, for each document not provided:

State, in the form of a privilege log, the following:

A) Whether the attorney-client privilege, the work-product doctrine, or another form of privilege provides the basis for withholding the document (*i.e.,* specify the privilege claimed).

B) The type of document being withheld (letter, e-mail, memo, etc.).

C) The date of the document.

D) The names of the author and all recipients.

E) The relationships of the parties privy to the communication.

F) The nature of the legal advice sought or rendered.

G) The circumstances indicating the confidential nature of the communication.

H) The litigation for which the document was prepared.

2. These are continuing requests for documents. A defendant is under a duty seasonably to supplement its production of documents if it obtains information upon the basis of which it learns or has reason to believe (a) that its production was incomplete when

made, or (b) that it has in its possession, custody or control, documents responsive to these requests which have not been produced.

3. To the extent possible, indicate the request number(s) to which the documents produced are responsive.

III.

REQUESTS FOR PRODUCTION

Please provide all of the following documents in your custody or control:

REQUEST FOR PRODUCTION NO. 1:

All technical specifications for the electronic throttle control system in the 2005 Camry that is the subject of this lawsuit, including all hardware, firmware (embedded microcode) and software.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

All design documents and specifications pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry, including the following:

- wiring diagrams
- circuit board diagrams and/or schematics, showing board layout on each layer of the board
- microcontroller and software that runs the microcontroller
- parts lists

- bills of materials
- functional block diagrams
- design calculations
- design control procedures governing how Toyota manages its design process
- assembly instructions
- manufacturing processes
- post-sale maintenance procedures
- fault-finding manuals
- systems modeling and simulations
- documents showing what kinds of commands are capable of actuating the throttle
- all applicable source codes
- accelerator pedal assembly, including, but not limited to, wiring diagram, module assembly, circuit board, schematic diagram, board layout (on each layer of the board)

Produce such documents relating to all iterations of the subject 2005 Camry, from the initial to the final production vehicles, and include all change request histories, including the reasons for the proposed changes (whether or not the change was effected).

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Documents that show how the technical specifications referred to in Request No. 1 were validated.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4 :

All FMEA's (failure mode and effects analyses), fault tree analyses, Ishikawa diagrams, and other failure analyses, (including, but not limited to, inductive, deductive, and brainstorming analyses) relating to the electronic throttle control system employed in the subject 2005 Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Documents that show how the electronic throttle control system and/or its components respond to electromagnetic disturbances reasonably likely to be experienced over the life of the vehicle due both electromagnetic activity in the vehicle itself and in the external environment.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

Documents that reflect how quality control was maintained during the process of manufacturing the ETCS-I, including how compliance with the EMC specifications in MY 2005 Camry vehicles was maintained.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Test schedules, test results, and sign-offs with respect to the electronic throttle control system employed in MY 2005 Camry vehicles. Include testing done at the component, system and/or vehicle level. Also include testing performed by outside suppliers.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

With respect to the EDR (electronic data recorder, sometimes referred to as the event data recorder or the "black box.") installed in MY 2005 Camry vehicles, provide all documents reflecting the following:

- its design and performance specifications
- its fault codes and their meanings
- the specific data captured by the EDR on the subject 2005 Camry (the Alberto accident vehicle).

- all documents interpreting, analyzing and/or reporting the status and performance of the systems monitored during the Alberto event that is the subject of this lawsuit

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

Produce all data retrieved from any other data recording device on the subject subject Alberto 2005 Camry, including, but not limited to, all documents interpreting, analyzing and/or reporting the status and performance of the systems monitored during the event that is the subject of this lawsuit

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

All technical service bulletins referring to or discussing the type of electronic throttle control system installed in MY 2005 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

The shop manual for the type of electronic throttle control system installed in MY 2005 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

All studies, analyses, memoranda and databases relating to alleged unintended acceleration in vehicles equipped with an electronic throttle control system (whether or not such vehicles were manufactured or marketed by Toyota).

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

Produce your records reflecting the number of MY 2005 Camry vehicles Toyota has manufactured for sale or lease in the United States. Separately, for each 2005 Camry vehicle manufactured by Toyota, show the following:

a. Vehicle identification number (VIN);
b. Type of pedal system vehicle was manufactured with (fixed or adjustable);
c. Type of transmission vehicle was manufactured with (auto or manual);
d. Date of manufacture;
e. Date warranty coverage commenced; and
f. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).

Please provide the table in a current searchable EXCEL spreadsheet format, entitled "PRODUCTION DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

Produce, in a current searchable EXCEL spreadsheet format, each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or

may relate to, sudden unintended, acceleration and/or engine surge in MY 2005 Camry vehicles:

a. Consumer complaints, including those from fleet operators;
b. Field reports, including dealer field reports;
c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
d. Property damage claims;
e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts "a" through "d," show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint). **Please do not exclude from your response consumer complaints, field reports and/or claims alleging any of the following:**

(1) incidents alleging uncontrollable acceleration that occurred for a long duration (more than one second);

(2) incidents in which the driver (or any surviving witness) alleged that he/she could not control the vehicle by applying the brakes;

(3) incidents alleging that unintended acceleration occurred when moving the shift lever to the Reverse or Drive position; or

(4) incidents that were terminated when the driver turned the ignition off.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:

Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to the foregoing Request No. 14, provide, in a current searchable EXCEL spreadsheet format, the following information:

a. Toyota's file number or other identifier used;
b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. Vehicle's VIN;
e. Vehicle's make, model and model year;
f. Vehicle's mileage at time of incident;
g. Incident date;
h. Report or claim date;
i. The incident type (alleged defect statement, type A, B, or both) alleged in the report;
j. Any retrieved diagnostic trouble code(s) related to the subject component (P codes);
k. Whether a subject component was determined to be the cause of the alleged incident;
l. Whether a subject component(s) was replaced during a service visit which was related to the report;
m. Whether Toyota inspected the vehicle in relation to the report;
n. Whether a crash is alleged;
o. Whether property damage is alleged;
p. Number of alleged injuries, if any;
q. Number of alleged fatalities, if any; and
r. Summary description (request No. 2 items "c" through "f" only).

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

Produce, in a current searchable EXCEL spreadsheet format, copies of all documents related to each item within the scope of Request No. 14. Organize the

documents separately by category (i.e., consumer complaints, filed reports, etc.) and describe the method Toyota used for further organizing the documents within each category.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Produce, in a current searchable EXCEL spreadsheet format, by model and model year, all of the following categories of claims, collectively, that have been paid by Toyota to date that relate to, or may relate to, the alleged defect in MY 2005 Camry vehicles: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

a. Toyota's claim number;
b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
c. VIN;
d. Repair date;
e. Vehicle mileage at time of repair;
f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
g. Labor operation number;
h. Problem code;
i. Replacement part number(s) and description(s);
j. Concern stated by customer; and
k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in a current searchable EXCEL spreadsheet format,, entitled "WARRANTY DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

Produce all documents reflecting the search criteria used by Toyota to identify the claims submitted in response to Request No. 17, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions applicable to the alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage offered by Toyota on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Toyota offered for the subject vehicles and state by option, model and model year, the number of vehicles that are covered under each such extended warranty.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

Copies of all correspondence, e-mails, memos, letters and records of all other communications, including telephone calls and minutes of meetings, between Toyota and the National Highway Traffic Safety Administration relating or referring in any manner to reports or allegations of unintended acceleration and/or engine surge in Toyota vehicles equipped with an electronic engine control system during the period commencing January 1, 2002, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:

All documents relating and/or referring to all recalls, voluntary or otherwise, involving allegations of unintended acceleration or to malfunctions in the electronic throttle control system in any Toyota vehicle, regardless of the country or region to which the recall pertains.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

If any software upgrades were effected as to the engine control unit in the subject 2005 Camry, provide documents reflecting or referencing:

- a description of the upgrade(s);
- the reason(s) for the upgrade(s);
- when the upgrade(s) were implemented; and
- whether any of these upgrade(s) were implemented with respect to vehicles that were already in the field (i.e., in the possession of consumers), and if so, their identity.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

Produce a copy of any written warranties applicable to the vehicle that is the subject of this action, that is, a subject 2005 Camry, VIN 4T1BE32K95U424864.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

Produce a copy of all advertising materials promoting or in any way relating to the 2005 Camry, including, but not limited to, print advertising and radio and television recordings and scripts thereof.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

Produce all documents reflecting the service history of the subject 2005 Camry, VIN 4T1BE32K95U424864, that is the subject of this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25:

Produce all documents relating to any and all investigations of the accident that occurred on April 19, 2008 involving the subject 2005 Camry, including any photos, drawings, field notes, expert analyses, or any other document as defined herein.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for testing electronic equipment installed in the 2005 Toyota Camry, including, but not limited to, all testing for electrical noise.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test methods for electric noise generated by automotive electronic devices installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test methods for resistance to induction noise generated by automotive electronic devices installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the life test method for soldering automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30 :

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test method for static electricity resistance of automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test methods for electrical disturbances from electrostatic discharges from automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test criteria for electrical disturbances from electrostatic discharges from automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test methods for migration of automotive electronic devices installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench test methods for performance of automotive electronic equipment installed in the 2005 Toyota Camry under fluctuating power supply voltage.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for all

electromagnetic radiation tests relating to the electromagnetic compatibility of automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the bench measurement method for narrow-band emission noise on EC regulation for automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the test method for measuring narrow-band emission noise from automotive ESA for which EMC homologation must be obtained, as it relates to automotive electronic devices installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the criteria

for bench measurement method for the effects of narrow-band emission noise on EC regulation of automotive electronic equipment installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the test methods employed in testing the computers used in the engine control system or unit installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents setting forth Toyota's engineering standards for the testing for radio noise interference of electric parts installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41:

To the extent not produced in response to one or more of the foregoing Requests, please produce all documents reflecting and/or reporting all test schedules, test results, analyses and sign-offs for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities under the standards, methods or tests hereinabove

described in Requests Nos. 21 through 36, inclusively, in relation to parts and/or systems installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42:

All design documents and specifications pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry that were delivered to defendants Denso International America and Denso Manufacturing Tennessee, Inc., or either of them.

RESPONSE:

REQUEST FOR PRODUCTION NO. 43:

All warranties pertaining to hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry that were designed and/or manufactured by defendants Denso International America and Denso Manufacturing Tennessee, or either of them.

RESPONSE:

REQUEST FOR PRODUCTION NO. 44:

All schedules, reports and analyses pertaining to testing conducted by or on behalf of defendants Denso International America and Denso Manufacturing Tennessee, or

either of them relative to the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 45:

All contracts or agreements between any Toyota entity, on the one hand, and defendants Denso International America and Denso Manufacturing Tennessee, or either of them, on the other, for the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 46:

All letters, memos, e-mails and/or records of communications between any Toyota entity, on the one hand, and defendants Denso International America and Denso Manufacturing Tennessee, or either of them, on the other, referring to the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 47:

All letters, memos, e-mails and/or records of communications authored by any Toyota engineer referring to the design, manufacturing, testing and/or production of any of the hardware, firmware (embedded microcode) and software components in the electronic throttle control system and/or engine control module assembly in the subject 2005 Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 48:

To the extent not produced in response to one or more of the foregoing Requests, please produce all letters, memos, e-mails and other records of communications from or to any Toyota and/or Denso engineer reflecting and/or reporting all test schedules, test results, analyses and sign-offs for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities under the standards, methods or tests hereinabove described in Requests Nos. 21 through 36, inclusively, in relation to parts and/or systems installed in the 2005 Toyota Camry.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49:

Please produce all instructional papers, manuals, books, and/or other documents used in training those persons whose job descriptions included responding, whether in writing, via e-mail, by telephone or otherwise, to reports, including consumer complaints, dealer contacts, customer hotline complaints and warranty claims that can reasonably be

construed as describing incidents or events of unintended acceleration in vehicles equipped with an electronic throttle control system and manufactured or marketed by Toyota.

RESPONSE:

REQUEST FOR PRODUCTION NO. 50:

Please produce all reports, letters, memos and/or other records of communications to and/or from all employees, officers, agents, attorneys or other persons who, at your request or under your direction or the direction of any of your officers, employees, agents or attorneys, has physically inspected and/or photographed and/or videographed the subject 2005 Camry that was involved in the accident that occurred on April 19, 2008 ("Alberto Accident Vehicle")..

RESPONSE:

REQUEST FOR PRODUCTION NO. 51:

Please produce all inspection protocols, agendas, field notes, invoices, photographs, audio recordings and videos and/or other papers, memos or documentation created, taken, recorded and/or maintained by each person who has physically inspected and/or photographed and/or videographed the subject 2005 Camry that was involved in the accident that occurred on April 19, 2008 ("Alberto Accident Vehicle").

RESPONSE:

REQUEST FOR PRODUCTION NO. 52:

Please produce all reports, diagrams, measurements, letters, memos and/or other records written, made or otherwise created by all employees, officers, agents, attorneys or other persons who, at your request or under your direction or the direction of any of your officers, employees, agents or attorneys, has physically inspected and/or photographed and/or videographed the accident scene in Flint, Michigan, where the subject 2005 Camry was involved in the accident that occurred on April 19, 2008 ("Alberto Accident Vehicle")..

RESPONSE:

REQUEST FOR PRODUCTION NO. 53:

Please produce all inspection protocols, agendas, field notes, photographs, audio recordings and videos and/or other papers, memos or documentation created, taken, recorded and/or maintained by each person who has physically inspected and/or photographed and/or videographed the accident scene in Flint, Michigan, where the subject 2005 Camry was involved in the accident that occurred on April 19, 2008 ("Alberto Accident Vehicle").

RESPONSE:

REQUEST FOR PRODUCTION NO. 54:

Please produce all invoices received by you or your attorneys from all persons, firms and/or corporations submitted for services or use of equipment in transporting the Alberto Accident Vehicle at any time following the accident of April 19, 2008.

RESPONSE

REQUEST FOR PRODUCTION NO. 55:

To the extent not produced in response to one or more of the foregoing Requests, please produce all reports, letters, memos, e-mails and other records of communications from or to any Toyota and/or Denso engineer reflecting and/or reporting all test schedules, test results, analyses and sign-offs for all testing conducted by Toyota and/or any of its contractors or suppliers or other third-party entities to determine the efficacy of braking by the driver of a 2005 Toyota Camry or any substantially similar Toyota sedan when the throttle is in a wide-open or substantially wide-open condition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56:

Produce copies of all service warranty, and other documents that relate to, or may relate to, the alleged defect in the MY 2005 Camry vehicles that Toyota has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that Toyota is planning to issue within the next 120 days.

RESPONSE:

REQUEST FOR PRODUCTION NO. 57:

Produce all documents describing, containing, setting forth or referring or relating to, all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, sudden, unintended acceleration and/or engine surge in the MY 2005 Camry vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Toyota. For each such action, provide the following information:

a. Action title or identifier:
b. The actual or planned start date;
c. The actual or expected end date;
d. Brief summary of the subject and objective of the action;
e. Engineering group(s) supplier(s) responsible for designing and for conducting the action; and
f. A brief summary of the findings and/or conclusions resulting from that action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

RESPONSE:

REQUEST FOR PRODUCTION NO. 58:

Describe all modifications or changes made by, or on behalf of, Toyota in the design, material composition, manufacture, quality control, supply, or installation of the electronic engine control unit or module, from the start of production to date, which relate to, or may relate to, sudden, unintended acceleration and/or engine surge in the subject vehicles. For each such modification or change, provide the following information:

a. The date or approximate date on which the modification or change was incorporated into vehicle production;
b. A detailed description of the modification or change;

c. The reason(s) for the modification or change;
d. The part numbers (service and engineering) of the original component;
e. The part number (service and engineering) of the modified component;
f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
g. When the modified component was made available as a service component; and
h. Whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that Toyota is aware of which may be incorporated into vehicle production within the next 120 days.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59:

Produce samples of one of each of the following:

a. An exemplar accelerator pedal assembly (with sensors);
b. An exemplar throttle body assembly (with sensors and throttle valve control motor); and
c. An exemplar electronic engine control unit (ECU).

RESPONSE:

REQUEST FOR PRODUCTION NO. 60:

Produce all documents reflecting the number of each of the following that Toyota has sold that may be used in the subject 2005 Camry vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (*including the cut-off date for sales, if applicable)*:

a. Accelerator pedal assembly (or sensor if serviced separately from assembly);
b. Throttle body assembly;

c. Throttle valve position sensor (if serviced separately from the throttle body assembly);
d. Throttle valve control motor (if serviced separately from the throttle body assembly); and
e. Electronic engine control unit or module.

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also identify by make, model and model year, any other vehicles of which Toyota is aware that contain either (1) the identical component, whether installed in production or in service, and state the applicable dates of production or service usage, or (2) a substantially similar component, whether installed in production or in service, and state the applicable dates of production or service usage.

RESPONSE:

REQUEST FOR PRODUCTION NO. 61:

Produce all documents reflecting the number of electronic engine control units or modules that Toyota has sold that may be used in MY 2005 Camry vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (*including the cut-off date for sales, if applicable)*:

a. Accelerator pedal assembly (or sensor if serviced separately from assembly);
b. Throttle body assembly;
c. Throttle valve position sensor (if serviced separately from the throttle body assembly);
d. Throttle valve control motor (if serviced separately from the throttle body assembly); and
e. Electronic engine control unit or module.

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also identify by make, model and model year, any other vehicles of which Toyota is aware that contain either (1) the identical component, whether installed in production or in service, and state the applicable dates of production or service usage, or (2) a substantially similar component, whether installed in production or in service, and state the applicable dates of production or service usage.

RESPONSE:

REQUEST FOR PRODUCTION NO. 63:

Furnish Toyota's assessment of the alleged defect (sudden, unintended acceleration and/or engine surge) in the subject 2005 Alberto Camry vehicle, including:

a. The causal or contributory factor(s);
b. The failure mechanism(s);
c. The failure mode(s);
d. The risk to motor vehicle safety that it poses; and
e. What warnings, if any, the operator and the other persons both inside and outside the vehicle would have that the alleged defect could occur, was occurring or the subject component was malfunctioning.

RESPONSE:

REQUEST FOR PRODUCTION NO. 64:

Please produce the contract pursuant to the terms of which the electronic engine control unit or module installed in the Alberto accident vehicle was sold to Toyota.

RESPONSE:

REQUEST FOR PRODUCTION NO. 65:

To the extent the documents are not included in your response to the foregoing Request No. 64, please produce all agreements, correspondence, e-mails and/or other records of communications (including, but not limited to, all indemnification and/or hold harmless agreements) between any Toyota entity and Denso International America, Inc., and/or Denso Manufacturing Tennessee, Inc., referring and/or relating to the design, manufacture and/or sale of electronic engine control units or modules installed in MY 2005 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 66:

To the extent the documents are not included in your response to the foregoing Request No. 65, please produce all agreements, correspondence, e-mails and/or other records of communications (including, but not limited to, all indemnification and/or hold harmless agreements) between any Toyota entity and Denso Manufacturing Tennessee, Inc. and/or Denso Manufacturing Michigan, Inc., referring and/or relating to the design, manufacture and/or sale of electronic engine control units or modules installed in MY 2005 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 67:

To the extent the documents are not included in your response to the foregoing Requests Nos. 65 and 66, please produce all agreements, correspondence, e-mails and/or

other records of communications between any Toyota entity and Denso International America, Inc., Denso Manufacturing Tennessee, Inc. and/or Denso Manufacturing Michigan, Inc., or any of them, referring and/or relating to claims of malfunction, failures, consumer complaints, NHTSA inquiries, or breach of warranty relating to the design, manufacture and/or sale of electronic engine control units or modules installed in MY 2005 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 68:

Produce all documents reflecting the various models and model years of vehicles (passenger cars, vans, SUVs and trucks) that Toyota has sold that are equipped with electronic engine control units or modules substantially similar in design to that installed in MY 2005 Camry vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (including the cut-off date for sales, if applicable).

RESPONSE:

REQUEST FOR PRODUCTION NO. 69:

All technical service bulletins referring to or discussing the electronic throttle control system installed in MY 2002, 2003, 2004, 2006, 2007, 2008, 2009 and 2010 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 70 :

The shop manual for the type of electronic throttle control system installed in MY 2002, 2003, 2004, 2006, 2007, 2008, 2009 and 2010 Camry vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 71:

Copies of all correspondence, e-mails, memos, letters and records of all other communications, including telephone communications and minutes of meetings, between Toyota and the National Highway Traffic Safety Administration relating or referring in any manner to reports or allegations of unintended acceleration and/or engine surge in Toyota vehicles equipped with an electronic engine control system during the period commencing January 1, 2002, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 72:

Produce your records reflecting the number of MY 2002, 2003, 2004, 2006, 2007, 2008, 2009 and 2010 Camry vehicles Toyota has manufactured for sale or lease in the United States. Separately, for each such Camry vehicle manufactured by Toyota, show the following:

a. Vehicle identification number (VIN);
b. Type of pedal system vehicle was manufactured with (fixed or adjustable);
c. Type of transmission vehicle was manufactured with (auto or manual);
d. Date of manufacture;
e. Date warranty coverage commenced; and

f. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).

Please provide the table in a current searchable EXCEL spreadsheet format, entitled "PRODUCTION DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 73:

Produce, in a current searchable EXCEL spreadsheet format, each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, sudden , unintended acceleration and/or engine surge in MY 2002, 2003, 2004, 2006, 2007, 2008, 2009 and 2010 Camry vehicles:

a. Consumer complaints, including those from fleet operators;
b. Field reports, including dealer field reports;
c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
d. Property damage claims;
e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts "a" through "d," show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report

and a consumer complaint). **Please do not exclude from your response consumer complaints, field reports and/or claims alleging any of the following:**

(1) incidents alleging uncontrollable acceleration that occurred for a long duration (more than one second);

(2) incidents in which the driver (or any surviving witness) alleged that he/she could not control the vehicle by applying the brakes;

(3) incidents alleging that unintended acceleration occurred when moving the shift lever to the Reverse or Drive position; or

(4) incidents that were terminated when the driver turned the ignition off.

RESPONSE:

REQUEST FOR PRODUCTION NO. 74:

Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to the foregoing Request No. 73, provide, in a current searchable EXCEL spreadsheet format, the following information:

a. Toyota's file number or other identifier used;
b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. Vehicle's VIN;
e. Vehicle's make, model and model year;
f. Vehicle's mileage at time of incident;
g. Incident date;
h. Report or claim date;
i. The incident type (alleged defect statement, type A, B, or both) alleged in the report;
j. Any retrieved diagnostic trouble code(s) related to the subject component (P codes);

k. Whether a subject component was determined to be the cause of the alleged incident;
l. Whether a subject component(s) was replaced during a service visit which was related to the report;
m. Whether Toyota inspected the vehicle in relation to the report;
n. Whether a crash is alleged;
o. Whether property damage is alleged;
p. Number of alleged injuries, if any;
q. Number of alleged fatalities, if any; and
r. Summary description (request No. 2 items "c" through "f" only).

RESPONSE:

REQUEST FOR PRODUCTION NO. 75:

Produce, in a current searchable EXCEL spreadsheet format, copies of all documents related to each item within the scope of Request No. 73. Organize the documents separately by category (i.e., consumer complaints, filed reports, etc.) and describe the method Toyota used for further organizing the documents within each category.

RESPONSE:

REQUEST FOR PRODUCTION NO. 76:

Produce, in a current searchable EXCEL spreadsheet format, by model and model year, all of the following categories of claims, collectively, that have been paid by Toyota to date that relate to, or may relate to, the alleged defect in MY 2002, 2003, 2004, 2006, 2007, 2008, 2009 and 2010 Camry vehicles: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

a. Toyota's claim number;
b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
c. VIN;
d. Repair date;
e. Vehicle mileage at time of repair;
f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
g. Labor operation number;
h. Problem code;
i. Replacement part number(s) and description(s);
j. Concern stated by customer; and
k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in a current searchable EXCEL spreadsheet format,, entitled "WARRANTY DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 77:

Produce all documents reflecting the search criteria used by Toyota to identify the claims submitted in response to Request No. 76, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions applicable to the alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage offered by Toyota on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Toyota offered for the subject vehicles and state by option, model and model year, the number of vehicles that are covered under each such extended warranty.

RESPONSE:

REQUEST FOR PRODUCTION NO. 78:

Produce your records reflecting the number of MY 2002, 2003, 2004, 2005,2006, 2007, 2008, 2009 and 2010 vehicles, other than Camrys, employing the ETCS-I that Toyota has manufactured for sale or lease in the United States. Separately, for each such vehicle, show the following:

a. Vehicle identification number (VIN);
b. Type of pedal system vehicle was manufactured with (fixed or adjustable);
c. Type of transmission vehicle was manufactured with (auto or manual);
d. Date of manufacture;
e. Date warranty coverage commenced; and
f. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).

Please provide the table in a current searchable EXCEL spreadsheet format, entitled "PRODUCTION DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 79:

Produce, in a current searchable EXCEL spreadsheet format, each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, sudden , unintended acceleration and/or engine surge in MY 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 Toyota vehicles, other than Camrys, in which the ETCS-i, or a version thereof, is installed:

a. Consumer complaints, including those from fleet operators;
b. Field reports, including dealer field reports;
c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the

manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

d. Property damage claims;

e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts "a" through "d," show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint). **Please do not exclude from your response consumer complaints, field reports and/or claims alleging any of the following:**

(1) incidents alleging uncontrollable acceleration that occurred for a long duration (more than one second);

(2) incidents in which the driver (or any surviving witness) alleged that he/she could not control the vehicle by applying the brakes;

(3) incidents alleging that unintended acceleration occurred when moving the shift lever to the Reverse or Drive position; or

(4) incidents that were terminated when the driver turned the ignition off.

RESPONSE:

REQUEST FOR PRODUCTION NO. 80:

Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to the foregoing Request No. 79, provide, in a current searchable EXCEL spreadsheet format, the following information:

a. Toyota's file number or other identifier used;
b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. Vehicle's VIN;
e. Vehicle's make, model and model year;
f. Vehicle's mileage at time of incident;
g. Incident date;
h. Report or claim date;
i. The incident type (alleged defect statement, type A, B, or both) alleged in the report;
j. Any retrieved diagnostic trouble code(s) related to the subject component (P codes);
k. Whether a subject component was determined to be the cause of the alleged incident;
l. Whether a subject component(s) was replaced during a service visit which was related to the report;
m. Whether Toyota inspected the vehicle in relation to the report;
n. Whether a crash is alleged;
o. Whether property damage is alleged;
p. Number of alleged injuries, if any;
q. Number of alleged fatalities, if any; and
r. Summary description (request No. 2 items "c" through "f" only).

RESPONSE:

REQUEST FOR PRODUCTION NO. 81:

Produce, in a current searchable EXCEL spreadsheet format, copies of all documents related to each item within the scope of Request No. 79. Organize the documents separately by category (i.e., consumer complaints, filed reports, etc.) and describe the method Toyota used for further organizing the documents within each category.

RESPONSE:

REQUEST FOR PRODUCTION NO. 82:

Produce, in a current searchable EXCEL spreadsheet format, by model and model year, all of the following categories of claims, collectively, that have been paid by Toyota to date that relate to, or may relate to, the alleged defect in MY 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 Toyota vehicles, other than Camrys, in which the ETCS-I is installed: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

a. Toyota's claim number;
b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
c. VIN;
d. Repair date;
e. Vehicle mileage at time of repair;
f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
g. Labor operation number;
h. Problem code;
i. Replacement part number(s) and description(s);
j. Concern stated by customer; and
k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in a current searchable EXCEL spreadsheet format,, entitled "WARRANTY DATA."

RESPONSE:

REQUEST FOR PRODUCTION NO. 83:

Produce all documents reflecting the search criteria used by Toyota to identify the claims submitted in response to Request No. 82, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions applicable to the alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage offered by Toyota on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Toyota offered for the subject vehicles and state by option, model and model year, the number of vehicles that are covered under each such extended warranty.

RESPONSE:

REQUEST FOR PRODUCTION NO. 84:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or minutes of meetings, between Christopher Santucci and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA during the period commencing January 1, 2003, to the present, in which allegations and/or customer complaints, claims, reports and/or dealer concerns regarding sudden, unintended accelerations of Toyota motor vehicles were discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 85:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between Christopher Santucci and his superiors and/or colleagues at Toyota Motor North America, Inc., Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in which any meeting and/or communication between Mr. Santucci and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA was discussed during the period commencing January 1, 2003, to the present..

RESPONSE:

REQUEST FOR PRODUCTION NO. 86:

To the extent not provided in response to the preceding requests, please produce Christophers Santucci's file containing documents, e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between him and his superiors and/or colleagues at Toyota Motor North America, Inc.. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in connection with NHTSA's 2004 defect investigation of MY 2003-04 Camry vehicles (PE04-021).

RESPONSE:

REQUEST FOR PRODUCTION NO. 87:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or minutes of meetings, between Christopher Tinto and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA during the period commencing January 1, 2002, to the present, in which allegations and/or customer complaints, claims, reports and/or dealer concerns regarding sudden, unintended accelerations of Toyota motor vehicles were discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 88:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between Christopher Tinto and his superiors and/or colleagues at Toyota Motor North America, Inc., Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in which any meeting and/or communication between Mr. Tinto and Scott Yon, Jeffrey Quandt, Kathleen DeMeter and/or any other employee of NHTSA was discussed during the period commencing January 1, 2002, to the present..

RESPONSE:

REQUEST FOR PRODUCTION NO. 89:

To the extent not provided in response to the preceding requests, please produce Christophers Tinto's file containing documents, e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or meetings, between him and his superiors and/or colleagues at Toyota Motor North America, Inc.. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, Inc., in connection with NHTSA's 2004 defect investigation of MY 2003-04 Camry vehicles (PE04-021).

RESPONSE:

REQUEST FOR PRODUCTION NO. 90:

Organizational charts showing the relationships, functions and operations among the various Toyota corporate entities operating within the United States.

RESPONSE:

REQUEST FOR PRODUCTION NO. 91:

All press releases, public statements, communiqués, announcements and/or like communications made or issued by any employee of, or spokesperson for, any Toyota entity during the period from July 1, 2009, to the present, referring or in any manner relating to reports or allegations of incidents of sudden, unintended acceleration in Toyota vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 92:

All e-mails, faxes, letters, memoranda, notes, reports and other written communications, as well as all records, including telephone call logs, of telephonic communications and/or minutes of meetings, between Christopher Santucci, Christopher Tinto and any other representative of Toyota, on the one hand, and any U.S. Senator or Member of the U.S. House of Representatives or any staff member thereof, on the other, during the period commencing July 1, 2009, to the present, in which allegations and/or customer complaints, claims, reports and/or dealer concerns or news reports regarding sudden, unintended accelerations of Toyota motor vehicles were discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 93:

All videos, recordings and/or other demonstrative products (including all outtakes and segments edited out during production) made for the purpose of accompanying or supporting press releases, public statements, communiqués, announcements and/or like communications made or issued by any employee of, or spokesperson for, any Toyota entity during the period from July 1, 2009, to the present, referring or in any manner relating to reports or allegations of incidents of sudden, unintended acceleration in Toyota vehicles.

RESPONSE:

REQUEST FOR PRODUCTION NO. 94:

RESPONSE:

REQUEST FOR PRODUCTION NO. 95:

Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to the foregoing Request No. 94, provide, in a current searchable EXCEL spreadsheet format, the following information:

a. Toyota's file number or other identifier used;
b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. Vehicle's VIN;
e. Vehicle's make, model and model year;
f. Vehicle's mileage at time of incident;
g. Incident date;
h. Report or claim date;
i. The incident type (alleged defect statement, type A, B, or both) alleged in the report;
j. Any retrieved diagnostic trouble code(s) related to the subject component (P codes);
k. Whether a subject component was determined to be the cause of the alleged incident;
l. Whether a subject component(s) was replaced during a service visit which was related to the report;
m. Whether Toyota inspected the vehicle in relation to the report;
n. Whether a crash is alleged;
o. Whether property damage is alleged;
p. Number of alleged injuries, if any;
q. Number of alleged fatalities, if any; and
r. Summary description (request No. 2 items "c" through "f" only).

RESPONSE:

REQUEST FOR PRODUCTION NO. 96:

Produce, in a current searchable EXCEL spreadsheet format, copies of all documents related to each item within the scope of Request No. 94. Organize the

documents separately by category (i.e., consumer complaints, filed reports, etc.) and describe the method Toyota used for further organizing the documents within each category.

RESPONSE:

BAILEY&GLASSER LLP

Lawyers
Internet www.baileyglasser.com
Phone (304) 345-6555 Fax (304) 342-1110

209 Capitol Street
Charleston WV 25301

February 10, 2010

Via Certified Mail

Lawrence C. Mann, Esq.
Bowman and Brooke LLP
50 West Big Beaver Road, Suite 600
Troy, MI 48084

Re: ***Alberto v. Toyota Motor North America, Inc., et al***

Dear Mr. Mann:

Enclosed please find **PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT TOYOTA MOTOR SALES U.S.A., INC.** for your client's review and response.

Should you have any questions regarding this matter, please do not hesitate to contact me at your convenience.

Sincerely,

Eric B. Snyder

EBS/tsc

Enclosure as noted above

cc: Edward M. Kronk, Esq.; via Certified Mail
Thomas J. Murray, Esq.
George Hilborn, Esq.
A. Camden Lewis, Esq.

RECEIVED
FEB 12 2010
BOWMAN AND BROOKE LLP

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

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EDWARD M. KRONK
Attorney for Denso Int'l America, Inc.
Butzel Long PC
150 W Jefferson Ave., Suite 100
Detroit, MI 48226

FEB 12 2010

PLAINTIFF'S NOTICE TO TAKE THE DEPOSITION OF CORPORATE REPRESENTATIVES OF TOYOTA MOTOR CORPORATION

PLEASE TAKE NOTICE that the Plaintiff, by counsel, pursuant to the MCR 2.306(B)(5), and MCR 2.315, hereby give notice that they will take the videotaped deposition of a witness or witnesses designated by Toyota Motor Company ("TMC") to testify on its behalf on, April 27, 2010 at the offices of Ackermann & Tilajef, P.C., 1180 South Beverly Drive, Suite 600, Los Angeles, Toyota Headquarters, 19001 S. Western Avenue, Torrence, California beginning at 9:00 a.m. and continuing day to day until complete. Unless otherwise limited, all requests cover the period January, 2001 to the present.

The deposition(s) will take place before a certified court reporter or notary public duly authorized to administer oaths and will continue from day-to-day until complete. You are invited to attend and protect your interests.

Plaintiff understands that TMC may wish to designate more than one representative, and/or produce different representatives on different days to address one more topics below. To the extent TMC wishes to do so, Plaintiffs request that TMC inform Plaintiff's counsel in writing, at least 2 weeks prior to the deposition which representative will be addressing which points on which day.

Pursuant to MI Rule 2.306(B)(5), and the stipulated agreement entered by the parties, within 75 days from service of this notice, TMC is requested to produce a witness or witnesses to testify on its behalf on the following matters:

1. All aspects of your policies and procedures for recording and reporting to other Toyota Entities any Consumer Complaints, Customer Complaints or Dealer Reports concerning UAE in any Toyota Vehicle, including your policies and procedures for receiving, processing, filing, investigating and responding to all such Consumer Complaints, Customer Complaints, and

Dealer Reports. This request covers the time period of January 1, 2001 to the present.

2. All aspects of your policies and procedures for recording and reporting to other Toyota Entities any Warranty Claims concerning UAE in any Toyota Vehicle, including your policies and procedures for receiving, processing, filing, investigating and responding to all such Warranty Claims. This request covers the time period of January 1, 2001 to the present.

3. All aspects of your communications with automobile dealers or automobile service providers in the United States (including but not limited to your dealers) concerning UAE, including but not limited to instructions or guidance on how to respond to individuals that raise issues concerning UAE. This request covers the time period of January 1, 2001 to the present.

4. All of your communications with Denso concerning UAE, including but not limited to any investigation of UAE undertaken by you, Denso, or any other entity; any design standards addressing UAE; conclusions regarding the potential root causes of UAE; any action proposed by you, Denso, or any other entity which were intended to remedy, reduce, or otherwise improve safety in regards to UAE; any media efforts involving you or Denso undertaken in response to increased public concern over UAE, and any rejection of goods, demand for payment, or indemnification asserted by you or Denso in regard to UAE. This request covers the time period of January 1, 2001 to the present.

5. All aspects of your communications with any supplier of electronic throttle control devices concerning UAE, including but not limited to any investigation of UAE undertaken by you, or any other entity; any design standards addressing UAE; any conclusions regarding the potential root causes of UAE; any action proposed by you, or any other entity which were intended to remedy, reduce, or otherwise improve safety in regards to UAE; any media efforts involving you or any other entity undertaken in response to increased public concern over UAE, and any rejection of goods, demand for payment, or indemnification asserted by you or any supplier of electronic throttle control devices in regard to UAE. This request covers the time period of January 1, 2001 to the present.

6. All aspects of your communications to government agencies concerning UAE, including but not limited to any documents produced in regard to government inquiries into UAE. This request covers the time period of January 1, 2001 to the present.

7. All aspects of your policies and procedures for recording and reporting potential defects associated with UAE under the Transportation Recall

Enhancement, Accountability, and Documentation ("TREAD") Act. This request covers January 1, 2001 to the present.

8. All aspects of the design, implementation, purchase, manufacture and installation of the ETCS-i including but not limited to different iterations or design evolutions of the ETCS-i hardware or software, including but not limited to different iterations of the ETCS-i incorporated into the design of Camry vehicles in M.Y. 2002 through 2010, inclusively.

9. The existence, negotiation, performance, and if applicable, termination of all contracts and/or agreements with any entity concerning the ETCS-i as incorporated into the design of Camry vehicles in M.Y. 2002 through 2010 inclusively.

10. All aspects of all Brake Override systems (if any) employed on the M.Y. 2005 Camry, including but not limited to the design, manufacture, implementation, purchase and installation of such system(s).

11. All aspects of your reason for not using a more effective, or different, Brake Override system then the Brake Override System (if any) employed on the M.Y. 2005 Camry.

12. All aspects of any Brake Override System you considered, but did not employ on the M.Y. 2005 Camry, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

13. All aspects of any Brake Override System (if any) you considered, but did not incorporate into the design of any M.Y. 2006 or later Toyota Vehicle equipped with an ETCS-i, including but not limited to the design, manufacture, implementation, purchase and installation of such system(s).

14. All aspects of any Brake Override System you considered, but did not employ on any Toyota Vehicle equipped with ETCS-i, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

15. All aspects of any fail-safe incorporated into the design of the M.Y. 2005 Camry which are designed or intended to guard against the occurrence of UAE, or protect individuals in the event of a UAE, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

16. All aspects of any fail-safe which was designed or intended to guard against the occurrence of UAE, or protect individuals in the event of a UAE, that you considered, but did not incorporate into the design of the M.Y. 2005 Camry which are designed or intended to guard against the occurrence of UAE, or protect individuals in the event of a UAE, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

17. All aspects of your knowledge of the Alberto Vehicle, including but not limited to when, where, how, and from what source you acquired such knowledge.

18. All of your reasons for not including the M.Y. 2005 Camry in the September 29, 2009, Recall regarding floor mats or the January, 2010, Recall regarding accelerator pedals.

19. All aspects of all Recalls which included the M.Y. 2005 Camry, including but limited to the reasons why such Recalls did not address UAE.

20. How you chose which models to include in the September 29, 2009 Recall regarding floor mats, and the January, 2010 Recall regarding accelerator pedals.

21. All aspects of all market studies, market research studies, demographic studies, focus groups, and advertising studies you conducted or commissioned concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

22. All aspects of all advertising you conducted or commissioned concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

23. All aspects of your marketing to consumers to date concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

24. All aspects of your decision to incorporate an ETCS-i module manufactured by Denso into certain Toyota Vehicles including but not limited to how you chose Denso to manufacture the ETCS-i components, how you determined which vehicles would receive the Denso ETCS-i components, any performance standards, quality control standards, or design standards which you supplied to Denso, and any testing you performed as part of your decision.

25. All aspects of your financial position including but not limited to your gross sales, your gross sales within the State of Michigan, all revenues and profits generated from the sale of Toyota Vehicles equipped with ETCS-i,

all revenues and profits generated by the sale of Toyota Vehicles equipped with ETCS-i sold within the State of Michigan, and Toyota's revenues and profits generated from the sale of the M.Y. 2005 Camry.

For purposes of this discovery, the following definitions shall apply:

DEFINITIONS

1. "ALBERTO VEHICLE" refers to the 2005 Toyota Camry Guadalupe Alberto was driving at the time of her fatal collision on April 19, 2008.

2. "BRAKE OVERRIDE" refers to any electronic or mechanical system designed and/or intended to allow a driver to stop a car with the footbrake, even if the vehicle's accelerator is depressed and the vehicle is running at full throttle, and any and all component parts of any such system, and shall include but is not limited, to the system described by Mr. Santucci on pages 206-208 of his deposition given on December 9, 2009. This definition shall also include, but is not limited to, any such system identified as a "brake override" by Toyota, or any other vehicle manufacturer, and unless otherwise stated is not limited to system that was placed in actual production by Toyota or any other entity.

3. "CAMRY" refers to the vehicle manufactured and/or marketed by Toyota under the Camry moniker, including all trim levels, and or vehicles sharing the Camry platform or major chassis and drive train components, including but not limited to vehicles marketed as the Lexus ES, Toyota Windom, or Toyota Aurion.

4. "COMMUNICATE" or "COMMUNICATION" refers to any transmission of information between parties, whether the same be written, verbal or electronic in nature and is to be interpreted consistent with the Federal Rules of Civil Procedure and/or any applicable Michigan Rule.

5. "CONCERNING" means related to, in regard to, connected to, relevant to, or affecting any other article, unless otherwise stated.

6. "CONSUMER" refers to any potential purchaser, lessee, or user of a product, irrespective of whether or not such person or entity meets the definition of Consumer or Customer under law, and any other person or entity you may specifically marketed towards, irrespective of whether or not such marketing resulted in an actual sale.

7. "CUSTOMER" refers to any actual purchaser, lessee, or user of a product, irrespective of whether or not such person or entity meets the definition of Consumer or Customer under law.

8. "CONSUMER COMPLAINT" and/or "CUSTOMER COMPLAINT" refers to any communication from a putative owner, lessor, lesee, operator or passenger regarding any question, criticism or concern regarding a product, whether or not such person meets the definition of a "consumer" under law, and irrespective of whether the concern raised in the communication was investigated or verified by you.

9. "DEALER" unless otherwise limited, "DEALER" refers to any seller or lessor of your product, irrespective of whether or not such person or entity is considered by you to be a licensed and/or authorized dealer.

10. "DEALER REPORTS" refer to any documentation or reporting mechanism whereby your Dealers or Maintenance Service Providers communicate to you in regard to complaints or concerns regarding your products, irrespective of whether such complaints or concerns were initiated by a Consumer or Customer.

11. "DOCUMENT" means anything which may be considered to be a document or tangible thing within the meaning of the applicable rules of court and means and includes, without limitation, any written, printed, typewritten, handwritten, videotaped, recorded or other graphic matter or computer-generated or stored information, whether produced in "hard" copy or other tangible medium or presently stored within the memory of a computer or other data storage device, such as tapes, hard or floppy disc drives, now or at any time in your possession, custody or control; and, includes generally and without limiting the generality of the foregoing definitions, any correspondence, letters, E-mail, telegrams, telexes, cables, transcripts, agreements, contracts, notes, memoranda, jottings, projections, reports, opinions, work papers, diaries, daybooks, notebooks, calendars, address and telephone records, expense records and vouchers, time records, personnel records, minutes, summaries of any communications, reports or summaries of investigations, books of account, journals, ledgers, journal entries, accounting books and records, spread sheets, micro-fiche cards, microfilms, photographs, films, appraisals, surveys, financial statements, financial forecasts, computer programs, computer printouts, manuals, guides, books, magazines, newspapers, publications, and all preliminary versions and drafts, revisions of, or notations on any of the foregoing, including all non-identical copies and drafts of the foregoing, and all summaries, analyses or reports relating or referring in whole or in part to any of the foregoing. Copies of documents that differ from the original because someone made notes on them are separate documents.

A document shall be deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having possession or custody thereof. If a document is responsive to an Interrogatory and is in

your control, but is not in your possession or custody, you are requested to identify the person with possession or custody.

12. "DENSO" refers to Denso International America, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions, including (unless otherwise expressly specified) Denso Manufacturing Michigan, Inc., and Denso Manufacturing Kentucky, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

13. "ELECTROMAGNETIC DISTURBANCE" includes, but is not limited to, radiated, conducted and/or induced phenomena, electrostatic discharge, variations and fluctuations in the vehicle's electrical supply, whether transient or continuous, and whether the source of the disturbance is the vehicle itself, the external environment, or passenger-supplied electronic devices. It also includes any combinations of the above.

14. "ELECTROMAGNETIC COMPATIBILITY" or "EMC" is a measure of a vehicle's functions to operate safely and without unacceptable degradation of the intended functionality over the anticipated lifetime of the vehicle despite the presence of electromagnetic disturbances.

15. "ELECTRONIC THROTTLE CONTROL SYSTEM", "ECU", "ELECTRONIC ENGINE CONTROL UNIT" "DRIVE BY WIRE" and "THROTTLE BY WIRE SYSTEM" all refer to any system that uses a computer-controlled electronic means to control the throttle. It includes anything that can affect the speed or power of the engine, including but not limited to, the duration and timing of fuel injection, the idle speed control system, the speed control system, the throttle assembly (including the servo mechanism),

accelerator pedal assembly, the associated electronic control modules, the associated wiring for these components, and the diagnostic software and devices. Plaintiffs are aware that the electronic throttle control system installed in the MY 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating to the "electronic throttle control system in the MY 2005 Camry," please answer with reference to all such documents and information even if the particular system has been installed in models in addition to the aforesaid MY 2005 Camry.

16. "ETCS-INTELLIGENT" and "ETCS-i" refer to the particular Electronic Throttle Control System incorporated by Toyota into the design of its vehicles, and marketed, designated or otherwise referred to by Toyota as the "ETCS-INTELLIGENT" and "ETCS-i" system. Plaintiffs are aware that the electronic throttle control system installed in the MY 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating to the "electronic throttle control system in the MY 2005 Camry," please answer with reference to all such documents and information even if the particular system has been installed in models in addition to the aforesaid MY 2005 Camry.

17. "MODEL YEAR" and/or "M.Y." refer to the calendar designation or number you use in North America to describe when a product was produced, or indicate any manufacturer-specified evolution in mid-cycle of a model range for any such product. Model Year or M.Y. is not synonymous with calendar year, although the two may coincide.

18. "RECALL" refers to any action undertaken to notify automobile owners of a defect, irrespective of whether such was voluntary or ordered by a regulatory agency, and irrespective of whether you described the same as a "Recall" at the time of taking such action.

19. "TEMA" refers to Toyota Motor Engineering & Manufacturing North America, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

20. "TMC" refers to Toyota Motor Corporation, and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

21. "TMMK" refers to Toyota Motor Manufacturing, Kentucky, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

22. "TMMWV" refers to Toyota Motor Manufacturing, West Virginia, Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents,

and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

23. "TMNA" refers to Toyota Motor North America, Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

24. "TMS" refers to Toyota Motor Sales U.S.A., Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

25. "TOYOTA DEFENDANTS" refers to any Toyota Entity identified as a Defendant in the instant lawsuit.

26. "TOYOTA ENTITIES" refers to Toyota Motor Corporation, and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions including but not limited to, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

27. "TOYOTA VEHICLE" unless otherwise specifically limited, refers to any vehicle designed, manufactured or marketed by Toyota Motor Company, or any

subsidiaries, predecessors, parents, successors, affiliates, segments or divisions therefore, including but not limited to vehicles marketed under the Toyota, Lexus, Scion of Hino brands, and any vehicles designed, manufactured, or marketed by a Toyota Entity in partnership with another vehicle manufacturer such as the Pontiac Vibe.

28. "UNINTENDED ACCELERATION EVENT" and "UAE" for the purpose of discovery in this case are defined as either an alleged unexpected increase in engine speed, or the failure of a vehicle to decelerate upon the driver's removal of force from the accelerator pedal, whether the incident be momentary, temporary, or sustained, including any situation where the driver experiences acceleration that could not be controlled, was unexpected, unwanted, unintended, or where the vehicle failed to decelerate. "Unintended acceleration" is also sometimes referred to as "surprise acceleration."

PLAINTIFF

By Counsel

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209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 *facsimile*

PROOF OF SERVICE

The undersigned, Eric B. Snyder, Counsel for Plaintiff, hereby declares that on February 10, 2010, he served a copy of the foregoing **Plaintiff's Notice to Take the Deposition of Corporate Representatives of Toyota Motor Corporation**, together with this Proof of Service, via Federal Express Delivery and facsimile transmission upon:

Edward M. Kronk, Esq.
Matthew H. Letzmann, Esq.
150 West Jefferson, Suite 100
Detroit, Michigan 48226-4430
(313) 225-7080
(Counsel for Defendant Denso International, Inc.)

and

Lawrence C. Mann, Esq.
Andrea L. Moody, Esq.
Bowman and Brooke, LLP
50 W. Big Beaver Road, Suite 600
Troy, Michigan 48084
(246) 743-0422
(Counsel for Toyota Defendants)

E. Bailey (pro hac vice)

Benjamin L. Bailey
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Attorney for Plaintiff
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 *facsimile*

Dated: February 10, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,
Plaintiff,

v.

No. 09-91973
Judge Archie Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,** a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.,** a California corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.,** a Kentucky corporation; **DENSO INTERNATIONAL AMERICA, INC.,** a Michigan corporation; and **DENSO MANUFACTURING TENNESSEE, INC.** a Tennessee corporation,
Defendants.

GEORGE HILBORN (P14995)
Attorney for Plaintiff
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999 Haynes Street, Suite 205
Birmingham, MI 48009
(248) 642-8350

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Attorney for Denso Int'l America, Inc.
Butzel Long PC
150 W Jefferson Ave, Suite 100
Detroit, MI 48226

RECEIVED
FEB 16 2010
BOWMAN AND BROOKE LLP

PLAINTIFF'S NOTICE TO TAKE THE VIDEOTAPED DEPOSITION OF TOYOTA MOTOR SALES U.S.A., INC.

PLEASE TAKE NOTICE that the Plaintiff, by counsel, pursuant to the MCR 2.306(B)(5), and MCR 2.315, hereby give notice that they will take the videotaped deposition of Toyota Motor Sales U.S.A., Inc., ("TMS") by its designated representative or representatives, on March 9, 2010 at the offices of Ackermann & Tilajef, P.C., 1180 South Beverly Drive, Suite 600, Los Angeles, California 90035, beginning at 9:00 a.m. and continuing day to day until complete. Unless otherwise limited, all requests cover the period January, 2001 to the present.

The deposition(s) will take place before a certified court reporter or notary public duly authorized to administer oaths and will continue from day-to-day until complete. You are invited to attend and protect your interests.

Plaintiff understands that TMS may wish to designate more than one representative, and/or produce different representatives on different days to address one more topics below. To the extent TMS wishes to do so, Plaintiffs request that TMS inform Plaintiff's counsel in writing, at least 2 weeks prior to the deposition which representative will be addressing which points on which day.

Pursuant to MI Rule 2.306(B)(5), and the stipulated agreement entered by the parties, TMS is requested to produce a witness or witnesses to testify on its behalf on the following matters:

1. All aspects of your policies and procedures for recording and reporting to other Toyota Entities any Consumer Complaints, Customer Complaints or Dealer Reports concerning UAE in any Toyota Vehicle, including your policies and procedures for receiving, processing, filing, investigating and responding to all such Consumer Complaints, Customer Complaints, and Dealer Reports. This request covers the time period of January 1, 2001 to the present.

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FEB 16 2010
BOWMAN AND BROOKE LLP

2. All aspects of your policies and procedures for recording and reporting to other Toyota Entities any Warranty Claims concerning UAE in any Toyota Vehicle, including your policies and procedures for receiving, processing, filing, investigating and responding to all such Warranty Claims. This request covers the time period of January 1, 2001 to the present.

3. All aspects of your communications with automobile dealers or automobile service providers in the United States (including but not limited to your dealers) concerning UAE, including but not limited to instructions or guidance on how to respond to individuals that raise issues concerning UAE. This request covers the time period of January 1, 2001 to the present.

4. All of your communications with Denso concerning UAE, including but not limited to any investigation of UAE undertaken by you, Denso, or any other entity; any design standards addressing UAE; conclusions regarding the potential root causes of UAE; any action proposed by you, Denso, or any other entity which were intended to remedy, reduce, or otherwise improve safety in regards to UAE; any media efforts involving you or Denso undertaken in response to increased public concern over UAE, and any rejection of goods, demand for payment, or indemnification asserted by you or Denso in regard to UAE. This request covers the time period of January 1, 2001 to the present.

5. All aspects of your communications with any supplier of electronic throttle control devices concerning UAE, including but not limited to any investigation of UAE undertaken by you, or any other entity; any design standards addressing UAE; any conclusions regarding the potential root causes of UAE; any action proposed by you, or any other entity which were intended to remedy, reduce, or otherwise improve safety in regards to UAE; any media efforts involving you or any other entity undertaken in response to increased public concern over UAE, and any rejection of goods, demand for payment, or indemnification asserted by you or any supplier of electronic throttle control devices in regard to UAE. This request covers the time period of January 1, 2001 to the present.

6. All aspects of your communications to government agencies concerning UAE, including but not limited to any documents produced in regard to government inquiries into UAE. This request covers the time period of January 1, 2001 to the present.

7. All aspects of your policies and procedures for recording and reporting potential defects associated with UAE under the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act. This request covers January 1, 2001 to the present.

8. All aspects of the design, implementation, purchase, manufacture and installation of the ETCS-i including but not limited to different iterations or design evolutions of the ETCS-i hardware or software, including but not limited to different

iterations of the ETCS-i incorporated into the design of Camry vehicles in M.Y. 2002 through 2010, inclusively.

9. The existence, negotiation, performance, and if applicable, termination of all contracts and/or agreements with any entity concerning the ETCS-i as incorporated into the design of Camry vehicles in M.Y. 2002 through 2010 inclusively.

10. All aspects of all Brake Override systems (if any) employed on the M.Y. 2005 Camry, including but not limited to the design, manufacture, implementation, purchase and installation of such system(s).

11. All aspects of your reason for not using a more effective, or different, Brake Override system then the Brake Override System (if any) employed on the M.Y. 2005 Camry.

12. All aspects of any Brake Override System you considered, but did not employ on the M.Y. 2005 Camry, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

13. All aspects of any Brake Override System (if any) you considered, but did not incorporate into the design of any M.Y. 2006 or later Toyota Vehicle equipped with an ETCS-i, including but not limited to the design, manufacture, implementation, purchase and installation of such system(s).

14. All aspects of any Brake Override System you considered, but did not employ on any Toyota Vehicle equipped with ETCS-i, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

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16. All aspects of any fail-safe which was designed or intended to guard against the occurrence of UAE, or protect individuals in the event of a UAE, that you considered, but did not incorporate into the design of the M.Y. 2005 Camry which are designed or intended to guard against the occurrence of UAE, or protect individuals in the event of a UAE, including but not limited to any design criteria, performance standard, testing, or cost-benefit analysis performed in regard to any such system, and your reasons for not employing such system(s).

17. All aspects of your knowledge of the Alberto Vehicle, including but not limited to when, where, how, and from what source you acquired such knowledge.

18. All of your reasons for not including the M.Y. 2005 Camry in the September 29, 2009, Recall regarding floor mats or the January, 2010, Recall regarding accelerator pedals.

19. All aspects of all Recalls which included the M.Y. 2005 Camry, including but limited to the reasons why such Recalls did not address UAE.

20. How you chose which models to include in the September 29, 2009 Recall regarding floor mats, and the January, 2010 Recall regarding accelerator pedals.

21. All aspects of all market studies, market research studies, demographic studies, focus groups, and advertising studies you conducted or commissioned concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

22. All aspects of all advertising you conducted or commissioned concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

23. All aspects of your marketing to consumers to date concerning the Toyota Camry, M.Y. 2006, 2006, 2004, 2003, and/or 2002.

24. All aspects of your decision to incorporate an ETCS-i module manufactured by Denso into certain Toyota Vehicles including but not limited to how you chose Denso to manufacture the ETCS-i components, how you determined which vehicles would receive the Denso ETCS-i components, any performance standards, quality control standards, or design standards which you supplied to Denso, and any testing you performed as part of your decision.

25. All aspects of your financial position including but not limited to your gross sales, your gross sales within the State of Michigan, all revenues and profits generated from the sale of Toyota Vehicles equipped with ETCS-i, all revenues and profits generated by the sale of Toyota Vehicles equipped with ETCS-i sold within the State of Michigan, and Toyota's revenues and profits generated from the sale of the M.Y. 2005 Camry.

26. All aspects of corporate structure of TMS, and the corporate roles and functions of all Toyota Entities including but not limited to an organizational chart for the Toyota Entities, corporate oversight, management controls, and lines of communication between Toyota Entities, and roles and responsibilities of each Toyota Entity.

TOY-RQ-05E-00004856

For purposes of this discovery, the following definitions shall apply:

DEFINITIONS

1. "ALBERTO VEHICLE" refers to the 2005 Toyota Camry Guadalupe Alberto was driving at the time of her fatal collision on April 19, 2008.

2. "BRAKE OVERRIDE" refers to any electronic or mechanical system designed and/or intended to allow a driver to stop a car with the footbrake, even if the vehicle's accelerator is depressed and the vehicle is running at full throttle, and any and all component parts of any such system, and shall include but is not limited, to the system described by Mr. Santucci on pages 206-208 of his deposition given on December 9, 2009. This definition shall also include, but is not limited to, any such system identified as a "brake override" by Toyota, or any other vehicle manufacturer, and unless otherwise stated is not limited to system that was placed in actual production by Toyota or any other entity.

3. "CAMRY" refers to the vehicle manufactured and/or marketed by Toyota under the Camry moniker, including all trim levels, and or vehicles sharing the Camry platform or major chassis and drive train components, including but not limited to vehicles marketed as the Lexus ES, Toyota Windom, or Toyota Aurion.

4. "COMMUNICATE" or "COMMUNICATION" refers to any transmission of information between parties, whether the same be written, verbal or electronic in nature and is to be interpreted consistent with the Federal Rules of Civil Procedure and/or any applicable Michigan Rule.

5. "CONCERNING" means related to, in regard to, connected to, relevant to, or affecting any other article, unless otherwise stated.

TOY-RQ-05E-00004857

6. "CONSUMER" refers to any potential purchaser, lessee, or user of a product, irrespective of whether or not such person or entity meets the definition of Consumer or Customer under law, and any other person or entity you may specifically marketed towards, irrespective of whether or not such marketing resulted in an actual sale.

7. "U" refers to CTS Corporation and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

8. "CUSTOMER" refers to any actual purchaser, lessee, or user of a product, irrespective of whether or not such person or entity meets the definition of Consumer or Customer under law.

9. "CONSUMER COMPLAINT" and/or "CUSTOMER COMPLAINT" refers to any communication from a putative owner, lessor, lesee, operator or passenger regarding any question, criticism or concern regarding a product, whether or not such person meets the definition of a "consumer" under law, and irrespective of whether the concern raised in the communication was investigated or verified by you.

10. "DEALER" unless otherwise limited, "DEALER" refers to any seller or lessor of your product, irrespective of whether or not such person or entity is considered by you to be a licensed and/or authorized dealer.

11. "DEALER REPORTS" refer to any documentation or reporting mechanism whereby your Dealers or Maintenance Service Providers communicate to you in regard to complaints or concerns regarding your products, irrespective of whether such complaints or concerns were initiated by a Consumer or Customer.

12. "DOCUMENT" means anything which may be considered to be a document or tangible thing within the meaning of the applicable rules of court and means and includes, without limitation, any written, printed, typewritten, handwritten, videotaped, recorded or other graphic matter or computer-generated or stored information, whether produced in "hard" copy or other tangible medium or presently stored within the memory of a computer or other data storage device, such as tapes, hard or floppy disc drives, now or at any time in your possession, custody or control; and, includes generally and without limiting the generality of the foregoing definitions, any correspondence, letters, E-mail, telegrams, telexes, cables, transcripts, agreements, contracts, notes, memoranda, jottings, projections, reports, opinions, work papers, diaries, daybooks, notebooks, calendars, address and telephone records, expense records and vouchers, time records, personnel records, minutes, summaries of any communications, reports or summaries of investigations, books of account, journals, ledgers, journal entries, accounting books and records, spread sheets, micro-fiche cards, microfilms, photographs, films, appraisals, surveys, financial statements, financial forecasts, computer programs, computer printouts, manuals, guides, books, magazines, newspapers, publications, and all preliminary versions and drafts, revisions of, or notations on any of the foregoing, including all non-identical copies and drafts of the foregoing, and all summaries, analyses or reports relating or referring in whole or in part to any of the foregoing. Copies of documents that differ from the original because someone made notes on them are separate documents.

A document shall be deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having possession or custody thereof. If a document is responsive to an Interrogatory and is in your control, but is not in your possession or custody, you are requested to identify the person with possession or custody.

TOY-RQ-05E-00004859

13. "DENSO" refers to Denso International America, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions, including (unless otherwise expressly specified) Denso Manufacturing Michigan, Inc., and Denso Manufacturing Kentucky, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

14. "ELECTROMAGNETIC DISTURBANCE" includes, but is not limited to, radiated, conducted and/or induced phenomena, electrostatic discharge, variations and fluctuations in the vehicle's electrical supply, whether transient or continuous, and whether the source of the disturbance is the vehicle itself, the external environment, or passenger-supplied electronic devices. It also includes any combinations of the above.

15. "ELECTROMAGNETIC COMPATIBILITY" or "EMC" is a measure of a vehicle's functions to operate safely and without unacceptable degradation of the intended functionality over the anticipated lifetime of the vehicle despite the presence of electromagnetic disturbances.

16. "ELECTRONIC THROTTLE CONTROL SYSTEM", "ECU", "ELECTRONIC ENGINE CONTROL UNIT" "DRIVE BY WIRE" and "THROTTLE BY WIRE SYSTEM" all refer to any system that uses a computer-controlled electronic means to control the throttle. It includes anything that can affect the speed or power of the engine, including but not limited to, the duration and timing of fuel injection, the idle speed control system, the speed control system, the throttle assembly (including the servo mechanism), accelerator pedal assembly, the associated electronic control modules, the associated wiring for these components, and the

diagnostic software and devices. Plaintiffs are aware that the electronic throttle control system installed in the M.Y. 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating to the "electronic throttle control system in the M.Y. 2005 Camry," please answer with reference to all such documents and information even if the particular system has been installed in models in addition to the aforesaid M.Y. 2005 Camry.

17. "ETCS-iNTELLIGENT" and "ETCS-i" refer to the particular Electronic Throttle Control System incorporated by Toyota into the design of its vehicles, and marketed, designated or otherwise referred to by Toyota as the "ETCS-iNTELLIGENT" and "ETCS-i" system. Plaintiffs are aware that the electronic throttle control system installed in the M.Y. 2005 Camry may not be unique to that model. Thus, when discovery in this case asks for documents or information relating to the "electronic throttle control system in the M.Y. 2005 Camry," please answer with reference to all such documents and information even if the particular system has been installed in models in addition to the aforesaid M.Y. 2005 Camry.

18. "MODEL YEAR" and/or "M.Y." refer to the calendar designation or number you use in North America to describe when a product was produced, or indicate any manufacturer-specified evolution in mid-cycle of a model range for any such product. Model Year or M.Y. is not synonymous with calendar year, although the two may coincide.

19. "RECALL" refers to any action undertaken to notify automobile owners of a defect, irrespective of whether such was voluntary or ordered by a regulatory agency, and irrespective of whether you described the same as a "Recall" at the time of taking such action.

20. "TEMA" refers to Toyota Motor Engineering & Manufacturing North America, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or

employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

21. "TMC" refers to Toyota Motor Corporation, and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

22. "TMMK" refers to Toyota Motor Manufacturing, Kentucky, Inc., and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

23. "TMMWV" refers to Toyota Motor Manufacturing, West Virginia, Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

24. "TMNA" refers to Toyota Motor North America, Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

25. "TMS" refers to Toyota Motor Sales U.S.A., Inc. and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

TOY-RQ-05E-00004862

26. "TOYOTA DEFENDANTS" refers to any Toyota Entity identified as a Defendant in the instant lawsuit.

27. "TOYOTA ENTITIES" refers to Toyota Motor Corporation, and any of its subsidiaries, predecessors, parents, successors, affiliates, segments or divisions including but not limited to, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. The term also refers to any present or former officers, directors, agents, and/or employees (including its attorneys, accountants and advisors) acting or purporting to act on behalf of any of said entities.

28. "TOYOTA VEHICLE" unless otherwise specifically limited, refers to any vehicle designed, manufactured or marketed by Toyota Motor Company, or any subsidiaries, predecessors, parents, successors, affiliates, segments or divisions therefore, including but not limited to vehicles marketed under the Toyota, Lexus, Scion of Hino brands, and any vehicles designed, manufactured, or marketed by a Toyota Entity in partnership with another vehicle manufacturer such as the Pontiac Vibe.

29. "UNINTENDED ACCELERATION EVENT" and "UAE" for the purpose of discovery in this case are defined as either an alleged unexpected increase in engine speed, or the failure of a vehicle to decelerate upon the driver's removal of force from the accelerator pedal, whether the incident be momentary, temporary, or sustained, including any situation where the driver experiences acceleration that could not be controlled, was unexpected, unwanted, unintended, or where the vehicle failed to decelerate. "Unintended acceleration" is also

TOY-RQ-05E-00004863

sometimes referred to as "surprise acceleration."

PLAINTIFF

By Counsel

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(304) 342-1110 *facsimile*

TOY-RQ-05E-00004864

PROOF OF SERVICE

The undersigned, Eric B. Snyder, Counsel for Plaintiff, hereby declares that on February 15, 2010, he served a copy of the foregoing **Plaintiff's Notice to Take the Videotaped Deposition of Toyota Motor Sales U.S.A., Inc.**, together with this Proof of Service, via Federal Express upon:

Edward M. Kronk, Esq.
Matthew H. Letzmann, Esq.
150 West Jefferson, Suite 100
Detroit, Michigan 48226-4430
(313) 225-7080
(Attorney for Denso Int'l America, Inc.)

and

Lawrence C. Mann, Esq.
Andrea L. Moody, Esq.
Bowman and Brooke, LLP
50 W. Big Beaver Road, Suite 600
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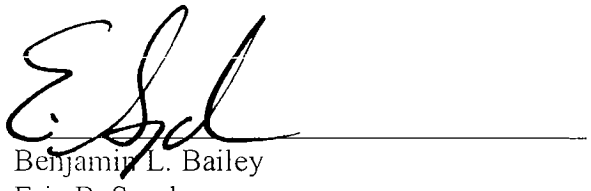
(Attorneys for Toyota Entities)



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Dated: February 15, 2010

365371

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA, INC., A California corporation; and DENSO INTERNATIONAL AMERICA, a Michigan corporation,

Defendants.

Case No.: 09-91973NP

Hon. Archie L. Hayman

GEORGE HILBORN (P14995) Attorney for Plaintiff Hilborn & Hilborn, P.C. 999 Haynes Street, Suite 205 Birmingham, MI 48009 (248) 642-8350	LAWRENCE C. MANN (P32223) ANDREA L. MOODY (P61903) Attorneys for Defendants Bowman and Brooke LLP 50 W. Big Beaver Rd., Suite 600 Troy, MI 48084 (248) 687-5300

ORDER CONCERNING TOYOTA MOTOR NORTH AMERICA, INC.'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the Courthouse, in the City of Flint, County of Genesee, State of Michigan on _____, 2009.

PRESENT:_____
Honorable Archie L. Hayman

This matter having come before the Court and the Court being otherwise advised in the premises:

::ODMA\PCDOCS\DET\211673\1

IT IS ORDERED that Toyota Motor North America, Inc.'s, Motion for Summary Disposition is Granted.

IT IS SO ORDERED.

HONORABLE ARCHIE L. HAYMAN P-37076
12/21/09

TOY-RQ-05E-00004867

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation; TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR MANUFACTURING KENTUCKY, INC., a Kentucky corporation; DENSO INTERNATIONAL AMERICA, INC., a Michigan corporation; and DENSO MANUFACTURING TENNESSEE, INC. a Tennessee corporation,

Defendants.

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TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.'S, ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

::ODMA\PCDOCS\DET\214321\1

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.'S, ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), by and through its attorneys, hereby responds to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3-4. The allegations contained in paragraphs 3 and 4 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect and/or liability contained in paragraphs 3 and 4 for the reason that they are untrue.

5. TEMA admits only that it had certain responsibilities related to the design and evaluation of the 2005 Toyota Camry. TEMA admits that it is headquartered in Erlander, Kentucky, and that it maintains research and engineering facilities in the State of Michigan.

6. The allegations contained in paragraph 6 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 6 for the reason that they are untrue.

7. TEMA admits only that it maintains research and engineering facilities in the State of Michigan.

8-9. The allegations contained in paragraphs 8 and 9 are not directed to TEMA, and therefore, no response is required. To the extent a response is required,

TEMA denies any and all allegations of defect and/or liability contained in paragraph 6 for the reason that they are untrue.

10. TEMA admits only that it had certain responsibilities related to the design and evaluation of the 2005 Toyota Camry. The remaining allegations contained in paragraph 10 are conclusions of law to which no response is required. To the extent a response is required, TEMA denies the allegations for the reason that they are not true.

11. TEMA denies the allegations contained in paragraph 11 for the reason that they are untrue.

12. TEMA denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 12.

13. The allegations contained in paragraph 13 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 13 for the reason that they are untrue.

COUNT I – NEGLIGENCE

14. TEMA restates and incorporates by reference its response to paragraphs 1 through 13 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

15. The allegations contained in paragraph 15 are conclusions of law to which no response is required. To the extent a response is required, TEMA denies the any

and all allegations of defect and/or liability contained in paragraph 15 for the reason that they are untrue.

16. The allegations contained in paragraph 16 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 16 for the reason that they are untrue.

17-18. TEMA denies the allegations contained in paragraphs 17 and 18 for the reason that they are untrue.

19. TEMA denies the allegations contained in paragraph 19, including subparts (a) through (h), for the reason that they are untrue.

20. TEMA denies the allegations contained in paragraph 20 for the reason that they are untrue.

21. TEMA denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. TEMA restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23. TEMA admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

24. TEMA admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

25. TEMA denies the allegations contained in paragraph 25 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

26. TEMA denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

27. TEMA restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28-30. TEMA denies the allegations contained in paragraphs 28 through 30 for the reason that they are untrue.

31. TEMA denies the allegations contained in paragraph 31, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

32. TEMA restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. The allegations contained in paragraph 33 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 33 for the reason that they are untrue.

34. TEMA denies the allegations contained in paragraph 34 for the reason that they are untrue.

35. TEMA denies any and all allegations of defect and/or liability contained in paragraph 35 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 35.

36. TEMA denies the allegations contained in paragraph 36 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

37. TEMA restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TEMA denies the allegations contained in paragraph 38 for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent a resopnse is required, TEMA denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TEMA denies the allegations contained in paragraph 40 for the reason that they are untrue.

41. TEMA denies the allegations contained in paragraph 41, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. TEMA restates and incorporates by reference its response to paragraphs 1 through 41 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

43. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 43. The remaining allegations contained in paragraph 43 are conclusions of law to which no response is required. To the extent a response is required, TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

44. The allegations contained in paragraph 44 are conclusions of law to which no response is required. To the extent an answer is required, TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

45. TEMA denies the allegations contained in paragraph 45, including subparts (a) through (d), for the reason that they are untrue.

46-47. TEMA denies the allegations contained in paragraphs 46 and 47 for the reason that they are untrue.

48-55. TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 48 through 55 for the reason that they are

untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 48 through 55.

56. The allegations contained in paragraph 56 are not directed to TEMA, and therefore, no response is required. To the extent a response is required, TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability contained in paragraph 56 for the reason that they are untrue.

57-58. TEMA denies the allegations contained in paragraphs 57 and 58 for the reason that they are untrue.

59-63. TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 59 through 63 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 59 through 63.

64-65. TEMA denies the allegations contained in paragraphs 64 and 65 for the reason that they are untrue.

66. The allegations contained in paragraph 66, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent a response is required, TEMA denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue. TEMA further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TEMA respectfully requests that this Court dismiss Plaintiff's Second Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for

Injunctive Relief in its entirety, and requests that TEMA be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TEMA hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TEMA.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TEMA to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TEMA relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TEMA.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of Toyota Motor Sales, U.S.A., Inc., and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TEMA is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TEMA, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TEMA reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea L. Moody
LAWRENCE C. MANN (P32223)
ANDREA L. MOODY (P61903)
Attorneys for TEMA

PROOF OF SERVICE

A copy of this document was served upon all attorneys of record by U.S. Mail/ Hand delivery/Facsimile/Express mail

on the 11th day of March, 2010.

Bianca M. Seeco

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR NORTH AMERICA, INC., A California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation, TOYOTA MOTOR SALES, U.S.A, INC., a California corporation and DENSO INTERNATIONAL AMERICA, a Michigan corporation,

Defendants.

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TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.'S, ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

A TRUE COPY
Michael J. Carr Clerk

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TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.'S, ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), by and through its attorneys, hereby responds to Plaintiff's First Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3. TEMA does not manufacture, assemble, sell to the public, or provide after sales service of Toyota vehicles, including the 2005 Toyota Camry. TEMA was not the manufacturer or assembler of the 2005 Toyota Camry nor was TEMA responsible for the distribution of the 2005 Toyota Camry for sale to the public. TEMA admits only that it had certain responsibilities related to the design and evaluation of the 2005 Toyota Camry. The remaining allegations contained in paragraph 3 are not directed to TEMA, and therefore, no answer is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 3 for the reason that they are untrue.

4. TEMA admits that it maintains research and engineering facilities in the State of Michigan.

5. The allegations contained in paragraph 5 are not directed to TEMA, and therefore, no answer is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 5 for the reason that they are untrue.

6. TEMA admits only that it had certain responsibilities related to the design and evaluation of the 2005 Toyota Camry. TEMA denies the remaining allegations for the reason that they are untrue.

7. TEMA denies the allegations contained in paragraph 7 for the reason that they are untrue.

8. TEMA denies any and all allegations of defect and/or liability contained in paragraph 8 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 8.

9. The allegations contained in paragraph 9 are not directed to TEMA, and therefore, no answer is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 9 for the reason that they are untrue.

COUNT I – NEGLIGENCE

10. TEMA restates and incorporates by reference its response to paragraphs 1 through 9 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

11. The allegations contained in paragraph 11 are conclusions of law to which no response is required. To the extent an answer is required, TEMA denies the any and all allegations of defect and/or liability contained in paragraph 11 for the reason that they are untrue.

12. The allegations contained in paragraph 12 are not directed to TEMA, and therefore, no answer is required. To the extent an answer is required, TEMA denies

any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue.

13. TEMA denies the allegations contained in paragraph 13 for the reason that they are untrue.

14. TEMA denies the allegations contained in paragraph 14, including subparts (a) through (h), for the reason that they are untrue.

15. TEMA denies the allegations contained in paragraph 15 for the reason that they are untrue.

16. TEMA denies the allegations contained in paragraph 16, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

17. TEMA restates and incorporates by reference its response to paragraphs 1 through 16 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

18. TEMA admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

19. TEMA admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

20. TEMA denies the allegations contained in paragraph 20 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

21. TEMA denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

22. TEMA restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23-25. TEMA denies the allegations contained in paragraphs 23 through 25 for the reason that they are untrue.

26. TEMA denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

27. TEMA restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28. The allegations contained in paragraph 28 are not directed to TEMA, and therefore, no answer is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability contained in paragraph 28 for the reason that they are untrue.

29. TEMA denies the allegations contained in paragraph 29 for the reason that they are untrue.

30. TEMA denies any and all allegations of defect and/or liability contained in paragraph 30 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 30.

31. TEMA denies the allegations contained in paragraph 31 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

32. TEMA restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. TEMA denies the allegations contained in paragraph 33 for the reason that they are untrue.

34. The allegations contained in paragraph 34 are conclusions of law to which no response is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability for the reason that they are untrue.

35. TEMA denies the allegations contained in paragraph 35 for the reason that they are untrue.

36. TEMA denies the allegations contained in paragraph 36, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

37. TEMA restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 38. The remaining allegations contained in paragraph 38 are conclusions of law to which no response is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TEMA denies the allegations contained in paragraph 40, including subparts (a) through (d), for the reason that they are untrue.

41-42. TEMA denies the allegations contained in paragraphs 41 and 42 for the reason that they are untrue.

43-50. TEMA denies any and all allegations of defect in paragraphs 43 through 50 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 43 through 50.

51-52. TEMA denies the allegations contained in paragraphs 51 and 52 for the reason that they are untrue.

53-57. TEMA denies any and all allegations of defect in paragraphs 53 through 57 for the reason that they are untrue. TEMA is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 53 through 57.

58-59. TEMA denies the allegations contained in paragraphs 58 and 59 for the reason that they are untrue.

60. The allegations contained in paragraph 60, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent an answer is required, TEMA denies any and all allegations of defect and/or liability for the reason that they are untrue. TEMA further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TEMA respectfully requests that this Court dismiss Plaintiff's First Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for Injunctive Relief in its entirety, and requests that TEMA be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TEMA hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TEMA.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TEMA to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TEMA relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TEMA.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of Toyota Motor Sales, U.S.A., Inc., and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TEMA is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TEMA, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TEMA reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea L. Moody
LAWRENCE C. MANN (P32223)
ANDREA L. MOODY (P61903)
Attorneys for TEMA

PROOF OF SERVICE

A copy of this document was served upon
all attorneys of record by U.S. Mail/
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on the 30th day of November, 2009.

Bill M. Sella

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA, INC., A California corporation; and DENSO INTERNATIONAL AMERICA, a Michigan corporation,

Defendants.

Case No.: 09-91973NP

Hon. Archie L. Hayman

A TRUE COPY
Michael J. Carr, Clerk

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TOYOTA MOTOR NORTH AMERICA, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

Toyota Motor North America, Inc. ("TMA"), by and through its attorneys, hereby responds to Plaintiff's Complaint as follows:

1-2. TMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3. TMA admits only that it is a California corporation and that it functions as a holding company for Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. TMA does not design, test, manufacture, assemble, sell, or provide after sales service to Toyota motor vehicles or any

component parts thereof. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

4. TMA denies the allegations contained in paragraph 4 for the reason that they are untrue.

5. TMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 5.

6. TMA denies the allegations contained in paragraph 6 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

7. TMA denies the allegations contained in paragraph 7 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

8. TMA denies any and all allegations of defect and/or liability contained in paragraph 8 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts. TMA is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 8.

9. The allegations contained in paragraph 9 are not directed to TMA, and therefore, no answer is required. To the extent an answer is required, TMA denies any and all allegations of defect and/or liability contained in paragraph 9 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

COUNT I – NEGLIGENCE

10. TMA restates and incorporates by reference its response to paragraphs 1 through 9 to Plaintiff's Complaint, as is fully set forth herein.

11. The allegations contained in paragraph 11 are conclusions of law to which no response is required. To the extent an answer is required, TMA denies the allegations contained in paragraph 11 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

12. The allegations contained in paragraph 12 are not directed to TMA, and therefore, no answer is required. To the extent an answer is required, TMA denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

13. TMA denies the allegations contained in paragraph 13 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

14. TMA denies the allegations contained in paragraph 14, including subparts (a) through (h), for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

15. TMA denies the allegations contained in paragraph 15 for the reason that they are untrue.

16. TMA denies the allegations contained in paragraph 16, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

17. TMA restates and incorporates by reference its response to paragraphs 1 through 16 to Plaintiff's Complaint, as is fully set forth herein.

18. TMA denies the allegations contained in paragraph 20 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

19. TMA denies the allegations contained in paragraph 20 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

20. TMA denies the allegations contained in paragraph 20 for the reason that they are untrue. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

21. TMA denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

22. TMA restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's Complaint, as is fully set forth herein.

23-25. TMA denies the allegations contained in paragraphs 23 through 25 for the reason that they are untrue.

26. TMA denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT V [sic] – WRONGFUL DEATH

27. TMA restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's Complaint, as is fully set forth herein.

28. The allegations contained in paragraph 28 are not directed to TMA, and therefore, no answer is required. To the extent an answer is required, TMA denies any and all allegations of defect and/or liability contained in paragraph 28 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

29. TMA denies the allegations contained in paragraph 29 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

30. TMA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 30.

31. TMA denies the allegations contained in paragraph 31 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

COUNT VI – PRODUCTS LIABILITY – FAILURE TO WARN

32. TMA restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's Complaint, as is fully set forth herein.

33. TMA denies the allegations contained in paragraph 33 for the reason that they are untrue.

34. The allegations contained in paragraph 34 are conclusions of law to which no response is required. To the extent an answer is required, TMA denies any and all allegations of defect and/or liability. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

35. TMA denies the allegations contained in paragraph 35 for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

36. TMA denies the allegations contained in paragraph 36, including subparts (a) through (e), for the reason that they are untrue. Moreover, TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

RELIANCE ON JURY DEMAND

TMA hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TMA.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TMA to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TMA relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TMA.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of Toyota Motor Sales, U.S.A., Inc, and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TMA is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TMA, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(Improper Party)

Plaintiff has improperly named TMA as a party based upon her belief that TMA designed, manufactured, marketed, distributed, warranted, and sold the 2005 Toyota Camry. TMA functions as a holding company for Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. TMA does not design, test, manufacture, assemble, sell, or provide after sales service to Toyota motor

vehicles or any component parts thereof. TMA did not design, manufacture, assemble, import, or distribute the subject 2005 Toyota Camry, or any of its component parts.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TMA reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea L. Moody
LAWRENCE C. MANN (P32223)
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Attorneys for TMA

PROOF OF SERVICE

A copy of this document was served upon
all attorneys of record by U.S. Mail/
Hand delivery/Facsimile/Express mail
on the 2nd day of November, 2009.
Brian M. Sells

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation; TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR MANUFACTURING KENTUCKY, INC., a Kentucky corporation; DENSO INTERNATIONAL AMERICA, INC., a Michigan corporation; and DENSO MANUFACTURING TENNESSEE, INC. a Tennessee corporation,

TRUE COPY
Michael J. Carr, Clerk

Defendants.

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TOYOTA MOTOR CORPORATION'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

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TOYOTA MOTOR CORPORATION'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Toyota Motor Corporation ("TMC"), by and through its attorneys, hereby responds to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TMC is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3. TMC admits only that it is a Japanese corporation and that it was responsible for the overall design and developmental testing of the subject 2005 Toyota Camry. TMC admits only that the subject Camry was manufactured and assembled by Toyota Motor Manufacturing Kentucky, Inc.

TMC admits only that Toyota Motor North America, Inc., functions as a holding company for Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering and Manufacturing North America, Inc., and that Toyota Motor North America, Inc., functions as an intermediary between TMC and the National Highway Traffic Safety Administration with respect to communications about Federal Motor Vehicle Safety Standards and other regulatory matters in the United States.

TMC denies the remaining allegations contained paragraph 3 for the reason that they are untrue.

4. TMC denies that it was responsible for the sale or distribution of the subject 2005 Toyota Camry for the reason that it is untrue. TMC admits only that Toyota Motor Sales, U.S.A., Inc., was responsible only for the distribution, marketing, advertising and warranty of the subject 2005 Toyota Camry.

5. The allegations contained in paragraph 5 are not directed to TMC, and therefore, no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraph 5 for the reason that they are untrue.

6. TMC admits only that the subject Camry was manufactured and assembled by Toyota Motor Manufacturing Kentucky, Inc.

7. TMC denies that it has constructed and maintains research and engineering facilities in the State of Michigan for the reason that it is untrue.

8-9. The allegations contained in paragraphs 8 and 9 are not directed to TMC, and therefore, no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraphs 8 and 9 for the reason that they are untrue.

10. TMC admits only that it was responsible for the overall design and developmental testing of the subject 2005 Toyota Camry. The remaining allegations contained in paragraph 10 are conclusions of law to which no response is required. To the extent a response is required, TMC denies the allegations for the reason that they are untrue.

11. TMC denies the allegations contained in paragraph 11 for the reason that they are untrue.

12. TMC denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue. TMC is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 12.

13. The allegations contained in paragraph 13 are not directed to TMC, and therefore, no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraph 13 for the reason that they are untrue.

COUNT I – NEGLIGENCE

14. TMC restates and incorporates by reference its response to paragraphs 1 through 13 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

15. The allegations contained in paragraph 15 are conclusions of law to which no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraph 15 for the reason that they are untrue.

16. The allegations contained in paragraph 16 are not directed to TMC, and therefore, no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraph 16 for the reason that they are untrue.

17-18. TMC denies the allegations contained in paragraphs 17 and 18 for the reason that they are untrue.

19. TMC denies the allegations contained in paragraph 19, including subparts (a) through (h), for the reason that they are untrue.

20. TMC denies the allegations contained in paragraph 20 for the reason that they are untrue.

21. TMC denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. TMC restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23. TMC admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

24. TMC admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

25. TMC denies the allegations contained in paragraph 25 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

26. TMC denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

27. TMC restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28-30. TMC denies the allegations contained in paragraphs 28 through 30 for the reason that they are untrue.

31. TMC denies the allegations contained in paragraph 31, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

32. TMC restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. The allegations contained in paragraph 33 are not directed to TMC, and therefore, no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability contained in paragraph 33 for the reason that they are untrue.

34. TMC denies the allegations contained in paragraph 34 for the reason that they are untrue.

35. TMC denies any and all allegations of defect and/or liability contained in paragraph 35 for the reason that they are untrue. TMC is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 35.

TOY-RQ-05E-00004907

36. TMC denies the allegations contained in paragraph 36 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

37. TMC restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TMC denies the allegations contained in paragraph 38 for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent a response is required, TMC denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TMC denies the allegations contained in paragraph 40 for the reason that they are untrue.

41. TMC denies the allegations contained in paragraph 41, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. TMC restates and incorporates by reference its response to paragraphs 1 through 41 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

43. TMC is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 43. The remaining allegations contained in paragraph 43 are conclusions of law to which no response is required. To the extent a response is required, TMC denies any and all allegations of

defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

44. The allegations contained in paragraph 44 are conclusions of law to which no response is required. To the extent a response is required, TMC denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

45. TMC denies the allegations contained in paragraph 45, including subparts (a) through (d), for the reason that they are untrue.

46-47. TMC denies the allegations contained in paragraphs 46 and 47 for the reason that they are untrue.

48-56. TMC denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 48 through 56 for the reason that they are untrue. TMC is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 48 through 56.

57-58. TMC denies the allegations contained in paragraphs 57 and 58 for the reason that they are untrue.

59-63. TMC denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 59 through 63 for the reason that they are untrue. TMC is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 59 through 63.

64-65. TMC denies the allegations contained in paragraphs 64 and 65 for the reason that they are untrue.

66. The allegations contained in paragraph 66, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent a response is required, TMC denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue. TMC further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TMC respectfully requests that this Court dismiss Plaintiff's Second Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for Injunctive Relief in its entirety, and TMC be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TMC hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TMC.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TMC to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TMC relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TMC.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of TMC and/or Toyota Motor Sales, U.S.A., Inc., and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TMC is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TMC, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TMC reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea J. Moody
LAWRENCE C. MANN (P32223)
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Attorneys for TMC

PROOF OF SERVICE

A copy of this document was served upon all attorneys of record by U.S. Mail/ ~~Hand delivery/Facsimile/Express mail~~

on the 11th day of March, 2010.

Bree M. Sellers

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation; TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR MANUFACTURING KENTUCKY, INC., a Kentucky corporation; DENSO INTERNATIONAL AMERICA, INC., a Michigan corporation; and DENSO MANUFACTURING TENNESSEE, INC. a Tennessee corporation,

Defendants.

TRUE COPY
Michael J. Carr, Clerk

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TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

::ODMA\PCDOCS\DET\214659\1

TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Toyota Motor Manufacturing Kentucky, Inc. ("TMMK"), by and through its attorneys, hereby responds to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3-5. The allegations contained in paragraphs 3 through 5 are not directed to TMMK, and therefore, no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraphs 3 through 5 for the reason that they are untrue.

6. TMMK admits only that it was responsible for the manufacture and assembly of the subject 2005 Toyota Camry.

7. TMMK denies that it has constructed and maintains research and engineering facilities in the State of Michigan for the reason that it is untrue.

8-9. The allegations contained in paragraphs 8 and 9 are not directed to TMMK, and therefore, no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraphs 8 and 9 for the reason that they are untrue.

10. The allegations contained in paragraph 10 are conclusions of law to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability for the reason that they are not true.

11. TMMK denies the allegations contained in paragraph 11 for the reason that they are untrue.

12. TMMK denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 12.

13. The allegations contained in paragraph 13 are not directed to TMMK, and therefore, no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraph 13 for the reason that they are untrue.

COUNT I – NEGLIGENCE

14. TMMK restates and incorporates by reference its response to paragraphs 1 through 13 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

15. The allegations contained in paragraph 15 are conclusions of law to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraph 15 for the reason that they are untrue.

16. The allegations contained in paragraph 16 are not directed to TMMK, and therefore, no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraph 16 for the reason that they are untrue.

17-18. TMMK denies the allegations contained in paragraphs 17 and 18 for the reason that they are untrue.

19. TMMK denies the allegations contained in paragraph 19, including subparts (a) through (h), for the reason that they are untrue.

20. TMMK denies the allegations contained in paragraph 20 for the reason that they are untrue.

21. TMMK denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. TMMK restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23. TMMK admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

24. TMMK admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

25. TMMK denies the allegations contained in paragraph 25 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any

implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

26. TMMK denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

27. TMMK restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28-30. TMMK denies the allegations contained in paragraphs 28 through 30 for the reason that they are untrue.

31. TMMK denies the allegations contained in paragraph 31, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

32. TMMK restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. The allegations contained in paragraph 33 are not directed to TMMK, and therefore, no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability contained in paragraph 33 for the reason that they are untrue.

34. TMMK denies the allegations contained in paragraph 34 for the reason that they are untrue.

35. TMMK denies any and all allegations of defect and/or liability contained in paragraph 35 for the reason that they are untrue. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 35.

36. TMMK denies the allegations contained in paragraph 36 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

37. TMMK restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TMMK denies the allegations contained in paragraph 38 for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TMMK denies the allegations contained in paragraph 40 for the reason that they are untrue.

41. TMMK denies the allegations contained in paragraph 41, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. TMMK restates and incorporates by reference its response to paragraphs 1 through 41 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

43. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 43. The remaining allegations contained in paragraph 43 are conclusions of law to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

44. The allegations contained in paragraph 44 are conclusions of law to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

45. TMMK denies the allegations contained in paragraph 45, including subparts (a) through (d), for the reason that they are untrue.

46-47. TMMK denies the allegations contained in paragraphs 46 and 47 for the reason that they are untrue.

48-56. TMMK denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 48 through 56 for the reason that they are untrue. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 48 through 56.

57-58. TMMK denies the allegations contained in paragraphs 57 and 58 for the reason that they are untrue.

59-63. TMMK denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 59 through 63 for the reason that they are

untrue. TMMK is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 59 through 63.

64-65. TMMK denies the allegations contained in paragraphs 64 and 65 for the reason that they are untrue.

66. The allegations contained in paragraph 66, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent a response is required, TMMK denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue. TMMK further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TMMK respectfully requests that this Court dismiss Plaintiff's Second Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for Injunctive Relief in its entirety, and TMMK be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TMMK hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TMMK.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TMMK to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TMMK relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TMMK.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of TMMK and/or Toyota Motor Sales, U.S.A., Inc., and the same is raised as a complete defense to

some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TMMK is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TMMK, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of

its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TMMK reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea L. Moody
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ANDREA L. MOODY (P61903)
Attorneys for TMMK

PROOF OF SERVICE

A copy of this document was ~~served upon~~
all attorneys ~~of record~~ by U.S. Mail/
Hand delivery/Facsimile/Express mail
on the 16th day of March, 2010.
Rebecca M. Rea

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR NORTH AMERICA, INC., A California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation, TOYOTA MOTOR SALES, U.S.A, INC., a California corporation and DENSO INTERNATIONAL AMERICA, a Michigan corporation,

Defendants.

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TOYOTA MOTOR SALES, U.S.A., INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

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A TRUE COPY
Michael J. Carr Clerk

Toyota Motor Sales, U.S.A., Inc. ("TMS"), by and through its attorneys, hereby responds to Plaintiff's First Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3. TMS admits only that it was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry. The remaining allegations contained in paragraph 3 are not directed to TMS, and therefore, no answer is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 3 for the reason that they are untrue.

4. TMS denies that it has constructed and maintains research and engineering facilities in the State of Michigan for the reason that it is untrue.

5. The allegations contained in paragraph 5 are not directed to TMS, and therefore, no answer is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 5 for the reason that they are untrue.

6. TMS admits only that it was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States. TMS denies the remaining allegations for the reason that they are untrue.

7. TMS denies the allegations contained in paragraph 7 for the reason that they are untrue.

8. TMS denies any and all allegations of defect and/or liability contained in paragraph 8 for the reason that they are untrue. TMS is without sufficient knowledge or

information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 8.

9. The allegations contained in paragraph 9 are not directed to TMS, and therefore, no answer is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 9 for the reason that they are untrue.

COUNT I – NEGLIGENCE

10. TMS restates and incorporates by reference its response to paragraphs 1 through 9 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

11. The allegations contained in paragraph 11 are conclusions of law to which no response is required. To the extent an answer is required, TMS denies the allegations contained in paragraph 11 for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry.

12. The allegations contained in paragraph 12 are not directed to TMS, and therefore, no answer is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue.

13. TMS denies the allegations contained in paragraph 13 for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry.

14. TMS denies the allegations contained in paragraph 14, including subparts (a) through (h), for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry.

15. TMS denies the allegations contained in paragraph 15 for the reason that they are untrue.

16. TMS denies the allegations contained in paragraph 16, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

17. TMS restates and incorporates by reference its response to paragraphs 1 through 16 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

18. TMS admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

19. TMS admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

20. TMS denies the allegations contained in paragraph 20 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

21. TMS denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

22. TMS restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23-25. TMS denies the allegations contained in paragraphs 23 through 25 for the reason that they are untrue.

26. TMS denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

27. TMS restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28. The allegations contained in paragraph 28 are not directed to TMS, and therefore, no answer is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 28 for the reason that they are untrue.

29. TMS denies the allegations contained in paragraph 29 for the reason that they are untrue.

30. TMS denies any and all allegations of defect and/or liability contained in paragraph 30 for the reason that they are untrue. TMS is without sufficient knowledge

or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 30.

31. TMS denies the allegations contained in paragraph 31 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

32. TMS restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. TMS denies the allegations contained in paragraph 33 for the reason that they are untrue.

34. The allegations contained in paragraph 34 are conclusions of law to which no response is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability for the reason that they are untrue.

35. TMS denies the allegations contained in paragraph 35 for the reason that they are untrue.

36. TMS denies the allegations contained in paragraph 36, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

37. TMS restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's First Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 38. The remaining

allegations contained in paragraph 38 are conclusions of law to which no response is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TMS denies the allegations contained in paragraph 40, including subparts (a) through (d), for the reason that they are untrue.

41-42. TMS denies the allegations contained in paragraphs 41 and 42 for the reason that they are untrue.

43-50. TMS denies any and all allegations of defect in paragraphs 43 through 50 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 43 through 50.

51-52. TMS denies the allegations contained in paragraphs 51 and 52 for the reason that they are untrue.

53-57. TMS denies any and all allegations of defect in paragraphs 53 through 57 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 53 through 57.

58-59. TMS denies the allegations contained in paragraphs 58 and 59 for the reason that they are untrue.

60. The allegations contained in paragraph 60, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent an answer is required, TMS denies any and all allegations of defect and/or liability for the reason that they are untrue. TMS further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TMS respectfully requests that this Court dismiss Plaintiff's First Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for Injunctive Relief in its entirety, and TMS be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TMS hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TMS.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TMS to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TMS relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

Fifth Affirmative Defense
(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TMS.

Sixth Affirmative Defense
(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of Toyota Motor Sales, U.S.A., Inc, and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TMS is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TMS, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed

warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

Any claim by plaintiff for recovery of economic benefits, damages or payment may barred to the extent provided by the applicable provisions of MCLA 500.3101 et seq., being the Michigan No-Fault Automobile Law.

Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TMS reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea J. Moody
LAWRENCE C. MANN (P32223)
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PROOF OF SERVICE

A copy of this document was ~~served~~ upon
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Beem M. Seller

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

LILIA ALBERTO, as Personal Representative of GUADALUPE ALBERTO, Deceased,

Plaintiff,

Case No.: 09-91973NP

v.

Hon. Archie L. Hayman

TOYOTA MOTOR CORPORATION, a corporation domiciled in Japan; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation; TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR MANUFACTURING KENTUCKY, INC., a Kentucky corporation; DENSO INTERNATIONAL AMERICA, INC., a Michigan corporation; and DENSO MANUFACTURING TENNESSEE, INC. a Tennessee corporation,

TRUE COPY
Michael J. Carr, Clerk

Defendants.

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TOYOTA MOTOR SALES, U.S.A., INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

::ODMA\PCDOCS\DET\214323\1

TOYOTA MOTOR SALES, U.S.A., INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Toyota Motor Sales, U.S.A., Inc. ("TMS"), by and through its attorneys, hereby responds to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief as follows:

1-2. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraphs 1 and 2.

3. The allegations contained in paragraph 3 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 3 for the reason that they are untrue.

4. TMS admits only that it was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States. The remaining allegations contained in paragraph 4 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 4 for the reason that they are untrue.

5-6. The allegations contained in paragraphs 5 and 6 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraphs 5 and 6 for the reason that they are untrue.

7. TMS denies that it has constructed and maintains research and engineering facilities in the State of Michigan for the reason that it is untrue.

8-9. The allegations contained in paragraphs 8 and 9 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraphs 8 and 9 for the reason that they are untrue.

10. TMS admits only that it was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States. The remaining allegations contained in paragraph 10 are conclusions of law to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability for the reason that they are not true.

11. TMS denies the allegations contained in paragraph 11 for the reason that they are untrue.

12. TMS denies any and all allegations of defect and/or liability contained in paragraph 12 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth as to the remaining allegations contained in paragraph 12.

13. The allegations contained in paragraph 13 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 13 for the reason that they are untrue.

COUNT I – NEGLIGENCE

14. TMS restates and incorporates by reference its response to paragraphs 1 through 13 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

15. The allegations contained in paragraph 15 are conclusions of law to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 15 for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States.

16. The allegations contained in paragraph 16 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 16 for the reason that they are untrue.

17-18. TMS denies the allegations contained in paragraphs 17 and 18 for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States.

19. TMS denies the allegations contained in paragraph 19, including subparts (a) through (h), for the reason that they are untrue. Moreover, TMS was responsible only for the distribution, marketing, advertising and warranty of the 2005 Toyota Camry in the United States.

20. TMS denies the allegations contained in paragraph 20 for the reason that they are untrue.

21. TMS denies the allegations contained in paragraph 21, including subparts (a) through (e), for the reason that they are untrue.

COUNT II – BREACH OF EXPRESS AND IMPLIED WARRANTIES

22. TMS restates and incorporates by reference its response to paragraphs 1 through 21 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

23. TMS admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

24. TMS admits only that the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

25. TMS denies the allegations contained in paragraph 25 for the reason that they are untrue. Moreover, the only applicable warranty is the limited written warranty that accompanied the 2005 Toyota Camry at the time of its initial sale. Any implied warranty of merchantability or fitness is controlled by the terms of the printed warranty.

26. TMS denies the allegations contained in paragraph 26, including subparts (a) through (e), for the reason that they are untrue.

COUNT III - GROSS NEGLIGENCE

27. TMS restates and incorporates by reference its response to paragraphs 1 through 26 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

28-30. TMS denies the allegations contained in paragraphs 28 through 30 for the reason that they are untrue.

31. TMS denies the allegations contained in paragraph 31, including subparts (a) through (e), for the reason that they are untrue.

COUNT IV – WRONGFUL DEATH

32. TMS restates and incorporates by reference its response to paragraphs 1 through 31 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

33. The allegations contained in paragraph 33 are not directed to TMS, and therefore, no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability contained in paragraph 33 for the reason that they are untrue.

34. TMS denies the allegations contained in paragraph 34 for the reason that they are untrue.

35. TMS denies any and all allegations of defect and/or liability contained in paragraph 35 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraph 35.

36. TMS denies the allegations contained in paragraph 36 for the reason that they are untrue.

COUNT V – PRODUCTS LIABILITY – FAILURE TO WARN

37. TMS restates and incorporates by reference its response to paragraphs 1 through 36 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

38. TMS denies the allegations contained in paragraph 38 for the reason that they are untrue.

39. The allegations contained in paragraph 39 are conclusions of law to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect and/or liability for the reason that they are untrue.

40. TMS denies the allegations contained in paragraph 40 for the reason that they are untrue.

41. TMS denies the allegations contained in paragraph 41, including subparts (a) through (e), for the reason that they are untrue.

COUNT VI – UNFAIR, UNCONSCIONABLE AND DECEPTIVE ACTS IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. TMS restates and incorporates by reference its response to paragraphs 1 through 41 to Plaintiff's Second Amended Complaint and Motion for Injunctive Relief, as is fully set forth herein.

43. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 43. The remaining allegations contained in paragraph 43 are conclusions of law to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

44. The allegations contained in paragraph 44 are conclusions of law to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability for the reason that they are untrue.

45. TMS denies the allegations contained in paragraph 45, including subparts (a) through (d), for the reason that they are untrue.

46-47. TMS denies the allegations contained in paragraphs 46 and 47 for the reason that they are untrue.

48-56. TMS denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 48 through 56 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 48 through 56.

57-58. TMS denies the allegations contained in paragraphs 57 and 58 for the reason that they are untrue.

59-63. TMS denies any and all allegations of defect, unfair, unconscionable and deceptive acts, and/or liability in paragraphs 59 through 63 for the reason that they are untrue. TMS is without sufficient knowledge or information necessary to form a belief as to the truth of the remaining allegations contained in paragraphs 59 through 63.

64-65. TMS denies the allegations contained in paragraphs 64 and 65 for the reason that they are untrue.

66. The allegations contained in paragraph 66, including subparts (a) through (f), request a prayer for relief from the Court to which no response is required. To the extent a response is required, TMS denies any and all allegations of defect, unfair,

unconscionable and deceptive acts, and/or liability for the reason that they are untrue. TMS further requests that the Court deny plaintiff's prayer for relief in its entirety, including her prayer for joint and several liability which was abolished by Michigan's Tort Reform.

WHEREFORE, TMS respectfully requests that this Court dismiss Plaintiff's Second Amended Complaint with prejudice in its entirety and deny Plaintiff's Motion for Injunctive Relief in its entirety, and TMS be awarded its costs and attorney fees incurred in defending this action.

RELIANCE ON JURY DEMAND

TMS hereby demands a trial by jury and relies upon plaintiff's demand for a jury trial and payment of the applicable fee.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Negligence/Comparative Fault)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have resulted in whole or in part from plaintiff's decedent's own negligence.

Second Affirmative Defense
(Third Party Negligence)

Any and all damages and/or injuries sustained by plaintiff and/or plaintiff's decedent may have been caused solely and proximately by the negligence and/or comparative negligence of persons other than TMS.

Third Affirmative Defense
(Compliance with Governmental Standards)

The 2005 Toyota Camry complied with all applicable federal and state standards, entitling TMS to a rebuttable presumption that the 2005 Toyota Camry, including all components, is not defective, pursuant to MCL 600.2946(4).

Fourth Affirmative Defense
(Statutory Defenses)

TMS relies on the presumptions and defenses set forth in applicable Michigan statutes which bar plaintiff's claims in whole or in part, including but not limited to MCLA 600.2945, .2946, .2946a, .2947, .2948, .2955a, .2957, and .2959.

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(Assumption of Risk)

Plaintiff's decedent may have voluntarily and unreasonably assumed the risk of her injuries and damages by her conduct and omissions, thereby barring plaintiff from any recovery against TMS.

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(Modification)

The 2005 Toyota Camry may have undergone an unforeseeable substantial change or modification subsequent to the time it left the possession of Toyota Motor Sales, U.S.A., Inc., and the same is raised as a complete defense to some or all of plaintiff's claims for damages. Therefore, plaintiff may not be entitled to recovery in this action.

Seventh Affirmative Defense
(Set-Off from Personal Injury Benefits)

TMS is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to or on behalf of the plaintiff's decedent from any and all collateral sources to the extent such a set-off is permissible under the laws applicable to this case.

Eighth Affirmative Defense
(Damages Limitations)

Plaintiff's recoverable damages against TMS, if any, are limited or eliminated by applicable Michigan statues including but not limited to MCL 600.2955a, 600.2957, 600.2959 and 440.2719.

Ninth Affirmative Defense
(Sole Proximate Cause)

Plaintiff's decedent's own negligence may have been the sole and/or contributory cause of the occurrence set forth in the complaint; therefore plaintiff may be barred from recovery.

Tenth Affirmative Defense
(Mitigation of Damages)

Plaintiff's decedent may have failed to mitigate her damages by failing to take all reasonable care to minimize her injuries and the consequences there from.

Eleventh Affirmative Defense
(Warranties)

The only applicable warranties, expressed or implied, are those which were incorporated in the printed material provided with the 2005 Toyota Camry at the time of its initial sale. Plaintiff's remedies are limited to those warranties stated in the printed

warranty. Any implied warranty of merchantability or fitness for a particular purpose was disclaimed by the printed warranty.

Twelfth Affirmative Defense
(Economic Damages Barred)

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Thirteenth Affirmative Defense
(No Joint and Several Liability)

Michigan law does not provide for joint and several liability and plaintiff's claims in that regard must be dismissed. MCLA 600.2956 and 600.2957.

Fourteenth Affirmative Defense
(Failure to State a Claim or Create Genuine Issue of Fact)

Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

TMS reserves the right to list additional affirmative defenses until it has had an opportunity to conduct an investigation and until the substantial completion of discovery.

Respectfully submitted,

Bowman and Brooke LLP

By: Andrea L Moody
LAWRENCE C. MANN (P32223)
ANDREA L. MOODY (P61903)
Attorneys for TMS

PROOF OF SERVICE

A copy of this document was served upon
all attorneys of record by U.S. Mail/
Hand delivery/Facsimile/Express mail

on the 11th day of March, 2010.

Bill M. Sacco