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LEGAL DEPARTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X

CAROL S. LEONG,

Plaintiff,

- against -

TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR CORPORATION, STAR TOYOTA OF BAYSIDE, INC. and KONG I. LEONG,

Defendants.

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Index No.

VERIFIED COMPLAINT

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Plaintiff, by her attorneys, DANSKER & ASPROMONTE ASSOCIATES, complaining of the Defendants herein, respectfully alleges as follows:

GENERAL ALLGATIONS

1. Plaintiff CAROL S. LEONG, at all times herein mentioned, was and is a resident of Queens County, New York.

2. Defendant TOYOTA MOTOR SALES USA, INC. ("TMS"), at all times herein mentioned, was and is a California corporation, organized and existing under the laws of the State of California, maintaining corporate offices in the State of California but having sufficient contacts with the State of New York to give this court jurisdiction.

3. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TNA"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.

4. Defendant TOYOTA MOTOR CORPORATION ("TMC"), at all times herein mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.

5. Defendants TMS, TNA and TMC are collectively referred to herein as "the Toyota Defendants" and "Toyota."

6. Defendant STAR TOYOTA OF BAYSIDE, INC. ("STAR TOYOTA"),at all relevant times, was and is a New York corporation, organized under the laws of the State of New York, maintaining corporate offices in the State of New York and doing business in Queens County, New York.

7. Defendant KONG LEONG, at all times herein mentioned, was and is a resident of Queens County, New York.

8. On or about June 15, 2009 Defendant KONG I. LEONG purchased a 2009 Toyota RAV-4 5 Door Sport 4x4 SUV, VIN JTMBK32V895080564, ("the subject vehicle") which was made in Japan by the Toyota defendants from Defendant STAR TOYOTA in Bayside, Queens.

9. The Toyota Defendants designed, manufactured, distributed, promoted and placed the subject vehicle into the stream of commerce.

10. Defendant STAR TOYOTA promoted and sold the subject vehicle to Defendant KONG LEONG.

11. When Defendant KONG I. LEONG drove the new RAV-4 home from the dealership, it was equipped with Toyota original equipment all-weather floor mats which had been installed by Star Toyota personnel.

12. On or about August 27, 2009 Defendant KONG I. LEONG was driving the subject vehicle in the westbound lanes of the New York State Thruway (Interstate 90) in the vicinity of mile marker 338.3 in Ontario County, New York (near Rochester) en route to Buffalo to drop off Plaintiff CAROL LEONG who was about to start her freshman year in college at the State University of New York at Buffalo. The Plaintiff was seated in the right rear passenger seat directly behind her mother, Sio-Keng Leong.

13. At or about 10:00 a.m., while the subject vehicle was being driven in a foreseeable manner at normal highway speed with the driver's side floor mat in its proper as-installed position, the vehicle suddenly and unexpectedly accelerated, despite Defendant Leong removing his foot from

the accelerator and applying the brakes, including the emergency brake. Eyewitnesses to the accident saw the brake lights on the Leong vehicle illuminated as the vehicle continued to accelerate. The sudden unintended acceleration and failure of the brakes to engage forced Defendant Leong to quickly change lanes to avoid hitting other cars on the highway, until the vehicle was no longer controllable and it left the roadway and crashed into trees in the center median at a high rate of speed.

14. Despite the fact that Plaintiff CAROL S. LEONG was wearing her seat belt, she suffered severe and permanent injuries as a result of the accident.

15. Well before the Leongs' accident, Toyota was aware of the sudden unintended acceleration ("SUA") problem in its vehicles because of hundreds of other similar incidents involving Toyota vehicles reported to Toyota and the National Highway Traffic Safety Administration (NHTSA) since 2002.

16. The day after the Leongs' terrifying ordeal in New York, four people died in a fiery crash near San Diego, California in a Toyota vehicle, with the same engine and electronic throttle control components (known within Toyota as 2GR-FE with ETCS-i) as the Leong vehicle. That vehicle also suddenly accelerated and caused the driver, an experienced California Highway Patrol Officer, to lose control of his vehicle and leave the roadway at a high rate of speed. Speaking about the incident afterward, Toyota's President said "four precious lives have been lost. I offer my deepest condolences." According to press reports, he also said "customers bought our cars because they thought they were the safest. But now we have given them cause for grave concern. I can't begin to express my remorse."

17. When the ETCS-i system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe (or back-up) in the event of a problem with the electronic throttle control system. The Leong's 2009 RAV-4, despite being made 10 years later, had no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

18. About a month after the Leongs' accident, Toyota issued a Consumer Safety Advisory indicating that it was investigating the SUA problems in its vehicles saying that a "stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death" and blaming out-of-position floor mats as the cause.

19. While publicly blaming floor mats for their SUA problem, tellingly, Toyota has recently indicated that it is considering software changes to the on-board computer systems as a solution to SUA which would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years. Had that simple design been incorporated in the Leongs' 2009 RAV-4, their accident and plaintiff's injuries would have been avoided entirely.

FIRST CAUSE OF ACTION - STRICT PRODUCT LIABILITY

20. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

21. The subject vehicle was defective and unreasonably dangerous when the defendants placed it into the stream of commerce.

22. The defects in the subject vehicle were a proximate cause of the injuries suffered by the Plaintiff.

23. By engaging in said conduct, defendants are strictly liable to the Plaintiff.

24. The conduct of the Toyota defendants was so wilful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

SECOND CAUSE OF ACTION - BREACH OF WARRANTY

25. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

26. Defendants have breached applicable warranties, express and implied, and are therefore liable to the Plaintiff.

THIRD CAUSE OF ACTION - NEGLIGENCE

27. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

28. The Toyota defendants were negligent in designing, manufacturing, assembling, inspecting, testing, labeling, monitoring, promoting, distributing and selling the subject vehicle.

29. Defendant Star Toyota was negligent in preparing, inspecting, installing optional features, promoting and selling the subject vehicle.

30. Defendant KONG I. LEONG was negligent in handling the vehicle during the accident.

31. As a proximate result of the foregoing, Plaintiff was severely injured, including, but not limited to, conscious pain and suffering.

32. Said defendants are therefore liable to the Plaintiff.

33. The conduct of the Toyota defendants was so willful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

CPLR 1602 EXCEPTIONS

34. Plaintiff's lawsuit falls within one or more of the enumerated exceptions of article 1602 of the CPLR and specifically sections 1602(2) (iv), 1602(6), 1602(7), 1602 (10) and1602(11).

DAMAGES

35. That the amount of damages sought exceeds the jurisdiction of all lower Courts that would otherwise have had jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants, severally and jointly:

a. Compensatory damages;

b. Punitive damages;

c. All together with interest, costs and disbursements;

d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 8, 2010

Yours, etc.,

DANSKER & ASPROMONTE ASSOCIATES
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH HAUTER and FRANK PALOMARES, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. SACV10-00105-CJC(ANx) **CLASS ACTION** **COMPLAINT FOR:** **1. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT;** **2. VIOLATION OF THE UNFAIR COMPETITION LAWS;** **3. VIOLATION OF THE FALSE ADVERTISING LAWS;** **4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;** **5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;** **6. NEGLIGENCE** **DEMAND FOR JURY TRIAL**

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Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated ("Plaintiffs"), allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Joseph Hauter is a resident of Los Angeles County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Downey, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle. In one incident, Plaintiff was pulling into a service station with his foot solely on the brake pedal when his vehicle suddenly accelerated. Plaintiff slammed on the brakes, and the vehicle lurched still, came to a stop, but he could feel it still attempting to accelerate. Plaintiff threw the vehicle into park, at which point the acceleration attempts stopped.

In a second incident, Plaintiff was coming up to a left turn lane with his son in the vehicle, began to apply the brakes, when the vehicle suddenly accelerated. Plaintiff stood on the brakes with both feet until the truck slowed. Plaintiff could feel the anti-lock brakes pumping and the vehicle continuing to attempt to accelerate. When the vehicle had slowed to a slow-roll, he threw the vehicle gearshift into park, at which point the acceleration attempts stopped. Plaintiff's vehicle has further suffered a diminution in resale value due to these incidents and press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

5. Plaintiff Frank Palomares is a resident of Orange County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff's vehicle has suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant

risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

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FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Toyota has carefully crafted and attempted to maintain a reputation for quality and safety in order to increase sales of its cars.

13. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

14. As the Los Angeles Times ("Times") reported in a front page story on December 23, 2009:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making 'inaccurate and misleading statements.'

15. Toyota's carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in that same Times article: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, it told U.S. regulators that no such recall was necessary in here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been

received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem *since 1992*, and should have initiated a recall immediately" (emphasis added).

16. The same Times article reports that a former Toyota lawyer who handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles shortcomings from becoming known."

17. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETC").

18. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

19. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

20. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

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21. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

22. Moreover, many of Defendants' vehicles now include an electronic ignition button rather than a mechanical ignition key-turned switch. In such cars, no mechanical means exists to turn off the engine in the case of unintended acceleration.

23. The combination of the lack of these safety systems creates a situation in which there are no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

24. According to an article in the November 8, 2009 issue of the Times, the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

25. The Times further quotes an independent safety expert as stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

26. The Times further states that other experts believe the numbers may be far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

27. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

28. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to

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control a runaway engine by applying the brakes.

29. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

30. On August 28, 2009, a 2009 Lexus ES350 vehicle, driven by California Highway Patrolman Mark Saylor, and carrying his family, experienced an instance of unintended acceleration. Mr. Saylor's brother-in-law called 911 from the back seat of the vehicle and said "the accelerator is stuck...we're approaching an intersection." Moments later, the Saylor family was dead.

31. The national attention garnered by this tragedy caused Toyota to finally, publicly, acknowledge that unintended acceleration was an issue in Toyota vehicles, yet, it still attempted to minimize the damage.

32. On or about September 29, 2009, Toyota announced a recall of 3.8 million vehicles, which was later expanded to 4.2 million vehicles, due to what Toyota claimed was an issue with aftermarket or improperly installed floor-mats causing unintended acceleration of its vehicles.

33. In a press release issued regarding the recall, however, Toyota unequivocally stated "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."

34. On November 3, 2009, ABC News's Nightline program focused its attention on the unintended acceleration of Toyota vehicles. Significantly, individuals interviewed during their program gave lie to Toyota's claims that all unintended acceleration problems could be traced back to improper driver's side floormats.

35. For example, the program interviewed Elizabeth James, a driver of a Toyota Prius, who stated:

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> I'm absolutely certain, that in my situation, it was not the floor mats. I kept going faster and faster and all of a sudden my foot was pressing on the brakes super, super hard and I wasn't slowing down. My car just kept accelerating. And it wasn't until I landed in the river that it stopped.

36. The same ABC News show reported that approximately 2,000 incidents of unintended acceleration of Toyota vehicles have been reported since Toyota moved to an ETC system.

37. A January 21, 2010 article on ConsumerAffairs.com by Truman Lewis documents additional cases of unintended acceleration unrelated to floormats.

38. For example, the article cites the story of "Radha" of Philadelphia, who was in a parking lot when his 2009 Prius experienced unintended acceleration:

> 'I went all in for the brakes – no reaction from the car,' he said. 'Car crashed into a light pole, tilted to its right crashed down in parking spot right next to where I wanted to park. With me hanging by the seat belt, car still accelerating, I went for the power button. No response to that either.' Radha managed to crawl through the window to escape from the car, the engine running wide open as the car lay on its side. When police arrived, they managed to switch the car off, Radha said.

39. The same article also tells the story of "Mary" of Medford, Oregon, which further shows that Toyota knew of these problems:

> "Mary of Medford, Oregon, also reported that four incidents of unintended acceleration in her 2007 Prius were accompanied by an apparent lack of response from the brakes. **She said her dealer was able to duplicate**

> **the problem twice but couldn't resolve it**. 'It has nothing to do with the floor mat,' Mary said. (emphasis added).

40. Contrary to its clear and unequivocal statements in November, 2009 that the only issue with its vehicles regarding unintended acceleration was improper floormats, on January 21, 2010, Toyota announced that it had "newly discovered" a mechanical defect with its accelerator pedal mechanism which allows the pedal, according to Toyota's press release, to be "harder to depress, slower to return or, in the worst case, stuck in a partially depressed position."

41. Toyota has admitted that the throttle control systems in certain model year vehicles contain defective mechanisms.

42. Toyota has admitted that the throttle can stick "in a partially depressed position."

43. Toyota has admitted that if the driver pumps the brakes, he or she can deplete the "power assist."

44. A vehicle with the throttle stuck in a partially depressed position can lead to accidents which can kill or maim not only the drivers and passengers of the defective vehicles, but other whom the vehicles might run into.

45. Toyota has admitted that their investigation is incomplete, and that they do not know the origin, cause, failure mechanism, or fix for the defective product.

46. Because Toyota's investigation is incomplete, and they do not know the origin, cause, failure mechanism, or fix for the defective vehicles, they have announced that their cars are defective, but they have not yet instituted a recall to fix their vehicles, do not know when they might do so, what such fix might be, how extensive it might be, nor how long it might take.

47. Toyota also continues to fail to address the fact that this new explanation still

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does not fully address the facts and circumstances of many of the incidents of unintended acceleration reported in press accounts.

48. For example, in the vast majority of unintended acceleration incidents reported in the press, the drivers state that depressing the brake pedal is ineffective at slowing or stopping the vehicle. Yet, Toyota's temporary solution states "[i]n the event the driver experiences an accelerator pedal that sticks in a partial open throttle position or returns slowly to idle position, the vehicle can be controlled with firm and steady application of the brakes. The brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure."

49. Both the September, 2009 recall and the January, 2010 recall includes vehicles as far back as the 2005 model year. Given the numerous press reports that Toyota had received approximately 2,000 complaints of unintended acceleration during that time period, it is clear that Toyota failed to properly and appropriately investigate these incidents and to issue appropriate remedies while being on notice of the defects in its vehicles.

50. Further, regardless of this knowledge, Toyota has taken no steps, even to this date, to effectively remedy this dangerous condition. Although Toyota has announced that it will begin installing accelerator-override systems in new vehicles which will reduce engine power to idle at any time the brake pedal is depressed, it has not agreed to recall and retrofit its prior vehicles with such a safety feature. Further, Toyota continues to turn a blind eye to the numerous incidents of unintended acceleration which fit neither the floor-mat nor the sticking-accelerator pedal profile.

51. Toyota had and has a duty to disclose the vehicle defects because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the

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general public.

CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

53. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

54. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

55. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes millions of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

56. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems are prone to sudden unintended acceleration;

b. What the mechanism is for unintended acceleration of Toyota vehicles equipped with an electronic throttle control system;

c. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

d. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

e. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

g. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

h. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

i. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

j. Whether Toyota's conduct described herein violated California's

Unfair Competition Law;

k. Whether Toyota's conduct described herein violated California's False Advertising Act;

l. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

m. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

n. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

57. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

58. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

59. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same

complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

60. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

61. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

62. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMER LEGAL REMEDIES ACT

(By Plaintiffs and the Class Against All Defendants)

63. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

64. The Defendants' acts and omissions violate the following portions of the California *Consumer Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which

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they do not have ..."

- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

65. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

66. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(d). In addition Plaintiffs are concurrently providing the notice to Defendants required under *Civil Code* § 1782(a) with the sending of a letter, sent via certified mail return receipt requested.

67. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at

law to deter Defendants' wrongful conduct, will be irreparably harmed.

68. If Defendants do not adequately correct the defects and take the appropriate remedies asked for in Plaintiffs' *Civil Code* § 1782(a) notice, Plaintiffs will amend the Complaint to add the following: Plaintiffs have suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced. As the factual allegations make clear, Defendants have known of the inherently dangerous defect for a long period of time and have, during that time, not only failed to correct it, but actively suppressed evidence of its existence. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(e).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(By Plaintiffs and the Class Against All Defendants)

69. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

70. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

71. Defendants violated and continue to violate the UCL through one or more of

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the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint.

72. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

73. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and preventing Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

74. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require

Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

75. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(By Plaintiffs and the Class Against All Defendants)

76. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

77. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the

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public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

78. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

79. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

80. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

81. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiffs and the Class Against All Defendants)

82. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

83. Defendants impliedly warrant that their vehicles are fit for the ordinary

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purpose for which the product is sold.

84. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

85. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

86. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiffs and the Class Against All Defendants)

87. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

88. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

89. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

90. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the

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general public.

91. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle safely.

92. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs and the Class Against All Defendants)

93. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

94. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

95. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

96. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and Class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to

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themselves and others every time they operate their vehicles.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth herein above;
2. For compensatory damages as to all causes of action where compensatory damages are available;
3. For restitution;
4. For disgorgement of all wrongfully obtained compensation;
5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;
6. For exemplary damages as to all causes of action where exemplary damages are available;
7. For reasonable costs and attorneys' fees as permitted by law; and
8. For such other and further relief as the Court may deem proper.

DATED: January 22, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 22, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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AFFIDAVIT OF JOSEPH HAUTER

1. I, Joseph Hauter, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

4. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county in which Defendants are doing business

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 22 day of January, 2010, at LAKEWOOD, California.

Joseph A. Hauter

Joseph Hauter

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Counsel for Plaintiffs and all others similarly situated

FILED
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH HAUTER and FRANK PALOMARES, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. SACV10-00105-CJC(ANx) **CLASS ACTION** **COMPLAINT FOR:** **1. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT;** **2. VIOLATION OF THE UNFAIR COMPETITION LAWS;** **3. VIOLATION OF THE FALSE ADVERTISING LAWS;** **4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;** **5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;** **6. NEGLIGENCE** **DEMAND FOR JURY TRIAL**

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Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated ("Plaintiffs"), allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Joseph Hauter is a resident of Los Angeles County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Downey, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle. In one incident, Plaintiff was pulling into a service station with his foot solely on the brake pedal when his vehicle suddenly accelerated. Plaintiff slammed on the brakes, and the vehicle lurched still, came to a stop, but he could feel it still attempting to accelerate. Plaintiff threw the vehicle into park, at which point the acceleration attempts stopped.

In a second incident, Plaintiff was coming up to a left turn lane with his son in the vehicle, began to apply the brakes, when the vehicle suddenly accelerated. Plaintiff stood on the brakes with both feet until the truck slowed. Plaintiff could feel the anti-lock brakes pumping and the vehicle continuing to attempt to accelerate. When the vehicle had slowed to a slow-roll, he threw the vehicle gearshift into park, at which point the acceleration attempts stopped. Plaintiff's vehicle has further suffered a diminution in resale value due to these incidents and press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

5. Plaintiff Frank Palomares is a resident of Orange County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff's vehicle has suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant

risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

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FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Toyota has carefully crafted and attempted to maintain a reputation for quality and safety in order to increase sales of its cars.

13. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

14. As the Los Angeles Times ("Times") reported in a front page story on December 23, 2009:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making 'inaccurate and misleading statements.'

15. Toyota's carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in that same Times article: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, it told U.S. regulators that no such recall was necessary in here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been

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received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem *since 1992*, and should have initiated a recall immediately" (emphasis added).

16. The same Times article reports that a former Toyota lawyer who handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles shortcomings from becoming known."

17. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETC").

18. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

19. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

20. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

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21. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

22. Moreover, many of Defendants' vehicles now include an electronic ignition button rather than a mechanical ignition key-turned switch. In such cars, no mechanical means exists to turn off the engine in the case of unintended acceleration.

23. The combination of the lack of these safety systems creates a situation in which there are no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

24. According to an article in the November 8, 2009 issue of the Times, the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

25. The Times further quotes an independent safety expert as stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

26. The Times further states that other experts believe the numbers may be far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

27. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

28. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to

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control a runaway engine by applying the brakes.

29. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

30. On August 28, 2009, a 2009 Lexus ES350 vehicle, driven by California Highway Patrolman Mark Saylor, and carrying his family, experienced an instance of unintended acceleration. Mr. Saylor's brother-in-law called 911 from the back seat of the vehicle and said "the accelerator is stuck...we're approaching an intersection." Moments later, the Saylor family was dead.

31. The national attention garnered by this tragedy caused Toyota to finally, publicly, acknowledge that unintended acceleration was an issue in Toyota vehicles, yet, it still attempted to minimize the damage.

32. On or about September 29, 2009, Toyota announced a recall of 3.8 million vehicles, which was later expanded to 4.2 million vehicles, due to what Toyota claimed was an issue with aftermarket or improperly installed floor-mats causing unintended acceleration of its vehicles.

33. In a press release issued regarding the recall, however, Toyota unequivocally stated "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."

34. On November 3, 2009, ABC News's Nightline program focused its attention on the unintended acceleration of Toyota vehicles. Significantly, individuals interviewed during their program gave lie to Toyota's claims that all unintended acceleration problems could be traced back to improper driver's side floormats.

35. For example, the program interviewed Elizabeth James, a driver of a Toyota Prius, who stated:

> I'm absolutely certain, that in my situation, it was not the floor mats. I kept going faster and faster and all of a sudden my foot was pressing on the brakes super, super hard and I wasn't slowing down. My car just kept accelerating. And it wasn't until I landed in the river that it stopped.

36. The same ABC News show reported that approximately 2,000 incidents of unintended acceleration of Toyota vehicles have been reported since Toyota moved to an ETC system.

37. A January 21, 2010 article on ConsumerAffairs.com by Truman Lewis documents additional cases of unintended acceleration unrelated to floormats.

38. For example, the article cites the story of "Radha" of Philadelphia, who was in a parking lot when his 2009 Prius experienced unintended acceleration:

> 'I went all in for the brakes – no reaction from the car,' he said. 'Car crashed into a light pole, tilted to its right crashed down in parking spot right next to where I wanted to park. With me hanging by the seat belt, car still accelerating, I went for the power button. No response to that either.' Radha managed to crawl through the window to escape from the car, the engine running wide open as the car lay on its side. When police arrived, they managed to switch the car off, Radha said.

39. The same article also tells the story of "Mary" of Medford, Oregon, which further shows that Toyota knew of these problems:

> "Mary of Medford, Oregon, also reported that four incidents of unintended acceleration in her 2007 Prius were accompanied by an apparent lack of response from the brakes. **She said her dealer was able to duplicate**

> **the problem twice but couldn't resolve it**. 'It has nothing to do with the floor mat,' Mary said. (emphasis added).

40. Contrary to its clear and unequivocal statements in November, 2009 that the only issue with its vehicles regarding unintended acceleration was improper floormats, on January 21, 2010, Toyota announced that it had "newly discovered" a mechanical defect with its accelerator pedal mechanism which allows the pedal, according to Toyota's press release, to be "harder to depress, slower to return or, in the worst case, stuck in a partially depressed position."

41. Toyota has admitted that the throttle control systems in certain model year vehicles contain defective mechanisms.

42. Toyota has admitted that the throttle can stick "in a partially depressed position."

43. Toyota has admitted that if the driver pumps the brakes, he or she can deplete the "power assist."

44. A vehicle with the throttle stuck in a partially depressed position can lead to accidents which can kill or maim not only the drivers and passengers of the defective vehicles, but other whom the vehicles might run into.

45. Toyota has admitted that their investigation is incomplete, and that they do not know the origin, cause, failure mechanism, or fix for the defective product.

46. Because Toyota's investigation is incomplete, and they do not know the origin, cause, failure mechanism, or fix for the defective vehicles, they have announced that their cars are defective, but they have not yet instituted a recall to fix their vehicles, do not know when they might do so, what such fix might be, how extensive it might be, nor how long it might take.

47. Toyota also continues to fail to address the fact that this new explanation still

does not fully address the facts and circumstances of many of the incidents of unintended acceleration reported in press accounts.

48. For example, in the vast majority of unintended acceleration incidents reported in the press, the drivers state that depressing the brake pedal is ineffective at slowing or stopping the vehicle. Yet, Toyota's temporary solution states "[i]n the event the driver experiences an accelerator pedal that sticks in a partial open throttle position or returns slowly to idle position, the vehicle can be controlled with firm and steady application of the brakes. The brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure."

49. Both the September, 2009 recall and the January, 2010 recall includes vehicles as far back as the 2005 model year. Given the numerous press reports that Toyota had received approximately 2,000 complaints of unintended acceleration during that time period, it is clear that Toyota failed to properly and appropriately investigate these incidents and to issue appropriate remedies while being on notice of the defects in its vehicles.

50. Further, regardless of this knowledge, Toyota has taken no steps, even to this date, to effectively remedy this dangerous condition. Although Toyota has announced that it will begin installing accelerator-override systems in new vehicles which will reduce engine power to idle at any time the brake pedal is depressed, it has not agreed to recall and retrofit its prior vehicles with such a safety feature. Further, Toyota continues to turn a blind eye to the numerous incidents of unintended acceleration which fit neither the floor-mat nor the sticking-accelerator pedal profile.

51. Toyota had and has a duty to disclose the vehicle defects because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the

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general public.

CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

53. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

54. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

55. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes millions of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

56. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems are prone to sudden unintended acceleration;

b. What the mechanism is for unintended acceleration of Toyota vehicles equipped with an electronic throttle control system;

c. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

d. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

e. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

g. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

h. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

i. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

j. Whether Toyota's conduct described herein violated California's

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Unfair Competition Law;

k. Whether Toyota's conduct described herein violated California's False Advertising Act;

l. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

m. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

n. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

57. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

58. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

59. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same

complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

60. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

61. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

62. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMER LEGAL REMEDIES ACT

(By Plaintiffs and the Class Against All Defendants)

63. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

64. The Defendants' acts and omissions violate the following portions of the California *Consumer Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which

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they do not have ..."

- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

65. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

66. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(d). In addition Plaintiffs are concurrently providing the notice to Defendants required under *Civil Code* § 1782(a) with the sending of a letter, sent via certified mail return receipt requested.

67. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at

law to deter Defendants' wrongful conduct, will be irreparably harmed.

68. If Defendants do not adequately correct the defects and take the appropriate remedies asked for in Plaintiffs' *Civil Code* § 1782(a) notice, Plaintiffs will amend the Complaint to add the following: Plaintiffs have suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced. As the factual allegations make clear, Defendants have known of the inherently dangerous defect for a long period of time and have, during that time, not only failed to correct it, but actively suppressed evidence of its existence. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(e).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(By Plaintiffs and the Class Against All Defendants)

69. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

70. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

71. Defendants violated and continue to violate the UCL through one or more of

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the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint.

72. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

73. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and preventing Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

74. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require

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Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

75. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(By Plaintiffs and the Class Against All Defendants)

76. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

77. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the

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public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

78. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

79. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

80. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

81. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiffs and the Class Against All Defendants)

82. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

83. Defendants impliedly warrant that their vehicles are fit for the ordinary

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purpose for which the product is sold.

84. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

85. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

86. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiffs and the Class Against All Defendants)

87. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

88. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

89. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

90. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the

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general public.

91. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle safely.

92. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs and the Class Against All Defendants)

93. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

94. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

95. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

96. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and Class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to

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themselves and others every time they operate their vehicles.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth herein above;
2. For compensatory damages as to all causes of action where compensatory damages are available;
3. For restitution;
4. For disgorgement of all wrongfully obtained compensation;
5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;
6. For exemplary damages as to all causes of action where exemplary damages are available;
7. For reasonable costs and attorneys' fees as permitted by law; and
8. For such other and further relief as the Court may deem proper.

DATED: January 22, 2009

Respectfully submitted,
KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 22, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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AFFIDAVIT OF JOSEPH HAUTER

1. I, Joseph Hauter, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

4. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county in which Defendants are doing business

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 22 day of January, 2010, at LAKEWOOD, California.

Joseph A. Hauter

Joseph Hauter

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Counsel for Plaintiffs and all others similarly situated

FILED
10 JAN 22 PM 1:08
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH HAUTER and FRANK PALOMARES, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. SACV10-00105-CJC(ANx) **CLASS ACTION** **COMPLAINT FOR:** **1. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT;** **2. VIOLATION OF THE UNFAIR COMPETITION LAWS;** **3. VIOLATION OF THE FALSE ADVERTISING LAWS;** **4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;** **5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;** **6. NEGLIGENCE** **DEMAND FOR JURY TRIAL**

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Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated ("Plaintiffs"), allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Joseph Hauter is a resident of Los Angeles County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Downey, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle. In one incident, Plaintiff was pulling into a service station with his foot solely on the brake pedal when his vehicle suddenly accelerated. Plaintiff slammed on the brakes, and the vehicle lurched still, came to a stop, but he could feel it still attempting to accelerate. Plaintiff threw the vehicle into park, at which point the acceleration attempts stopped.

In a second incident, Plaintiff was coming up to a left turn lane with his son in the vehicle, began to apply the brakes, when the vehicle suddenly accelerated. Plaintiff stood on the brakes with both feet until the truck slowed. Plaintiff could feel the anti-lock brakes pumping and the vehicle continuing to attempt to accelerate. When the vehicle had slowed to a slow-roll, he threw the vehicle gearshift into park, at which point the acceleration attempts stopped. Plaintiff's vehicle has further suffered a diminution in resale value due to these incidents and press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

5. Plaintiff Frank Palomares is a resident of Orange County. Plaintiff owns and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a dealership located in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff's vehicle has suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant

risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

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FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Toyota has carefully crafted and attempted to maintain a reputation for quality and safety in order to increase sales of its cars.

13. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

14. As the Los Angeles Times ("Times") reported in a front page story on December 23, 2009:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making 'inaccurate and misleading statements.'

15. Toyota's carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in that same Times article: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, it told U.S. regulators that no such recall was necessary in here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been

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received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem *since 1992*, and should have initiated a recall immediately" (emphasis added).

16. The same Times article reports that a former Toyota lawyer who handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles shortcomings from becoming known."

17. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETC").

18. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

19. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

20. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

21. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

22. Moreover, many of Defendants' vehicles now include an electronic ignition button rather than a mechanical ignition key-turned switch. In such cars, no mechanical means exists to turn off the engine in the case of unintended acceleration.

23. The combination of the lack of these safety systems creates a situation in which there are no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

24. According to an article in the November 8, 2009 issue of the Times, the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

25. The Times further quotes an independent safety expert as stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

26. The Times further states that other experts believe the numbers may be far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

27. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

28. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to

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control a runaway engine by applying the brakes.

29. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

30. On August 28, 2009, a 2009 Lexus ES350 vehicle, driven by California Highway Patrolman Mark Saylor, and carrying his family, experienced an instance of unintended acceleration. Mr. Saylor's brother-in-law called 911 from the back seat of the vehicle and said "the accelerator is stuck...we're approaching an intersection." Moments later, the Saylor family was dead.

31. The national attention garnered by this tragedy caused Toyota to finally, publicly, acknowledge that unintended acceleration was an issue in Toyota vehicles, yet, it still attempted to minimize the damage.

32. On or about September 29, 2009, Toyota announced a recall of 3.8 million vehicles, which was later expanded to 4.2 million vehicles, due to what Toyota claimed was an issue with aftermarket or improperly installed floor-mats causing unintended acceleration of its vehicles.

33. In a press release issued regarding the recall, however, Toyota unequivocally stated "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."

34. On November 3, 2009, ABC News's Nightline program focused its attention on the unintended acceleration of Toyota vehicles. Significantly, individuals interviewed during their program gave lie to Toyota's claims that all unintended acceleration problems could be traced back to improper driver's side floormats.

35. For example, the program interviewed Elizabeth James, a driver of a Toyota Prius, who stated:

> I'm absolutely certain, that in my situation, it was not the floor mats. I kept going faster and faster and all of a sudden my foot was pressing on the brakes super, super hard and I wasn't slowing down. My car just kept accelerating. And it wasn't until I landed in the river that it stopped.

36. The same ABC News show reported that approximately 2,000 incidents of unintended acceleration of Toyota vehicles have been reported since Toyota moved to an ETC system.

37. A January 21, 2010 article on ConsumerAffairs.com by Truman Lewis documents additional cases of unintended acceleration unrelated to floormats.

38. For example, the article cites the story of "Radha" of Philadelphia, who was in a parking lot when his 2009 Prius experienced unintended acceleration:

> 'I went all in for the brakes – no reaction from the car,' he said. 'Car crashed into a light pole, tilted to its right crashed down in parking spot right next to where I wanted to park. With me hanging by the seat belt, car still accelerating, I went for the power button. No response to that either.' Radha managed to crawl through the window to escape from the car, the engine running wide open as the car lay on its side. When police arrived, they managed to switch the car off, Radha said.

39. The same article also tells the story of "Mary" of Medford, Oregon, which further shows that Toyota knew of these problems:

> "Mary of Medford, Oregon, also reported that four incidents of unintended acceleration in her 2007 Prius were accompanied by an apparent lack of response from the brakes. **She said her dealer was able to duplicate**

> **the problem twice but couldn't resolve it**. 'It has nothing to do with the floor mat,' Mary said. (emphasis added).

40. Contrary to its clear and unequivocal statements in November, 2009 that the only issue with its vehicles regarding unintended acceleration was improper floormats, on January 21, 2010, Toyota announced that it had "newly discovered" a mechanical defect with its accelerator pedal mechanism which allows the pedal, according to Toyota's press release, to be "harder to depress, slower to return or, in the worst case, stuck in a partially depressed position."

41. Toyota has admitted that the throttle control systems in certain model year vehicles contain defective mechanisms.

42. Toyota has admitted that the throttle can stick "in a partially depressed position."

43. Toyota has admitted that if the driver pumps the brakes, he or she can deplete the "power assist."

44. A vehicle with the throttle stuck in a partially depressed position can lead to accidents which can kill or maim not only the drivers and passengers of the defective vehicles, but other whom the vehicles might run into.

45. Toyota has admitted that their investigation is incomplete, and that they do not know the origin, cause, failure mechanism, or fix for the defective product.

46. Because Toyota's investigation is incomplete, and they do not know the origin, cause, failure mechanism, or fix for the defective vehicles, they have announced that their cars are defective, but they have not yet instituted a recall to fix their vehicles, do not know when they might do so, what such fix might be, how extensive it might be, nor how long it might take.

47. Toyota also continues to fail to address the fact that this new explanation still

does not fully address the facts and circumstances of many of the incidents of unintended acceleration reported in press accounts.

48. For example, in the vast majority of unintended acceleration incidents reported in the press, the drivers state that depressing the brake pedal is ineffective at slowing or stopping the vehicle. Yet, Toyota's temporary solution states "[i]n the event the driver experiences an accelerator pedal that sticks in a partial open throttle position or returns slowly to idle position, the vehicle can be controlled with firm and steady application of the brakes. The brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure."

49. Both the September, 2009 recall and the January, 2010 recall includes vehicles as far back as the 2005 model year. Given the numerous press reports that Toyota had received approximately 2,000 complaints of unintended acceleration during that time period, it is clear that Toyota failed to properly and appropriately investigate these incidents and to issue appropriate remedies while being on notice of the defects in its vehicles.

50. Further, regardless of this knowledge, Toyota has taken no steps, even to this date, to effectively remedy this dangerous condition. Although Toyota has announced that it will begin installing accelerator-override systems in new vehicles which will reduce engine power to idle at any time the brake pedal is depressed, it has not agreed to recall and retrofit its prior vehicles with such a safety feature. Further, Toyota continues to turn a blind eye to the numerous incidents of unintended acceleration which fit neither the floor-mat nor the sticking-accelerator pedal profile.

51. Toyota had and has a duty to disclose the vehicle defects because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the

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general public.

CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

53. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

54. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

55. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes millions of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

56. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems are prone to sudden unintended acceleration;

b. What the mechanism is for unintended acceleration of Toyota vehicles equipped with an electronic throttle control system;

c. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

d. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

e. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

g. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

h. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

i. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

j. Whether Toyota's conduct described herein violated California's

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Unfair Competition Law;

k. Whether Toyota's conduct described herein violated California's False Advertising Act;

l. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

m. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

n. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

57. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

58. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

59. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same

complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

60. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

61. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

62. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMER LEGAL REMEDIES ACT

(By Plaintiffs and the Class Against All Defendants)

63. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

64. The Defendants' acts and omissions violate the following portions of the California *Consumer Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which

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they do not have ..."

- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

65. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

66. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(d). In addition Plaintiffs are concurrently providing the notice to Defendants required under *Civil Code* § 1782(a) with the sending of a letter, sent via certified mail return receipt requested.

67. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at

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law to deter Defendants' wrongful conduct, will be irreparably harmed.

68. If Defendants do not adequately correct the defects and take the appropriate remedies asked for in Plaintiffs' *Civil Code* § 1782(a) notice, Plaintiffs will amend the Complaint to add the following: Plaintiffs have suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced. As the factual allegations make clear, Defendants have known of the inherently dangerous defect for a long period of time and have, during that time, not only failed to correct it, but actively suppressed evidence of its existence. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(e).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(By Plaintiffs and the Class Against All Defendants)

69. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

70. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

71. Defendants violated and continue to violate the UCL through one or more of

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the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint.

72. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

73. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and preventing Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

74. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require

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Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

75. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(By Plaintiffs and the Class Against All Defendants)

76. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

77. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the

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public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

78. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

79. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

80. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

81. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiffs and the Class Against All Defendants)

82. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

83. Defendants impliedly warrant that their vehicles are fit for the ordinary

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purpose for which the product is sold.

84. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

85. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

86. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiffs and the Class Against All Defendants)

87. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

88. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

89. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

90. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the

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general public.

91. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle safely.

92. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs and the Class Against All Defendants)

93. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62 above.

94. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

95. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

96. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and Class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to

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themselves and others every time they operate their vehicles.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth herein above;
2. For compensatory damages as to all causes of action where compensatory damages are available;
3. For restitution;
4. For disgorgement of all wrongfully obtained compensation;
5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;
6. For exemplary damages as to all causes of action where exemplary damages are available;
7. For reasonable costs and attorneys' fees as permitted by law; and
8. For such other and further relief as the Court may deem proper.

DATED: January 22, 2009

Respectfully submitted,
KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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KIRTLAND & PACKARD LLP

TOY-RQ-05E-00006973

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 22, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

LAW OFFICES
KIRTLAND & PACKARD LLP

TOY-RQ-05E-00006974

AFFIDAVIT OF JOSEPH HAUTER

1. I, Joseph Hauter, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

4. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county in which Defendants are doing business

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 22 day of January, 2010, at LAKEWOOD, California.

Joseph A. Hauter

Joseph Hauter

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FILED
10 JAN 22 PM 4:08
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: MAPO

LAW OFFICES
KIRTLAND & PACKARD LLP

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH HAUTER, and FRANK PALOMARES, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. SACV10-00105-CJC(ANx) PLAINTIFFS' CERTIFICATE OF INTERESTED PARTIES [LOCAL RULE 7.1-1]

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Local Rule 7.1-1, Plaintiffs hereby respectfully submit this Certificate of Interest Parties. The undersigned, counsel of record for Plaintiffs JOSEPH HAUTER and FRANK PALOMARES, certifies that the following listed parties may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

Joseph Hauter, Frank Palomares, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation.

DATED: January 22, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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Attorneys for Defendants
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

(Southern Division – Santa Ana)

JOSEPH HAUTER and FRANK PALOMARES, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10	Case No.: CV10-00105 CJC (AN) Assigned to the Honorable Cormac J. Carney **STIPULATION REGARDING SERVICE AND TO EXTEND TIME TO RESPOND TO INITIAL COMPLAINT BY NOT MORE THAN 30 DAYS (L.R. 8-3)** Ctrm: 9B Filing Date: January 22, 2010 Service Accepted: January 25, 2010 Current Resp. Date: February 18, 2010 New Response Date: March 12, 2010

It is stipulated that Defendants Toyota Motor Sales, U.S.A., Inc. ("TMS") and Toyota Motor Corporation ("TMC") will be deemed to be served with the complaint in the above-entitled action as of January 25, 2010.

In exchange for an agreement to forego the formalities of the Hague Service Convention otherwise required for service on TMC, Plaintiffs and Defendants agree to the following: (1) TMC will have an additional 60 days to respond to all written discovery requests; (ii) any TMC corporate representative deposition noticed under FRCP 30(b)(6) will be done on at least 90 days notice; and (iii) at Defendants' election, any depositions of a TMC corporate representative noticed under FRCP 30(b)(6) shall be conducted at a law office selected by Defendants in the Los Angeles area.

Pursuant to Civil Local Rule 8-3 of the United States District Court, Central District of California, Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation, and Plaintiffs Joseph Hauter and Frank Palomares, by and through their respective counsel of record, hereby stipulate to extend Defendants' time within which to respond to the Complaint in this matter by twenty-six (25) days.

The new deadline for Defendants to file an Answer or otherwise respond to the Complaint is March 12, 2010.

DATED: January 25, 2010

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON
KIRTLAND & PACKARD LLP

/s/ Behram V. Parekh
Behram V. Parekh

Attorneys for **PLAINTIFFS**

[Signatures continued on next page]

[Signatures continued from previous page]

DATED: January 25, 2010

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JOHN D. ARYA
ROGER CERDA
ALSTON & BIRD LLP

VINCENT GALVIN, JR.
BOWMAN AND BROOKE

/s/ Lisa M. Gilford
Lisa M. Gilford

Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., and TOYOTA MOTOR CORPORATION

(FMOx), DISCOVERY, RELATED-G

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Southern Division - Santa Ana)
CIVIL DOCKET FOR CASE #: 8:10-cv-00105-AHM-FMO

Joseph Hauter et al v. Toyota Motor Sales USA Inc et al
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-08143-AHM-FMO
Cause: 28:1332 Diversity-Fraud

Date Filed: 01/22/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Joseph Hauter
on behalf of themselves and all others similarly situated

represented by **Behram V Parekh**
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Plaintiff

Frank Palomares
on behalf of themselves and all others similarly situated

represented by **Behram V Parekh**
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Heather Marie Peterson
(See above for address)
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Michael L Kelly
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V.

Defendant

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Toyota Motor Corporation represented by

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lisa Gilford
(See above for address)
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Cari K Dawson
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Defendant

Doe Defendants
1 -10

Date Filed	#	Docket Text
01/22/2010	1	COMPLAINT against defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales USA Inc.(Filing fee $ 350 paid) jury demand., filed by plaintiffs Joseph Hauter, Frank Palomares.(twdb) (twdb). (Entered: 01/27/2010)

01/22/2010	2	CERTIFICATE of Interested Parties filed by plaintiffs Joseph Hauter, Frank Palomares, (twdb) (twdb). (Entered: 01/27/2010)
01/22/2010		21 DAY Summons Issued re Complaint - (Discovery) 1 as to defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales USA Inc. (twdb) (Entered: 01/27/2010)
01/26/2010	4	ORDER RETURNING CASE FOR REASSIGNMENT UPON RECUSAL by Magistrate Judge Arthur Nakazato. ORDER case returned to the Clerk for random reassignment Discovery pursuant to General Order 05-07 and General Order 08-05. Case randomly reassigned from Magistrate Judge Arthur Nakazato to Magistrate Judge Marc L. Goldman for all further proceedings. The case number will now reflect the initials of the transferee Judge SACV10-00105 CJC (MLGx). (ade) (Entered: 02/01/2010)
01/27/2010	3	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Corporation answer now due 3/12/2010; Toyota Motor Sales USA Inc answer now due 3/12/2010, filed by Defendants Toyota Motor Corporation; Toyota Motor Sales USA Inc.(Gilford, Lisa) (Entered: 01/27/2010)
02/11/2010	5	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case-filed. Related Case No: CV 09-08143 AHM (FMOx). Case transferred from Judge Cormac J. Carney and Magistrate Judge Marc L. Goldman to Judge A. Howard Matz and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge SACV 10-00105 AHM(FMOx).Signed by Judge A. Howard Matz (rn) (Entered: 02/11/2010)
02/18/2010	6	APPLICATION for attorney Cari K. Dawson to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973-6554390 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc. (Attachments: # 1 Proposed Order)(Gilford, Lisa) (Entered: 02/18/2010)
02/19/2010	7	ORDER by Judge A. Howard Matz: granting 6 Application to Appear Pro Hac Vice by Attorney Cari K. Dawson on behalf of defendant Toyota Motor Sales USA, Inc., designating Lisa Gilford as local counsel. (se) (Entered: 02/19/2010)
02/19/2010	8	NOTICE of Related Case(s) filed by Plaintiff Joseph Hauter, Frank Palomares. *and Notice of Pendency of Other Actions or Proceedings* Related Case(s): 2:09-cv-8143, 2:09-cv-9158, 2:09-cv-9386, 8:10-cv-105, 2:10-cv-710, 2:10-cv-706, 2:10-cv-799, 2:10-cv-849, 2:10-cv-942, 2:10-cv-946, 2:10-cv-947, 2:10-cv-1030, 2:10-cv-1039, 2:10-cv-1073, 2:10-cv-1089, 2:10-cv-1094, 8:10-cv-183, 2:10-cv-1153 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Parekh, Behram) (Entered: 02/19/2010)

PACER Service Center			
Transaction Receipt			
02/25/2010 06:38:03			
PACER Login:	wb0242	**Client Code:**	056707-383593
Description:	Docket Report	**Search Criteria:**	8:10-cv-00105-AHM-FMO End date: 2/25/2010

TOY-RQ-05E-00006984

Billable Pages:	4	**Cost:**	0.32

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 10-105 AHM (FMOx)	Date	March 1, 2010
Title	JOSEPH HAUTER, et al. v. TOYOTA MOTOR SALES, U.S.A., et al.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: (IN CHAMBERS)

This is one of many cases involving claims against one or more related Toyota companies that have been assigned to this Court. As was disclosed in the first such case, the Court owns a 2000 Toyota Avalon SLX. In addition, an adult son of the Court who has not lived in the Court's home for many years owns a 2005 Prius. Counsel for plaintiffs shall notify the Court in writing, by not later than March 10, 2010, whether owners of either such model vehicle would be putative members of any class that the complaint in this action seeks to have certified.

Initials of Preparer SMO

TOY-RQ-05E-00006986

[redacted] NY REGION

6

TOY-RQ-05E-00006987

February 11, 2010

VIA U.S. MAIL AND FACSIMILE

Russell Shanks, Esq.
Cyruli Shanks Hart & Zimor, LLP
420 Lexington Avenue
New York, New York 10170

Re: [redacted] v Toyota of Manhattan, Toyota Motor Sales, U.S.A., Inc and Toyota Financial Services
AAA Case No: 134200199209

Dear Mr. Shanks,

This letter serves as a formal response to your request that Toyota Motor Sales, U.S.A., Inc. ("TMS") indemnify and defend Toyota of Manhattan ("TOM") in the above-referenced matter. At this juncture, TMS must respectfully deny your request.

Despite the claimant's recent assertion that the alleged brake concerns she experienced were a "manifestation of the now disclosed accelerator pedal problems", the subject vehicle is not involved in any current recall campaign by TMS regarding accelerator pedal issues. Moreover, the claimant continues to assert independent allegations of fraud as to TOM. Accordingly, notwithstanding the allegations made in the claimant's more detailed statement of claims, TMS does not feel indemnification and defense of TOM is appropriate at this time.

Notwithstanding the foregoing, please note that we stand ready and willing to fully cooperate with you in this matter moving forward.

Should you have any questions, please contact me.

Very truly yours,

Mark W. Skanes

MWS/brs
J:\Data\Toyota New York\Matter\19683\Correspondence\Shanks.1.doc

[redacted]

Attorney at Law

[redacted]
New York, New York [redacted]
Email: [redacted]

Tel: [redacted]
Fax [redacted]

January 12, 2008

General Counsel
Toyota Motor Sales USA
National Customer Relations
19001 South Western Avenue
Dept. HQM
Legal Department
Torrance, CA 90509

President, Jim Press
Toyota Motor Sales USA
National Customer Relations
19001 South Western Avenue
Dept. WC11
Torrance, CA 90509

Dear Sir or Madam:

I am writing to ask for your intervention in a matter that occurred at one of your dealerships in November and December of 2008. I called your customer service number and relayed this complaint to their attention, for which they assigned a case number of 200901060523.

I am the owner of a 2007 Rav 4, which I leased from your dealership, Toyota of Manhattan, located at at 645 11th Avenue New York, New York 10036. In the month of November I repeatedly returned to this dealership complaining to your service advisor Elliot Lamboy that my brakes were not functioning correctly. After inspection, he reported that there was no problem found, as indicated on the receipt dated November 26, 2008. However, when I brought the car in again on December 24, 2008 to get my tires serviced, I spoke to service consultant Tina Soriano, who suggested I purchase the 15,000 Miles Service for my car. Upon this inspection, it was discovered that there was indeed a problem with my brakes. I was in disbelief that this could be possible since I had been in and out of the dealership for a month regarding this problem, and had repeatedly been told by Elliot that there was nothing wrong with my brakes. I then asked to speak to the service manager Frantz Casimir about this matter because I felt that the issue needed to be communicated to Elliot. The first thing Mr. Casimir said to me was that the dealership would not be charging me for the brakes, and then he apologized. Shortly after, I called

the office asking for the brake pads back that had been removed, and was told that they had been sent back to Toyota Motor Sales USA because they were under warranty.

I know that the brakes were not in fact under warranty for two reasons. Firstly, I was initially charged for the brakes because I was told they were not under warranty. Secondly, on the second page of the receipt dated December 24, 2008 you will find that the service fee for the brakes was waived due to "good will," with no mention of a warranty. Thus, I wrote a letter to Frantz Casimir on January 6, 2008 expressing my concern about this discrepancy. Because of the inconsistency between what was said to me and what appeared on my bill, as well as the immediacy with which Mr. Casimir seemed to dismiss the problem, I was led to believe that Mr. Casimir had been covering for Elliot's actions.

As an aside, there was another incident that caused me to suspect Elliot Lamboy of dishonesty. On November 18, 2008, I brought my car into the dealership because I had noticed that when filling it with gas it took about five minutes for the reading to show that the tank was full. I asked Elliot to fix the problem, and then to check that the gauge was functioning correctly by filling up the tank with gas. He asked me for $20 for the gas, which I gave to him. When I got the car back, however, the meter indicated that the tank was still half-empty. Consequently, I did not know if there was still a problem with the gauge, or if the tank had simply not been filled. It took me three phone calls to finally reach Elliot, at which point he told me he would return my $20. He never did.

I happen to be an attorney and have a strong belief that my brakes have been tampered with and that there have been unfair dealings regarding the service for the brakes on my car. Therefore, I would like to investigate Elliot Lamboy's motivations in this matter. Enclosed please find the following for your perusal: receipts from the dealerships on the three occasions noted, a flyer indicating the 15,000 Miles Service I purchased, and a letter to Frantz Casimir requesting that the brake pads which he claimed were under warranty be sent back to me. I am asking for your intervention in this matter and your assistance in tracking and returning the brake pads of my car, which Mr. Casimir claims are in your possession. Please send them to me as soon as possible so that I can then send them to the D.A.'s office for further investigation. I know that Toyota holds a national reputation for honesty and fair dealing with its customers and I would appreciate you abiding by these standards. Thank you for your attention, and I greatly appreciate you intervention in this matter.

Very Truly Yours,

[redacted]

072579

RONALD KURZEJA, ESQ.
574 Newark Avenue, Suite 201
Jersey City, New Jersey 07306
(201) 610-1400

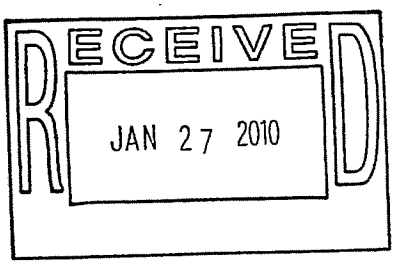
fax: (201) 610-1470

Ronald Kurzeja

January 27, 2010

VIA FAX
(401) 435-6529

Melanie Cabrera, Case Manager
American Arbitration Association
950 Warren Avenue
East Providence, RI 02914-1414



re: [redacted] v. Toyota of Manhattan et al
Case Number 13 434 E 01992 09

Dear Ms. Cabrera:

Please find claimant's more detailed statement of the claim and the relief sought.

Claimant leased a 2007 RAV 4 from Toyota of Manhattan on or about August 22, 2007. Toyota of Manhattan may also use the name Skyline Automobiles, Inc. The lease was assigned to Toyota Financial Services who may also be known as Toyota Motor Credit Corporation. The vehicle was either manufactured or distributed by Toyota Motor Sales, USA, Inc. The vehicle identification number was JTMBD33V875[redacted] In November 2008, claimant began experiencing a problem with the front brakes on the subject vehicle. Respondent Toyota of Manhattan as part of a scheme to mislead claimant told claimant that there was no problem with the brakes then proceeded to replace the brakes pursuant to the new car warranty in December 2008. After the brakes were replaced, respondent Toyota Motor Sales USA, Inc. further attempted to cover up the problem by allegedly returning a set of used brake pads to claimant stating that they were from claimant's vehicle and that they had the claimant's serial number on them when in fact they could not have come from claimant's vehicle. Unknown to claimant, respondent Toyota Motor Sales, USA, Inc. was having a major problem with sticking accelerator pedals during this time period. This major problem was never disclosed to claimant. This sticking accelerator problem has since come to the attention of the public. Claimant believed that she had a continuing brake problem and in fact had the brakes replaced once again in October 2009. Claimant believes that the brake problem was actually the manifestation of the now disclosed accelerator pedal problem. Claimant will demonstrate

that the brakes exhibited an excessive wear pattern which was likely related to the previously undisclosed accelerator pedal problem. This concealed defect still exists in claimant's vehicle. Respondents have made misrepresentations to claimant by failing to disclose the accelerator pedal defect but instead choosing to let claimant believe that she had a warranty related brake problem. Respondents have breached its express warranty, the standard new vehicle warranty from the manufacturer. Respondents have breached the implied warranty of merchantability. Respondents have breached the implied warranty of fitness for the particular purpose. Respondents are liable to claimant under strict liability in tort. Respondents are liable to claimant for breach of contract. Claimant seeks rescission and/or reformation of the underlying contract, the lease. Claimant seeks termination of the lease and termination of the responsibility to make the remaining payments pursuant to the lease. Claimant seeks the return of all payments previously made to respondents. Claimant seeks triple damages, attorney's fees and costs under the applicable consumer protection statutes. Respondent Toyota Financial Services is subject to all claims and defenses pursuant to section 5 of the Federal Trade Commission Act. In addition, respondents have committed an unfair or deceptive act by failing to place in the lease the notice required by the Federal Trade Commission Act.

We have attached a copy of the recent New York Times article of January 27, 2010 which supports our position that a problem existed with Toyota vehicles generally and this problem is consistent with the difficulties that claimant encountered.

Claimant is unable to set forth the claim in greater detail at this time inasmuch as much of the evidence necessary to substantiate the claim is in respondents' possession.

Thank you for your courtesy and cooperation.

Very truly yours,

Ronald Kurzeja

cc: Russell Shanks, Esq. - VIA FAX (212) 661-5350
Mark Skanes, Esq. - VIA FAX (518) 869-3334
Jason Creech, Esq. - VIA FAX (516) 802-0631

RONALD KURZEJA, ESQ.
574 Newark Avenue, Suite 201
Jersey City, New Jersey 07306
(201) 610-1400

fax: (201) 610-1470

Ronald Kurzeja

January 27, 2010

VIA FAX
(401) 435-6529

Melanie Cabrera, Case Manager
American Arbitration Association
950 Warren Avenue
East Providence, RI 02914-1414

re: [redacted] v. Toyota of Manhattan et al
Case Number 13 434 E 01992 09

Dear Ms. Cabrera:

This letter supplements our prior letter of Janaury 27, 2010.

Claimant also seeks the cost of the second brake replacement carried out in Ocotber 2009 by a third party. The cost for this work was $399.39.

Thank you for your courtesy and cooperation.

Very truly yours,

Ronald Kurzeja

cc: Russell Shanks, Esq. - VIA FAX (212) 661-5350
Mark Skanes, Esq. - VIA FAX (518) 869-3334
Jason Creech, Esq. - VIA FAX (516) 802-0631

THE NEW YORK TIMES, JANUARY 27, 2010

Toyota Halts Production Of 8 Models

By NICK BUNKLEY

Toyota Motor, still struggling to resolve a problem with accelerator pedals, said Tuesday it would temporarily stop selling and building eight models in the American market, including the popular Camry and Corolla sedans.

The unusual move has the potential to further damage Toyota.

The company's reputation for quality has been battered by two recalls of millions of vehicles in the last two months for a problem that the company has described as a "rare" condition in which the gas pedal can stick, and cause a vehicle to speed up unintentionally.

"This action is necessary until a remedy is finalized," Robert S. Carter, a Toyota group vice president, said in a statement. "We're making every effort to address this situation for our customers as quickly as possible."

Toyota said it would immediately stop selling the Camry, Corolla and Avalon sedans, Matrix wagon, RAV4 crossover, Tundra pickup, and Highlander and Sequoia sport utility vehicles.

It will also stop building those models the week of Feb. 1. All of the vehicles are assembled in the United States or Canada, at a total of five plants.

The models affected accounted for more than a million sales in 2009, 57 percent of Toyota's

Continued on Page 2

Pedal Flaw Leads Toyota To Stop Building 8 Models

From First Business Page

American total for the year.

The company said the move was intended to restore confidence in the automaker, and the safety of its products. One analyst said many consumers may have a different reaction.

"The problem seems to be getting larger than anyone was led to believe at first," said Erich Merkle, an analyst with Autoconomy.com in Grand Rapids, Mich. "A lot of those vehicles are probably in the garages of families. It gets people thinking, 'Would I want my wife and kids in the vehicle, would they know what to do in a situation like that.'"

The recession has led to a sharp drop in sales over all for the auto industry. For Toyota dealers, the news will likely further reduce their business.

"It's not exciting to hear that a good portion of my inventory now can't be sold," said Paul Lunsford, general manager of South Coast Toyota in Costa Mesa, Calif.

But Mr. Lunsford, who has been a Toyota dealer for 30 years, applauded the company's decision to move fast to suspend sales of the vehicles involved in last week's recall. "Nobody had to put a gun to Toyota's head to get them to do the right thing," he said.

Still, Mr. Lunsford added, "it's not the feel-good story of the year if you're a Toyota dealer."

A November recall by Toyota was intended to fix a design flaw that could cause the gas pedal to become trapped under the floor mat. It was prompted in part by the crash of a Lexus sedan that ran out of control and crashed into a ravine near San Diego, killing four people.

But the automaker and federal safety officials continued to receive reports of unintended acceleration and stuck pedals even in cases where the floor mats had been removed, a stopgap measure recommended by Toyota.

The National Highway Traffic Safety Administration has been looking into two recent incidents in Texas and New Jersey. Four people died on Dec. 26 near Dallas when a Toyota Avalon — with its floor mats in the trunk — went off a road and landed upside down in a pond.

In announcing a second recall last week, Toyota said the accelerator pedal could wear down and become difficult to depress, slow to spring back or get stuck partly depressed.

Toyota does not have a solution for the problem yet, and it said drivers who experienced it should depress the brake firmly and steadily, and then contact a dealer after the vehicle was in a safe location and turned off.

Drivers who have not had a problem should wait for the company to develop a remedy before visiting their dealer.

Together, the two recalls cover 4.8 million vehicles, including 1.7 million affected by both. The Prius hybrid and several Lexus models were included in the November recall but not in last week's action or the sales halt.

A problem 'larger than anyone was led to believe at first.'

The latest series of recalls threaten to undo all the efforts Toyota made in the middle of the last decade, when it was hit by a series of quality problems that caused recalls to spike. But a number of those recalls were for vehicles at least a decade old.

The most recent recalls follow what Toyota insisted was a companywide effort to improve quality that was started by Katsuaki Watanabe, who served as its president before he was replaced last year by Akio Toyoda, grandson of the company's founder.

The decision to stop production, though unusual, is not unprecedented. Detroit carmakers have in the past delayed or slowed production on vehicles like the Chevrolet Cavalier and Ford Thunderbird in order to address quality issues.

Julie Creswell and Micheline Maynard contributed reporting.

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 13 434 E 01992 09
[redacted]
and
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and
Toyota Financial Services

Notice of Compensation Arrangements

To: Howard R. Reiss, Esq.

You have been invited to serve as an arbitrator in the above matter. It is important that you understand the terms of your compensation and the role you play in ensuring that you receive payment for fees and expenses that you may incur during your service. This invitation to serve is based on our assumption that unless your panel biography states otherwise, you are willing to comply with the Association's *Billing Guidelines for Commercial, Construction, and Employment Neutrals*, which are enclosed. If you expect to assess charges that fall outside those guidelines and those charges are not detailed on your panel biography, you must notify the Association prior to accepting your appointment so that the parties can determine whether they still seek your services as an arbitrator.

Your Compensation

This matter is being administered under the Supplementary Procedures for Consumer-Related Disputes of the Commercial Arbitration Rules. As such, your rate of compensation is $750 per day of hearing. The case should require no more than one day of hearing. Should this matter conclude after the preliminary hearing and prior to the final hearing, you will be compensated at half of this established rate. If the case closes prior to the preliminary hearing, you will not be compensated.

Your Expenses

On most cases, your expenses should be nominal and will be reimbursed immediately after you submit them. For any single expense over $25, please include a receipt with your request for reimbursement.

If you anticipate that you will incur significant expenses, such as airfare or hotel room costs, please advise your Case Manager in advance so that the parties can be asked to make deposits prior to you incurring the expense.

Deposits and Payment

Payment for your compensation is the obligation of the parties and it is understood that the American Arbitration Association has no liability, direct or indirect, for such payment. During the course of the

proceeding the Case Manager will ask that you provide an estimate of the amounts needed to cover your fees. Generally this occurs immediately after the preliminary hearing, although on longer or more complex cases it can occur immediately upon appointment or after each series of hearings.

Unless you specify otherwise, the parties are advised that deposits are due 30 days prior to the first hearing. No later than two weeks prior to the hearing, the Case Manager will advise you of the total amount on deposit. Should the parties fail to make deposits in a timely manner, you must determine whether to go forward or suspend the proceedings until such time as deposits have been made. If you decide to go forward without full deposits, you may not subsequently delay the rendering of the award for lack of payment of your fees. *The time to deal with this issue is prior to the commencement of the hearings.* Should you decide to suspend the proceedings, your Case Manager can assist you in issuing an appropriate order to the parties.

If you realize that you are spending more time on this matter than you originally estimated, it is your obligation to inform the Case Manager prior to exhausting the current deposit. The Case Manager will then make arrangements with the parties for additional deposits per your instructions.

In order to receive payment, please submit bills promptly. Your bills should be submitted in a format that is presentable to the parties, should detail the dates on which the charges were incurred and must correspond with the terms of compensation outlined herein. Upon receipt, the AAA will release payment from the amounts deposited by the parties. Should there be insufficient funds on deposit, you will not receive payment until the parties have made additional deposits. Further, we will not use one party's deposit to cover another party's obligation without written permission to do so.

In the event your Award is delivered prior to payment by the parties of the agreed upon compensation, the Association is authorized but not obligated to seek to collect these monies on your behalf by all lawful means to represent you in any action or proceeding for such recovery and to file a claim in any bankruptcy or insolvency proceeding for such monies. The Association may prosecute and receive any recovery on behalf of the undersigned and has full authority to compromise or settle such claims as may be, in its discretion, appropriate. However, under no circumstances whatsoever will the Association be liable for any failure to collect any or all the monies due. The Association is authorized to subtract a reasonable amount for collection and attorney's fees.

Failure to Disclose and Forfeiting Compensation

As an arbitrator in this matter, you have an ongoing obligation to disclose any direct or indirect relationship with the case participants. Your failure to make disclosures in a timely manner would be a serious transgression and may be grounds for your removal as arbitrator from this case and/or from the AAA's Roster of Neutrals. Should this occur, you may be required to forfeit the compensation for the time you spent on this matter after you should have made such disclosures.

If you are willing to serve on this matter per the compensation terms detailed above, please complete and sign the following section and return it, along with your Notice of Appointment, to your Case Manager.

ARBITRATOR MUST COMPLETE THE FOLLOWING SECTION

Compensation payments, and the corresponding IRS reporting, will be made to either to you individually (attributed to your Social Security Number) or to your employer (attributed to the Employer Identification Number), based on the preference you indicated and as recorded in your panel record. If you are unsure of your current payment preference, you may contact your Case Manager or the AAA Department of Neutrals' Services. Promptly inform the AAA if this information is incorrect or changes during the case, or if an address correction is necessary.

If the AAA does not have the payee's tax information on record, we must withhold 31% of compensation payments, as required by the IRS. Reimbursements of expenses are not subject to withholding and are not reported to the IRS.

I am willing to accept appointment on this matter under the compensation terms detailed above.

Signed:_____ **Date:** 11/16/09

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 13 434 E 01992 09

[redacted]

and
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and
Toyota Financial Services

NOTICE OF APPOINTMENT

To: Howard R. Reiss, Esq.

It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the biographical information that you have provided to the AAA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The Association will call the disclosure to the attention of the parties.

You will not be able to serve until a duly executed Notice of Appointment is received and on file with the Association. Please review the attached *Disclosure Guidelines* and, after conducting a conflicts check, answer the following questions and complete the remainder of this Notice of Appointment:

	Yes	No
1. Do you or your law firm presently represent any person in a proceeding involving any party to the arbitration?	☐	☑
2. Have you represented any person against any party to the arbitration?	☐	☑
3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?	☐	☑
4. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?	☐	☑
5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?	☐	☑
6. Have you, any member of your family, or any close social or business associate ever served as an arbitrator in a proceeding in which any of the identified witnesses or named individual parties gave testimony?	☐	☑
7. Have you, any member of your family, or any close social or business associate been involved in the last five years in a dispute involving the subject matter contained in the case, which you are assigned?	☐	☑

8. Have you ever served as an expert witness or consultant to any party, attorney, witness or other arbitrator identified in this case? ☐ ☑

9. Have any of the party representatives, law firms or parties appeared before you in past arbitration cases? ☐ ☑

10. Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration? ☐ ☑

11. Have you ever sued or been sued by either party or its representative? ☐ ☑

12. Do you or your spouse own stock in any of the companies involved in this arbitration? * Could possibly own Toyota stock Thru a Mutual fund, I do not know. ☑ ☐

13. If there is more than one arbitrator appointed to this case, have you had any professional or social relationships with any of the other arbitrators? ☐ ☑ N/A

14. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions? ☐ ☑

Should the answer to any question be "Yes", or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality, then describe the nature of the potential conflict(s) on an attached page.

Please indicate one of the following:

☑ I have conducted a check for conflicts and have **nothing to disclose.** except for the above #12.

☐ I have conducted a check for conflicts and have **made disclosures on an attached sheet.**

THE ARBITRATOR'S OATH

State of New York
County of New York } SS:

I attest that I have reviewed the panel biography which the American Arbitration Association provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the American Arbitration Association, Code of Ethics for Commercial Arbitrators and/or all applicable statutes pertaining to arbitrator disclosures.

I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as an arbitrator in this matter, and that failing to make appropriate and timely disclosures may result in my removal as arbitrator from the case and/or my removal from the AAA's Roster of Neutrals.

The Arbitrator being duly sworn, hereby accepts this appointment, and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the Code of Ethics, and the rules of the American Arbitration Association will make an Award according to the best of the arbitrator's understanding.

Dated: Nov 16, 2009 Signed: _____

Sworn before me this 16th day of November, 2009

MATTHEW SHEPPE
Notary Public, State of New York
No. 02SH6090717
Qualified in Westchester County
Commission Expires April 21, 2011

Contact American Arbitration Association
950 Warren Avenue
East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529

Howard R. Reiss, Esq.

Current Employer-Title Reiss Eisenpress LLP - Founding Partner

Profession Commercial Litigator, Arbitrator, Mediator

Work History Partner, Reiss Eisenpress LLP (formerly Shatzkin & Reiss), 1988-present; Partner, Solin & Breindel, 1985-88; Associate Attorney, Donovan, Leisure, Newton & Irvine, 1978-84; Law Clerk, Judge Charles Metzner, Southern District of New York, 1976-77.

Experience Since 1976 focused on commercial litigation in a wide range of areas including contract, intellectual property, insurance, reinsurance, securities, entertainment and employment. Thirty percent of practice involves insurance and reinsurance coverage issues ranging from $50,000 to $50,000,000.00. Fifty percent of practice involves contract disputes involving securites, intellectual properties, employment and international issues. Twenty percent of practice involving product liability, personal injury, franchise disputes, real estate and drafting with respect to transactional matters. Clients include large publicly traded Fortune 100 companies, medium-sized and small businesses, governmental entities both domestic and foreign, international banks, insurance companies, unions, healthcare companies and individuals.

Alternative Dispute Resolution Experience Has served as an arbitrator in numerous disputes over the past 20 years for the American Arbitration Association as a sole arbitrator, as a panel member and as chairman. These include, among other matters, a lengthy hearing involving a Fortune 100 company over a supply contract with respect to power generation involving claims in excess of $10M; a lengthy hearing involving a Fortune 100 company concerning patents involing claims in excess of $50M, which involved extensive discovery and motion practice; a hearing involving a group of single room occupancy hotels in New York City; a hearing involving a large design contract; a hearing concerning the breach of a large event contract with respect to the Superbowl; a hearing involving a large publisher with respect to publication rights; hearings involving insurance coverage with respect to directors and officers liability and theft coverage; a hearing involving the management contract of a well known performer; hearings involving securities including claims for churning and suitability; a hearing involving a partnership dispute with respect to a chain of retail stores, a hearing involving the break-up of a computer service company, and a hearing involving a Fortune 100 company concerning franchise rights and intellectual property. In addition, has represented numerous parties as counsel in arbitrations and mediations, and mediated

cases for both the United States District Court for the Southern District of New York and the New York State Supreme Court in New York County.

Alternative Dispute Resolution Training AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2008; AAA Arbitrator Ethics & Disclosure (ACE003), 2007; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 03/06; ACE004 - Dealing With Delay Tactics in Arbitration, 2/05; ACE001 - Arbitration Awards: Safeguarding, Deciding & Writing Awards, 06/03; Annual Arbitrator Update 2002; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, New York, 4/01; AAA Commercial Arbitrator Training, White Plains, 11/99; U.S. District Court, Southern District of New York, Mediation Training 1996, 1995.

Professional Licenses Admitted to the Bar: New York, 1977; U.S. District Court: Southern and Eastern Districts of New York; U.S. Court of Appeals: Second, Third, Fifth, and Eleventh Circuits; U.S. Supreme Court.

Professional Associations Association of the Bar of the City of New York (Committee on Alternate Dispute Resolution); New York State Bar Association (Committee on Alternative Dispute Resolution); Dartmouth Lawyers' Association.

Education Dartmouth College (AB, summa cum laude-1973); Columbia University (JD, Law Review Board of Editors, Stone Scholar-1976).

Publications and Speaking Engagements "Personal Injury and Product Liability Litigation", Prentice Hall, 1987; also serves annually as a Judge in the National Moot Court Competition, and has taught the "Practice of Law" course at Columbia Law School.

Compensation $2,000.00 Per Day
$300.00 Per Hour

Hourly rate charged for study time.

Citizenship United States of America

Locale New York, NY

Howard R. Reiss, Esq.
101187

American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org/

067568

FAX

Date: October 21, 2009

To
Ronald Kurzeja, Esq.
574 Newark Avenue #201
Jersey City, NJ 07306

Russell Shanks, Esq.
Cyruli, Shanks, Hart & Zizmor, LLP
420 Lexington Ave, Ste 2320
New York, NY 10170

Mark Skanes, Esq.
The Rose Law Firm, PLLC
501 New Karner Rd
Albany, NY 12205

Jason W. Creech, Esq.
Simmons Jannace, LLP
75 Jackson Ave
Syosset, NY 11791

Fax Number: (201)-610-1470
(212)-661-5350
(518)-869-3334
(516)-802-0631

From: Melanie Cabrera
Number of Pages: 15 (including cover)
[redacted] v.
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and Totota Financial Services

THIS FAX TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED OR OTHERWISE EXEMPT FROM DISCLOSURE. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE PERSON AUTHORIZED TO DELIVER THIS FAX TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OF THIS FAX IS PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AT THE NUMBER LISTED ABOVE AND RETURN THE ORIGINAL FAX TO US BY FIRST CLASS MAIL AT THE ABOVE ADDRESS.

American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center

October 21, 2009

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org/

VIA FACSIMILE

Ronald Kurzeja, Esq.
574 Newark Avenue #201
Jersey City, NJ 07306

Russell Shanks, Esq.
Cyruli, Shanks, Hart & Zizmor, LLP
420 Lexington Ave, Ste 2320
New York, NY 10170

Mark Skanes, Esq.
The Rose Law Firm, PLLC
501 New Karner Rd
Albany, NY 12205

Jason W. Creech, Esq.
Simmons Jannace, LLP
75 Jackson Ave
Syosset, NY 11791

Re: 13 434 E 01992 09
[redacted]
and
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and
Toyota Financial Services

Dear Parties:

This will advise the parties the Association has appointed Charles J. Moxley, Jr., Esq. as arbitrator. Enclosed please find his duly executed Notice of Appointment and Notice of Compensation Arrangements, as well as his professional resume and disclosure..

Arbitrator Moxley has made the enclosed disclosure.

Please advise the Association of any objections to the appointment of Charles Moxley no later than Noon, Thursday October 29, 2009, copying the other side. The arbitrator shall not be copied on any comments related to the disclosure.

If any objections to this arbitrator's appointment are raised, the other party may respond within five business days. The AAA will make a determination regarding the arbitrator's continued service in accordance with the Rules.

As requested by the neutral, if either party or their counsel knows of any contact or conflict that may be relevant, they are to communicate this information to the Association within seven days.

We have had a request for more information on the Consumer Due Process Protocol. Because this is too length to print here, we invite you to go to our website at www.adr.org and Click on "Consumer Due Process Protocol".

If you have any questions, please feel free to contact me.

Sincerely,

/s/

Melanie Cabrera
Manager of ADR Services
401 431 4802
CabreraM@adr.org

Encl.

mdc/pss.

Contact American Arbitration Association
950 Warren Avenue
East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529

Charles J. Moxley Jr., Esq.

Current Employer-Title Kaplan Fox & Kilsheimer LLP - Of Counsel

Profession Attorney, Arbitrator and Mediator

Work History Of Counsel, Kaplan Fox & Kilsheimer LLP, 1994-present; Adjunct Professor, Fordham University School of Law, 2003-present; Distinguished ADR Practitioner in Residence, Cardozo Law School, 2009-present; Partner/Counsel, Jones, Hirsch, Connors & Bull, 1987-94; Associate/Assistant Professor, St. John's University School of Law, 1991-92, 1994-98; Partner, Schwartz, Klink & Schreiber, P.C., 1979-87; Adjunct Professor, New York Law School, 1986-91; Associate, Davis, Polk & Wardwell, 1970-79; Law Clerk to Hon. Thomas F. Croake, United States District Judge for the Southern District of New York, 1969-70.

Experience Over 35 years as a litigator representing clients in courts throughout the country in a wide range of commercial, corporate, partnership, securities, commodities, insurance, accounting, construction, real estate, employment, matrimonial, and international cases, including issues as to breach of contract and fiduciary duty, commercial and securities fraud, malpractice, business break-ups and insolvencies, insurance coverage, reinsurance, D&O coverage, shareholders' rights, sales of goods and services, tortious interference, investments, class actions, statutory violations, corporate governance, antitrust, hedge funds, tender offers, mergers and acquisitions, multinational manufacturers, and issues as to alleged liabilities of officers and directors, majority shareholders, accountants, attorneys, engineers, architects, actuaries, investment advisors, educators, insurance brokers and intermediaries, regulators, and security and fire alarm companies. Focus has been on complex matters involving multiple parties, intricate factual and legal issues, scores of witnesses, and extensive documents. Clients have included individuals and closely held and public corporations, including securities firms, insurance companies, accounting firms, and banks, as well as government officials and departments. Representative Cases: representation of State Insurance Regulator in case involving claims of over $140,000,000 in Supreme Court, New York County (Commercial Division) against former officers, directors and auditors of two insolvent insurance companies for alleged breach of duty in permitting the companies to continue in business when insolvent; representation of public insurance company in case in federal court alleging $5,000,000 in damages resulting from misrepresentations in connection with sale of securities; representation of hedge funds in numerous cases involving claims of fraud by and against such funds, including cases in the substantial millions of dollars; representation of accountants, officers and directors in cases alleging their securities fraud

and other breaches of duty; representation of insurance companies and insureds in cases involving coverage disputes; representation of teacher in claim by public authority of neglect of children; representation of parties in matrimonial litigation; representation of attorney in disciplinary matter; Broad experience with business, financial, accounting, and insurance issues. AV Rated (Martindale-Hubbell).

Alternative Dispute Resolution Experience AAA arbitrator for over 30 years, presiding over more than 150 cases in the commercial, securities, employment, insurance, franchise, construction, matrimonial, and international areas, including cases involving business break-ups, claims under employment and franchise agreements, alleged misrepresentations and breaches of contract and fiduciary duty, sales of businesses and securities, corporate governance, claims for declaratory judgment, insurance industry disputes, project finance, and closely held corporations. Representative cases include: Dispute between public company and its former CEO/founder involving competing damages and declaratory judgment claims for over $28 million; numerous insurance coverage disputes, including as to coverage of $50 million in tax shelter losses in one case and as to $3 million of liability for statutory securities fraud class action settlement in another case; claim for declaratory judgment arising out of $100 million sale of chemical business where the business thereafter sustained some $8 million of liability damages allegedly arising out of decisions made prior to the closing on the sale; dispute among owner, owner's successor, architect and contractor as to an alleged $30 million in construction delays and extras arising out of construction of cogeneration plant at airport; disputes involving termination claims under employment, partnership, and shareholder agreements, including in the fashion, manufacturing, advertising, automotive, computer servicing, telecommunications, security, restaurant, international freight, and commodities businesses and involving disputes among professional associations of attorneys and physicians; disputes among hospitals, physicians, and health insurance providers over coverage issues; disputes as to rights under franchise and licensing agreements in apparel, restaurant, fast food, and jewelry businesses, including declaratory judgment action between franchisor of major high end international clothing line and franchisee involving rights to hundreds of millions of dollars of business; disputes involving representations made in connection with investments, including $800,000 dispute between investor and her investment advisor; disputes arising out of sales of businesses and the subsequent employment of the sellers as managers in the business, including in the computer systems and brokerage businesses; claims to recover on notes and other debt instruments; dispute over securities arising out of the parties' divorce and involving issues as to the marital or non-marital nature of various assets and liabilities; dispute between major law firm and departing partner; disputes between attorneys and clients over legal fees; disputes between brokers and securities and real estate firms for which they have allegedly provided services; disputes as to accounting services; dispute among principals in hedge fund as to their financial obligations to one another; dispute among members of an extended family and others who jointly owned a major jewelry business in New York and throughout the United States over their respective rights under certain contracts to expand the business; dispute arising out of pay-out agreement with retiring founder/partner of law firm; numerous international disputes involving investments, securities, consulting agreements, mergers, supply of goods and services, construction, industrial facilities, and fees for legal services; dispute

over ownership of interest in gambling casino; dispute between carrier and physician as to whether the physician was upcoding; and dispute as to departing co-owner's right to open competing automobile distributorship. Many of these cases have been as member of panel, often as Chair, and others have been as sole arbitrator. Has served as counsel in arbitrations and mediations and as mediator in numerous multi-million dollar cases.

Alternative Dispute Resolution Training ICDR 7th Annual Miami International Arbitration Conference, 2009; AAA/ICDR Neutrals Conference, 2009; AAA Managing the ICDR Guidelines on Information Exchange, 2009; AAA Chairing the ICDR International Arbitral Tribunal, 2009; AAA Arbitration Roadmap: The Standard for Efficient and Cost Effective Arbitration, 2009; AAA Electronic Discovery in Arbitration: What You Need to Know, 2009; ABA Section of Dispute Resolution, 11th Annual Spring Conference, 2009; ARIAS-U.S. Spring Conference on Insurance and Reinsurance Arbitration and Mediation, 2009; ARIAS-U.S. Arbitrator Training Seminar-Organizing the Arbitration, 2009; CPR Advanced Mediator Training, 2009; The Center for Mediation in Law, Mediation Intensive Training Program, 2009; Ackerman Institute for the Family, Divorce Mediation Program-Advanced Mediation Training, 2009; Ackerman Institute for the Family, Basic Mediation Training (Family Law, Matrimonial, and Other High Intensity Disputes), 2009; New York County Lawyers' Association Joint Committee on Fee Disputes & Conciliation Part 137 Program: Training in Fee Dispute Arbitration, 2008; ICDR/ICC/ICSID Joint Colloquium on International Arbitration, 2008; New York State Bar Association, Dispute Resolution Section, Colloquium - Exploring Established Techniques, Challenges, and New Directions in Mediation and Arbitration, 2008; ARIAS-U.S., Arbitrator Training: The Powers of Arbitrators: Legal Standards as to Discovery, 2008; ARIAS-U.S., Colloquium on Developments as to Arbitration and Mediation in the Insurance/Reinsurance Industries, Fall Conference, 2008; ARIAS-U.S., Intensive Training Workshop on Arbitration of Insurance Industry Disputes, 2008; Fordham Law School, Third Annual Conference on International Arbitration and Mediation, 2008; ABA Center for Continuing Legal Education, Hall Street v. Mattel: The FAA's Grounds of Review are Preserved - Or are They?, 2008; New York City Bar, Mediation Program, 2008; AAA Webinar, Ensuring That Your Clients' Interests are Addressed in Mediation, 2008; AAA Webinar, Attorney Mishaps, Missteps and Mismanagement in Arbitration, 2008; New York City Bar, Securities Arbitration & Mediation: Hot Topics, 2008; New York State Judicial Institute, Advanced Training for Commercial Division Mediators, 2008; New York City Bar, Commercial Arbitration: Recent Developments, Emerging Trends & Future Issues, 2008; Queens County Bar Association, Commercial Mediation Training, 2007; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2006; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2005; Attended AAA Neutrals Conference, 2003; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2003; AAA Arbitrator Update, 2002; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Commercial Arbitrator Training, 2000; various other ADR training.

Professional Licenses Admitted to the Bar: New York, 1969; U.S. District Court: Southern and Eastern Districts of New York; U.S. Court of Appeals: Second (1972) and Seventh (1984)

Circuits; U.S. Supreme Court, 1982.

Professional Associations College of Commercial Arbitrators (Fellow); New York State Bar Association (Section on Dispute Resolution, Treasurer; Legislation Committee, Co-Chair; Executive Committee; Standing Sub-Committee on International Arbitration; Arbitration and Mediation Committees); New York City Bar Association (Arbitration Committee); American Bar Association (Section on Dispute Resolution, Arbitration and Mediation Committees; International Law Section); New York County Lawyers Association; Lawyers Committee for Nuclear Policy (Board of Directors; Treasurer).

Education Fordham University (BA-1965; MA-1966); Columbia University (JD-1969).

Publications and Speaking Engagements "Beyond the 'Discretion of the Arbitrator': Applying the Standard of 'Reasonable Necessity' to Determine the Appropriate Scope of Discovery in Insurance/Reinsurance Arbitration," ARIAS-U.S. QUARTERLY, First Quarter, 2009; "Discovery in Commercial Arbitration: How Arbitrators Think," DISPUTE RESOLUTION JOURNAL, American Arbitration Association, Aug.-Oct. 2008; "Scope of Discovery in Commercial Arbitration," NEW YORK DISPUTE RESOLUTION LAWYER, Fall 2008; "The Status of the Uniform Mediation Act in New York," NEW YORK DISPUTE RESOLUTION LAWYER, Fall 2008; "Selecting the Ideal Arbitrator," DISPUTE RESOLUTION JOURNAL, American Arbitration Association, Aug.-Oct. 2005; book and articles on international law.

SPEAKING ENGAGEMENTS: "Best Practices as to Conducting Preliminary Hearings in Large Complex Arbitrations in the Employment and Other Areas," NYSBA, Dispute Resolution Section, Fall Meeting, 2009 (upcoming); "Designing Arbitration Clauses to Anticipate Choice of Law Issues and Avoid Costly and Time-Consuming Ancillary Litigation," New York City Bar Association, 2009 (upcoming); "Exploring The Murky Boundaries Between The FAA and State Law in Arbitrations in New York: Which Law Applies and When? An Overview of Arbitration Choice of Law," ABA Section of Dispute Resolution's 11th Annual Spring Conference, 2009; "Selecting the Ideal Arbitrator," American Arbitration Association, 2005; "The Uniform Mediation Act - Is It Time For New York State To Get On The Bandwagon?," New York State Bar Association, Dispute Resolution Section, Fall Meeting, 2008.

Compensation $375.00 Per Hour
Hourly rate charged for hearing and study time.

Citizenship United States of America

Charles J. Moxley Jr., Esq.
34586

Locale New York, NY

Charles J. Moxley Jr., Esq.
34586

KAPLAN FOX

Kaplan Fox & Kilsheimer LLP
850 Third Avenue
New York, NY 10022
phone 212.687.1980
fax 212.687.7714
email mail@kaplanfox.com
www.kaplanfox.com

October 21, 2009

VIA E-MAIL and MAIL

Pauline Squadrito, Case Manager
American Arbitration Association
950 Warren Ave.
East Providence, RI 02914-1414

Re: [redacted]
and
Toyota of Manhattan
and
Toyota Motor sales USA, Inc.
and
Toyota Financial Services

Dear Pauline:

Returned herewith please find the Notice of Compensation Arrangements, Notice of Appointment, and Arbitrator's Oath executed by me.

I have the following disclosures. I have owned a Toyota since 2004 and am in the process of buying a second one. As to my 2004 Toyota, a Sienna, it is my recollection that I have had work done on the brakes or brake pads over the years, but I do not recall the specifics.

I make this disclosure out of completeness. It would not in any way affect my independence or impartiality or interfere with my ability to serve fairly as arbitrator in this matter.

Thank you.

Very truly yours,

Charlie

Charles J. Moxley, Jr.

CJM:sm
Enclosures

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 13 434 E 01992 09
[redacted]
and
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and
Toyota Financial Services

Notice of Compensation Arrangements

To: Charles J. Moxley Jr., Esq.

You have been invited to serve as an arbitrator in the above matter. It is important that you understand the terms of your compensation and the role you play in ensuring that you receive payment for fees and expenses that you may incur during your service. This invitation to serve is based on our assumption that unless your panel biography states otherwise, you are willing to comply with the Association's *Billing Guidelines for Commercial, Construction, and Employment Neutrals*, which are enclosed. If you expect to assess charges that fall outside those guidelines and those charges are not detailed on your panel biography, you must notify the Association prior to accepting your appointment so that the parties can determine whether they still seek your services as an arbitrator.

Your Compensation

This matter is being administered under the Supplementary Procedures for Consumer-Related Disputes of the Commercial Arbitration Rules. amended and effective June 1, 2009. As such, your rate of compensation is $750 per day of hearing. The case should require no more than one day of hearing. Should this matter conclude after the preliminary hearing and prior to the final hearing, you will be compensated at half of this established rate. If the case closes prior to the preliminary hearing, you will not be compensated.

Your Expenses

On most cases, your expenses should be nominal and will be reimbursed immediately after you submit them. For any single expense over $25, please include a receipt with your request for reimbursement.

If you anticipate that you will incur significant expenses, such as airfare or hotel room costs, please advise your Case Manager in advance so that the parties can be asked to make deposits prior to you incurring the expense.

Deposits and Payment

Payment for your compensation is the obligation of the parties and it is understood that the American Arbitration Association has no liability, direct or indirect, for such payment. During the course of the proceeding the Case Manager will ask that you provide an estimate of the amounts needed to cover your fees. Generally this occurs immediately after the preliminary hearing, although on longer or more complex cases it can occur immediately upon appointment or after each series of hearings.

Unless you specify otherwise, the parties are advised that deposits are due 30 days prior to the first hearing. No later than two weeks prior to the hearing, the Case Manager will advise you of the total amount on deposit. Should the parties fail to make deposits in a timely manner, you must determine whether to go forward or suspend the proceedings until such time as deposits have been made. If you decide to go forward without full deposits, you may not subsequently delay the rendering of the award for lack of payment of your fees. *The time to deal with this issue is prior to the commencement of the hearings*. Should you decide to suspend the proceedings, your Case Manager can assist you in issuing an appropriate order to the parties.

If you realize that you are spending more time on this matter than you originally estimated, it is your obligation to inform the Case Manager prior to exhausting the current deposit. The Case Manager will then make arrangements with the parties for additional deposits per your instructions.

In order to receive payment, please submit bills promptly. Your bills should be submitted in a format that is presentable to the parties, should detail the dates on which the charges were incurred and must correspond with the terms of compensation outlined herein. Upon receipt, the AAA will release payment from the amounts deposited by the parties. Should there be insufficient funds on deposit, you will not receive payment until the parties have made additional deposits. Further, we will not use one party's deposit to cover another party's obligation without written permission to do so.

In the event your Award is delivered prior to payment by the parties of the agreed upon compensation, the Association is authorized but not obligated to seek to collect these monies on your behalf by all lawful means to represent you in any action or proceeding for such recovery and to file a claim in any bankruptcy or insolvency proceeding for such monies. The Association may prosecute and receive any recovery on behalf of the undersigned and has full authority to compromise or settle such claims as may be, in its discretion, appropriate. However, under no circumstances whatsoever will the Association be liable for any failure to collect any or all the monies due. The Association is authorized to subtract a reasonable amount for collection and attorney's fees.

Failure to Disclose and Forfeiting Compensation

As an arbitrator in this matter, you have an ongoing obligation to disclose any direct or indirect relationship with the case participants. Your failure to make disclosures in a timely manner would be a serious transgression and may be grounds for your removal as arbitrator from this case and/or from the AAA's Roster of Neutrals. Should this occur, you may be required to forfeit the compensation for the time you spent on this matter after you should have made such disclosures.

If you are willing to serve on this matter per the compensation terms detailed above, please complete and sign the following section and return it, along with your Notice of Appointment, to your Case Manager.

ARBITRATOR MUST COMPLETE THE FOLLOWING SECTION

Compensation payments, and the corresponding IRS reporting, will be made to either to you individually (attributed to your Social Security Number) or to your employer (attributed to the Employer Identification Number), based on the preference you indicated and as recorded in your panel record. If you are unsure of your current payment preference, you may contact your Case Manager or the AAA Department of Neutrals' Services. Promptly inform the AAA if this information is incorrect or changes during the case, or if an address correction is necessary.

If the AAA does not have the payee's tax information on record, we must withhold 31% of compensation payments, as required by the IRS. Reimbursements of expenses are not subject to withholding and are not reported to the IRS.

I am willing to accept appointment on this matter under the compensation terms detailed above.

Signed: Charles J. Morley, JA **Date:** 10/21/09

Payment to be made to my law firm, Kaplan Fox & Kilsheimer LLP.
The firm's tax i.d. no. is 13-1806017.

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 13 434 E 01997 09
[redacted]
and
Toyota of Manhattan
and
Toyota Motor Sales USA, Inc.
and
Toyota Financial Services

NOTICE OF APPOINTMENT

To: Charles J. Moxley Jr., Esq.

It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the biographical information that you have provided to the AAA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The Association will call the disclosure to the attention of the parties.

You will not be able to serve until a duly executed Notice of Appointment is received and on file with the Association. Please review the attached *Disclosure Guidelines* and, after conducting a conflicts check, answer the following questions and complete the remainder of this Notice of Appointment:

	Yes	No
1. Do you or your law firm presently represent any person in a proceeding involving any party to the arbitration?	☐	☒
2. Have you represented any person against any party to the arbitration?	☐	☒
3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?	☐	☒
4. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?	☐	☒
5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?	☐	☒
6. Have you, any member of your family, or any close social or business associate ever served as an arbitrator in a proceeding in which any of the identified witnesses or named individual parties gave testimony?	☐	☒
7. Have you, any member of your family, or any close social or business associate been involved in the last five years in a dispute involving the subject matter contained in the case, which you are assigned?	☐	☒

8. Have you ever served as an expert witness or consultant to any party, attorney, witness or other arbitrator identified in this case? ☐ ☒

9. Have any of the party representatives, law firms or parties appeared before you in past arbitration cases? ☐ ☒

10. Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration? ☐ ☒

11. Have you ever sued or been sued by either party or its representative? ☐ ☒

12. Do you or your spouse own stock in any of the companies involved in this arbitration? ☐ ☒

13. If there is more than one arbitrator appointed to this case, have you had any professional or social relationships with any of the other arbitrators? ☐ ☐
N/A

14. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions? ☐ ☒
See disclosure dated 10/21/09.

Should the answer to any question be "Yes", or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality, then describe the nature of the potential conflict(s) on an attached page.

Please indicate one of the following:

☐ I have conducted a check for conflicts and have **nothing to disclose.**

☒ I have conducted a check for conflicts and have **made disclosures on an attached sheet.**

THE ARBITRATOR'S OATH

State of New York }
County of New York } SS:

I attest that I have reviewed the panel biography which the American Arbitration Association provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the American Arbitration Association, Code of Ethics for Commercial Arbitrators and/or all applicable statutes pertaining to arbitrator disclosures.

I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as an arbitrator in this matter, and that failing to make appropriate and timely disclosures may result in my removal as arbitrator from the case and/or my removal from the AAA's Roster of Neutrals.

The Arbitrator being duly sworn, hereby accepts this appointment, and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the Code of Ethics, and the rules of the American Arbitration Association will make an Award according to the best of the arbitrator's understanding.

Dated: 10/21/09 Signed: [illegible]

Sworn before me this day of October ,20 09

[illegible]

Sheri I. Marcazzolo
Notary Public, State of New York
No. 01MA4768208
Qualified in New York County
Commission Expires 01/30/2011

067753

RONALD KURZEJA, ESQ.
574 Newark Avenue, Suite 201
Jersey City, New Jersey 07306
(201) 610-1400

fax: (201) 610-1470

Ronald Kurzeja

October 22, 2009

VIA FAX
(401) 435-6529

Melanie Cabrera, Case Manager
American Arbitration Association
950 Warren Avenue
East Providence, RI 02914-1414

re: [redacted] v. Toyota of Manhattan et al
Case Number 13 434 E 01992 09

Dear Ms. Cabrera:

We are in receipt of your communication of October 21, 2009.

We object to the appointment of Charles J. Moxley, Jr., Esq. as arbitrator.

Mr. Moxley appears to be a very satisfied Toyota customer as expressed in his letter of October 21, 2009. One of the core issues that the claimant will demonstrate at the hearing is her extreme dissatisfaction with Toyota. She believes that Mr. Moxley's expressed satisfaction with Toyota will create an inherent bias at the outset of the case.

For this reason, please disqualify Charles J. Moxley, Jr., Esq.

Thank you for your courtesy and cooperation.

Very truly yours,

Ronald Kurzeja

RECEIVED
OCT 26 2009

cc: Russell Shanks, Esq. - VIA FAX (212) 661-5350
Mark Skanes, Esq. - VIA FAX (518) 869-3334
Jason Creech, Esq. - VIA FAX (516) 802-0631

FILE START

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	**CASE NO.**
	*	
	*	
Plaintiff,	*	
	*	
versus	*	
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	**JURY DEMAND**
Defendants.	*	

****

CLASS ACTION COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Amanda R. Maillho, individually and as representatives of all similarly situated individuals, and bring this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

2. Plaintiff, Amanda R. Maillho, is a citizen of the State of Louisiana and resides in

Bush, Louisiana in the Parish of St. Tammany.

3. On October 21, 2009, Amanda R. Maillho purchased a Toyota Camry, model year 2009, VIN # , from Northshore Toyota in Covington, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

4. Plaintiff brings this action on their own behalf and on behalf of the all similarly situated persons who are defined to be the following:

All persons in Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

5. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota; any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota; any federal, state or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

8. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its

principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

9. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff herein is a resident of Louisiana. None of the Defendants herein are residents of Louisiana.

11. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events and omissions giving rise to Plaintiff's claims did not take place in one particular state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

12. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

13. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

14. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

15. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

16. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

17. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator pedals sticking.

18. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Federal Rule of Civil Procedure 23(b)(3).

20. The proposed Plaintiff Class is defined as follows:

> All persons in the state of Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

21. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be

impracticable. The Class includes millions of owners of Toyota vehicles. The approximate number of Class members at this time is 5.3 million. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

22. **COMMONALITY:** Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated the Louisiana Products Liability Law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

c. Whether Toyota breached their implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota's actions have caused damages to Plaintiff and members of the Class;

e. Whether or not Plaintiff and members of the Class are entitled to injunctive relief preventing Toyota from proposing or implementing any untested and unapproved by NHTSA, fixes or possible solutions to the accelerator pedal defects in the Subject Vehicles;

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein; and

G. Whether or not Toyota should be subject to punitive damages.

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

24. **ADEQUACY:** Plaintiff willfully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor their counsel have interests contrary to or conflicting with the interests of the Class.

25. **SUPERIORITY:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota, in many cases, are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

26. Plaintiff does not anticipate any difficulties in the management of this litigation.

COUNT I
BREACH OF IMPLIED WARRANTY

27. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

28. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

29. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

30. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

31. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

32. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

33. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and Class Members would not have purchased the Subject Vehicles had they known of the vice or defect.

34. The damages in question arose from the reasonably anticipated use of the product

in question.

35. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

36. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
NEGLIGENCE

37. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

38. Toyota had a duty to Plaintiff and Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

39. Toyota breached its duty of reasonable care to Plaintiff and Class Members by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

40. Toyota breached its duty of reasonable care to Plaintiff and Class Members by

manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

41. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

42. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to exercise due care under the circumstances.

43. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

44. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
REDHIBITION

45. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

46. As stated with more particularity herein, Defendant embarked on and carried out a common scheme of marketing and selling Subject Vehicles, falsely and deceptively representing that the Subject Vehicles were safe and reliable.

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the

Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

48. Defendant's practices further resulted in Plaintiff and members of the Class purchasing Subject Vehicles without understanding the true nature of Defendant's product.

49. The monies paid by Plaintiff and members of the Class to Defendant in the purchase of the Subject Vehicles conferred substantial benefits upon Defendant. Defendant knew of and appreciated the benefits conferred upon them by Plaintiff and the Class and accepted and retained these benefits, which, injustice and fairness, should be refunded and paid over to Plaintiff and members of the Class, in an amount to be proved at trial but not less than $5,000,000.00, not including interest or costs.

50. Defendant's product contains a vice or defect which renders it either absolutely useless or renders it use so inconvenient and imperfect that buyers would not have purchased it had they known of this defect or vice.

51. Defendants, while knowing of the vice/defect as described herein, failed to describe it to Plaintiff and members of the Class, Defendants are liable for all damages, including reasonable attorney's fees, as provided by Louisiana Civil Code Articles 2545 and 1953 et seq.

52. The damages in questions arose from the reasonably anticipated use of the product in question.

53. It would be inequitable for Defendant to retain the money collected from Plaintiff and Class members, in light of their unconscionable acts and practices.

54. As a direct and proximate result, Defendant should be ordered to make restitution

to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

55. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

56. Alternatively, the product in question is unreasonably dangerous for the following reasons:

a. It is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

b. It is unreasonably dangerous in design as provided in R.S. 9:2800.56;

c. It is unreasonably dangerous because an adequate warning about the product was not provided as required by R.S. 9:2800.57;

d. It is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

57. The characteristics of the product that render it unreasonably dangerous under R.S. 9:2800.55, et seq., existed at the time the product left the control of the manufacturer or resulted from a reasonably anticipated alteration or modification of the product.

58. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

60. The Subject Vehicles reached Plaintiff without substantial change in their condition from time of completion of manufacture by Toyota.

61. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

62. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiff and Class Members to harm resulting from the defective pedals.

63. Plaintiff and Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a

declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

COUNT V
INJUNCTIVE RELIEF

65. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

66. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause of the accelerators becoming stuck in the depressed position.

67. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

68. In order to protect Plaintiff, Class Members, and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

69. Plaintiff and Class Members have a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or

returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiff and Class Members injuries, losses and damages.

70. Plaintiff and Class Members risk irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

71. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiff, Class Members and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by NHTSA, effectuates a solution as ineffective as switching the floor mats was.

72. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiff and Class Members, granting of the preliminary injunction would serve the public interest.

73. Plaintiff and Class Members are entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demands judgment in their favor and against Toyota as follows:

a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representatives of the Class, and appointing counsel for Plaintiff as counsel for the Class;

b. For an award of compensatory damages according to proof;

c. For an award of equitable and declaratory relief as requested and according to proof;

d. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiff and members of the Class, as well as an amount sufficient to punish Toyota and deter Toyota and others from similar wrongdoing;

e. For restitution and disgorgement of profits;

f. For an award of all costs incurred by Plaintiff in pursuing this action;

g. For an award of reasonable attorneys' fees;

h. For an Order enjoining Toyota from implementing any fixes to the defect in the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

i. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

/s/ Matthew B. Moreland

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PLEASE SERVE:

TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Amanda R. Maillho

(b) County of Residence of First Listed Plaintiff St. Tammany
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Matthew B. Moreland, Becnel Law Firm, LLC, P.O. Drawer H, Reserve, LA 70084, 985-536-1186

DEFENDANTS
TOYOTA MOTOR NORTH AMERICA, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☒ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/29/2010

SIGNATURE OF ATTORNEY OF RECORD /s/Matthew B. Moreland

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 10-279

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

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_____ on *(date)* _____ ; or

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❒ Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 10-279

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

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❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	**CASE NO.**
	*	
	*	
Plaintiff,	*	
	*	
versus	*	
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	**JURY DEMAND**
Defendants.	*	

****

CLASS ACTION COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Amanda R. Maillho, individually and as representatives of all similarly situated individuals, and bring this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

2. Plaintiff, Amanda R. Maillho, is a citizen of the State of Louisiana and resides in

Bush, Louisiana in the Parish of St. Tammany.

3. On October 21, 2009, Amanda R. Maillho purchased a Toyota Camry, model year 2009, VIN # , from Northshore Toyota in Covington, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

4. Plaintiff brings this action on their own behalf and on behalf of the all similarly situated persons who are defined to be the following:

All persons in Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

5. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota; any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota; any federal, state or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

8. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its

principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

9. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff herein is a resident of Louisiana. None of the Defendants herein are residents of Louisiana.

11. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events and omissions giving rise to Plaintiff's claims did not take place in one particular state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

12. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

13. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

14. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

15. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

16. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

17. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator pedals sticking.

18. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Federal Rule of Civil Procedure 23(b)(3).

20. The proposed Plaintiff Class is defined as follows:

> All persons in the state of Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

21. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be

impracticable. The Class includes millions of owners of Toyota vehicles. The approximate number of Class members at this time is 5.3 million. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

22. **COMMONALITY:** Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated the Louisiana Products Liability Law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

c. Whether Toyota breached their implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota's actions have caused damages to Plaintiff and members of the Class;

e. Whether or not Plaintiff and members of the Class are entitled to injunctive relief preventing Toyota from proposing or implementing any untested and unapproved by NHTSA, fixes or possible solutions to the accelerator pedal defects in the Subject Vehicles;

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein; and

G. Whether or not Toyota should be subject to punitive damages.

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

24. **ADEQUACY:** Plaintiff willfully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor their counsel have interests contrary to or conflicting with the interests of the Class.

25. **SUPERIORITY:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota, in many cases, are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

26. Plaintiff does not anticipate any difficulties in the management of this litigation.

COUNT I
BREACH OF IMPLIED WARRANTY

27. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

28. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

29. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

30. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

31. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

32. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

33. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and Class Members would not have purchased the Subject Vehicles had they known of the vice or defect.

34. The damages in question arose from the reasonably anticipated use of the product

in question.

35. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

36. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
NEGLIGENCE

37. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

38. Toyota had a duty to Plaintiff and Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

39. Toyota breached its duty of reasonable care to Plaintiff and Class Members by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

40. Toyota breached its duty of reasonable care to Plaintiff and Class Members by

manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

41. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

42. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to exercise due care under the circumstances.

43. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

44. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
REDHIBITION

45. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

46. As stated with more particularity herein, Defendant embarked on and carried out a common scheme of marketing and selling Subject Vehicles, falsely and deceptively representing that the Subject Vehicles were safe and reliable.

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the

Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

48. Defendant's practices further resulted in Plaintiff and members of the Class purchasing Subject Vehicles without understanding the true nature of Defendant's product.

49. The monies paid by Plaintiff and members of the Class to Defendant in the purchase of the Subject Vehicles conferred substantial benefits upon Defendant. Defendant knew of and appreciated the benefits conferred upon them by Plaintiff and the Class and accepted and retained these benefits, which, injustice and fairness, should be refunded and paid over to Plaintiff and members of the Class, in an amount to be proved at trial but not less than $5,000,000.00, not including interest or costs.

50. Defendant's product contains a vice or defect which renders it either absolutely useless or renders it use so inconvenient and imperfect that buyers would not have purchased it had they known of this defect or vice.

51. Defendants, while knowing of the vice/defect as described herein, failed to describe it to Plaintiff and members of the Class, Defendants are liable for all damages, including reasonable attorney's fees, as provided by Louisiana Civil Code Articles 2545 and 1953 et seq.

52. The damages in questions arose from the reasonably anticipated use of the product in question.

53. It would be inequitable for Defendant to retain the money collected from Plaintiff and Class members, in light of their unconscionable acts and practices.

54. As a direct and proximate result, Defendant should be ordered to make restitution

to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

55. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

56. Alternatively, the product in question is unreasonably dangerous for the following reasons:

a. It is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

b. It is unreasonably dangerous in design as provided in R.S. 9:2800.56;

c. It is unreasonably dangerous because an adequate warning about the product was not provided as required by R.S. 9:2800.57;

d. It is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

57. The characteristics of the product that render it unreasonably dangerous under R.S. 9:2800.55, et seq., existed at the time the product left the control of the manufacturer or resulted from a reasonably anticipated alteration or modification of the product.

58. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

60. The Subject Vehicles reached Plaintiff without substantial change in their condition from time of completion of manufacture by Toyota.

61. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

62. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiff and Class Members to harm resulting from the defective pedals.

63. Plaintiff and Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a

declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

COUNT V
INJUNCTIVE RELIEF

65. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

66. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause of the accelerators becoming stuck in the depressed position.

67. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

68. In order to protect Plaintiff, Class Members, and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

69. Plaintiff and Class Members have a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or

returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiff and Class Members injuries, losses and damages.

70. Plaintiff and Class Members risk irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

71. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiff, Class Members and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by NHTSA, effectuates a solution as ineffective as switching the floor mats was.

72. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiff and Class Members, granting of the preliminary injunction would serve the public interest.

73. Plaintiff and Class Members are entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demands judgment in their favor and against Toyota as follows:

a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representatives of the Class, and appointing counsel for Plaintiff as counsel for the Class;

b. For an award of compensatory damages according to proof;

c. For an award of equitable and declaratory relief as requested and according to proof;

d. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiff and members of the Class, as well as an amount sufficient to punish Toyota and deter Toyota and others from similar wrongdoing;

e. For restitution and disgorgement of profits;

f. For an award of all costs incurred by Plaintiff in pursuing this action;

g. For an award of reasonable attorneys' fees;

h. For an Order enjoining Toyota from implementing any fixes to the defect in the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

i. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

/s/ Matthew B. Moreland

MATTHEW B. MORELAND (#24567)
CHRISTOPHER D. BECNEL(#30859)
TONI S. BECNEL (#23645)
JUNE A. OSWALD (#24858)
Becnel Law Firm, LLC
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CAMILO K. SALAS, III (#11657)
Salas, L.C.
650 Poydras, Suite 1650
New Orleans, LA 70130
Phone: (504) 799-3080
Facsimile: (504) 799-3085

PLEASE SERVE:

TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

CT Corporation

Service of Process Transmittal

02/04/2010
CT Log Number 516111757

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Louisiana**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Amanda R. Maillho, Pltf. vs. Toyota North America, Inc., et al. including Toyota Motor Sales, U.S.A., Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Complaint, Service List
COURT/AGENCY:	United States District Court, Eastern District, LA Case # 10-279 "S" (2)
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Pertaining to defective accelerator pedals
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Baton Rouge, LA
DATE AND HOUR OF SERVICE:	By Process Server on 02/04/2010 at 15:50
APPEARANCE OR ANSWER DUE:	Within 21 days after service
ATTORNEY(S) / SENDER(S):	Jennifer L. Crose Becnel Law Firm, LLC P. O. Drawer H Reserve, LA 70084 985-536-1186
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799442024488 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Lisa Uttech
ADDRESS:	5615 Corporate Blvd Suite 400B Baton Rouge, LA 70808
TELEPHONE:	225-922-4490

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)	Civil Action No. 10-279 "S" (2)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Loretta G. Whyte
Name of clerk of court

Date: **Feb 02 2010**

Deputy clerk's signature

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	**CASE NO.**
	*	
	*	
Plaintiff,	*	
	*	
versus	*	
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	**JURY DEMAND**
Defendants.	*	

****

CLASS ACTION COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Amanda R. Maillho, individually and as representatives of all similarly situated individuals, and bring this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

2. Plaintiff, Amanda R. Maillho, is a citizen of the State of Louisiana and resides in

Bush, Louisiana in the Parish of St. Tammany.

3. On October 21, 2009, Amanda R. Maillho purchased a Toyota Camry, model year 2009, VIN # , from Northshore Toyota in Covington, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

4. Plaintiff brings this action on their own behalf and on behalf of the all similarly situated persons who are defined to be the following:

   All persons in Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

5. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota; any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota; any federal, state or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

8. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its

principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

9. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff herein is a resident of Louisiana. None of the Defendants herein are residents of Louisiana.

11. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events and omissions giving rise to Plaintiff's claims did not take place in one particular state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

12. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

13. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

14. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

15. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

16. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

17. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator pedals sticking.

18. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Federal Rule of Civil Procedure 23(b)(3).

20. The proposed Plaintiff Class is defined as follows:

> All persons in the state of Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

21. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be

impracticable. The Class includes millions of owners of Toyota vehicles. The approximate number of Class members at this time is 5.3 million. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

22. **COMMONALITY:** Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated the Louisiana Products Liability Law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

c. Whether Toyota breached their implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota's actions have caused damages to Plaintiff and members of the Class;

e. Whether or not Plaintiff and members of the Class are entitled to injunctive relief preventing Toyota from proposing or implementing any untested and unapproved by NHTSA, fixes or possible solutions to the accelerator pedal defects in the Subject Vehicles;

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein; and

G. Whether or not Toyota should be subject to punitive damages.

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

24. **ADEQUACY:** Plaintiff willfully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor their counsel have interests contrary to or conflicting with the interests of the Class.

25. **SUPERIORITY:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota, in many cases, are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

26. Plaintiff does not anticipate any difficulties in the management of this litigation.

COUNT I
BREACH OF IMPLIED WARRANTY

27. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

28. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

29. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

30. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

31. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

32. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

33. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and Class Members would not have purchased the Subject Vehicles had they known of the vice or defect.

34. The damages in question arose from the reasonably anticipated use of the product

in question.

35. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

36. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
NEGLIGENCE

37. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

38. Toyota had a duty to Plaintiff and Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

39. Toyota breached its duty of reasonable care to Plaintiff and Class Members by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

40. Toyota breached its duty of reasonable care to Plaintiff and Class Members by

manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

41. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

42. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to exercise due care under the circumstances.

43. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

44. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
REDHIBITION

45. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

46. As stated with more particularity herein, Defendant embarked on and carried out a common scheme of marketing and selling Subject Vehicles, falsely and deceptively representing that the Subject Vehicles were safe and reliable.

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the

Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

48. Defendant's practices further resulted in Plaintiff and members of the Class purchasing Subject Vehicles without understanding the true nature of Defendant's product.

49. The monies paid by Plaintiff and members of the Class to Defendant in the purchase of the Subject Vehicles conferred substantial benefits upon Defendant. Defendant knew of and appreciated the benefits conferred upon them by Plaintiff and the Class and accepted and retained these benefits, which, injustice and fairness, should be refunded and paid over to Plaintiff and members of the Class, in an amount to be proved at trial but not less than $5,000,000.00, not including interest or costs.

50. Defendant's product contains a vice or defect which renders it either absolutely useless or renders it use so inconvenient and imperfect that buyers would not have purchased it had they known of this defect or vice.

51. Defendants, while knowing of the vice/defect as described herein, failed to describe it to Plaintiff and members of the Class, Defendants are liable for all damages, including reasonable attorney's fees, as provided by Louisiana Civil Code Articles 2545 and 1953 et seq.

52. The damages in questions arose from the reasonably anticipated use of the product in question.

53. It would be inequitable for Defendant to retain the money collected from Plaintiff and Class members, in light of their unconscionable acts and practices.

54. As a direct and proximate result, Defendant should be ordered to make restitution

to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

55. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

56. Alternatively, the product in question is unreasonably dangerous for the following reasons:

a. It is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

b. It is unreasonably dangerous in design as provided in R.S. 9:2800.56;

c. It is unreasonably dangerous because an adequate warning about the product was not provided as required by R.S. 9:2800.57;

d. It is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

57. The characteristics of the product that render it unreasonably dangerous under R.S. 9:2800.55, et seq., existed at the time the product left the control of the manufacturer or resulted from a reasonably anticipated alteration or modification of the product.

58. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

60. The Subject Vehicles reached Plaintiff without substantial change in their condition from time of completion of manufacture by Toyota.

61. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

62. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiff and Class Members to harm resulting from the defective pedals.

63. Plaintiff and Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a

declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

COUNT V
INJUNCTIVE RELIEF

65. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

66. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause of the accelerators becoming stuck in the depressed position.

67. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

68. In order to protect Plaintiff, Class Members, and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

69. Plaintiff and Class Members have a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or

returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiff and Class Members injuries, losses and damages.

70. Plaintiff and Class Members risk irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

71. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiff, Class Members and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by NHTSA, effectuates a solution as ineffective as switching the floor mats was.

72. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiff and Class Members, granting of the preliminary injunction would serve the public interest.

73. Plaintiff and Class Members are entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demands judgment in their favor and against Toyota as follows:

a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representatives of the Class, and appointing counsel for Plaintiff as counsel for the Class;

b. For an award of compensatory damages according to proof;

c. For an award of equitable and declaratory relief as requested and according to proof;

d. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiff and members of the Class, as well as an amount sufficient to punish Toyota and deter Toyota and others from similar wrongdoing;

e. For restitution and disgorgement of profits;

f. For an award of all costs incurred by Plaintiff in pursuing this action;

g. For an award of reasonable attorneys' fees;

h. For an Order enjoining Toyota from implementing any fixes to the defect in the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

i. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

/s/ Matthew B. Moreland

MATTHEW B. MORELAND (#24567)
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TONI S. BECNEL (#23645)
JUNE A. OSWALD (#24858)
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PLEASE SERVE:

TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Amanda R. Maillho

(b) County of Residence of First Listed Plaintiff St. Tammany
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Matthew B. Moreland, Becnel Law Firm, LLC, P.O. Drawer H, Reserve, LA 70084, 985-536-1186

DEFENDANTS
TOYOTA MOTOR NORTH AMERICA, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☒ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/29/2010

SIGNATURE OF ATTORNEY OF RECORD /s/Matthew B. Moreland

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 10-279

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
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Signature of Clerk or Deputy Clerk

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Date: _____

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Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 10-279

PROOF OF SERVICE

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Date: _____

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Server's signature

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Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Amanda R. Maillho *Plaintiff* v. Toyota North America, Inc. *Defendant*	)))))))	Civil Action No. 10-279 "S" (2)

SUMMONS IN A CIVIL ACTION

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CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Matthew B. Moreland
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Loretta G. Whyte
Name of clerk of court

Date: **Feb 02 2010**

Deputy clerk's signature

Civil Action No. 10-279

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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Date: _____

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Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GARY T. BROCK	*	**CASE NO.**
	*	
	*	
Plaintiff,	*	
	*	
versus	*	
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	**JURY DEMAND**
Defendants.	*	

****

COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Gary T. Brock, and brings this Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

2. Plaintiff, Gary T. Brock, is a citizen of the State of Louisiana and resides in Reserve, Louisiana in the Parish of St. John the Baptist.

3. In March of 2008, Gary T. Brock purchased a Toyota Avalon Limited, model year 2008, VIN # 4T1BK36B38U293745, from Ray Brandt Toyota in Kenner, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

4. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

5. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

6. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

7. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, because the amount in controversy as to the Plaintiff exceeds $75,000.00, exclusive of interests and costs, and because Defendants are incorporated and have their principal place of business in states other than the state in which the Plaintiff resides.

9. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events and omissions giving rise to Plaintiff's claims did not take place in one particular

state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

10. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

11. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

12. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

13. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

14. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

15. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator pedals sticking.

16. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota

Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

COUNT I
BREACH OF IMPLIED WARRANTY

17. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

18. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

19. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

20. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

21. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

22. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

23. The Subject Vehicles contain a vice or defect which renders them either absolutely

useless or renders their use inconvenient and imperfect such that Plaintiff would not have purchased the Subject Vehicles had they known of the vice or defect.

24. The damages in question arose from the reasonably anticipated use of the product in question.

25. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

26. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff has sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and is therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
NEGLIGENCE

27. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

28. Toyota had a duty to Plaintiff to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

29. Toyota breached its duty of reasonable care to Plaintiff by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably

and dangerously.

30. Toyota breached its duty of reasonable care to Plaintiff by manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

31. Toyota breached its duty of reasonable care to Plaintiff by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

32. Toyota breached its duty of reasonable care to Plaintiff by failing to exercise due care under the circumstances.

33. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff has sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

34. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
PRODUCTS LIABILITY

35. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

36. At all times material hereto, Toyota was engaged in the business of designing,

manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

37. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiff; consequently, Plaintiff was an expected user of the product which Toyota manufactured.

38. The Subject Vehicles reached Plaintiff without substantial change in their condition from time of completion of manufacture by Toyota.

39. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

40. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiff to harm resulting from the defective pedals.

41. Plaintiff has used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

42. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff has sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to

compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff is therefore entitled to equitable relief as described below.

COUNT IV
INJUNCTIVE RELIEF

43. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

44. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause of the accelerators becoming stuck in the depressed position.

45. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

46. In order to protect Plaintiff and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

47. Plaintiff has a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle

position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiff injuries, losses and damages.

48. Plaintiff risks irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

49. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiff and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by NHTSA, effectuates a solution as ineffective as switching the floor mats was.

50. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiff, granting of the preliminary injunction would serve the public interest.

51. Plaintiff is entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, demands judgment in their favor and against Toyota as follows:

a. For an award of compensatory damages according to proof;

b. For an award of equitable and declaratory relief as requested and according to proof;

c. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiff and members of the Class, as well as an amount sufficient to

punish Toyota and deter Toyota and others from similar wrongdoing;

d. For restitution and disgorgement of profits;

e. For an award of all costs incurred by Plaintiff in pursuing this action;

f. For an award of reasonable attorneys' fees;

g. For an Order enjoining Toyota from implementing any fixes to the defect in the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

h. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

i. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

/s/Daniel E. Becnel, Jr.

DANIEL E. BECNEL, JR. (#2926)
JENNIFER L. CROSE (#32116)
JUNE A. OSWALD (#24858)
Becnel Law Firm, LLC
106 West 7th Street
P.O. Drawer H
Reserve, LA 70084
Phone: (985) 536-1186
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CAMILO K. SALAS, III (#11657)
Salas, L.C.
650 Poydras, Suite 1650
New Orleans, LA 70130
Phone: (504) 799-3080
Facsimile: (504) 799-3085

PLEASE SERVE:

TOYOTA MOTOR NORTH AMERICA, INC.
Through its agent for service of process:
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Los Angeles, CA 90017

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY40207

TOYOTA MOTOR SALES, US.A., INC.
Through its agent for service of process:
CT Corporation System
5615 Corporate Blvd., Suite 400B
Baton Rouge, LA 70808

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

8:10CV 326-T 23 TGW

RECEIVED
10 JAN 29 PM 4:22
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

MICHELLE LYNCH on behalf of herself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc. Defendants.	)	Case No.: CLASS ACTION JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Michelle Lynch ("Plaintiff"), by her undersigned attorneys of Morgan & Morgan, P.A., hereby sues Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A. (collectively the "Toyota Defendants") individually and on behalf of the class indentified below, and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This is a class action arising from the Toyota Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control. In the last four months, the Toyota Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009, with the Toyota Defendants claiming that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and was an expansion of the first, including additional models within the scope of the first recall and once again attributing the risk

ID
$350

of sudden unintended acceleration to a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

2. In conjunction with the third voluntary recall, the Toyota Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. The Toyota Defendants did not indicate in their announcement when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

3. Finally, the Toyota Defendants have announced suggested actions consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Toyota has suggested consumers remove the floor mats and place them in the trunk pending the Toyota Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Toyota has suggested to consumers that "no action is required unless you feel you are experiencing this condition." Toyota suggests that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Toyota has told consumers that if they experience any of these symptoms,

"the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

4. As of the filing of this complaint, the Toyota Defendants have not announced a permanent fix for any of the Recalled Vehicles. The Toyota Defendants have made no effort to provide affected consumers with any alternative means of transportation while a permanent fix is being developed or during the time it takes for any repairs recommended by the Toyota Defendants to be completed.

THE PARTIES

5. Plaintiff is an individual currently residing in Safety Harbor, Pinellas County, Florida, who purchased a 2006 Toyota Avalon in April of 2006.

6. Toyota Motor Corporation is, and at all relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan, which conducts and transacts business within this Judicial District.

7. Toyota Motor Sales, U.S.A. is, and at all relevant times was, a California corporation with its principal place of business in Torrance, California, which conducts and transacts business within this Judicial District.

8. The above-named Defendants are collectively referred to as the "Toyota Defendants."

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (a) (1) and (d). There is diversity of citizenship, the case is filed as a class action, the matter in controversy exceeds the value of $5,000,000, exclusive of interest and costs, and more than two-thirds of the members of the proposed class are citizens of a state different than defendant. In addition, the amount in

controversy as to the Plaintiff exceeds $75,000.00, exclusive of interest and costs, and the Defendant is incorporated and has its principal place of business in a state other than the state in which the named individual representative Plaintiff resides.

10. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiff resides in this Judicial District and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District. In addition, Defendants do business and/or transact business in this Judicial District, and therefore, are subject to personal jurisdiction in this Judicial District and reside here for venue purposes.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

11. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

12. Defendant Toyota Motor Sales, U.S.A, is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

13. For many years, automobiles manufactured and sold by the Toyota Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times*, recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

14. In recent years, however, the Toyota Defendants have maintained this good reputation through a pattern and practice of deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, the Toyota Defendants have intentionally failed to

disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

15. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

16. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

17. The Toyota Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
> * * *
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

18. The Toyota Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those vehicles.

19. Specifically, the Toyota Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, the Toyota Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, the Toyota Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Toyota knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, the Toyota Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

20. In addition, the Toyota Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall

and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

21. Plaintiff Michelle Lynch purchased a 2006 Toyota Avalon (VIN #4T1BK36B06U126983) in April of 2006. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

22. On January 25, 2010, Plaintiff experienced sudden unintended acceleration of her Toyota Avalon while driving to her place of employment. Plaintiff's accelerator became stuck for approximately 45 seconds, but after putting the car in neutral and pressing on the brakes, Plaintiff was able to regain control of the car. During the 45 second time period, the engine exceeded its maximum RPM and Plaintiff is concerned damage to the engine may have resulted.

23. Plaintiff took her car to a local Toyota Dealership, Brandon Toyota, on January 25, 2010. Plaintiff was advised that the problem was likely due to her floor mats and that there was no permanent fix available for her car.

24. Plaintiff does not wish to drive her Toyota Avalon until a permanent fix is available but in the absence of assistance from Defendants' in defraying the costs associated with obtaining alternative transportation, is unable to do so.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class

25. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common

basis. Plaintiff's proposed class, as defined under Federal Rules of Civil Procedure 23(b)(3) includes.

26. Plaintiff proposes to act as a representative of the following class composed of:

All persons in the United States who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010.

Excluded from the class are the Toyota Defendants, officers, directors, board members or employees of the Toyota Defendants; any entity in which the Toyota Defendants have a controlling interest; affliates, legal representatives, attorneys, heirs or assigns of the Toyota Defendants; any federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

27. In addition to or in the alternative to the above, Plaintiff may propose subclasses so as to ameliorate any choice of law concerns or as required by Federal Rule of Civil Procedure 23 by proposing subclasses based upon the fifty states and the Commonwealth of Puerto Rico and the District of Columbia.

28. While Plaintiff and the proposed class may seek subclasses as set forth above, this will be the subject of an appropriate Rule 23 class certification motion. Until such time, Plaintiff and the proposed class alternatively propose an initial subclass defined as:

All residents of the State of Florida who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010.

Excluded from the class are the Toyota Defendants, officers, directors, board members or employees of the Toyota Defendants; any entity in which the Toyota Defendants have a controlling interest; affliates, legal representatives, attorneys, heirs or assigns of the Toyota Defendants; any federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

29. The class is so numerous that joinder of all issues is impractical. Similarly, the class is so numerous that joinder of all members is impractical.

30. Plaintiff is unable to state the exact number of class members without discovery of the defendants' records; however, upon information and belief, and based upon published news reports, well over 4 million vehicles fall within the proposed class definition. It is estimated that the class will be composed of millions of individuals.

31. Plaintiff and the class members are claiming damages and injunctive relief based upon the misconduct alleged herein including the Toyota Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and the Toyota Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

32. Additionally, no attorney would have the financial resources to litigate this case against opposition from Defendants where the potential recovery for Plaintiff and each class member is relatively small. Therefore, joinder of all similarly situated individuals is appropriate.

Predominance of Common Questions of Law and Fact

33. The claims asserted by Plaintiff on behalf of herself and all similarly situated class members present questions of fact or law common to the class, including, *inter alia*, whether defendants engaged in deceptive or unfair trade or business practices.

34. Questions of law or fact common to the members of the class predominate over questions affecting individual members. The common questions of law and fact include, but are not limited to, the following:

Questions of Fact:

a) Whether the Toyota Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether the Toyota Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether the Toyota Defendants concealed that risk from consumers; and,

c) Whether the Toyota Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

Questions of law:

a) Whether the Toyota Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

b) Whether the Toyota Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

c) What steps the Toyota Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

d) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and,

e) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

35. The claims asserted by Plaintiff on behalf of herself are typical of the other class members' claims in that the other class members are also owners of a Recalled Vehicle and have

also been deceived or mislead by received similar misrepresentations about the risk of sudden unintended acceleration in Recalled Vehicles, and have all similarly suffered harm as a result of Defendants' violations of law, as alleged herein.

Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interests of the class because (i) Plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class, (ii) Plaintiff and his counsel are aware of no conflicts of interest between Plaintiff and absent class members or otherwise; and (iii) Plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

Superiority

37. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (i) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinders of all class members in this action is impracticable and would create a massive and unnecessary burden on the resources of Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class, (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on may class members, and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A

class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise out of the same circumstances and course of conduct.

COUNT I

VIOLATION OF CONSUMER PROTECTION STATUTES

38. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 37 as if fully set forth separately herein.

39. Plaintiff and all class members are consumers and the transactions at issue in this are protected by state consumer protection statutes with respect to their purchase of Recalled Vehicles.

40. The Toyota Defendants engaged in commercial conduct by selling Recalled Vehicles.

41. The Toyota Defendants misrepresented and omitted material information regarding the risk of sudden unintended acceleration in Recalled Vehicles by failing to disclose known risks and had Plaintiff and class members known of such risks they would not have purchased a Recalled Vehicle or have paid the same price of such Recalled Vehicle as they did pay.

42. The Toyota Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation or the knowing concealment, suppression or omission of material facts with the intent that others rely on such concealment, suppression or omission in connection with the sale and marketing of Recalled Vehicles in violation of state consumer protection statutes, including but not limited to Florida's Deceptive and Unfair Trade Practices Act.

43. As a result of the wrongful conduct described herein, Plaintiff and members of the class suffered damages.

44. Plaintiff and members of the class are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT II

BREACH OF IMPLIED WARRANTY

45. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 37 as if fully set forth separately herein.

46. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Toyota knew of the use for which the Recalled Vehicles were intended and impliedly warranted the product to be of a certain quality.

47. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use.

48. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

49. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold, and unfit for the particular use for which they were sold.

50. The Recalled Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and Class Members would not have purchased the Recalled Vehicles had they known of the vice or defect.

51. The damages in question arose from the reasonably anticipated use of the product in question.

52. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when its recalled automobiles were sold to Plaintiff and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

53. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and is therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT III

UNJUST ENRICHMENT

54. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 37 as if fully set forth separately herein.

55. Defendants have received benefits from Plaintiff and the members of the class when each purchased a Recalled Vehicle.

56. By failing to disclose true scope and cause of the risk of sudden unintended acceleration in Recalled Vehicles, Defendants have been unjustly enriched.

57. As a direct and proximate result of the foregoing, Plaintiff and class members have suffered damages. Plaintiff and the class members are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed class, prays for the Court to:

A. Enter an order certifying a class action pursuant to Federal Rules Civil Procedure Rule 23 (a), (b) (2) and (b)(3) consisting of the class defined herein and directing that appropriate notice to class members be delivered;

B. Designate Plaintiff as representative of the proposed class and designate his counsel as class counsel;

C. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company and Toyota Motor Sales, U.S.A., Inc.;

D. Award Plaintiffs and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;

E. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

F. Provide such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 25, 2010

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	**CASE NO.**
	*	
	*	
Plaintiff,	*	
	*	
versus	*	
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	**JURY DEMAND**
Defendants.	*	

****

CLASS ACTION COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Amanda R. Maillho, individually and as representatives of all similarly situated individuals, and bring this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

2. Plaintiff, Amanda R. Maillho, is a citizen of the State of Louisiana and resides in

Bush, Louisiana in the Parish of St. Tammany.

3. On October 21, 2009, Amanda R. Maillho purchased a Toyota Camry, model year 2009, VIN # , from Northshore Toyota in Covington, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

4. Plaintiff brings this action on their own behalf and on behalf of the all similarly situated persons who are defined to be the following:

   All persons in Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

5. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota; any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota; any federal, state or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

8. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its

principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

9. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff herein is a resident of Louisiana. None of the Defendants herein are residents of Louisiana.

11. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events and omissions giving rise to Plaintiff's claims did not take place in one particular state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

12. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

13. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

14. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

15. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

16. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

17. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator pedals sticking.

18. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Federal Rule of Civil Procedure 23(b)(3).

20. The proposed Plaintiff Class is defined as follows:

> All persons in the state of Louisiana who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

21. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be

impracticable. The Class includes millions of owners of Toyota vehicles. The approximate number of Class members at this time is 5.3 million. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

22. **COMMONALITY:** Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated the Louisiana Products Liability Law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

c. Whether Toyota breached their implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota's actions have caused damages to Plaintiff and members of the Class;

e. Whether or not Plaintiff and members of the Class are entitled to injunctive relief preventing Toyota from proposing or implementing any untested and unapproved by NHTSA, fixes or possible solutions to the accelerator pedal defects in the Subject Vehicles;

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein; and

G. Whether or not Toyota should be subject to punitive damages.

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

24. **ADEQUACY:** Plaintiff willfully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor their counsel have interests contrary to or conflicting with the interests of the Class.

25. **SUPERIORITY:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota, in many cases, are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

26. Plaintiff does not anticipate any difficulties in the management of this litigation.

COUNT I
BREACH OF IMPLIED WARRANTY

27. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

28. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

29. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

30. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

31. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

32. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

33. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and Class Members would not have purchased the Subject Vehicles had they known of the vice or defect.

34. The damages in question arose from the reasonably anticipated use of the product

in question.

35. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

36. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
NEGLIGENCE

37. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

38. Toyota had a duty to Plaintiff and Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

39. Toyota breached its duty of reasonable care to Plaintiff and Class Members by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

40. Toyota breached its duty of reasonable care to Plaintiff and Class Members by

manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

41. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

42. Toyota breached its duty of reasonable care to Plaintiff and Class Members by failing to exercise due care under the circumstances.

43. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

44. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
REDHIBITION

45. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

46. As stated with more particularity herein, Defendant embarked on and carried out a common scheme of marketing and selling Subject Vehicles, falsely and deceptively representing that the Subject Vehicles were safe and reliable.

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the

Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

48. Defendant's practices further resulted in Plaintiff and members of the Class purchasing Subject Vehicles without understanding the true nature of Defendant's product.

49. The monies paid by Plaintiff and members of the Class to Defendant in the purchase of the Subject Vehicles conferred substantial benefits upon Defendant. Defendant knew of and appreciated the benefits conferred upon them by Plaintiff and the Class and accepted and retained these benefits, which, injustice and fairness, should be refunded and paid over to Plaintiff and members of the Class, in an amount to be proved at trial but not less than $5,000,000.00, not including interest or costs.

50. Defendant's product contains a vice or defect which renders it either absolutely useless or renders it use so inconvenient and imperfect that buyers would not have purchased it had they known of this defect or vice.

51. Defendants, while knowing of the vice/defect as described herein, failed to describe it to Plaintiff and members of the Class, Defendants are liable for all damages, including reasonable attorney's fees, as provided by Louisiana Civil Code Articles 2545 and 1953 et seq.

52. The damages in questions arose from the reasonably anticipated use of the product in question.

53. It would be inequitable for Defendant to retain the money collected from Plaintiff and Class members, in light of their unconscionable acts and practices.

54. As a direct and proximate result, Defendant should be ordered to make restitution

to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

55. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

56. Alternatively, the product in question is unreasonably dangerous for the following reasons:

a. It is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

b. It is unreasonably dangerous in design as provided in R.S. 9:2800.56;

c. It is unreasonably dangerous because an adequate warning about the product was not provided as required by R.S. 9:2800.57;

d. It is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

57. The characteristics of the product that render it unreasonably dangerous under R.S. 9:2800.55, et seq., existed at the time the product left the control of the manufacturer or resulted from a reasonably anticipated alteration or modification of the product.

58. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

60. The Subject Vehicles reached Plaintiff without substantial change in their condition from time of completion of manufacture by Toyota.

61. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

62. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiff and Class Members to harm resulting from the defective pedals.

63. Plaintiff and Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a

declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

COUNT V
INJUNCTIVE RELIEF

65. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein at length.

66. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause of the accelerators becoming stuck in the depressed position.

67. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

68. In order to protect Plaintiff, Class Members, and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

69. Plaintiff and Class Members have a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or

returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiff and Class Members injuries, losses and damages.

70. Plaintiff and Class Members risk irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

71. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiff, Class Members and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by NHTSA, effectuates a solution as ineffective as switching the floor mats was.

72. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiff and Class Members, granting of the preliminary injunction would serve the public interest.

73. Plaintiff and Class Members are entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demands judgment in their favor and against Toyota as follows:

a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representatives of the Class, and appointing counsel for Plaintiff as counsel for the Class;

b. For an award of compensatory damages according to proof;

c. For an award of equitable and declaratory relief as requested and according to proof;

d. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiff and members of the Class, as well as an amount sufficient to punish Toyota and deter Toyota and others from similar wrongdoing;

e. For restitution and disgorgement of profits;

f. For an award of all costs incurred by Plaintiff in pursuing this action;

g. For an award of reasonable attorneys' fees;

h. For an Order enjoining Toyota from implementing any fixes to the defect in the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

i. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

/s/ Matthew B. Moreland

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PLEASE SERVE:

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TOYOTA MOTOR SALES, US.A., INC.
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Baton Rouge, LA 70808

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DANIEL WEIMER, JR., COLBY WENCK, and ANN CAVALIER, all individually and on behalf of all other similarly situated Plaintiffs Plaintiffs, versus TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC. Defendants.	*	CASE NO. 10-219 SECT. B MAG. 1 JURY DEMAND

CLASS ACTION COMPLAINT

NOW COME Plaintiffs, Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, individually and as representatives of all similarly situated individuals, and bring this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submit and allege the following:

INTRODUCTION

1. Plaintiffs bring this class action on behalf of all persons in the United States who own Toyota vehicles of model years 2005-2010 which were subject to various recalls in January of 2010 (hereinafter the "Class").

2. Upon information and belief, some 5.3 million vehicles have been recalled by Toyota for defects in accelerator pedals which can unexpectedly become stuck in

TOY-RQ-05E-00007136

place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle.

PARTIES

3. Plaintiff, Daniel Weimer, Jr. is a citizen of the State of Louisiana and resides in LaPlace, Louisiana in the Parish of St. John the Baptist.

4. In December of 2009, Daniel Weimer purchased a Toyota Camry, model year 2009, VIN # 4T15K46K49U09311, from All Star Toyota in Baton Rouge, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

5. Plaintiff, Colby Wenck, is a citizen of the State of Louisiana and resides in New Orleans, Louisiana in the Parish of Orleans.

6. In 2009, Colby Wenck purchased a Toyota Camry, model year 2010, VIN #4T4BF3EKOAR048516 from Lakeside Toyota in Metairie, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

7. Plaintiff, Ann Cavalier, is a citizen of the State of Louisiana and resides in New Orleans, Louisiana in the Parish of Orleans.

8. On January 22, 2010, Ann Cavalier purchased a Toyota Camry XLE, model year 2010, VIN # 4T1BK3EK3AU114403, from Bohn Brothers Toyota in Harvey, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

9. Plaintiffs bring this action on their own behalf and on behalf of the all similarly situated persons who are defined to be the following:

TOY-RQ-05E-00007137

All persons in the United States who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

10. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota; any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota; any federal, state or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

11. Plaintiff and Plaintiff Class Members contemplate sub-classes so as to ameliorate any choice of law concerns and/or be compliant with F.R.C.P. 23(a) and 23(b); more specifically, such sub-classes are contemplated based upon the 50 states and the District of Columbia.

12. While Plaintiffs and the Plaintiff Class may seek sub-classes as set forth above, this will be the subject of the Class Certification briefing which will be filed and prepared as soon as practical. To this end, Plaintiff and the Plaintiff Class additionally and/or alternatively propose the following proposed Class and/or initial subclass herein as:

    a. **Toyota Purchaser Refund Louisiana Class:** All citizens of Louisiana state or residents of the State of Louisiana who have purchased a Subject Vehicle manufactured and distributed by Toyota and such citizens', residents' and domiciliaries' estates, representatives, administrators, spouses, children, relatives, and "significant others" as their heirs or survivors.

    b. **Toyota Personal Injury Louisiana Class:** All citizens of Louisiana state or

residents of the State of Louisiana who have purchased a Subject Vehicle manufactured and distributed by Toyota and suffered due to the purchase of Subject Vehicle and such citizens', residents' and domiciliaries' estates, representatives, administrators, spouses, children, relatives, and "significant others" as their heirs or survivors.

13. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

14. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

15. Defendant, Toyota Motor Sales, U.S.A., Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

16. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiffs assert this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiffs herein are residents of Louisiana. None of the Defendants herein are residents of Louisiana.

18. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §§ 1391 (a). As the Defendants herein are not residents of the same state and the events

and omissions giving rise to Plaintiffs' claims did not take place in one particular state, the Eastern District of Louisiana is a proper venue given that Defendant, Toyota Motor Sales, U.S.A., Inc. is subject to personal jurisdiction in this state.

BACKGROUND

19. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

20. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, and Tundra.

21. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

22. On September 29, 2010, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

23. On January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles produced in the years 2005 through 2010 due to problems with the accelerator pedals on those vehicles becoming stuck in a depressed position, causing unexpected and unsafe acceleration.

24. To date, Toyota has recalled approximately 5.3 million vehicles for problems with

accelerator pedals sticking.

25. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vibe, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2007-2010 Toyota Camry ("Subject Vehicles").

CLASS ACTION ALLEGATIONS

26. Plaintiffs bring this class action on behalf of all similarly situated persons, pursuant to Federal Rule of Civil Procedure 23(b)(3).

27. The proposed Plaintiff Class is defined as follows:

> All persons in the United States who own a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010, which was subject to recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

28. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be impracticable. The Class includes millions of owners of Toyota vehicles. The approximate number of Class members at this time is 5.3 million. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

29. **COMMONALITY:** Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

    a. Whether Toyota violated Products Liability Law of the varying States;

    b. Whether the defects in the vehicles recalled by Toyota render them unfit for

their intended use;

c. Whether Toyota breached their implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota's actions have caused damages to Plaintiffs and members of the Class;

e. Whether or not Plaintiffs and members of the Class are entitled to injunctive relief preventing Toyota from proposing or implementing any untested and unapproved by NHTSA, fixes or possible solutions to the accelerator pedal defects in the Subject Vehicles;

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiffs and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein; and

G. Whether or not Toyota should be subject to punitive damages.

30. **TYPICALITY:** Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiffs and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiffs' claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

31. **ADEQUACY:** Plaintiffs will fully and adequately assert and protect the interests of

the Class. Plaintiffs have retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiffs nor their counsel have interests contrary to or conflicting with the interests of the Class.

32. **SUPERIORITY:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota, in many cases, are too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

33. Plaintiffs do not anticipate any difficulties in the management of this litigation.

COUNT I
BREACH OF IMPLIED WARRANTY

34. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein at length.

35. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

36. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiffs and Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

37. Toyota embarked on and carried out a common scheme of marketing and selling

automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Subject Vehicles was fit for its intended use.

38. Said representations and warranties are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

39. The Subject Vehicles, when sold, were defective, unmerchantable, unfit for ordinary use, and unfit for the particular use for which they were sold.

40. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiffs and Class Members would not have purchased the Subject Vehicles had they known of the vice or defect.

41. The damages in question arose from the reasonably anticipated use of the product in question.

42. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiffs and Class Members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

43. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiffs and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according

to proof.

COUNT II
NEGLIGENCE

44. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein at length.

45. Toyota had a duty to Plaintiffs and Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the defective nature of the accelerator pedals in the Subject Vehicles.

46. Toyota breached its duty of reasonable care to Plaintiffs and Class Members by designing the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

47. Toyota breached its duty of reasonable care to Plaintiffs and Class Members by manufacturing and/or assembling the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously.

48. Toyota breached its duty of reasonable care to Plaintiffs and Class Members by failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

49. Toyota breached its duty of reasonable care to Plaintiffs and Class Members by failing to exercise due care under the circumstances.

50. As a direct and proximate result of Toyota's negligence as set forth in the preceding

paragraphs, Plaintiffs and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses, consequential damages and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

51. Toyota's egregious misconduct alleged above warrants the imposition of punitive damages against Toyota to prevent such future behavior.

COUNT III
PRODUCTS LIABILITY

52. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein at length.

53. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota Vehicles in the United States, including but not limited to, the Subject Vehicles.

54. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles, including Plaintiffs and Class members; consequently, Plaintiffs and Class Members were expected users of the product which Toyota manufactured.

55. The Subject Vehicles reached Plaintiffs without substantial change in their condition from time of completion of manufacture by Toyota.

56. The accelerator pedal defects in the Subject Vehicles could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected

users in a reasonable manner.

57. Toyota should have reasonably foreseen that the dangerous conditions caused by the defective accelerator pedals in the Subject Vehicles would subject Plaintiffs and Class Members to harm resulting from the defective pedals.

58. Plaintiffs and Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

59. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiffs and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiffs and Class Members are therefore entitled to equitable relief as described below.

COUNT IV
INJUNCTIVE RELIEF

60. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein at length.

61. Upon information and belief, in November of 2009 Toyota first attempted a "quick fix" of the defects in the accelerator pedals of the Subject Vehicles by voluntarily recalling the floor mats of the Subject Vehicles, citing the floor mats, an easily replaceable aspect of the Subject Vehicles, not the accelerator pedals, as the cause

of the accelerators becoming stuck in the depressed position.

62. Upon information and belief, Toyota has been aware of the problems with the Subject Vehicles' accelerator pedals becoming stuck in the depressed position since, at the latest, September of 2009.

63. In order to protect Plaintiffs, Class Members, and the public at large, Toyota should be preliminarily enjoined from proposing, implementing, or in any other way manifesting to the public possible solutions and/or fixes of the defective accelerator pedals without prior approval from the NHTSA.

64. Plaintiffs and Class Members have a substantial likelihood of success on the merits of demonstrating that Toyota designed, manufactured and/or assembled the accelerator pedals of the Subject Vehicles in such a manner that they were prone to becoming stuck in the depressed position and failing to return or returning extremely slowly to the idle position, thereby causing the vehicle to accelerate rapidly, uncontrollably and dangerously, causing Plaintiffs and Class Members injuries, losses and damages.

65. Plaintiffs and Class Members risk irreparable harm should the Court not grant preliminary injunctive relief as sought because Toyota may offer unapproved, untested, and unworthy fixes to the defective accelerator pedals in the Subject Vehicles.

66. Toyota will incur little if any harm in being precluded from proposing fixes without the approval of NHTSA; consequently, the balance of harms weighs heavily in favor of Plaintiffs, Class Members and the pubic at large, who could be severely injured by a proposed fix to the defective accelerator pedals, which, if unapproved by

NHTSA, effectuates a solution as ineffective as switching the floor mats was.

67. Because the public may also be injured without the granting of the preliminary injunction sought by Plaintiffs and Class Members, granting of the preliminary injunction would serve the public interest.

68. Plaintiffs and Class Members are entitled to injunctive relief consistent with the immediately preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the Class, demand judgment in their favor and against Toyota as follows:

a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiffs as the representatives of the Class, and appointing counsel for Plaintiffs as counsel for the Class;

b. For an award of compensatory damages according to proof;

c. For an award of equitable and declaratory relief as requested and according to proof;

d. For punitive or exemplary damages against Toyota, consistent with the degree of Toyota's reprehensibility and the resulting harm or potential harm to Plaintiffs and members of the Class, as well as an amount sufficient to punish Toyota and deter Toyota and others from similar wrongdoing;

e. For restitution and disgorgement of profits;

f. For an award of all costs incurred by Plaintiffs in pursuing this action;

g. For an award of reasonable attorneys' fees;

h. For an Order enjoining Toyota from implementing any fixes to the defect in

the accelerator pedals of the Subject Vehicles without prior approval from NHTSA;

i. For an award of any and all other damages suffered by Plaintiff and members of the Class; and

j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: January 29, 2010

All of which is respectfully submitted,

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U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED FEB 2 2010
LORETTA G. WHYTE
CLERK

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL DOCKET NO.-

In Re: Defective Gas Pedal Litigation

MOTION OF PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE EASTERN DISTRICT OF LOUISIANA PURSUANT TO US 28 U.S.C. §1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Daniel E. Becnel, Jr.
June Oswald
Jennifer Crose
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106 West 7th Street
Reserve, LA 70084

Pursuant to 28 U.S.C. §1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on MultiDistrict Litigation, plaintiffs in the action captioned Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. any and all additional related actions that may be brought to the attention of the Panel against similar defendants, to the United States District Court for the Eastern District of Louisiana before the Honorable Judge Ivan L.R. Lemelle or Chief Judge Sarah S. Vance.

As set forth below and in the accompanying Memorandum, Movants believe the actions listed on the accompanying Schedule of Action (attached as Exhibit "A" to Plaintiff's Memorandum of Law in Support of Motion for Transfer and Coordination or Consolidation

under 28 U.S.C. §1407) satisfy the requirements for consolidation and coordination because they concern common questions of fact and law and consolidation or coordination will serve be interest of efficiency and convenience.

In support of this Motion, Movants state as follows:

Movants are the named plaintiff in the following action:

> Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A.

Movants bring this action against defendants based on the defendants' design, manufacture, promotion, selling and putting into the stream of commerce defective gas pedals.

Counsel for Movants are aware of the following other federal action containing virtually identical allegations and seeking similar relief against similar defendants. See Schedule of Actions.

For the foregoing reasons, Movants respectfully move this Panel for an order transferring all pending actions against defendants and any other additional related actions that may be brought to the attention of the Panel, to the United States District Court for the Eastern District of Louisiana before the Honorable Ivan L.R. Lemelle or Chief Judge Sarah S. Vance.

Date: February 1, 2010

Respectfully submitted,

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BEFORE THE JUDICAL PANEL ON

MULTIDISTRICT LITIGATION

	:	**MDL DOCKET NO.**
	:	
In re: Defective Gas Pedal Litigation:		

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

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I.
INTRODUCTION

Pursuant to 28 U.S.C. § and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, plaintiffs in the action captioned Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A. respectfully submit this Brief in Support of Plaintiffs' Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407.

Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., and the other related actions listed in the accompanying Schedule of Actions were filed against the manufacturers of these vehicles and the respective accelerator parts. The legal theories and facts asserted in all of those actions are virtually identical and arise from the common conduct

of the defendants in designing, manufacturing, selling, and putting into the stream of commerce their defective gas pedals.

II.
SUMMARY OF THE CASE

Plaintiffs brought actions against manufacturers of certain Toyota vehicle models and one Pontiac Vehicle defective gas pedals around the country. Plaintiffs allege that accelerator pedals are inherently defective because it causes the vehicle to accelerate suddenly and unintentionally or stick or grow unresponsive.

This defect is latent and existed in these vehicles at the time plaintiffs' purchased. Furthermore, there is no repair that would correct this defect. The pedal assemblies are an electromechanical device. A sensor turns the mechanical pedal's motion into an electronic signal that tells the car's computer how much gas to give the engine. "Drive by wire," it's called, it's ubiquitious in modern cars.

The defendants in this case include the manufacturers of Toyota vehicles, Pontiac vehicles and the manufacturer of the gas pedal, CTS Corporation. The manufacturing defendants are located in internationally. All the Toyota vehicles in this recall have CTS assemblies.

Recalls since September 2009 number 6.3 million from Toyota alone. The recall involves the mechanical part, not the electronics. The Associated Press published a report on January 30, 2010 which indicates that Toyota is sending new gas pedal systems its factories rather than its independent dealership service departments, which means millions of car owners still

cannot have their defect remedied. According to the Associated Press, Toyota said this was done because a decision has not been made as to whether repair or replace the pedals.

Another effect of this recall is the rental car companies have massive fleets of Toyota vehicles and now these cars cannot be rented out to travelers, due to the potential danger. Travelers, particularly those going to Miami for the Superbowl, are being stranded in distant cities without transportation. This will have a chilling effect on nationwide travel for both the business and tourism communities.

Several cases have been filed regarding this problem and others are likely to be filed requiring consolidation pursuant to § 28 U.S.C. § 1407.

III.

PENDING ACTIONS

There are other related actions filed in the federal courts. There may be other pending federal actions of which Movants are unaware. Movants expect additional cases to soon be filed. Pursuant to Panel Rule 7.5(e) regarding notice of "tag-along" actions, these actions should also be transferable.

IV.

TRANSFER TO ONE DISTRICT FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS WILL PROMOTE §1407'S GOALS OF INSURING THE JUST AND EFFICIENT CONDUCT OF THE ACTIONS, AND AVOIDING INCONSISTENT OR CONFLICTING SUBSTANTIVE AND PROCEDURAL DETERMINATIONS

Pursuant to 28 U.S.C. § 1407 (a) the above actions should be coordinated and Consolidated. 28 U.S.C. § (a) provides, in relevant part:

> When civil actions involving one or more common questions for fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on the Multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

The transfer of actions to a single forum under §1407 is appropriate where, as here, it will prevent duplication of discovery and eliminate the possibility of overlapping or inconsistent pleading determinations by courts of coordinate jurisdictions. *In re Litig. Arising from Termination of Retirement Plan for Employees of Firearm's Fund Ins. Co.*, 422 F. Supp. 287, 290 (J.P.M.L. 1976); In re LTV Corp. Sec. Litig., 470 F. Supp. 859, 862 (J.P.M.L. 1979).

The litmus test of transferability and coordination under § 1407 is the presence of commonquestions of fact. *In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979). Common questions are presumed "where two or more complaints assert comparable assert comparable allegations against identical defendants based on similar transactions and events." *In re Air West, Inc., Securities Litig.,* 384 F.Supp.609, 611 (J.P.M.L. 1974); *See also In re Cuisinart Food Processor Antitrust litig.,* 506 F.Supp. 651, 654-655 (J.P.M.L 1981). The transfer of actions to a single forum under §1407 is appropriate where, as here, it will prevent duplication of discovery and eliminate the possibility of overlapping or inconsistent pleading determinations by courts of coordinate jurisdictions. Moreover, while this matter involves numerous defendants, consolidation and transfer is appropriate because all defendants, and potential defendants, manufactured and distributed the defective gas pedals. *In re Silicone Breast Implants Product Liability Litig.* 793 F.Supp. 1098, 1100 (J.P.M.L. 1992). (The Multidistrict panel found that common questions exist as long as the difference

manufacturers all designed similar defective products). *See, also In re Humana Inc. Managed Care Litig.,* 2000 WL 1952080, * 3(J.P.M.L. August 4, 1994) (common questions of law and fact existed even when defendants included different health care insurers.); *In re Orthopedic Bone Screw Products Liability Litig.,* (MDL 1014) (J.P.M.L. August 4, 1992); and *In Re Phenylpropanolamine (PPA) Products Liability Litigation,* at p.2 (MDL 1407) (J.P.M.L. 2001).

A.
THE PANEL SHOULD TRANSFER THESE CASES TO THE EASTERN DISTRICT OF LOUISIANA

1.
THE EASTERN DISTRICT OF LOUISIANA IS CONVENIENT FOR ALL PARTIES

The United States District Court for the Eastern District of Louisiana is a particularly convenient forum for litigation after consolidation of these actions. In *In re Worldcom, Inc. Securities & "ERISA" Litig.,* 226 F.Supp. 2d 1352 (J.P.M.L. 2002), this panel consolidated several actions and transferred the consolidated action to the nearby Southern District of New York, noting, in particular, that "a litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *Id.* At 1355; *See also, In re Jamster Mktg. Litig.,* 427 F.Supp. 2d 1366, 1368 (J.P.M.L. 2006) (choosing as a transfer forum an "accessible metropolitan location"). These considerations of convenience apply with full force to the United States District Court for the Eastern District of Louisiana's New Orleans courthouse. The courthouse is 12 miles from New Orleans International Airport. New Orleans is easily accessible by plane. Accordingly, convenience weighs in favor

transferring and consolidating these actions in the United States District Court for the Eastern District of Louisiana.

2.

THE HONORABLE JUDGE IVAN L.R. LEMELLE AND CHIEF JUDGE SARAH S. VANCE ARE EXPERIENCED JUDGES CAPABLE OF HANDLING THIS LITIGATION

Also, the experience and ability of Judges Lemelle and Vance is another factor which militates in favor of transferring these actions to the United States District Court for the Eastern District of Louisiana. The availability of an experienced and capable judge weights in favor of transferring a case to that district. *See e.g., In re Hawaiian Hotel Room Rate Antitrust Litig.,* 438 F.Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.,* 437 F.Supp. 1204, 1208 (J.P.M.L. 1977); *In re Ampicillin Antitrust Litig.,* 315 F.Supp. 317, 319 (J.P.M.L. 1970). The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See e.g., In re "Factor VIII or IX Concentrate Blood Prod. Liab. Litig.,* 853 F.Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel Breast Implants Prods. Liab. Litig.,* 793 F.Supp. at 1101; *In re Data General Corp. Antitrust Litig.,* 470 F.Supp. 855, 859 (J.P.M.L. 1979).

Judge Ivan L.R. Lemelle is eminently qualified to preside over this litigation. Judge Lemelle has served in the Eastern District of Louisiana as a federal Judge for 11 years and he has had the distinction of presiding over In Re High Sulfur Content Gasoline Products Liability Litigation, MDL No. 1632. In this matter, he brought the case to a final conclusion through settlement and confirming administration of the settlement to bring the entire MDL No. 1632 to a close. This case involved complex testimony of several technical fuel quality and

production experts. Chief Judge Sarah S. Vance is also eminently qualified for this MDL. In her over 14 years on the bench, she has successfully brought three MDL's to fruition. These include the Educational Testing MDL and the Ford Paint Failure Case which also involved complicated manufacturing issues. These cases were all brought to an expedient resolution showing that Chief Judge Sarah S. Vance is more than amply qualified to handle this litigation. Thus, Judge Lemelle and Chief Judge Vance are eminently qualified to preside over this litigation.

3.

THE EASTERN DISTRICT OF LOUISIANA IS WELL-SUITED TO HANDLE THIS LITIGATION

The MDL Panel has concluded on several occasions that the United States District Court for the Eastern District of Louisiana is an appropriate forum to hear complex litigation because *of its expertise in handling these matters. See MDL-2116 IN RE: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation; MDL-2047 IN RE: Chinese-Manufactured Drywall Products Liability Litigation; MDL-1873 IN RE: FEMA Trailer Formaldehyde Products Liability Litigation; MDL-1355 IN RE: Propulsid Products Liability Litigation; MDL-1657 IN RE: Vioxx Marketing, Sales Practices and Products Liability Litigation; MDL-1390 IN RE: Life Insurance Co. of Georgia Industrial Life Insurance Litigation; and MDL-1984 IN RE: DirecTech Southwest, Inc., Fair Labor Standards Act (FLSA)* to name just a few of the still active MDL's in the Eastern District of Louisiana. Moreover, the Eastern District of Louisiana is able to handle its docket efficiently.

V.

CONCLUSION

For the foregoing reasons and in light of the similar allegations regarding the defendant's conduct, and the likelihood of overlapping discovery and the potential for conflicting pretrial rulings, Movants respectfully request that this Panel order that the related actions be centralized and transferred to the United States District Court for the Eastern District of Louisiana pursuant to 28 U.S.C. §1407 before Judge Ivan L.R. Lemelle or Chief Judge Sarah S. Vance, and that all related individual or class actions be transferred thereto as "tag along actions."

Date: February 1, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Plaintiff's Motion for Transfer and Coordination or Consolidation under 28 U.S.C. § 1407 to be served this 29th Day of January, 2010 by U.S. mail, postage prepaid, upon the following:

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Daniel E. Becnel, Jr.

Before the Judicial Panel on Multidistrict Litigation
MDL - - In re Defective Gas Pedal Litigation

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
Plaintiffs: Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A.	E.D. LA.	10-219	Ivan L.R.Lemelle
Plaintiffs: Michelle Lynch on behalf of herself and all others similarly situated **Defendants:** Toyota Motor Corporation and Toyota Motor Sales, U.S.A.	M.D. Fla.	08:10-cv-326 T23-TGW	Stephen D. Merryday
Plaintiffs: Amanda Maillho **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A.	E.D. La	10-279	Mary Ann Vial Lemmon
Plaintiffs: Gary T. Brock **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A.	E.D. LA	10-281	Eldon E. Fallon

Date: February 1, 2010

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2010 FEB -8 PM 1:06
LORETTA G. WHYTE
CLERK

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA SUDDEN UNINTENDED ACCELERATION	)))	MDL Docket No. 2151

Privilege

PETITION FOR TRANSFER, COORDINATION AND CONSOLIDATION PURSUANT TO 28 U.S.C. §1407

Petitioners Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, plaintiffs in an action entitled *Choi et al v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, Case No. 2:09-08143 AHM (FMOx), pending in the United States District Court for the Central District of California (the "*Choi* Action") , by their undersigned attorneys, respectfully petition this Panel pursuant to 28 U.S.C §1407 for an Order (a) transferring to the United States District Court for the Central District of California the ten actions listed in the accompanying Schedule of Actions not already pending in district,[1] and any and all additional similar against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota

1 Petitioners have compiled this information based on best information available to them. Because Toyota, the manufacturer of the defective vehicles, would presumably be named as a defendant in every Toyota product liability case, Petitioner believes that Toyota can identify every such case currently pending in federal courts around the country.

Motor Manufacturing, Kentucky, Inc., and other related entities (collectively, "Toyota") arising from defects in motor vehicles manufactured and/or sold by Toyota relating to a phenomenon known as "sudden unintended acceleration" ("SUA") that may be brought to the attention of the Panel; (b) consolidating with the *Choi* Action for pretrial proceedings the transferred actions and the other five actions already pending in the Central District of California; and (c) designating Judge A. Howard Matz as the transferee judge. In support of transfer and consolidation, Petitioner states as follows:

1. Class actions and personal injury cases have been filed around the country against Toyota arising from certain defects in motor vehicles manufactured and sold by Toyota that cause the vehicles suddenly, without warning, and without intention on the part of the driver, to accelerate. This sudden, unintended acceleration ("SUA") has given rise to two recalls by Toyota and to all the actions listed in the Schedule of Actions. These cases are of two types: (1) class actions on behalf of Toyota owners seeking damages and/or injunctive relief for breaches of warranty and/or fraudulent, deceptive or unfair practices relating to SUA; and (2) personal injury actions arising from accidents caused by SUA that resulted in injuries or death. The *Choi* action, in which Petitioners are the plaintiffs, is a class action seeking injunctive relief and damages on behalf of a California-wide and a nation-wide class of Toyota owners. Although only one of the cases on the Schedule of Actions is a personal injury case, Petitioners are aware of numerous personal injury actions filed in state courts around the country and expect that many of these will be removed to federal court by Toyota on the basis of diversity jurisdiction.

2. Petitioners are aware of at least 16 cases, including their own, pending in United States District Courts in 9 different districts, all seeking relief because of SUA of cars and trucks

manufactured and/or sold by Toyota. Six of these cases are pending in the United States District Court for the Central District of California, the district to which Petitioner seeks transfer. So far as Petitioners are aware, no other Federal District has a greater number of Toyota cases than the Central District of California.

3. The *Choi* Action was commenced on November 5, 2009 and was, to the best of Petitioners' knowledge, the first class action filed arising from the SUA incidents. The case has been assigned to Judge Matz. On February 3, 2010, the *Choi* Plaintiffs filed a motion for a preliminary injunction in the *Choi* Action, seeking to expand the scope of the existing recalls. Petitioners believe that the remaining 15 cases are in a more preliminary stage than those of Petitioners.

4. These cases present numerous common issues of fact in that they all arise from the same defect in Toyota motor vehicles – the tendency to experience incidents of SUA.

5. Because the Toyota cases are scattered throughout the country, however, Petitioners anticipate numerous pretrial issues – including the appropriate scope of virtually identical interrogatories and document requests, and the proper scope of any protective orders to be used to protect the confidentiality of identical documents – will be litigated over and over, often with papers virtually identical to those filed in other courts. Such duplicative litigation is wasteful of both the court's and the parties' resources. The various class actions, moreover, overlap in that each seeks class-wide relief on behalf of the owners of such motor vehicles.

6. For the convenience of parties and witnesses, and to promote the just and efficient conduct of the actions, these cases should be consolidated in the Central District of California. Consolidation of these actions before a single judge will eliminate duplicative discovery, prevent conflicting pretrial rulings, conserve judicial resources, reduce the costs of litigation, and allow

the cases to proceed more efficiently. Rulings on what documents defendants are required to produce, what information they are entitled to seek from plaintiffs, what documents are entitled to protection as confidential or propriety information should be uniform; conflicting rulings on these topics are both inefficient and ineffective.

7. Petitioner respectfully suggests that the cases be consolidated in the Central District of California and that Judge A. Howard Matz be designated the transferee judge. As noted above, the Central District of California has the highest concentration of Toyota cases among the federal courts. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), is and at all relevant times was, a California corporation with its principal place of business located at 19001 South Western Ave., Torrance, CA 90501, which is approximately 18 miles from the Western Division - Spring Street Courthouse of the Central District of California. Of the six cases pending in the Central District of California, two are assigned to Judge Matz; no other judge has more than one. In addition, Judge Matz has before him the motion filed by the plaintiffs for preliminary injunctive relief in the *Choi* case. His familiarity with the case and the parties will ensure that the efficiencies of consolidation are realized.

For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, Petitioner respectfully requests that (a) the ten actions listed in the accompanying Schedule of Actions not already pending in the United States District Court for the Central District of California be transferred to that district, and any and all additional similar against Toyota arising from defects in motor vehicles manufactured and/or sold by Toyota relating to a phenomenon known as "sudden unintended acceleration" ("SUA") that may be brought to the attention of the Panel; (b) the *Choi* Action be consolidated with the transferred actions and the other five actions already pending in the Central District of California; and (c) Judge A. Howard

Matz be designated as the transferee judge.

Dated: February 5, 2010

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA SUDDEN UNINTENDED ACCELERATION	)))	MDL Docket No._____

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR TRANSFER, COORDINATION AND CONSOLIDATION PURSUANT TO 28 U.S.C. §1407

Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker submit this Memorandum of Law in support of their petition, pursuant to 28 U.S.C. 1407 and Rule 7.1 of the Rules of the Judicial Panel on Multidistrict Litigation, for transfer and consolidation of the sixteen actions listed on Schedule of Actions to the petition. Each of the actions listed in the Schedule of Actions arises from damages caused by certain Toyota and Lexus vehicles equipped with ETCS-i, which have yielded reports of at least 11 deaths and over 200 injuries caused by the unintended acceleration of the vehicles. These actions satisfy all of the requirements for transfer: they are "pending in different districts" and they involve "common questions of fact." *See* 28 U.S.C. § 1407(a). Moreover, their transfer and consolidation will further the "convenience of parties and witnesses" and will "promote the just and efficient conduct of the litigation," *see* § 1407(a), by (1) eliminating duplicative discovery; (2) preventing conflicting pretrial rulings; (3) conserving judicial resources; (4) reducing the costs of litigation for the parties involved; and (5) allowing the cases to proceed more efficiently. These efficiencies will especially be realized if the consolidated cases are transferred to the Central District of California, where six of them currently are pending, and assigned to Judge A. Howard Matz as the transferee judge.

BACKGROUND OF THE LITIGATION

These are consumer class actions and mass tort motor vehicle products liability lawsuits. The sixteen actions listed in Schedule of Actions have been filed by plaintiffs who allege damages from their experience of the unexplained sudden and dangerous acceleration of their Toyota or Lexus vehicle. Plaintiffs in the various actions contend that defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and other related entities (collectively, "Toyota") are liable for these injuries because Toyota (1) by its acts and practices as described in the complaints constituted unlawful, fraudulent, and unfair business acts and practices in violation of various consumer fraud statutes; (2) made material misrepresentations to consumers which caused them to justifiably rely on such misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to purchase or lease the defective subject vehicles; and (3) impliedly and/or expressly warranted that the subject vehicles were not unreasonably dangerous and were safe when used as designed by Defendants.

The cases are pending in nine different federal district courts around the country. The highest concentration of cases is in the Central District of California, in which six cases are pending. The cases are of two types: (1) class actions on behalf of Toyota owners seeking damages and/or injunctive relief for breaches of warranty and/or fraudulent, deceptive or unfair practices relating to SUA; and (2) personal injury actions arising from accidents caused by SUA that resulted in injuries or death. The *Choi* action[1], in which Petitioners are the plaintiffs, is a

[1] *Choi et al v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, Case No. 2:09-08143 AHM (FMOx). The full names of all of the *Choi* Plaintiffs are set forth in the Schedule of Actions.

class action seeking injunctive relief and damages on behalf of a California-wide and a nation-wide class of Toyota owners; it was the first of the class actions to be filed. Petitioners have filed a motion for a preliminary injunction in the *Choi* action. The other cases are believed to be in preliminary stages of litigation. Petitioners now seek to consolidate all of these cases for the remainder of pretrial proceedings, in the interest of justice, economy, and efficiency.

ARGUMENT

I. THESE ACTIONS WARRANT TRANSFER AND CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

Consolidation of the Toyota cases under §1407 is proper because these cases involve common questions of fact and consolidation will promote the convenience of witnesses and parties and the just and efficient conduct of these actions.

First, it is clear that there are common questions of fact. All of the plaintiffs were owners of the subject vehicles that are subject to unintended acceleration. The factual bases for the various claims – including defendants' full awareness of the recurring problem of sudden unintended acceleration in plaintiffs' Toyota and Lexus vehicles equipped with ETCS-i and failure to incorporate important failsafe measures critical to assisting a driver in maintaining control of the vehicle during a sudden unintended acceleration event – are common to all the cases. These common issues satisfy the "common questions of fact" requirement of § 1407. *See Daffin v. Ford Motor Co.*, 458 F.3d 549 (J.P.M.L. 2006) (finding whether the question of whether the throttle body was defective was common to all van owners because they all had the same throttle body and warranty, and the legal question of whether the warranty contract was properly read to contain a promise to repair the type of common "defect" in all throttle body assemblies, regardless of whether or not manifested during the warranty period, was also common to the class); *see also In re Zyprexa Products Liability Litigation*, (J.P.M.L. Apr. 14,

2004) (finding common issues warranting transfer and consolidation because all the actions "share allegations concerning the safety of Zyprexa"); *In re Ford Motor Co. Crown Victoria Police Interceptor Products Liability Litigation*, 229 F.Supp.2d 1377, 1378 (J.P.M.L. 2002) (explaining that common factual questions arise because all actions focus on allegations regarding the design and placement of the car's fuel tanks); *In re Inter-op Hip Prosthesis Liability Litigation*, 204 F.R.D. 330 (D.C.Ohio 2001) (finding that all the claims involved questions of whether the hip-implant components had a defect, whether the manufacturer adequately tested the safety of the product, when the manufacturer learned of the defect, and whether it took timely action upon learning that the defect might exist, and questions of fact and law idiosyncratic to each plaintiff did not outweigh questions common to the class members); *In re General Motors Corp. Dex-Cool Products Liability Litigation*, 293 F.Supp.2d 1381, 1382 (J.P.M.L. 2003) (transfer ordered where all actions involved "allegations that the Dex-Cool engine coolant in certain GM vehicles cause significant damage to the vehicles and/or did not perform as warranted."); *In re Heritage Bonds Litigation*, 217 F.Supp.2d 1369, 1370 (J.P.M.L. 2002) ("transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer"). These cases seek to impose liability based on the alleged defective design or manufacture of the accelerators and/or throttle control systems used in the all of the subject vehicles. Thus, there will be overlapping factual questions and discovery related to the design, manufacture, testing, installation, and performance of the accelerators and related components. As is true in the other motor vehicle product liability cases consolidated by this Panel, the common questions here can more efficiently be addressed in a coordinated and consolidated proceeding, rather than being litigated multiple times, in multiple forums around the country.

Second, as this Panel has noted in consolidating other class action cases, centralization of pretrial proceedings in such cases is necessary "in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings." *In re A. H. Robins CO., INC. 'Dalkon Shield' IUD Products Liability Litigation*, 406 F.Supp 540, 542 (J.P.M.L. 1975); *accord In re Zyprexa Products Liability Litigation*, MDL 1596, *slip op.* (J.P.M.L. Apr. 14, 2004); *In re Cooper Tire & Rubber Co. Tires Products Liability Litigation*, 2001 WL 253115, *3 (J.P.M.L. 2001) ("Motion practice and relevant discovery will overlap substantially in each action. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent rulings, and conserve the resources of the parties, their counsel and the judiciary.") Given the number of motor vehicle product liability cases which this Panel has coordinated in recent years, there appears little doubt about the propriety of coordinating and consolidating the litigation in this case. Like other motor vehicle product liability cases, the Toyota cases involve a single product alleged to have damaged numerous people in essentially the same way. There is a groundswell of federal litigation already on file, and anticipated in this case, and the number and similarity of cases calls for consolidated pre-trial proceedings. Extensive duplicative discovery will result if these actions are not consolidated and coordinated. Consolidation will efficiently and effectively utilize judicial resources as well as the resources of the parties.

Without consolidation and transfer, at least nine federal jurisdictions (and, most likely, more, as additional cases are filed), will be making individual decisions on similar issues of fact and law that apply to these cases. This will waste unnecessarily the time and resources of many judges and their staffs. Furthermore, these rulings will be duplicative, as they will be made on the same issues in many courts. Finally, there is a strong possibility that the various courts will rule inconsistently on the same issues. The risk of potentially inconsistent pretrial rulings is an

especially important factor given that these are putative class actions. The Panel has "consistently held that transfer of actions under section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists." *In re Sugar Indus. Antitrust Litigation*, 395 F.Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Mutual Funds Sales Anti-Trust Litigation*, 361 F.Supp 638, 639-40 (J.P.M.L. 1973) ("[W}e have frequently held that the possibility for conflicting class determinations under [Fed.R.Civ.P. 23] is an important factor favoring transfer of all actions to a single district").

Petitioners submit that consolidation and coordination of the Toyota cases is necessary to prevent duplicative litigation around the country of cases alleging the same injury from a single product.

II. THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA IS THE MOST APPROPRIATE FORUM FOR THE TOYOTA CASES

The Central District of California is the most appropriate transferee forum for holding consolidated pretrial proceedings of these actions because (1) Toyota's U.S. headquarters are located in this district; (2) the *Choi* action, which is pending in the Central District of California and was the first class action filed and is further advanced than the other cases; and (3) the Central District of California has more of these cases on file than any other district, which would add to its familiarity in becoming the transferee venue to litigate all other pending and future Toyota unintended acceleration cases.

In *In re Phenylpropanalomine Products Liability Litigation*, this Panel held:

> Given the range of locations of parties and witnesses in this docket, the geographic dispersal of current and anticipated constituent actions, and the wide array already of suggested transferee districts, it is clear that any one of a large number of districts would qualify as an appropriate transferee forum for this litigation nationwide in scope. In concluding that the Western District of Washington is the appropriate forum for this docket, we note that centralization in this district permits the Panel to effect the Section 1407 assignment to a major

> metropolitan court that i) is not currently overtaxed with other multidistrict dockets, and ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require.

MDL 1407, *slip op.* (J.P.M.L. Aug. 28, 2001). Petitioners believe the factors described for the Western District of Washington, in *In re Phenylpropanalomine*, apply equally well, if not better, to the Central District of California in this litigation.

First, this Panel often considers as a relevant factor the situs of the first filed action in determining the appropriate venue for an MDL proceeding. *See In re Ortho Evra Products Liability Litigation*, 2006 WL 538724 (J.P.M.L. 2006) (transferee district contained the first filed action which was progressing well); *In re Veeco Instruments Inc., Securities Litigation*, 387 F.Supp.2d 1365, 1366 (J.P.M.L. 2005) (selecting the Southern District of New York because it contained the first-filed action and has favorable caseload statistics); *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, 398 F.Supp.2d 1365, 1367 (J.P.M.L. 2005) (selecting the Eastern District of Michigan in part because it contained the first-filed action). The *Choi* action, filed on November 5, 2009, is the first-filed of the sixteen unintended accelerated actions and is progressing on schedule. This Panel also considers venues where the cases are more procedurally advanced. *See In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litigation*, 484 F.Supp.2d 1355 (J.P.M.L. 2007) (although either suggested district was appropriate, Panel chose Central District of California because action located there appeared slightly broader and more procedurally advanced). Here, the Petitioners filed an Amended Complaint on January 19, 2010, and subsequently filed their motion for a preliminary injunction on February 3, 2010 seeking expansion of Defendants' current recalls of Toyota subject vehicles at issue in these cases.

Second, six of the sixteen cases currently filed have been filed in the Central District of California. No other district has more than three.[2] Thus, among federal district courts, the Central District of California is already the venue holding the largest number of unintended acceleration cases at this time. This Panel has found the Central District of California to be the appropriate venue for litigation when one or more actions are already pending there. *See In re Capital One Bank Credit Card Terms Litigation*, 201 F.Supp.2d 1377 (J.P.M.L. 2002) (Central District of California most appropriate transferee forum as one action and one potential tag-along already were pending there). The same reasoning applies here with even greater force because of the larger number of cases pending in the Central District of California. Two of these cases have been assigned to Judge A. Howard Matz; no other judge in the Central District has more than more. His familiarly with these cases will make him the best suited to be the transferee judge.

Finally, the Central District of California is located in the City of Los Angeles, California, which is well served as a transportation hub. Los Angeles International Airport is one of the busiest airports in the world, serving 88 airlines through nine terminals. Moreover, the Toyota defendants conduct substantial business in all Counties within the State of California and Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), has its principal place of business located at 19001 South Western Avenue, Torrance, CA 90501, which is approximately 18 miles from the Western Division - Spring Street Courthouse of the Central District of California. This Panel has transferred cases where the defendant's headquarters was located in the same district for venue transfer because of the convenience and likelihood of defendant's headquartered site containing documents and witnesses. *See In re Express Scripts, Inc., Pharmacy Benefits*

[2] Three cases are pending in the Eastern District of Louisiana. All three were filed on January 29, 2010 by the same law firm and seek substantially overlapping relief.

Management Litigation, 368 F.Supp.2d 1356 (J.P.M.L. 2005); *In re Thaxton Group Inc. Secs. Litigation*, 323 F.Supp.2d 1374 (J.P.M.L. 2004).

CONCLUSION

For the foregoing reasons, this Panel should grant the Petition for transfer and consolidation of the Toyota cases to the United States District Court for the Central District of California before the Honorable A. Howard Matz.

Dated: February 5, 2010

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL-_____ – TOYOTA SUDDEN UNINTENDED ACCELERATION

SCHEDULE OF ACTIONS

	CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE	CASE TYPE
1.	**Plaintiffs:** Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker **Defendants:** Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	C.D. California	2:09-cv-08143	A. Howard Matz	Class action
2.	**Plaintiffs:** Eric Kmetz and Joe Morris **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	C.D. California	2:09-cv-08478	A. Howard Matz	Class action
3.	**Plaintiff:** Heather A. Lane **Defendants:** Toyota Motor Sales, U.S.A., Inc.	C.D. California	2:09-cv-09158	Fernando M. Olguin	Class action
4.	**Plaintiff:** Dale Baldiseeri **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	C.D. California	2:09-cv-09386	Gary A. Feess	Class action
5.	**Plaintiff:** Roz Schwartz **Defendants:** Toyota Motor Sales USA Inc, Toyota Motor Corp	C.D. California	2:10-cv-00710	Ronald S.W. Lew	Class action

6.	**Plaintiffs:** Joseph Hauter and Frank Palomares **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	C.D. California	8:10-cv-00105	Cormac J. Carney	Class action
7.	**Plaintiff:** Michelle Lynch **Defendants:** Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc.	M.D. Florida	8:10-cv-00326	Steven D. Merryday	Class action
8.	**Plaintiffs:** Lata Mehta, Jim Heidenreich **Defendants:** Toyota Motor North America Inc, Toyota Motor Sales Usa Inc	N.D. Florida	4:10-cv-00035	Robert L Hinkle	Class action
9.	**Plaintiff:** Jonathan Gellman **Defendants:** Toyota Motor Sales U.S.A., Inc.	S.D. Florida	1:10-cv-20006	Marcia G. Cooke	Class action
10.	**Plaintiffs:** Daniel Weimer, Jr., Colby Wenck and Ann Cavalier **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00219	Ivan L. R. Lemelle	Class action
11.	**Plaintiff:** Amanda R. Maillho **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00279	Mary Ann Vial Lemmon	Class action

TOY-RQ-05E-00007186

12.	**Plaintiff:** Gary T. Brock **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00281	Eldon E. Fallon	Class action
13.	**Plaintiffs:** Robert Elmes **Defendants:** Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	W.D. Penn.	2:2008cv01300	Alan N. Bloch	Personal Injury
14.	**Plaintiff:** Linda Alford Wooten **Defendants:** Toyota Motor North America Inc, Toyota Motor Engineering & Manufacturing North America Inc, Toyota Motor Manufacturing Kentucky Inc, Toyota Motor Sales USA Inc, Toyota Motor Corporation	D. South Carolina	3:10-cv-00229	Matthew J Perry, Jr	Class action
15.	**Plaintiffs:** Albert A. Pena, III and Sylvia Pena **Defendants:** Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	S.D. Texas	2:10-cv-00037	Janis Graham Jack	Class action
16.	**Plaintiffs:** Michael Graves, Michael C. Graves and Jeff Mullins **Defendants:** Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor Corporation	S.D. West Virginia	2:09-cv-01247	Joseph R. Goodwin	Class action

TOY-RQ-05E-00007187

EXHIBIT A

Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending December 31, 2008

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	**175,385**	**8.1**	**44,049**	**5.0**	**104,916**	**7.9**	**22,094**	**13.6**	**4,326**	**32.8**
DC	**1,931**	**8.6**	**650**	**6.2**	**1,213**	**9.4**	**42**	**12.4**	**26**	**35.6**
1ST	**4,709**	**9.1**	**1,633**	**6.5**	**2,271**	**8.7**	**633**	**16.8**	**172**	**25.5**
ME	374	7.1	166	4.5	181	8.4	14	13.1	13	16.9
MA	2,333	9.2	1,008	6.6	948	8.9	287	19.0	90	26.5
NH	351	7.4	89	3.2	125	5.7	131	14.6	6	-
RI	392	8.8	133	8.2	189	8.3	59	11.2	11	19.5
PR	1,259	10.2	237	8.7	828	9.1	142	22.6	52	34.1
2ND	**19,398**	**9.9**	**4,320**	**6.2**	**11,957**	**10.2**	**2,831**	**14.0**	**290**	**29.4**
CT	1,846	10.1	1,178	7.7	550	13.8	65	25.0	53	30.5
NY,N	1,092	13.0	214	4.7	564	15.3	289	15.4	25	27.2
NY,E	5,612	12.9	866	8.7	3,559	13.6	1,092	14.6	95	29.8
NY,S	9,547	8.0	1,938	5.0	6,201	7.8	1,304	12.7	104	28.7
NY,W	1,072	11.3	105	4.1	881	11.8	78	21.5	8	-
VT	229	7.8	19	2.5	202	8.2	3	-	5	-
3RD	**16,760**	**7.1**	**3,609**	**4.6**	**9,800**	**6.1**	**3,076**	**12.3**	**275**	**25.4**
DE	734	12.4	170	6.6	515	13.3	16	31.1	33	30.8
NJ	6,033	8.2	1,759	5.8	2,658	5.9	1,543	14.6	73	31.7
PA,E	6,306	5.3	583	2.3	4,346	4.2	1,269	9.6	108	19.6
PA,M	1,417	7.6	404	4.1	924	8.2	57	18.0	32	27.4
PA,W	1,884	7.1	534	4.4	1,296	8.3	27	26.7	27	33.4
VI	386	24.7	159	17.1	81	28.4	164	27.3	2	-
4TH	**11,453**	**6.6**	**2,817**	**5.8**	**7,493**	**6.4**	**970**	**8.5**	**173**	**20.9**
MD	2,468	7.1	906	7.0	1,316	6.0	209	13.1	37	22.3
NC,E	837	8.8	341	7.6	475	9.6	13	11.0	8	-
NC,M	612	8.4	365	5.5	227	13.8	17	14.0	3	-
NC,W	912	6.1	221	7.9	595	5.0	82	13.4	14	26.6
SC	2,128	8.4	328	4.6	1,644	8.5	109	11.0	47	24.8
VA,E	2,150	4.7	276	2.2	1,337	4.1	500	6.4	37	10.1
VA,W	639	9.0	157	6.3	449	9.7	17	11.1	16	19.0
WV,N	416	10.0	181	9.2	217	9.5	12	23.0	6	-
WV,S	1,291	4.6	42	3.9	1,233	4.6	11	18.6	5	-

Table C-5. (December 31, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
5TH	**25,402**	**10.0**	**4,574**	**6.7**	**15,604**	**8.3**	**3,383**	**15.6**	**1,841**	**166.4**
LA,E	9,111	9.8	63	3.6	6,362	7.1	2,613	15.7	73	18.5
LA,M	2,087	166.4	258	5.5	374	12.6	19	24.7	1,436	166.4
LA,W	1,558	12.2	427	7.9	1,039	12.9	59	24.2	33	20.2
MS,N	745	12.0	216	7.9	347	9.5	151	17.7	31	26.6
MS,S	1,977	10.6	1,298	9.7	591	10.8	50	20.2	38	20.1
TX,N	2,414	7.4	325	5.6	2,025	7.4	2	-	62	23.5
TX,E	1,829	9.4	308	6.6	1,420	9.4	53	19.3	48	19.6
TX,S	3,684	6.8	1,137	3.2	2,114	8.2	366	10.1	67	19.3
TX,W	1,997	8.4	542	7.1	1,332	8.3	70	15.4	53	18.2
6TH	**16,260**	**9.7**	**4,083**	**5.2**	**8,041**	**9.5**	**3,889**	**13.9**	**247**	**23.9**
KY,E	1,317	9.2	170	4.9	1,098	9.4	34	17.1	15	25.2
KY,W	1,061	9.3	291	7.6	678	9.1	79	19.7	13	25.9
MI,E	4,161	9.7	993	4.4	1,210	6.1	1,904	14.9	54	26.2
MI,W	906	8.3	117	2.9	763	9.2	10	23.0	16	30.6
OH,N	3,399	9.1	819	4.1	1,688	11.7	853	9.6	39	17.6
OH,S	2,513	10.3	937	5.8	866	10.3	676	14.3	34	26.5
TN,E	962	11.9	198	8.0	435	10.2	300	16.4	29	22.9
TN,M	1,093	9.2	253	5.8	811	9.7	8	-	21	17.3
TN,W	848	11.7	305	8.7	492	11.9	25	20.0	26	26.8
7TH	**11,953**	**7.3**	**3,610**	**4.7**	**6,439**	**7.3**	**1,699**	**12.0**	**205**	**25.2**
IL,N	6,620	6.3	2,328	4.8	3,589	6.5	600	11.5	103	25.0
IL,C	590	9.7	216	6.9	362	10.8	5	-	7	-
IL,S	650	9.6	151	4.5	460	10.3	23	27.8	16	25.8
IN,N	1,072	11.1	254	5.0	327	9.1	469	14.3	22	24.7
IN,S	1,717	9.0	451	4.2	824	9.0	419	11.8	23	22.3
WI,E	862	7.8	144	3.7	649	7.9	43	14.9	26	33.5
WI,W	442	4.7	66	2.1	228	3.7	140	7.1	8	-
8TH	**13,270**	**5.7**	**5,029**	**2.7**	**6,910**	**8.8**	**1,139**	**16.1**	**192**	**21.5**
AR,E	1,166	8.4	215	9.4	914	7.2	7	-	30	22.5
AR,W	575	10.2	24	3.2	530	10.2	5	-	16	16.2
IA,N	393	9.0	71	6.7	308	9.1	3	-	11	20.7
IA,S	558	10.8	153	7.3	270	9.6	119	16.1	16	23.9
MN	6,583	3.0	3,015	2.4	2,581	7.1	956	15.6	31	19.7
MO,E	1,594	7.0	672	5.0	888	8.2	7	-	27	18.6
MO,W	1,425	7.8	693	5.9	693	9.1	11	18.2	28	26.7
NE	545	8.6	28	2.4	480	8.4	20	17.1	17	19.5
ND	220	6.5	93	3.6	120	7.6	3	-	4	-
SD	211	12.4	65	12.4	126	10.6	8	-	12	24.4

Table C-5. (December 31, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	**26,603**	**7.9**	**8,594**	**5.9**	**15,591**	**8.1**	**1,961**	**14.2**	**457**	**23.8**
AK	318	8.7	142	6.6	169	10.1	2	-	5	-
AZ	1,929	8.6	679	7.5	1,195	9.1	17	36.2	38	29.2
CA,N	4,060	8.1	862	4.6	1,947	6.1	1,202	14.0	49	24.3
CA,E	2,003	9.8	758	6.5	1,167	10.8	36	27.1	42	29.2
CA,C	9,189	6.9	3,658	6.0	5,294	7.1	100	18.5	137	21.7
CA,S	1,702	5.8	173	3.2	1,145	5.8	359	10.3	25	26.6
HI	534	10.5	297	8.2	177	11.0	39	22.4	21	30.8
ID	354	10.5	38	4.0	305	10.8	4	-	7	-
MT	481	10.3	200	7.0	171	9.9	95	16.3	15	23.4
NV	1,542	9.1	539	7.0	933	9.7	48	15.6	22	29.2
OR	1,677	11.0	476	8.6	1,139	11.7	15	24.3	47	19.0
WA,E	481	8.3	156	3.7	289	9.0	28	16.1	8	-
WA,W	2,274	6.9	588	4.0	1,636	8.0	12	15.8	38	17.1
GUAM	27	17.9	9	-	15	19.2	2	-	1	-
NMI	32	12.5	19	13.3	9	-	2	-	2	-
10TH	**7,366**	**8.3**	**1,556**	**5.0**	**4,469**	**8.0**	**1,183**	**11.8**	**158**	**20.5**
CO	2,011	6.6	149	3.0	1,746	6.5	80	18.0	36	25.9
KS	1,176	9.3	500	7.0	549	9.4	104	17.4	23	23.6
NM	1,007	9.5	232	4.0	371	9.9	374	11.3	30	20.2
OK,N	592	9.2	80	3.6	482	9.9	14	17.4	16	16.5
OK,E	335	7.6	218	8.6	100	6.3	8	-	9	-
OK,W	1,134	8.2	311	3.4	368	7.8	436	9.8	19	16.1
UT	894	8.8	53	3.0	787	9.0	40	17.4	14	29.7
WY	217	10.0	13	4.3	66	5.5	127	11.0	11	15.4
11TH	**20,280**	**6.8**	**3,574**	**4.1**	**15,128**	**6.9**	**1,288**	**13.5**	**290**	**18.3**
AL,N	2,371	10.6	502	7.5	1,821	11.2	25	18.6	23	18.2
AL,M	734	9.6	201	7.5	456	9.2	62	17.0	15	16.2
AL,S	589	7.8	128	7.2	430	7.6	16	15.6	15	15.0
FL,N	875	7.6	130	6.4	704	7.8	17	9.1	24	17.6
FL,M	5,297	7.7	447	5.9	4,687	7.6	92	17.2	71	20.6
FL,S	6,374	4.6	1,539	3.0	4,701	5.0	51	15.6	83	14.8
GA,N	2,997	6.6	427	2.4	1,534	5.1	994	11.9	42	24.0
GA,M	635	11.4	136	6.6	481	11.8	7	-	11	22.8
GA,S	408	9.9	64	5.8	314	10.0	24	14.5	6	-

NOTE: MEDIAN TIME INTERVALS NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

CALIFORNIA CENTRAL			12-MONTH PERIOD ENDING SEPTEMBER 30							
			2008	2007	2006	2005	2004	2003	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*		15,144	14,154	12,909	14,630	16,938	14,720	U.S.	Circuit
	Terminations		14,742	13,642	13,680	16,173	15,269	15,800		
	Pending		12,221	11,817	12,401	13,180	14,720	13,129		
	% Change in Total Filings	Over Last Year		7.0					23	3
		Over Earlier Years			17.3	3.5	-10.6	2.9	28	4
Number of Judgeships			28	28	28	28	28	28		
Vacant Judgeship Months**			12.0	31.2	53.9	24.8	2.3	23.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	540	505	461	523	605	526	19	5
		Civil	433	425	397	450	515	451	12	3
		Criminal Felony	63	47	36	45	60	49	49	9
		Supervised Release Hearings**	44	33	28	28	30	26	15	6
	Pending Cases		436	422	443	471	526	469	24	5
	Weighted Filings**		578	551	518	565	651	590	12	4
	Terminations		527	487	489	578	545	564	20	7
	Trials Completed		11	12	12	13	12	14	84	12
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.5	12.1	12.4	10.3	8.2	9.4	32	4
		Civil**	7.0	6.8	7.2	7.4	7.3	7.5	12	2
	From Filing to Trial** (Civil Only)		22.0	21.3	21.3	20.5	17.8	21.2	24	2
OTHER	Civil Cases Over 3 Years Old**	Number	821	712	1,240	809	624	609		
		Percentage	8.1	7.2	11.6	7.2	5.0	5.4	68	10
	Average Number of Felony Defendants Filed Per Case		1.5	1.3	1.6	1.5	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	60.94	60.57	64.08	47.33	49.01	49.49		
		Percent Not Selected or Challenged	53.7	56.5	55.7	48.3	49.4	51.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	12130	1023	200	2976	287	205	839	1508	562	1395	1292	113	1730
Criminal*	1761	12	242	671	115	360	48	124	49	48	15	37	40

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

ALL DISTRICT COURTS			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing	
			2008	2007	2006	2005	2004	2003	U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		349,969	335,655	335,868	330,721	358,983	328,520		
	Terminations		317,056	317,277	350,807	347,196	324,532	323,399		
	Pending		358,303	324,673	309,006	323,914	341,785	312,223		
	% Change in Total Filings	Over Last Year		4.3					-	-
		Over Earlier Years			4.2	5.8	-2.5	6.5	-	-
Number of Judgeships			678	678	678	678	679	680		
Vacant Judgeship Months**			397.9	424.7	399.3	309.2	291.4	444.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	516	495	495	488	528	483	-	-
		Civil	394	380	383	374	414	372	-	-
		Criminal Felony	91	85	84	87	88	87	-	-
		Supervised Release Hearings**	31	30	28	27	26	24	-	-
	Pending Cases		528	479	456	478	503	459	-	-
	Weighted Filings**		472	477	464	489	529	498	-	-
	Terminations		468	468	517	512	478	476	-	-
	Trials Completed		20	20	19	19	19	19	-	-
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.3	7.6	7.6	7.3	6.9	6.7	-	-
		Civil**	8.1	8.6	8.3	9.5	8.5	9.3	-	-
	From Filing to Trial** (Civil Only)		24.8	24.6	23.2	22.5	22.6	22.5	-	-
OTHER	Civil Cases Over 3 Years Old**	Number	21,820	17,446	27,574	39,600	35,965	34,067		
		Percentage	7.3	6.6	1.1	14.9	12.6	13.0	-	-
	Average Number of Felony Defendants Filed Per Case		1.3	1.4	1.4	1.4	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	48.81	49.32	49.61	47.36	46.33	47.81		
		Percent Not Selected or Challenged	37.4	37.3	38.1	36.7	36.8	40.0		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	267257	13138	52110	54786	3782	5072	16788	34172	19901	9592	32132	1318	24466
Criminal*	61026	3606	11010	21190	7980	7036	1991	2660	706	1293	910	894	1750

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

SCHEDULE OF ACTIONS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully submit the following schedule of actions in support of their Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of All Pretrial Proceedings Pursuant to 28 U.S.C. §1407.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

Behram V. Parekh, Of Counsel
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KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue, Fourth Floor
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Counsel for Plaintiffs-Movants
Eric Kmetz, Joseph Morris,
Joseph Hauter, and Frank Palomares

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

SCHEDULE OF ACTIONS

CASE CAPTIONS	COURT	CASE NO.	JUDGE
Dale Baldiseeri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-09-8478 CAS	Christina A. Snyder
Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
Matthew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799-CAS-SS	Christina A. Snyder
Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-001710-RSWL-FMO	Ronald S.W. Lew
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz

Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	SA CV10-00105 CJC	Cormac J. Carney
Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227-PAB	Philip A. Brimmer
Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006-MGC	Marcia G. Cooke
Jim Heidenreich v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035-RH-WCS	Robert L. Hinkle
Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326-SDM-TGW	Steven D. Merryday
Arlene S. Heilbrunn v. Toyota Motor Corp.	D. Florida, Southern	9:10-cv-80208-WJZ	William J. Zloch
Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	D. Indiana, Southern	1:10-cv-00142-SEB-TAB	Sarah E. Barker

TOY-RQ-05E-00007197

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021-WOB	William O. Bertelsman
Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279-MVL-JCW	Mary A.V. Lemmon
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219-ILRL-SS	Ivan L.R. Lemelle
Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281-ILRL-SS	Ivan L.R. Lemelle
David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs
Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper

TOY-RQ-05E-00007198

Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260-SO	Solomon Oliver, Jr.
Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

TOY-RQ-05E-00007199

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

NOTICE OF APPEARANCE

In compliance with Rule 5.2(c) of the Rule of Procedure of the Judicial Panel on Multidistrict Litigation, the following attorney is authorized to receive service of all pleadings, notices, orders, and other papers relating to practice before the Judicial Panel on Multidistrict Litigation on behalf of Plaintiffs Eric Kmetz, Joseph Morris, Joseph Hauter, and Frank Palomares in the following captioned litigations:

USDC, Central District of California, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx)

USDC, Central District of California, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx)

Name and Address of Designated Attorney:

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bvp@kirtlandpackard.com
Kirtland & Packard LLP
2361 Rosecrans Avenue, Fourth Floor
El Segundo, California 90245
Tel: 310.536.1000
Fax: 310.536.1001

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

Behram V. Parekh, Of Counsel
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2361 Rosecrans Avenue, Fourth Floor
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Counsel for Plaintiffs-Movants
Eric Kmetz, Joseph Morris,
Joseph Hauter, and Frank Palomares

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

COURTESY COPY OF DOCKETS/COMPLAINTS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully submit the following courtesy copies of dockets/complaints in support of their Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of All Pretrial Proceedings Pursuant to 28 U.S.C. §1407.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

Behram V. Parekh, Of Counsel
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Eric Kmetz, Joseph Morris,
Joseph Hauter, and Frank Palomares

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

INDEX OF ATTACHED COURTESY DOCKETS/COMPLAINTS

CASE CAPTIONS	COURT	CASE NO.	JUDGE
Dale Baldiseeri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-09-8478 CAS	Christina A. Snyder
Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
Matthew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799-CAS-SS	Christina A. Snyder
Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-001710-RSWL-FMO	Ronald S.W. Lew
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz

Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	SA CV10-00105 CJC	Cormac J. Carney
Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227-PAB	Philip A. Brimmer
Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006-MGC	Marcia G. Cooke
Jim Heidenreich v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035-RH-WCS	Robert L. Hinkle
Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326-SDM-TGW	Steven D. Merryday
Arlene S. Heilbrunn v. Toyota Motor Corp.	D. Florida, Southern	9:10-cv-80208-WJZ	William J. Zloch
Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	D. Indiana, Southern	1:10-cv-00142-SEB-TAB	Sarah E. Barker

TOY-RQ-05E-00007205

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021-WOB	William O. Bertelsman
Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279-MVL-JCW	Mary A.V. Lemmon
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219-ILRL-SS	Ivan L.R. Lemelle
Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281-ILRL-SS	Ivan L.R. Lemelle
David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs
Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper

Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260-SO	Solomon Oliver, Jr.
Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

TOY-RQ-05E-00007207

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

PROOF OF SERVICE MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407 AND ACCOMPANYING DOCUMENTS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I 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 action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245.

On February 5, 2010, I served and/or filed the following document(s) described as:

MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

SCHEDULE OF ACTIONS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

NOTICE OF APPEARANCE

COURTESY COPY OF DOCKETS/COMPLAINTS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407 (without exhibits)

on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes and addressed as follows: **SEE ATTACHED LIST**

(✓) U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

(✓) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

KATHERINE STUCZYNSKI

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

COURT SERVICE LIST

United States District Court
California, Central
312 N. Spring St.
Los Angeles, CA 90012-4793
(tel: 213/894-2634)

United States District Court
West Virginia, Southern
P.O. Box 2546
Charleston, WV 25329
(tel: 304/347-3000)

United States District Court
Florida, Southern
400 N. Miami Ave, 8th Flr.
Miami, FL 33128
(tel: 305/523-5100)

United States District Court
Florida, Middle
801 N. Florida Avenue
Tampa, FL 33602
(tel: 813/301-5400)

United States District Court
Texas, Southern
1133 N. Shoreline Blvd.
Corpus Christi, TX 78401
(tel: 361/888-3142)

United States District Court
Texas, Eastern
100 E. Houston, Rm 125
Marshall, TX 75670
(tel: 903/935-2912)

United States District Court
Louisiana, Eastern
500 Poydras St.
New Orleans, LA 70130

United States District Court
District of Utah
350 South Main Street, Rm. 150
Salt Lake City, Utah 84101-2180
(tel: 801/524-6100)

United States District Court
South Carolina
901 Richland Street
Columbia, SC 29201
(tel: 803/765-5816)

United States District Court
Federico Degetau Federal Building, Room 150
150 Carlos Chardón Street
San Juan, Puerto Rico 00918-1767
(Tel: 787/772-3000)

United States District Court
New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street Room 2020
Trenton, NJ 08608

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

COUNSEL SERVICE LIST

CASE NAME	CASE NO.	Plaintiff's Counsel	Defendant's Counsel
Dale Baldiseeri vs. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	2:09-cv-09386-GAF-FMO	H Scott Leviant Ira R. Spiro J. Mark Moore Spiro Moss LLP 11377 West Olympic Boulevard 5th Floor Los Angeles , CA 90064 310-235-2468 Fax: 310-235-2456 Email: scott@spiromoss.com	
Eric Kmetz and Joe Morris vs. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	2:09-cv-09-8478 CAS	Michael Louis Kelly Kirtland & Packard LLP 2361 Rosecrans Avenue, Fourth Floor El Segundo, CA 90245 (310) 536-1000 tell. (310) 536-1001 fax mlk@kirtlandpackard.com	Cari K. Dawson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com

Heather A. Lane vs. Toyota Motor Sales, USA, Inc.	2:09-cv-09158-GAF-FMO	Gene J. Stone barger Stonebarger Law, APC 75 Iron Point Circle, Ste. 145 Folsom, CA 95630 916-235-7140 tel. 916-235-7141 fax gstonebarger@stonebargerlaw.com	Cari K. Dawson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com
Matthew Marr, Luis Fernandez, and Sylvia Fernandez vs. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	2:10-cv-00799-CAS-SS	Lionel Z. Glancy Michael M. Goldberg Glancy Binkow and Goldberg LLP 1801 Avenue of the Stars, Ste. 311 Los Angeles, CA 90067 310-201-9150 tel. 310-201-9160 fax	

Roz Schwartz vs. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	2:10-cv-001710-RSWL-FMO	Jeff Osterwise Jon Lamibiras Sherrie Savett Berger & Montague PC 1622 Locust St. Philadelphia, PA 19103 215-875-3000 tel. 215-875-4604 fax Marc M. Seltzer Ryan C. Kirkpatrick Susman Godfrey LLP 1901 Avenue of the Stars, Ste. 950 Los Angeles, CA 90067 310-789-3100 tel. 310-789-3150 fax	
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker vs. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	2:09-cv-08143-AHM-FMO	David C. Wright Kristy M. Arevalo Richard D. McCune, Jr. McCune Wright LLP 2068 Orange Tree Ln #216 Redlands, CA 92374 909/557-1250 tel 909/557-1275 fax dcw@mccunewright.com	Cari K. Dawson Derin B. Dickerson Kyle G.A. Wallace Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel.

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Joseph Hauter vs. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	SA CV10-00105 CJC	Michael Louis Kelly Kirtland & Packard LLP 2361 Rosecrans Avenue, Fourth Floor El Segundo, CA 90245 (310) 536-1000 tell. (310) 536-1001 fax mlk@kirtlandpackard.com	
Ryan Scharrel vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	1:10-cv-0227-PAB	Daniel Ellis McKenzie Michael S. Burg Seth Alan Katz Burg, Simpson, Eldredge, Hersh & Jardine, PC 40 Inverness Drive East Englewood , CO 80112-2866 303-792-5595 Fax: 303-708-0527 Email: dmckenzie@burgsimpson.com	
Jonathan Gellman vs. Toyota Motor Sales U.S.A., Inc.	1:10-cv-20006-MGC	Lance August Harke Harke & Clasby 155 S Miami Ave #600	Michael Ross Tein Lewis Tein 3059 Grand Ave #340

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Jim Heidenreich vs. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	4:10-cv-00035-RH-WCS	Douglas S Lyons Norwood Sherman Wilner Phillip Timothy Howard **LYONS & FARRAR PA** 325 N Calhoun St Tallahassee, FL 32301 850-222-8811 Fax: 850-222-5583 Email: dslyons@earthlink.net	
Michelle Lynch vs. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	8:10-cv-00326-SDM-TGW	J. Andrew Meyer Morgan & Morgan, PA 7th Floor 201 N Franklin St Tampa, FL 33602 813-223-5505 Fax: 813-223-5402 ameyer@forthepeople.com Scott Wm. Weinstein Morgan & Morgan, PA 12800 University Dr - Ste 600 PO Box 9504 Ft Myers, FL 33906 239/433-6880	

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Arlene S. Heilbrunn vs. Toyota Motor Corp.	9:10-cv-80208-WJZ	Brian William Smith Smith & Vanture, LLP 1615 Forum Place West Palm Beach, FL 33401 561-684-6330 Fax: 688-0630 Email: bws@smithvanture.com	
Judith M. Enderle vs. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	1:10-cv-00142-SEB-TAB	Irwin B. Levin COHEN & MALAD LLP One Indiana Square Suite 1400 Indianapolis, IN 46204 (317) 636-6481 Fax: (317) 636-2593 Email: ilevin@cohenandmalad.com	

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson vs. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	2:10-cv-00021-WOB	Eric C. Deters Eric C. Deters & Associates, P.S.C. 5247 Madison Pike Independence , KY 41051 859-363-1900 Fax: 859-363-1444 Email: llittle@ericdeters.com	
Amanda R. Maillho vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	2:10-cv-00279-MVL-JCW	Matthew B. Moreland Becnel Law Firm, LLC 106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel 985/536-6445 fax Hugh P. Lambert Cayce C. Peterson Linda J. Nelson Lambert & Nelson 701 Magazine St. New Orleans, LA 70130 504-581-1750 tel. Camilo K. Salas, III	

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Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota	2:10-cv-00219-ILRL-SS	Daniel E. Becnel, Jr. Becnel Law Firm, LLC 106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel	

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Gary T. Brock vs. Toyota Motor North America, Inc., Toyota Motor Engineering &	2:10-cv-00281-ILRL-SS	Daniel E. Becnel, Jr. Jennifer L. Crose Becnel Law Firm, LLC	

Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.		106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel 985/536-6445 fax Hugh P. Lambert Cayce C. Peterson Linda J. Nelson Lambert & Nelson 701 Magazine St. New Orleans, LA 70130 504-581-1750 tel. Camilo K. Salas, III Salas LC 650 Poydras St., Ste. 1650 New Orleans, LA 70130 504-499-3080 tel. Diane K. Zink Becnel Law Firm 425 W. Airline Hwy., Ste. B LaPlace, LA 70083 985-651-6101 tel. John F. Nevares P.O. Box 13667 San Juan, PR 00908 787-722-9333 tel.	
David Hulsen vs. Toyota	4:10-cv-00103-	Chad Cameron Lucas	

Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	HFS	Kuhlman Law Firm, LLC 1100 Main St. Ste. 2550 Kansas City, MO 64105 (816) 799-0330 Fax: 816-799-0336 Email: clucas@kuhlman-law.com	
Margaret Gonzalez vs. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595-MLC-DEA	Andres F. Alonso Jerrold S. Parker Melanie H. Muhlstock Parker Waichman & Alonso Llp 111 Great Neck Road 5th Floor Great Neck, NY 11021 516-466-6665 jparker@yourlawyer.com muhlstock@yourlawyer.com Michael A. London Douglas & London, PC 111 John Street St., Suite 1400 New York, NY 10038 (212) 566-7500 mlondon@douglasandlondon.com	
Troy Menssen vs. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	1:10-cv-00260-SO	John R. Climaco Frank E. Piscitelli, Jr. Partick G. Warner Climaco, Lefkowitz, Peca, Wilcox & Garofoli Ste. 1950	

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Zahira Crespo Bithorn and Milagros Rodriguez Cruz vs. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	3:10-cv-01083-FAB	John F. Nevares John F. Nevares & Assoc. PSC P.O. Box 13667 San Juan , PR 00908-3667 787-722-9333 Fax: 787-721-8820 Email: jfnevares@nevareslaw.com	

Linda Alford Wooten vs. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	3:10-cv-00229-MJP	Arthur Camden Lewis Lewis & Babcock P.O. Box 11208 Columbia, SC 29211 (803) 733-3534 acl@lewisbabcock.com	
Sylvia Pena and Albert A. Pena, III vs. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	2:10-cv-00037	Robert C. Hilliard Kevin W. Grillo Reynaldo A. Pena Hilliard Munoz Guerra, LLP 719 S. Shoreline Blvd., #500 Corpus Christi, TX 78401 361/882-1612 tel 361/882-3015 fax bobh@hmglawfirm.com Edward M. Carstarphen, III Ellis Carstarphen et al. 5847 San Felipe, Ste. 1900 Houston, TX 77057 713-647-6800 tel.713-647-6884 fax Kathryn Snapka The Snapka Law Firm P.O. Drawer 23017 Corpus Christi, TX 78403 361-888-7676 tel. 361-884-8545 fax	

Michael Graves and Jeff Mullins vs. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	2:09-cv-1247	Benjamin L. Bailey Eric B. Snyder Robert P. Lorea Bailey & Glasser 209 Capitol Street Charleston, WV 25301 304/345-6555 bbailey@baileyglasser.com Edgar F. Heiskell, III P.O. Box 3232 Charleston, WV 35332 434-951-7234 tel. 434-951-7254 fax	Nicholas S. Johnson Rebecca A. Betts David B. Thomas Allen Guthrie & Thomas POB 3394 Charleston, WV 25333 304/345-9941 tel 304/345-9941 nsjohnson@agmtlaw.com Cari K. Dawson Derin B. Dickerson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs") respectfully move the Panel for an Order pursuant to 28 U.S.C. §1407, to transfer the pending cases identified in the schedule of actions filed concurrently herewith ("Actions"), as well as any cases subsequently filed involving similar facts or claims ("tag-along cases") to the United States District Court for the Central District of California, and to consolidate or coordinate the cases for pretrial proceedings before the Honorable A. Howard Matz, to whom the low numbered case is currently assigned in the Central District of California.

I. INTRODUCTION

There are, at last count, 21 actions filed in various courts throughout the nation against some combination of the defendants in these litigations. These cases all stem from the alleged tendency of Toyota and Lexus branded (collectively "Toyota") vehicles to experience events of sudden unintended acceleration while the driver of the vehicle is attempting to slow the vehicle, or at least not accelerate the vehicle. Although the various complaints generally allege that this tendency has existed in Toyota vehicles since approximately 2001, when Toyota first switched from mechanical linkages between the accelerator pedal and the throttle control, these cases have generally been filed subsequent to the high-profile death of California Highway Patrol Officer Mark Saylor while driving a Lexus ES350 vehicle on August 28, 2009. Officer Saylor's brother-in-law called 911 while in the vehicle, just prior to his death, stating "the accelerator is stuck...we're approaching an intersection."

The national press coverage given to this incident forced Toyota to begin seriously investigating incidents of unintended acceleration of its vehicles which, heretofore, it had externally attributed to isolated incidents and driver error. On September 29, 2009 Toyota announced a recall of 3.8 million vehicles, which was subsequently expanded to 4.2 million vehicles, due to what Toyota claimed was an issue with aftermarket or improperly installed floor-mats causing unintended acceleration of its vehicles.

In a press release issued regarding the recall, Toyota unequivocally stated "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." This explanation, however, did not appear to ring true, given the numerous incidents of unintended acceleration of Toyota vehicles in which both witnesses and investigators had concluded that floor mats were not responsible. Plaintiffs Kmetz and Morris filed suit on

November 18, 2009 in the Central District of California, both their home district and that of the primary defendant, Toyota Motor Sales U.S.A., Inc., alleging that the floor mats, alone, were not the problem and that a more systemic problem related to Toyota's electronic throttle control system existed.

On January 21, 2010, Toyota announced a second recall, this time blaming unintended acceleration events on an worn accelerator pedal assemblies that could "stick" in a partially depressed position. Again, Toyota's explanation did not appear to ring true, given incidents of unintended acceleration involving vehicles that were not part of the "sticky pedal" recall, and also given incidents in vehicles which were almost brand-new.

Subsequent to this announcement, Plaintiffs Hauter and Palomares filed a suit on January 22, 2010, again in the Central District of California, and again for the same reasons, alleging that the floor mats and "sticky pedals," alone, were not the problem and that a more systemic problem related to Toyota's electronic throttle control system existed.

At that point, apparently, the floodgates opened, and no less that 18 suits alleging similar claims and seeking similar relief as Movants have been filed in various courts, both state and federal, throughout the nation. These related actions arise from the same or similar nucleus of operative facts as Movants' cases. Each action will involve substantially similar discovery, with the same or similar documents and witnesses. Discovery has not commenced in Plaintiffs' cases or any of the related actions.

Since these actions require the same or similar questions of law and fact to be determined by a court of law, prompt action by the Panel to transfer and consolidate or coordinate these actions in the Central District of California will promote their just and efficient prosecution, enhance judicial economy, and serve the convenience of the parties.

II. ARGUMENT

A. Transfer and Consolidation or Coordination of All Actions Is Appropriate Under 28 U.S.C. §1407.

28 U.S.C. §1407 provides for transfer of actions to one district for coordinated or consolidated pretrial proceedings where actions pending in different districts involve one or more common questions of fact. 28 U.S.C. §1407(a). Transfers are authorized where the Panel determines that such transfers will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. *Id.*

The purpose of the multidistrict litigation process is to "eliminate the potential for contemporaneous pretrial rulings by coordinate district and appellate courts in multidistrict related civil actions." *In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F.Supp. 484, 491-92 (J.P.M.L. 1968). Consolidation is especially important in class actions where "the potential for conflicting, disorderly, chaotic" action is greatest. *Id.* at 493. Transfer of related actions to a single district for pretrial proceedings avoid conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedurs. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006).

Transfer and consolidation is appropriate here because many common questions of fact and law exist. The Actions all arise from the same or similar nucleus of operative facts, and each seeks a determination of, among other things:

1. Whether certain Toyota vehicles are prone to unintended acceleration events;
2. if so, which Toyota vehicles are prone to unintended acceleration events;
3. what is the cause or causes of the unintended acceleration events;
4. whether Toyota failed to properly test its vehicles prior to market entry;

5. Toyota's knowledge of the propensity of their vehicles to unintended acceleration events;
6. the timing of Toyota's knowledge;
7. whether Toyota negligently, recklessly, or intentionally delayed recalls of their vehicles;
8. whether Toyota breached its duty of car to Plaintiffs and class members;
9. whether Toyota breached any contract or warranty, express or implied, related to their sale of their vehicles;
10. whether Toyota was unjustly enriched as a result of its wrongful conduct;
11. whether Plaintiffs and class members are entitled to equitable or injunctive relief;
12. whether Plaintiffs and class members are entitled to compensatory damages;
13. whether Plaintiffs and class members are entitled to exemplary damages; and
14. whether a class or classes may be appropriately certified.

Determination of these and other common issues in a single district will benefit the parties and witnesses, and promote the just and efficient prosecution and resolution of the Actions. Without transfer and consolidation of the Actions, the significant hazard of inconsistent rulings exists, and judicial inefficiency, overlapping discovery, and unnecessary expense will certainly result.

Transfer and consolidation is especially appropriate as formal discovery has not yet commenced in any of the actions and the pleadings in the Actions are not even yet at issue. Transfer and consolidation of the Actions in a single district is appropriate for the just and efficient prosecution of the Actions and convenience of the parties and witnesses.

B. The Central District of California Is the Most Appropriate Forum for Transfer and Consolidation or Coordination

There are numerous factors which the Panel generally takes into consideration in determining the most appropriate transferee forum. Among those factors include the number of cases pending in the jurisdiction, convenience of the parties, location of witnesses and other evidence, whether the district is in an accessible metropolitan location, the caseload of the transferee district, and experience in management of class actions and complex litigation. *See, e.g.*, *In re Wheat Farmers Antitrust Class Action Litig.*, 366 F. Supp. 1087, 1088 (J.P.M.L. 1973); *In re Preferential Drug Prods. Pricing Antitrust Litig.*, 429 F. Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F. Supp. 2d 1376, 1378 (J.P.M.L. 2002); *In re General Motors Corp. Dex-Cool Products Liability Litig.*, 293 F. Supp. 2d 1381, 1382 (J.P.M.L. 2003); *In re Educ. Testing Serv. Plt 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004). Of the various potential venues in the United States, the Central District of California best meets those factors.

1. <u>Number of Cases Pending</u>

The jurisdiction with the greatest number of pending cases is currently the Central District of California (7). No other jurisdiction other than the Central District of California has any significant number of filed cases. Moreover, given that American location for Toyota's headquarters is in Los Angeles, and that it appears that the number of lawsuits being filed regarding the issues addressed in the Actions appears to increase daily, it is likely that number of law suits filed will continue to increase significantly, including the diversity of jurisdictions in which such suits are filed. Thus, it is likely that the Central District of California, with its significantly higher population and the location of Toyota's American headquarters, will end up

as the jurisdiction with the greatest number of independently filed lawsuits. Thus, of the potential jurisdictions available to the Panel, the Central District of California constitutes the venue with the greatest current number of filed cases, and the same District will probably end up with having the greatest number of filed lawsuits when all is said and done.

2. **Convenience of the Parties**

There is a significant geographic advantage to the Central District of California for the convenience of the Parties. First, as noted above, to date the greatest number of lawsuits have been filed in the Central District of California, and thus, presumably, the parties which filed these lawsuits consider the Central District of California their most convenient choice of forum. Second, the primary defendant in the litigation, Toyota Motor Sales, U.S.A., Inc., has its American headquarters in the Central District of California, and thus, presumably, it would be the most convenient location for it as well. Finally, although the other primary defendant, the parent Toyota Motor Corporation, is located in Japan, presumably, Toyota executives are used to traveling back and forth to its American headquarters, and would be able to most conveniently travel and use Toyota's American facilities in Los Angeles were it necessary for them to attend depositions or court appearances in the United States. Thus, of the jurisdictions available to the Panel, the Central District of California provides the greatest convenience to the parties.

3. **Location of Witnesses and Other Evidence**

Equally, from the perspective of the location of witnesses and other evidence, the Central District of California is the most convenient location, as it is the American headquarters of the primary defendant, and no other jurisdiction has any stronger claim to being convenient to the location of witnesses or other evidence.

D. Accessible Metropolitan Location

While there are numerous jurisdictions which are in accessible metropolitan locations, for the reasons discussed above, the Central District of California has a slight advantage in that it is closer and cheaper to access for parties and witnesses conducting discovery in Japan or appearing in the United States from Japan as compared to airports further east, is significantly more accessible in terms of the number of direct flights, and the locations directly flown to, both in Japan and domestically, than many locations further east, and has the least weather related airport delays of any major metropolitan airport in the United States.

E. Caseload of the Transferee District / Experience in Managing Complex Litigation

The Central District of California is also an appropriate forum because of the status of its civil dockets. Of major metropolitan based district courts, the Central District has one of the lower median times to disposition, at 6.9 months for calendar 2008. (See Ex. A). Further, the Central District of California is in the top 15 percent of all District Courts for time to disposition, and top 25 percent for Time to trial, and the Ninth Circuit as a whole is ranked second in the nation. (See Exh. A). , and Judge Matz is an experienced jurist with over 21 years experience on the bench, including having dealt with many complex and high-profile cases, such as the first legal challenge to Guantanamo Bay's Camp X-Ray and the challenge by Perfect 10 to the Google Books initiative, along with prior MDL experience, i.e., *Conseco Life Ins.*, MDL 1610, which concluded July, 2007.

Further, even were the case to go another jurist than Judge Matz, the other jurists in the Central District who are currently assigned to some of the Actions are also experienced jurists with prior MDL experience, such as Judge Fees, MDL 1394, which concluded August, 2006,

Judge Lew, MDL 1581, which concluded May 2006, Judge Carney, MDL 1926, and Judge Snyder, MDL 1671. These are but exemplars, and there is simply no question that the jurists of the Central District of California are more than capable of handling this MDL.

III. CONCLUSION

For the reasons discussed above, Movants respectfully request that the Panel transfer the Actions for coordinated or consolidated pretrial proceedings before the Central District of California.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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TOY-RQ-05E-00007235

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED FEB 10 2010
LORETTA G. WHYTE
CLERK

Privilege

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED)
ACCELERATION PRODUCT)
LIABILITY LITIGATION)
)

MDL Docket No. 2151

MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully move the Panel for an Order pursuant to 28 U.S.C. §1407, to transfer the pending cases identified in the schedule of actions filed concurrently herewith ("Actions"), as well as any cases subsequently filed involving similar facts or claims ("tag-along cases") to the United States District Court for the Central District of California, and to consolidate or coordinate the cases for pretrial proceedings before the Honorable A. Howard Matz, to whom the low numbered case is currently assigned in the Central District of California.

In support of the Motion for Transfer and Coordination or Consolidation to the Central District of California, and as set forth in more detail in the accompanying Memorandum, Plaintiffs state as follows:

1. Movants are plaintiffs in the following captioned cases in the Central District of California:

   - *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx)
   - *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (Anx)

2. These Actions are nationwide class actions that allege that various causes of action against Toyota Motor Sales U.S.A., Inc. and its Japanese parent, Toyota Motor Corporation relating to the unintended acceleration of Toyota and Lexus branded vehicles.

3. At last count, there were at least 7 actions pending in the Central District of California, and 14 actions pending in various other district courts nationwide, which similarly allege various causes of action against these defendants relating to the unintended acceleration of Toyota and Lexus branded vehicles.

4. Each of these Actions seek relief for virtually the identical class of persons: all persons in the United States who own i) Toyota vehicles equipped with an electronic throttle control system and/or ii) a Toyota vehicle subject to Toyota's recalls regarding unintended acceleration.

5. Each of these Actions arise out of the same or similar nucleus of operative facts, all arising out of Toyota's same or similar alleged wrongful conduct.

6. Each of these Actions assert similar claims for injunctions, compensatory damages, exemplary damages, all arising out of Toyota's same or similar alleged wrongful conduct.

7. Each of these Actions will involve the resolution of the same or similar questions of fact and law, as the all arise from Toyota's same or similar alleged wrongful conduct.

8. Discovery conducted in each of these Actions will be substantially similar, and will involve the same or similar documents and witnesses, since each action arises from the same or similar nucleus of operative facts.

9. Discovery has not yet commenced in any of the Actions, thus no prejudice or inconvenience will result from transfer and coordination or consolidation.

10. Defendant Toyota Motor Sales, U.S.A., Inc., is headquartered in Torrance, California, in the Central District of California, and thus, judicial and discovery efficiency, as well as the convenience of the parties, will be enhanced, as many of the witnesses and documents will be located in the Central District.

11. The corporate parent Defendant, Toyota Motor Corporation, is located in Japan. The Central District of California, located in Los Angeles, makes a convenient location for the centralization of discovery efforts which may result in depositions and document discovery in Japan, or the need for Japanese employees of Toyota to travel the to the United States, with numerous direct flights to Tokyo and connecting flights to Nagoya, the closest airport to Toyota's headquarters in the city of Toyota, Japan.

For the reasons stated above, and in more detail in the accompanying Memorandum, the transfer and coordination or consolidation of the Actions to the Central District of California will promote the just and efficient administration of these Actions. Thus, Movants respectfully request that the Actions, and tag-along actions, be transferred to the Central District of California for consolidated or coordinated proceedings before the Honorable A. Howard Matz.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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Eric Kmetz, Joseph Morris,
Joseph Hauter, and Frank Palomares

TOY-RQ-05E-00007239

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	NO2:10-cv-00279-MVL-JCW
	*	
PLAINTIFF	*	SECTION: S
	*	
VERSUS	*	DIVISION: 2
	*	
TOYOTA MOTOR NORTH AMERICA, INC.;	*	
TOYOTA MOTOR ENGINEERING &	*	
MANUFACTURING NORTH AMERICA, INC.;	*	
and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	
DEFENDANTS	*	JURY DEMAND

* *

EX PARTE MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADINGS

NOW INTO COURT, through undersigned counsel, comes defendant Toyota Motor Sales, U.S.A., Inc., and pursuant to Local Rule 7.9E, moves for one extension for a period of 21 days, until March 18, 2010, to file responsive pleadings.

Undersigned counsel certifies that there has been no previous extension of time requested or obtained by Toyota Motor Sales, U.S.A., Inc., and that no opposing party has filed in the record an objection to an extension of time.

Respectfully Submitted,

/s/ Mark N. Bodin

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Henri Wolbrette III (No. 13631)
Mark N. Bodin (No. 18803)
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Counsel For Toyota Motor Sales, U.S.A., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel/parties by placing same in the United States mail, properly addressed and postage prepaid, and/or via the Court's electronic filing system.

Done this 22nd day of February, 2010.

/s/ Mark N. Bodin

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Toni S. Becnel (Bar 23645)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMANDA R. MAILLHO	*	NO. 2:10-cv-00279-MVL-JCW
	*	
PLAINTIFF	*	SECTION: S
	*	
VERSUS	*	DIVISION: 2
	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
	*	
DEFENDANTS	*	JURY DEMAND

* *

ORDER

CONSIDERING THE FOREGOING "Ex Parte Motion for Extension of Time to File Responsive Pleadings" filed on behalf of Toyota Motor Sales, U.S.A., Inc.:

IT IS ORDERED that, pursuant to Local Rule 7.9E, the motion be and is GRANTED, and that Toyota Motor Sales, U.S.A., Inc. shall have until March 18, 2010 to file responsive pleadings in this case.

New Orleans, Louisiana, this 22nd day of February, 2010.

Mary Ann Vial Lemmon

JUDGE

CLASS_REQUESTED

U. S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:10-cv-00279-MVL-JCW

Maillho v. Toyota Motor North America, Inc. et al
Assigned to: Judge Mary Ann Vial Lemmon
Referred to: Magistrate Judge Joseph C. Wilkinson, Jr
Cause: 28:1332 Diversity-Motor Vehicle Product Liability

Date Filed: 01/29/2010
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Diversity

Plaintiff

Amanda R. Maillho represented by **Hugh Palmer Lambert**
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LEAD ATTORNEY
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V.

Defendant

Toyota Motor North America, Inc.

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc.

Defendant

Toyota Motor Sales, U.S.A., Inc. represented by

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/29/2010	1	COMPLAINT with jury demand against all defendants (Filing fee $ 350 receipt number 053L0000000002288260) filed by Amanda R. Maillho. (Attachments: #1 Civil Cover Sheet, #2 Summons, #3 Summons, #4 Summons)(Moreland, Matthew) (Entered: 01/29/2010)
02/01/2010	2	Initial Case Assignment to Judge Mary Ann Vial Lemmon and Magistrate Judge Joseph C. Wilkinson, Jr. (cl,) (Entered: 02/01/2010)
02/02/2010	3	Summons Issued as to Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. (Attachments: #1 Summons, #2 Summons)(ecm,) (Entered: 02/02/2010)
02/02/2010	4	MOTION to MDL Panel for Transfer of Actions to the Eastern District of Louisiana pursuant to 28:1407 for coordinated or consolidated pretrial proceedings, by plaintiff. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit)(ecm,) (Entered: 02/04/2010)
02/08/2010	5	Motion before the MDL Panel for Transfer, Coordination and Consolidation to USDC Central District of California. (Attachments: #1 Memorandum in Support, #2 Exhibit)(ijg,) (Entered: 02/09/2010)
02/10/2010	6	Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of all Pretrial Proceedings. (Attachments: #1 Memorandum in Support, #2 Exhibit)(lag,) (Entered: 02/11/2010)
02/22/2010	7	EXPARTE/CONSENT MOTION for Extension of Time to Answer 1 *Complaint* by Toyota Motor Sales, U.S.A., Inc.. (Attachments: #1 Proposed Order)(Bodin, Mark) Modified on 2/23/2010 to create link to Rec. doc. 1 (ecm,). (Entered: 02/22/2010)
02/23/2010	8	ORDER granting 7 Motion for Extension of Time to Answer re 1 Complaint as to Toyota Motor Sales, U.S.A., Inc. answer due 3/18/2010. Signed by Judge Mary Ann Vial Lemmon on 2/22/2010. (ecm,) (Entered: 02/23/2010)

FILE START

CT Corporation

Service of Process Transmittal

02/08/2010
CT Log Number 516127138

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Texas**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Sylvia Pena and Albert A. Pena, III, as Individuals and On Behalf of Themselves and All Others Simliarly Situated, Pltfs. vs. Toyota Motor Corporation, et al. including Toyota Motor Sales, U.S.A., Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Return Form, Original Complaint
COURT/AGENCY:	United States District Court, Southern District, Corpus Christi Division, TX Case # 210CV00037
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Failure to correct and/or repair defects on a 2008 Toyota Avalon and defective Electronic Throttle Control System
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/08/2010 postmarked on 02/03/2010
APPEARANCE OR ANSWER DUE:	Within 20 days after service of this summons, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	Robert C. Hilliard Hilliard Munoz Guerra, L.L.P. 719 S. Shoreline Boulevard Suite 500 Corpus Christi, TX 78401 361-882-1612
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790695030408 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

UNITED STATES DISTRICT COURT

SOUTHERN District of TEXAS

Sylvia Pena and Albert A. Pena, III as Individuals and on behalf of themselves and all others similarly situated

V.

Toyota Motor Corporation,
Toyota Motor Sales, U.S.A., Inc.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 2:10-CV-00037

TO: (Name and address of Defendant)

TOYOTA MOTOR SALES, U.S.A., INC.., by and through its registered agent for service,
CT Corporation System
350 North St. Paul St.
Dallas, Texas 75201

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Robert C. Hilliard
HILLIARD MUÑOZ GUERRA, L.L.P.
719 S. Shoreline Boulevard, Suite 500
Corpus Christi, Texas 78401
Telephone: (361) 882-1612
Telecopier: (361) 882-3015

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

David J. Bradley
CLERK

2-1-10
DATE

Yolanda Dias
(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me[1]	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

_____ Date

_____ *Signature of Server*

_____ *Address of Server*

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
Plaintiffs,	§	
v.	§	**Civil Action No. _____**
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	
Defendants.	§	**DEMAND FOR JURY TRIAL**

CLASS ACTION ORIGINAL COMPLAINT

Plaintiffs, SYLVIA PENA and ALBERT A. PENA, III, as Individuals and on behalf of themselves and all others similarly situated (i.e., the members of the various Plaintiff Class described and defined, infra), herein alleges as follows:

I.
JURIDICTION AND VENUE

1. This Court has jurisdiction of this action under 28 US.C. § 1332(a) in that no plaintiff is a citizen of the same state as any defendant so that complete diversity exists. The citizenship of the putative class representative or representatives is different than that of Defendants so complete diversity exists. Further, the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

2. Additionally, this Court has jurisdiction under the Class Action Fairness Act of 2005. The amount in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs, and any member of the putative class of plaintiffs is a citizen of a state different from any defendant.

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3. Venue is proper in the Southern District of Texas, Corpus Christi Division in that a substantial part of the events or omissions giving rise to the claim occurred or took place in this District.

II.
PARTIES

4. Plaintiff, Sylvia Pena, is a resident of Corpus Christi, Nueces County, Texas.

5. Plaintiff, Albert A. Pena, III, is a resident of Corpus Christi, Nueces County, Texas.

6. Defendant, TOYOTA MOTOR CORPORATION ("TMC"), is, and at all relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan. Defendant TMC may be served with Citation in accordance with the Federal Rules of Civil Procedure and the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, TIAS # 10072 (U.S. Treaties & other International Acts) and 20 UST 361 (U.S. Treaties & other International Agreements), by servicing the Citation upon the Office of the Ministry of Foreign Affairs of Japan, which shall then served the agent or officers of Defendant with Citation at its offices at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan, Phone: (0565) 28-2121, or otherwise, pursuant to the laws of Japan.

7. Defendant, TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), is, and at all relevant times was, a California corporation with its principal place of business in Los Angeles County, California. Defendant TMS conducts business in the state of Texas, derives substantial profits from its business in the state of Texas, and may be served with process in this action by delivering summons and copy of this complaint to its

registered agent for service, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

8. The above-named Defendants are collectively referred to as the "Toyota Defendants."

9. The Toyota Defendants conduct substantial business in all Counties within the State of Texas as well as in all other States in the United States.

III.
FACTUAL ALLEGATIONS

10. This is a civil action against Defendants based upon information and belief that Defendants, and each of them, designed, manufactured, distributed, and sold certain automobiles equipped with the Electronic Throttle Control System with Intelligence ("ETCS-i") and/or Electronic Throttle Control System ("ETC") that is defective in that it will allow sudden unintended acceleration of the vehicle engine.

11. Defendant TOYOTA MOTOR CORPORATION is the world's largest manufacturer of automobiles sold throughout the United States and the world.

12. Defendant TOYOTA MOTOR SALES, U.S.A., ("TMS") is a wholly-owned subsidiary of TMC.

13. The Toyota Defendants conduct substantial business in all Counties within the State of Texas as well as in all other States in the United States.

14. Plaintiffs ALBERT A. PENA, III and SYLVIA PENA are the owners of a 2008 Toyota Avalon, purchased new from Champion Toyota located in Corpus Christi, Nueces County, Texas.

15. Plaintiffs' contend that the 2008 Toyota Avalon is designed, manufactured, and sold with Toyota's ETCS-i and/or ETC.

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16. On or about January 14, 2010, Plaintiff ALBERT A. PENA, III was driving the 2008 Toyota Avalon in question, when the vehicle unexpectedly accelerated at a stop sign, causing a collision. Recently, Plaintiff, SYLVIA PENA, was driving the vehicle in question when the vehicle suddenly and unexpectedly accelerated while attempting to slow down to make a turn.

The Toyota Defendants' Development of ETCS-i

17. On information and belief, beginning in 1998 and continuing to the present, Defendants designed, manufactured, distributed, and sold certain automobiles equipped with Electronic Throttle Control System with Intelligence ("ETCS-i").

18. ETCS-i is a system whereby the engine's throttle is controlled by electronic signals that are sent from a sensor that detects the position of the gas pedal to an electronic control module that determines how much throttle opening is being requested and in turn sends electronic signals to a throttle control motor that opens the throttle plate.

19. Initially, Defendants designed their vehicle with both an electronic throttle control and a redundant mechanical linkage between the gas pedal and the engine throttle control as a failsafe in the event of a sudden unintended acceleration. This failsafe system would disconnect the ETCS-i and automatically allow the throttle to be controlled by the mechanical linkage.

20. Beginning in or about 2001, however, Defendants designed, manufactured, distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any redundant mechanical linkage between the gas pedal and the engine throttle control.

The Danger of Sudden Unintended Acceleration

21. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are defective and unsafe in that such vehicles are susceptible to incidents of sudden unintended acceleration rendering such vehicles uncontrollable.

22. Plaintiffs further allege that Toyota and Lexus vehicles equipped with ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate important failsafe measures critical to assisting a driver in maintaining control of the vehicle during a sudden unintended acceleration event.

23. ON information and belief, one such failsafe measure is a computer algorithm that will direct the ETCS-i to automatically reduce the engine to idle when the brakes are being applied while the throttle is an open position. This failsafe measure has been incorporated by other automobile manufacturers in vehicles designed with electronic throttle control for years.

24. Plaintiffs allege on information and belief that the Toyota Defendants have been fully aware of the recurring problem of sudden acceleration in their Toyota and Lexus vehicles equipped with ETCS-I and/or ETC.

Defendants' Knowledge of the Sudden Unintended Acceleration Danger

25. Plaintiffs allege on information and belief that since the introduction of ETCS-i and/or ETC, more than 2,000 complaints of sudden unintended acceleration have been made by Toyota and Lexus owners to Toyota and government agencies.

26. Plaintiffs further allege on information and belief that sudden unintended accelerations in Toyota and Lexus vehicles equipped with ETCS-i and/or ETC have resulted in automobile accidents causing 16 deaths and 243 injuries.

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27. These complaints have resulted in numerous inquiries from the National Highway Traffic Safety Administration.

28. At all times relevant herein, the Toyota Defendants had full knowledge that Toyota and Lexus equipped with ETCS-i and/or ETC were susceptible to incidents of sudden unintended acceleration that posed a significant risk of injury and death to vehicle occupants and other motorists and pedestrians alike.

29. Despite this knowledge, the Toyota Defendants continue to design, manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i and/or ETC that are susceptible to incidents of sudden unintended acceleration and fail to incorporate critical failsafe measures to assist the driver in such an event.

IV.
CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and all other similarly situated in the State of Texas.

31. Plaintiffs initially define the "Texas Class" as follows:

a. **The Texas Class**: All persons who reside in Texas and presently own Toyota and Lexus vehicles equipped with ETCS-i and/or ETC.

Specifically excluded from this Class are all persons who have suffered, or possess a right of action for, any personal injury or wrongful death as a result of sudden unintended acceleration. Also excluded from this class is any entity in which Defendants have a controlling interest, and officers or directors of Defendants. Plaintiffs, and those persons similarly situated as described in the preceding paragraph, may be collectively referred to herein as the "Texas Class Plaintiffs".

32. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and

23(b). Plaintiffs reserve the right to modify the "Texas Class" definitions and the class period based on the results of discovery.

33. **Numerosity of the "Texas Class"** - The members of the "Texas Class" are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe that there are at least hundreds of thousands of members in the class. Because the class members may be identified through business records regularly maintained by the Toyota Defendants and its employees and agents, and through the records of public agencies, the number and identities of class members can be ascertained. Members of the Classes can be notified of the pending action by e-mail, mail and supplemented by published notice, if necessary.

34. **Existence and Predominance of Common Questions of Fact and Law**

There are questions of law and fact common to both Classes. These questions predominate over any questions affecting only individual class members. These common legal and factual issues include, but are not limited to:

a. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are dangerous when used as designed because the ETCS-i and/or ETC may cause sudden unintended acceleration;

b. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are dangerous when used as designed because the ETCS-i and/or ETC fails to incorporate critical failsafe measures designed to assist the driver in maintaining control of the vehicle in the event of a sudden unintended acceleration;

c. Whether the Toyota Defendants knew during the time that it sold Toyota and Lexus vehicles equipped with ETCS-i and/or ETC that such vehicles were susceptible to sudden unintended acceleration when used as designed;

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d. Whether the Toyota Defendants' conduct as described above constitutes violations of Texas Bus. & Comm. Code Sections 17.46(b)(5), 17.46(b)(7); 17.46(b)(24), 17.50 (a)(2), and 17.50(a)(3);

e. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are unreasonably dangerous, constituting a breach of implied warranty;

f. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are not fit for their intended use, constituting a breach of implied warranty.

35. **Typicality** - The claims of the representatives Plaintiffs are typical of the claims of the members of the "Texas Class". Plaintiffs, like other members of the Class, have sustained damages arising from Defendants' violations of the laws, as alleged herein. The representative Plaintiffs and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by Defendants.

36. **Adequacy** – The representative Plaintiff will fairly and adequately represent and protect the interests of the Class members and have retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflict between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

37. **Predominance and Superiority** – This suit may be maintained as a class action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the Classes predominate over the questions affecting only individual members of the Classes and a class action is superior to other available means for the

TOY-RQ-05E-00007258

fair and efficient adjudication of this dispute. The damages suffered by individual class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendants' conduct. Further, it would be virtually impossible for the members of the Classes to individually redress effectively the wrongs done to them. Even if Class members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from complex litigation and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictor judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

38. The Class Plaintiffs contemplate the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendants' own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, the Class Plaintiffs would contemplate the use of additional media and/or mailings.

39. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

separate actions by individual members of the Classes will create the risk of:

i. Inconsistent or varying adjudications with respect to individual members of the Classes which would establish incompatible standards of conduct for the parties opposing the Classes; or

ii. Adjudication with respect to individual members of the Classes which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

b. The parties opposing the Classes have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Classes as a whole; or

c. Common questions of law and fact exist as to the members of the Classes and predominate over any questions affecting only individual members, and a Class Action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the classes in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning controversy already commenced by or against members of the classes;

iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

iv. The difficulties likely to be encountered in the management of Class Action.

TOY-RQ-05E-00007260

FIRST CAUSE OF ACTION

(Breach of the Implied Warranty of Merchantability,

Tex. Bus. & Comm. Code § 2.313)

(Against all Defendants)

40. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

41. At all times herein mentioned, Defendants impliedly warranted that Toyota and Lexus vehicles equipped with ETCS-i and/or ETC were not unreasonably dangerous and were safe when used as designed by Defendants.

42. Defendants breached their implied warranty and the product was not safe for its expected use and was not merchantable.

43. As a legal result of said breach of the implied warranties, plaintiffs and the members of the Texas Class have been damaged in an amount to be proven at trial. However, Plaintiffs, individually and as representatives of the class have damages each in excess of $75,000.00, including damages for the value of vehicle, loss of use, mental anguish, attorneys' fees, and punitive damages.

SECOND CAUSE OF ACTION

(Breach of the Implied Warranty of Fitness for a Particular purpose by

Tex. Bus. & Comm. Code §2.315)

(Against all Defendants)

44. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

45. The Toyota Defendants are a leader in the business of designing and manufacturing motor vehicles for many decades and for more than l0 years have sold

vehicles equipped with ETCS-i and/or ETC while the Toyota Defendants designed, manufactured, distributed, and sold vehicles equipped with ETCS-I and/or ETC, the Toyota Defendants knew that such vehicles would be used by the buyer, such as Plaintiffs and the Class members, for transportation and that the buyers were relying on the Toyota Defendants' skill and judgment to select or furnish suitable goods.

46. Therefore, Defendants impliedly warranted their product to be fit for the particular purpose of being used as a motor vehicle.

47. Defendants impliedly warranted to purchasers of the product that the product was safe for their particular use and purpose.

48. Defendants breached their implied warranty and the product was not safe for its intended particular use and was not merchantable.

49. As a legal result of said breach of the implied warranties, Plaintiffs and the members of the Texas Class have been damaged in an amount to be proven at trial.

PROPOSED CAUSE OF ACTION

50. Plaintiffs, individually and as potential representative of the class, propose to add violations of the Texas Deceptive Trade Practices Act. The particular sections proposed to be added are violations of Texas Bus. & Comm. Code §17.46 (b)(5), 17.46(b)(6), 17.46 (b)(24) and statutory breaches of warranty under Tex. Bus. & Comm. Code §17.50(a)(2), and unconscionable cause of action under $17.50(a)(3). Commensurate with the filing of this Complaint, Plaintiffs will be sending Defendants a 60 day notice letter as required under the act and will request leave to add their cause of action for Plaintiffs, individually and as representatives of the Texas Class.

TOY-RQ-05E-00007262

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the "Texas class" pray for relief as follows:

A. For an order certifying the "Texas Class" and appointing Plaintiffs and their counsel to represent the "Texas Class";

B. An order requiring Defendants to recall all Toyota and Lexus vehicles equipped with ETCS-i and provide restitution of all funds improperly obtained by Defendants as a result of such acts and practices declared by this Court to be an unlawful fraudulent, or deceptive business act or practice, a violation of laws, statutes, or regulations, or constituting deceptive trade practices;

C. An order for disgorgement of all profits and compensation improperly obtained by Defendants as a result of such acts and practices declared by this Court to be an unlawful, fraudulent, or deceptive business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition;

D. For an order of restitution;

E. For compensatory damages according to proof and in an amount to exceed $75,000 for each class Plaintiff representative;

F. For punitive damages, as allowed under Texas law;

G. For reasonable attorney's fees and costs;

H. For prejudgment interest to the extent allowed by raw;

I. For costs of suit incurred herein;

J. For such other and further relief as the Court and law may allow.

DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

DATED: January 29, 2010.

Respectfully submitted,

HILLIARD MUNOZ GUERRA, LLP

/s/ Robert C. Hilliard
Robert C. Hilliard
State Bar No. 09677700
Federal ID #: 5912
Reynaldo A. Pena
State Bar No. 24042339
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TOY-RQ-05E-00007264

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
Plaintiffs,	§	
v.	§	**Civil Action No. _____**
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	
Defendants.	§	**DEMAND FOR JURY TRIAL**

CLASS ACTION ORIGINAL COMPLAINT

Plaintiffs, SYLVIA PENA and ALBERT A. PENA, III, as Individuals and on behalf of themselves and all others similarly situated (i.e., the members of the various Plaintiff Class described and defined, infra), herein alleges as follows:

I.
JURIDICTION AND VENUE

1. This Court has jurisdiction of this action under 28 US.C. § 1332(a) in that no plaintiff is a citizen of the same state as any defendant so that complete diversity exists. The citizenship of the putative class representative or representatives is different than that of Defendants so complete diversity exists. Further, the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

2. Additionally, this Court has jurisdiction under the Class Action Fairness Act of 2005. The amount in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs, and any member of the putative class of plaintiffs is a citizen of a state different from any defendant.

3. Venue is proper in the Southern District of Texas, Corpus Christi Division in that a substantial part of the events or omissions giving rise to the claim occurred or took place in this District.

II.
PARTIES

4. Plaintiff, Sylvia Pena, is a resident of Corpus Christi, Nueces County, Texas.

5. Plaintiff, Albert A. Pena, III, is a resident of Corpus Christi, Nueces County, Texas.

6. Defendant, TOYOTA MOTOR CORPORATION ("TMC"), is, and at all relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan. Defendant TMC may be served with Citation in accordance with the Federal Rules of Civil Procedure and the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, TIAS # 10072 (U.S. Treaties & other International Acts) and 20 UST 361 (U.S. Treaties & other International Agreements), by servicing the Citation upon the Office of the Ministry of Foreign Affairs of Japan, which shall then served the agent or officers of Defendant with Citation at its offices at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan, Phone: (0565) 28-2121, or otherwise, pursuant to the laws of Japan.

7. Defendant, TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), is, and at all relevant times was, a California corporation with its principal place of business in Los Angeles County, California. Defendant TMS conducts business in the state of Texas, derives substantial profits from its business in the state of Texas, and may be served with process in this action by delivering summons and copy of this complaint to its

registered agent for service, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

8. The above-named Defendants are collectively referred to as the "Toyota Defendants."

9. The Toyota Defendants conduct substantial business in all Counties within the State of Texas as well as in all other States in the United States.

III.
FACTUAL ALLEGATIONS

10. This is a civil action against Defendants based upon information and belief that Defendants, and each of them, designed, manufactured, distributed, and sold certain automobiles equipped with the Electronic Throttle Control System with Intelligence ("ETCS-i") and/or Electronic Throttle Control System ("ETC") that is defective in that it will allow sudden unintended acceleration of the vehicle engine.

11. Defendant TOYOTA MOTOR CORPORATION is the world's largest manufacturer of automobiles sold throughout the United States and the world.

12. Defendant TOYOTA MOTOR SALES, U.S.A., ("TMS") is a wholly-owned subsidiary of TMC.

13. The Toyota Defendants conduct substantial business in all Counties within the State of Texas as well as in all other States in the United States.

14. Plaintiffs ALBERT A. PENA, III and SYLVIA PENA are the owners of a 2008 Toyota Avalon, purchased new from Champion Toyota located in Corpus Christi, Nueces County, Texas.

15. Plaintiffs' contend that the 2008 Toyota Avalon is designed, manufactured, and sold with Toyota's ETCS-i and/or ETC.

16. On or about January 14, 2010, Plaintiff ALBERT A. PENA, III was driving the 2008 Toyota Avalon in question, when the vehicle unexpectedly accelerated at a stop sign, causing a collision. Recently, Plaintiff, SYLVIA PENA, was driving the vehicle in question when the vehicle suddenly and unexpectedly accelerated while attempting to slow down to make a turn.

The Toyota Defendants' Development of ETCS-i

17. On information and belief, beginning in 1998 and continuing to the present, Defendants designed, manufactured, distributed, and sold certain automobiles equipped with Electronic Throttle Control System with Intelligence ("ETCS-i").

18. ETCS-i is a system whereby the engine's throttle is controlled by electronic signals that are sent from a sensor that detects the position of the gas pedal to an electronic control module that determines how much throttle opening is being requested and in turn sends electronic signals to a throttle control motor that opens the throttle plate.

19. Initially, Defendants designed their vehicle with both an electronic throttle control and a redundant mechanical linkage between the gas pedal and the engine throttle control as a failsafe in the event of a sudden unintended acceleration. This failsafe system would disconnect the ETCS-i and automatically allow the throttle to be controlled by the mechanical linkage.

20. Beginning in or about 2001, however, Defendants designed, manufactured, distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any redundant mechanical linkage between the gas pedal and the engine throttle control.

The Danger of Sudden Unintended Acceleration

21. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are defective and unsafe in that such vehicles are susceptible to incidents of sudden unintended acceleration rendering such vehicles uncontrollable.

22. Plaintiffs further allege that Toyota and Lexus vehicles equipped with ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate important failsafe measures critical to assisting a driver in maintaining control of the vehicle during a sudden unintended acceleration event.

23. ON information and belief, one such failsafe measure is a computer algorithm that will direct the ETCS-i to automatically reduce the engine to idle when the brakes are being applied while the throttle is an open position. This failsafe measure has been incorporated by other automobile manufacturers in vehicles designed with electronic throttle control for years.

24. Plaintiffs allege on information and belief that the Toyota Defendants have been fully aware of the recurring problem of sudden acceleration in their Toyota and Lexus vehicles equipped with ETCS-I and/or ETC.

Defendants' Knowledge of the Sudden Unintended Acceleration Danger

25. Plaintiffs allege on information and belief that since the introduction of ETCS-i and/or ETC, more than 2,000 complaints of sudden unintended acceleration have been made by Toyota and Lexus owners to Toyota and government agencies.

26. Plaintiffs further allege on information and belief that sudden unintended accelerations in Toyota and Lexus vehicles equipped with ETCS-i and/or ETC have resulted in automobile accidents causing 16 deaths and 243 injuries.

27. These complaints have resulted in numerous inquiries from the National Highway Traffic Safety Administration.

28. At all times relevant herein, the Toyota Defendants had full knowledge that Toyota and Lexus equipped with ETCS-i and/or ETC were susceptible to incidents of sudden unintended acceleration that posed a significant risk of injury and death to vehicle occupants and other motorists and pedestrians alike.

29. Despite this knowledge, the Toyota Defendants continue to design, manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i and/or ETC that are susceptible to incidents of sudden unintended acceleration and fail to incorporate critical failsafe measures to assist the driver in such an event.

IV.
CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and all other similarly situated in the State of Texas.

31. Plaintiffs initially define the "Texas Class" as follows:

a. **The Texas Class**: All persons who reside in Texas and presently own Toyota and Lexus vehicles equipped with ETCS-i and/or ETC.

Specifically excluded from this Class are all persons who have suffered, or possess a right of action for, any personal injury or wrongful death as a result of sudden unintended acceleration. Also excluded from this class is any entity in which Defendants have a controlling interest, and officers or directors of Defendants. Plaintiffs, and those persons similarly situated as described in the preceding paragraph, may be collectively referred to herein as the "Texas Class Plaintiffs".

32. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and

23(b). Plaintiffs reserve the right to modify the "Texas Class" definitions and the class period based on the results of discovery.

33. **Numerosity of the "Texas Class"** - The members of the "Texas Class" are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe that there are at least hundreds of thousands of members in the class. Because the class members may be identified through business records regularly maintained by the Toyota Defendants and its employees and agents, and through the records of public agencies, the number and identities of class members can be ascertained. Members of the Classes can be notified of the pending action by e-mail, mail and supplemented by published notice, if necessary.

34. **Existence and Predominance of Common Questions of Fact and Law**

There are questions of law and fact common to both Classes. These questions predominate over any questions affecting only individual class members. These common legal and factual issues include, but are not limited to:

a. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are dangerous when used as designed because the ETCS-i and/or ETC may cause sudden unintended acceleration;

b. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are dangerous when used as designed because the ETCS-i and/or ETC fails to incorporate critical failsafe measures designed to assist the driver in maintaining control of the vehicle in the event of a sudden unintended acceleration;

c. Whether the Toyota Defendants knew during the time that it sold Toyota and Lexus vehicles equipped with ETCS-i and/or ETC that such vehicles were susceptible to sudden unintended acceleration when used as designed;

d. Whether the Toyota Defendants' conduct as described above constitutes violations of Texas Bus. & Comm. Code Sections 17.46(b)(5), 17.46(b)(7); 17.46(b)(24), 17.50 (a)(2), and 17.50(a)(3);

e. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are unreasonably dangerous, constituting a breach of implied warranty;

f. Whether Toyota and Lexus vehicles equipped with ETCS-i and/or ETC are not fit for their intended use, constituting a breach of implied warranty.

35. **Typicality** - The claims of the representatives Plaintiffs are typical of the claims of the members of the "Texas Class". Plaintiffs, like other members of the Class, have sustained damages arising from Defendants' violations of the laws, as alleged herein. The representative Plaintiffs and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by Defendants.

36. **Adequacy** – The representative Plaintiff will fairly and adequately represent and protect the interests of the Class members and have retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflict between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

37. **Predominance and Superiority** – This suit may be maintained as a class action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the Classes predominate over the questions affecting only individual members of the Classes and a class action is superior to other available means for the

fair and efficient adjudication of this dispute. The damages suffered by individual class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendants' conduct. Further, it would be virtually impossible for the members of the Classes to individually redress effectively the wrongs done to them. Even if Class members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from complex litigation and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictor judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

38. The Class Plaintiffs contemplate the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendants' own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, the Class Plaintiffs would contemplate the use of additional media and/or mailings.

39. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

separate actions by individual members of the Classes will create the risk of:

i. Inconsistent or varying adjudications with respect to individual members of the Classes which would establish incompatible standards of conduct for the parties opposing the Classes; or

ii. Adjudication with respect to individual members of the Classes which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

b. The parties opposing the Classes have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Classes as a whole; or

c. Common questions of law and fact exist as to the members of the Classes and predominate over any questions affecting only individual members, and a Class Action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the classes in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning controversy already commenced by or against members of the classes;

iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

iv. The difficulties likely to be encountered in the management of Class Action.

TOY-RQ-05E-00007274

FIRST CAUSE OF ACTION

(Breach of the Implied Warranty of Merchantability,

Tex. Bus. & Comm. Code § 2.313)

(Against all Defendants)

40. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

41. At all times herein mentioned, Defendants impliedly warranted that Toyota and Lexus vehicles equipped with ETCS-i and/or ETC were not unreasonably dangerous and were safe when used as designed by Defendants.

42. Defendants breached their implied warranty and the product was not safe for its expected use and was not merchantable.

43. As a legal result of said breach of the implied warranties, plaintiffs and the members of the Texas Class have been damaged in an amount to be proven at trial. However, Plaintiffs, individually and as representatives of the class have damages each in excess of $75,000.00, including damages for the value of vehicle, loss of use, mental anguish, attorneys' fees, and punitive damages.

SECOND CAUSE OF ACTION

(Breach of the Implied Warranty of Fitness for a Particular purpose by

Tex. Bus. & Comm. Code §2.315)

(Against all Defendants)

44. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

45. The Toyota Defendants are a leader in the business of designing and manufacturing motor vehicles for many decades and for more than l0 years have sold

vehicles equipped with ETCS-i and/or ETC while the Toyota Defendants designed, manufactured, distributed, and sold vehicles equipped with ETCS-I and/or ETC, the Toyota Defendants knew that such vehicles would be used by the buyer, such as Plaintiffs and the Class members, for transportation and that the buyers were relying on the Toyota Defendants' skill and judgment to select or furnish suitable goods.

46. Therefore, Defendants impliedly warranted their product to be fit for the particular purpose of being used as a motor vehicle.

47. Defendants impliedly warranted to purchasers of the product that the product was safe for their particular use and purpose.

48. Defendants breached their implied warranty and the product was not safe for its intended particular use and was not merchantable.

49. As a legal result of said breach of the implied warranties, Plaintiffs and the members of the Texas Class have been damaged in an amount to be proven at trial.

PROPOSED CAUSE OF ACTION

50. Plaintiffs, individually and as potential representative of the class, propose to add violations of the Texas Deceptive Trade Practices Act. The particular sections proposed to be added are violations of Texas Bus. & Comm. Code §17.46 (b)(5), 17.46(b)(6), 17.46 (b)(24) and statutory breaches of warranty under Tex. Bus. & Comm. Code §17.50(a)(2), and unconscionable cause of action under $17.50(a)(3). Commensurate with the filing of this Complaint, Plaintiffs will be sending Defendants a 60 day notice letter as required under the act and will request leave to add their cause of action for Plaintiffs, individually and as representatives of the Texas Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the "Texas class" pray for relief as follows:

A. For an order certifying the "Texas Class" and appointing Plaintiffs and their counsel to represent the "Texas Class";

B. An order requiring Defendants to recall all Toyota and Lexus vehicles equipped with ETCS-i and provide restitution of all funds improperly obtained by Defendants as a result of such acts and practices declared by this Court to be an unlawful fraudulent, or deceptive business act or practice, a violation of laws, statutes, or regulations, or constituting deceptive trade practices;

C. An order for disgorgement of all profits and compensation improperly obtained by Defendants as a result of such acts and practices declared by this Court to be an unlawful, fraudulent, or deceptive business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition;

D. For an order of restitution;

E. For compensatory damages according to proof and in an amount to exceed $75,000 for each class Plaintiff representative;

F. For punitive damages, as allowed under Texas law;

G. For reasonable attorney's fees and costs;

H. For prejudgment interest to the extent allowed by raw;

I. For costs of suit incurred herein;

J. For such other and further relief as the Court and law may allow.

DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

DATED: January 29, 2010.

Respectfully submitted,

HILLIARD MUNOZ GUERRA, LLP

/s/ Robert C. Hilliard
Robert C. Hilliard
State Bar No. 09677700
Federal ID #: 5912
Reynaldo A. Pena
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

Albert A. Pena, III, et al

VS. CIVIL ACTION NO. C- 10-37

Toyota Motor Corporation
Toyota Motor Sales, USA, Inc.

ORDER FOR CONFERENCE
AND
DISCLOSURE OF INTERESTED PARTIES

1. **Counsel or Pro Se Party shall appear for an initial pretrial and scheduling conference before:**

The Honorable Janis Graham Jack
on MARCH 9, 2010 at 1:15 p.m.
United States District Courthouse
1133 North Shoreline Boulevard
3rd Floor Courtroom, 319-A
Corpus Christi, Texas

2. **COUNSEL SHALL FILE WITH THE CLERK WITHIN 15 DAYS FROM RECEIPT OF THIS ORDER A CERTIFICATE LISTING ALL PERSONS, ASSOCIATIONS OF PERSONS, FIRMS, PARTNERSHIPS, CORPORATIONS, AFFILIATES, PARENT CORPORATIONS, OR OTHER ENTITIES THAT ARE FINANCIALLY INTERESTED IN THE OUTCOME OF THIS LITIGATION (EACH, AN "INTERESTED PARTY"). IT IS PRESUMED THAT ANY PERSON, ASSOCIATION OF PERSONS, FIRM, PARTNERSHIP, CORPORATION, AFFILIATE, PARENT CORPORATION, OR OTHER ENTITY THAT OWNS OR OTHERWISE EXERCISES CONTROL OVER AT LEAST 10% OF A FINANCIALLY INTERESTED ENTITY IS AN INTERESTED PARTY AND MUST BE LISTED. FOR PURPOSES OF THE COURT DETERMINING POSSIBLE CONFLICTS, UNDERLINE THE NAME OF EACH CORPORATION WHOSE SECURITIES ARE PUBLICLY TRADED AND INDICATE THE TRADING SYMBOL OF SUCH PUBLICLY TRADED CORPORATION. COUNSEL SHALL ALSO FILE WRITTEN NOTICE OF ANY NON-PUBLICLY-TRADED CORPORATION THAT BECOMES PUBLICLY TRADED ALONG WITH THAT CORPORATION'S TRADING SYMBOL WITHIN TEN DAYS OF ANY INITIAL PUBLIC OFFERING. IF YOUR INTERESTED PARTY IS NOT PUBLICLY TRADED BUT IS OWNED IN WHOLE OR IN PART (I.E., A 10% OR GREATER OWNERSHIP OR ANY OTHER CONTROLLING INTEREST) BY A PUBLICLY TRADED ENTITY, IDENTIFY THAT ENTITY BY NAME AND TRADING SYMBOL. THE COURT SHALL BE NOTIFIED BY NOTICE PLEADING WITHIN 15 DAYS OF ANY CHANGES OF OWNERSHIP DURING THIS LITIGATION. IF INTERESTED PARTIES ARE IDENTIFIED (OR A NON-INTERESTED PARTY BECOMES AN INTERESTED PARTY) AT ANY TIME DURING THE PENDENCY OF THIS LITIGATION, THEN EACH COUNSEL SHALL PROMPTLY FILE AN AMENDED CERTIFICATE WITH**

THE CLERK WITHIN 15 DAYS OF IDENTIFICATION. FOR THOSE FILING ELECTRONICALLY, ONE PAPER COPY OF ANY NOTICE FILED PURSUANT TO THIS PARAGRAPH SHALL BE FILED WITH THE COURT THROUGH THE CLERK'S OFFICE, CLEARLY MARKED, "COURTESY COPY FOR THE COURT."

3. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 120 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.

4. After the parties confer as required by Fed. R. Civ. P. Rule 26(f), counsel shall prepare and file not less than 10 days before the conference a joint report of meeting and joint discovery/case management plan containing the information required on the attached form.

5. The court will enter a scheduling order and may rule on any pending motions at the conference.

6. Counsel who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.

7. Attendance by an attorney who has authority to bind the party is required at the conference.

8. Counsel shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference shall advise the court of the results of their discussion.

9. A person litigating pro se is bound by the requirements imposed upon counsel in this Order.

10. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

By Order of the Court

Rev. 7/05

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

///	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. C-
	§	
///	§	
Defendant	§	

JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER RULE 26(f)
FEDERAL RULES OF CIVIL PROCEDURE

Please restate the instruction before furnishing the information

1. State when the conference of the parties required by Rule 26 was held, and identify the counsel who attended for each party.

2. List the cases related to this one that are pending in any state or federal court, with the case number and court.

3. Briefly describe what this case is about.

4. Specify the allegation of federal jurisdiction.

5. Name the parties who disagree and the reasons.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

7. List anticipated interventions.

8. Describe class-action issues.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

10. Describe the proposed agreed discovery plan, including:

    A. Responses to all the matters raised in Rule 26(f).
    B. When and to whom the plaintiff anticipates it may send interrogatories.
    C. When and to whom the defendant anticipates it may send interrogatories.

D. Of whom and by when the plaintiff anticipates taking oral depositions.
E. Of whom and by when the defendant anticipates taking oral depositions.
F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.
G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).
H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

13. State the date the planned discovery can reasonably be completed.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) conference.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

16. From the attorneys' discussions with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

17. Magistrate judges may hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

18. State whether a jury demand has been made and if it was made on time.

19. Specify the number of hours it will take to present the evidence in this case

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

21. List other pending motions.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the Court at the conference.

23. Certify that all parties have filed Disclosures of Interested Parties as directed in the Order of Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.

24. List the names, bar numbers, addresses, and telephone numbers of all counsel.

_____ _____

Counsel for Plaintiff(s) Date

_____ _____

Counsel for Defendant(s) Date

Rev. 12/09

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

Albert A. Pena, III, et al	§	
VS.	§	Civil Action No. 10-37
Toyota Motor Corporation Toyota Motor Sales, USA, Inc.	§	

SCHEDULING ORDER

1. **TRIAL IS SET FOR Wednesday, January 5, 2011 at 8:00 am**, before Judge Janis Graham Jack at the United States District Court, 1133 N. Shoreline Blvd., Corpus Christi, Texas. If the parties prepare this case for trial sooner than this date, a final pretrial order may be prepared and filed with a joint motion stating that the case is ready for trial and that an earlier trial date is requested.
2. **FINAL PRETRIAL CONFERENCE IS SET FOR Tuesday, January 4, 2011 at 8:30 a.m.**, before Judge Janis Graham Jack at the United States District Court, 1133 N. Shoreline Blvd., Corpus Christi, Texas. The attorney-in-charge for each party is required to be present.
3. **THE ORIGINAL AND ONE COPY OF YOUR JOINT PRETRIAL ORDER SHALL BE FILED NO LATER THAN Friday, December 17, 2010 BY 3:00 PM** This satisfies the requirement of FRCP 26 (a)(3). Plaintiff will be responsible for the filing of a joint pretrial order, executed by the attorney-in-charge for each party, and conforming fully with the form set out in Appendix B of the Local Rules of the Southern District of Texas (2009). Plaintiff shall allow all parties at least **fifteen (15) working days** for review and contribution. A motion for leave to file a joint pretrial order without the signature of all counsel must be made, showing good cause, to obtain authority to file a pretrial order without all required signatures. Differences of the parties with respect to any matter relevant to a pretrial order will be set forth in the joint pretrial order at the appropriate place. Willful or indifferent failure to submit a well-prepared joint pretrial order in a timely fashion or to respond to its completion is cause for dismissal in the case of Plaintiff, or in the case of Defendant, is cause for default.

4. **EXCEPT FOR GOOD CAUSE SHOWN, THE DEADLINE FOR FILING DISPOSITIVE MOTIONS IS** **October 15, 2010**. Failure to respond timely will be considered by the Court as if the motion is unopposed, and the motion may be granted. Legal memoranda greater in length than 25 pages will **NOT** be filed without leave of Court. No reply to the opposition to a motion will be filed by movant without leave of Court on good cause.

5. The provisions of the **JOINT DISCOVERY/CASE MANAGEMENT PLAN** are hereby adopted.

6. **THE DEADLINE FOR JOINDER OF PARTIES IS** **April 15, 2010**. **THE DEADLINE FOR AMENDMENT OF PLEADING IS** **July 15, 2010**. This provision does not relieve the parties from obtaining leave to file pleading or add parties whenever required by the Federal Rules of Civil Procedure.

7. Discovery shall end on **October 29, 2010**. **DESIGNATION OF EXPERTS**, by all parties, are due **40 DAYS** prior to the Discovery deadline. **RESPONSIVE EXPERTS** are due **20 DAYS** prior to the Discovery deadline. Responsive experts will not be limited to rebuttal testimony. **Written Reports** that fully comply with Federal Rules of Civil Procedure 26 (a)(2)(B) shall be due at the time of designation of each expert. Parties are ordered to file only proposed witnesses with Court, pursuant to Federal Rules of Civil Procedure 26, but **NOT** reports or other discovery materials. Hearings on expert testimony and/or qualifications (i.e. Daubert and Markman) shall be requested no later than the deadline for discovery.

8. All pleading, motions, briefs, memoranda, and requests for affirmative relief will be directed to the Court, **IN PLEADING FORM**, not correspondence form, through the United States District Clerk:

United States District Clerk
1133 North Shoreline Blvd.
Corpus Christi, TX 78401

You are requested **NOT** to use the informality of letter briefs, letters citing authorities, or letters requesting continuances or other affirmative relief. Additionally, do not copy the Court on letters between the parties.

ORDERED this _____ day of _____, 20___.

_____
JANIS GRAHAM JACK
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas
FILED
APR 29 2008
Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ORDER REGARDING CASES ASSIGNED TO JANIS GRAHAM JACK, U.S. DISTRICT JUDGE

This Order supersedes the Order Regarding civil and criminal Cases Assigned to Janis Graham Jack, U.S. District Judge, signed on April 7, 2005.

1. Motions to substitute counsel in cases assigned to this Court must include the signatures of the withdrawing counsel, the counsel substituting in and the client. The motion must also include a statement that said substitution will not result in any delays in the case and that the substituting counsel is familiar with the Court's Scheduling Order.
2. In civil cases, motions to withdraw without a substitution of counsel in cases assigned to this Court must include the client's signature, a complete recitation of the Scheduling Order and the client's address and phone number for service.
3. In criminal cases, motions to withdraw are required to contain the signature of the defendant in imaged format.
4. Signatures of attorneys in both civil and criminal cases may be indicated by the standard "s/" pursuant to the Administrative Procedures for Electronic Filing in Civil and Criminal Cases.
5. All exhibits to motions filed in cases assigned to this Court must be tabbed; in civil cases, if filed electronically, all references to exhibits in the body of the motion must be hyperlinked.

6. For those filing electronically, one paper copy of all dispositive motions, briefs, and responses shall be filed with the Court through the Clerk's Office, clearly marked, "Courtesy Copy for the Court." All exhibits shall be tabbed.

7. Rule 26 is to be complied with completely. Though no discovery is to be filed with the Court, list of persons with relevant knowledge must be filed by the Initial Pretrial Conference date.

8. Any document requesting that the Court take action of any kind (*i.e.*, any motion, monition, etc.) must be filed separately. For those filing electronically, this means that any such document must be filed as a separate docket entry. The Court will not consider requests filed in combination with other documents. For example, the Court will not consider a motion to limit discovery filed in combination with a defendant's answer to a plaintiff's complaint (this includes a motion to limit discovery included in the body of the answer, or filed as an attachment to the answer). In addition, the Court will not consider a motion brought pursuant to Federal Rule of Civil Procedure 12(b) filed in combination with a responsive pleading. A party may preserve a Rule 12(b)(2)-(5) defense by raising it in its responsive pleading, in accordance with Rule 12(h)(1); however, the Court will not act on such defense absent a separate motion.

SIGNED and ORDERED this 29th day of April, 2008.

Janis Graham Jack
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
Plaintiffs,	§	
v.	§	**Civil Action No. 2:10-cv-00037**
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	
Defendants.	§	**DEMAND FOR JURY TRIAL**

PLAINTIFFS' NOTICE OF APPEARANCE OF CO-COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs in the above-referenced and numbered cause, and file this Notice of Appearance of Co-Counsel as set forth below:

I.

Notice is hereby given to the Court and the parties, by and through their attorneys-of-record that the following counsel will be appearing as co-counsel for Plaintiffs:

The Snapka Law Firm
Kathryn Snapka
State Bar No. 18781200
Federal ID # 1617
606 N. Carancahua, Suite 1511 (78476)
P.O. Drawer 23017
Corpus Christi, Texas 78403
Phone: (361) 888-7676
Fax: (361) 884-8545

and

TOY-RQ-05E-00007288

Ellis, Carstarphen, Dougherty & Griggs P.C.
Edward M. Carstarphen
State Bar No. 03906700
Federal ID No. 3989
5847 San Felipe, Suite 1900
Houston, Texas 77057
Main: 713-647-6800
Fax: 713-647-6884

Respectfully submitted,

HILLIARD MUNOZ GUERRA, LLP

By: /s/ Robert C. Hilliard

Robert C. Hilliard
State Bar No. 09677700
Federal ID #: 5912
Jesse E. Guerra, Jr.
State Bar No. 24057877
Federal ID #: 770501
Reynaldo A. Pena
State Bar No. 24042339
Federal ID # 36918
Kevin W. Grillo
State Bar No. 08493500
Federal ID # 4647
719 S. Shoreline Boulevard, Suite 500
Corpus Christi, Texas 78401
Telephone: 361.882.1612
Facsimile: 361.882.3015
Email: bobh@hmglawfirm.com

And

ELLIS, CARSTARPHEN, DOUGHERTY & GRIGGS P.C.
Edward M. Carstarphen
State Bar No. 03906700
Federal ID # 3989
5847 San Felipe, Suite 1900
Houston, Texas 77057
Telephone: 713-647-6800
Facsimile: 713-647-6884

And

THE SNAPKA LAW FIRM
Kathryn Snapka
State Bar No. 18781200
Federal ID # 1617
606 N. Carancahua, Suite 1511 (78476)
P.O. Drawer 23017
Corpus Christi, Texas 78403
Telephone: (361) 888-7676
Facsimile: (361) 884-8545

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record, pursuant to the Texas Rules of Civil Procedure on this the 2nd day of February, 2010.

/s/ Robert C. Hilliard
Robert C. Hilliard

TOY-RQ-05E-00007290

IUNITED STATES DISTRICT COURT	SOUTHERN DISTRICT OF TEXAS

RECUSAL ORDER	Case Number:	C.A. No. C-10-037
Style	SYLVIA PENA and ALBERT A. PENA, III, as individuals and on behalf of themselves and all others similarly situated v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	
ORDER	I stand recused in this case. Deadlines in scheduling orders continue in effect. Court settings are vacated. Counsel must notify the new case manager of pending motions by letter within ten days of receipt of this order.	

Signed: Janis Graham Jack	
JANIS GRAHAM JACK United States District Judge	
Date:	February 4, 2010

REASSIGNMENT	This case is reassigned to:
JUDGE JOHN D. RAINEY	

DAVID J. BRADLEY United States District Clerk	
By:	
Deputy Clerk	
Date:	February 4, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

CIVIL ACTION NO.

2:10-cv-00037

ORDER FOR CONFERENCE AND DISCLOSURE OF INTERESTED PARTIES

1. Counsel shall appear for an initial pretrial and scheduling conference before:

   United States District Judge John D. Rainey

   on May 10, 2010 at 09:40 AM, at 312 S. Main, Room 406, Victoria, Texas 77901

2. Counsel may attend the conference by telephone. Arrangements should be made in advance with the Case Manager, Joyce Richards...361-788-5009.

3. Counsel shall file with the clerk within fifteen days from receipt of this order a certificate listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded . If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.

4. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 120 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.

5. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel shall prepare and file not less than 7 days before the conference a Joint Discovery/Case Management plan. A document that can be converted to PDF format is available for downloading at the Court's website ...www.txs.uscourts.gov.

6. The court will enter a scheduling order and may rule on any pending motions at the conference.

7. Counsel who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.

8. Counsel shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference shall advise the court of the results of their discussions.

9. A person litigating pro se is bound by the requirements imposed upon counsel in this Order.

10. Failure to comply with this Order may result in sanctions, including dismissal of the action and assessment of fees and costs.

11. Counsels' attention is directed to the Court's procedures which are available on the website.

12. See attached *Notice to Counsel*.

BY ORDER OF THE COURT

Form Revised: 09/11/06

NOTICE TO COUNSEL

A courtesy copy of all ***opposed motions and responses thereto*** shall be forwarded to chambers. If the document was filed electronically, attach a copy of the Notice of Electronic Filing indicating the document number and date of filing.

All courtesy copies are to be clearly marked "Courtesy Copy" and shall be delivered to:

Judge John D. Rainey
Martin Luther King Jr. Federal Bldg.
312 S. Main St.
Room 406
Victoria, Texas 77902

Emergency Matters: Contact the Court's Case Manager, Joyce Richards 361−788−5009 or 361−788−5000.

AFFIDAVIT OF SERVICE

State of Texas **County of U.S.Northern District** **.Corpus Christi Division Court**

Case Number: 2:10-CV-00037

Plaintiff:
SYLVIA PENA AND ALBERT A PENA III AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

vs.

Defendant:
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES U.S.A., INC

For:
Robert C. Hilliard
Hilliard Munoz Guerra L.L.P.
719 S. Shoreline Blvd. Suite 500
Corpus Christi, TX 78401

Received by Allen Civil Process on the 2nd day of February, 2010 at 10:29 am to be served on **Toyota Motor Sales U.S.A. Inc Registered Agent: CT Corporation System, 350 North St. Paul, Dallas, Dallas County, TX 75201.**

I, Elizabeth Bier TCPS, being duly sworn, depose and say that on the **3rd day of February, 2010** at **11:38 am, I:**

mailed from Corpus Christi, Texas 78401, via Certified Mail - Restricted Delivery for **Toyota Motor Sales U.S.A. Inc Registered Agent: CT Corporation System** to the address of **350 North St. Paul, Dallas, Dallas County, TX 75201.** That the Postal Service Receipt Form 3811 was accepted by, **Stamped Received, By Authorized Employee, on February 8, 2010 at 8:54 A.M.,** enclosed was a true copy of the Summons and Complaint . Attached to this affidavit is a copy of the Certified Mail Return Receipt Form 3811of the United States Postal Service showing the Delivery Date thereon.

I am over the age of eighteen, not a party to nor interested in the outcome of the above numbered suit and that I am an Authorized Process Server. I have personal knowledge of the facts set forth in the foregoing affidavit and declare that the statements therein contained are true and correct.

Elizabeth Bier TCPS
SCH-203

Allen Civil Process
400 Mann Street Suite 902
P.O. Box 181293 (78480)
Corpus Christi, TX 78401
(361) 884-1657
Our Job Serial Number: 2010000550

Subscribed and Sworn to before me on the 10th day of February, 2010 by the affiant who is personally known to me.

D. Casares
NOTARY PUBLIC

D. CASARES
Notary Public, State of Texas
My Commission Expires
May 16, 2012

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SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Toyota Motor Sales, U.S.A
c/o C.T Corporation System
350 N. St. Paul St.
Dallas, TX 75201

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X FEB 0 8 2010 ☐ Agent ☐ Addressee

B. Received by (Printed Name) RECEIVED BY CT CORPORATION C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Arti
(Tra 7008 1830 0004 6303 8191

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
Plaintiffs,	§	
v.	§	**Civil Action No. 2:10-cv-00037**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, U.S.A., INC.;	§	
Defendants.	§	**DEMAND FOR JURY TRIAL**

CERTIFICATE OF INTERESTED PARTIES

TO THE UNITED STATES DISTRICT COURT:

COMES NOW, SYLVIA PENA and ALBERT A. PENA, III, as Individuals and on behalf of themselves and all others similarly situated (i.e., the members of the various Plaintiff Class described and defined, infra), and files this their Certificate of Interested Parties, In compliance with the Court's order.

I.

Plaintiffs will show that the following are believed to be persons or entities financially interested in the outcome of the litigation:

(a) Plaintiffs, SYLVIA PENA and ALBERT A. PENA, III, as Individuals and on behalf of themselves and all others similarly situated (i.e., the members of the various Plaintiff Class described and defined, infra), in c/o Robert C. Hilliard, Hilliard Munoz Guerra, L.L.P., 719 S. Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 882-1612

(b) Robert C. Hilliard, Hilliard Munoz Guerra, L.L.P., 719 S. Shoreline

Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 882-1612; attorney for Plaintiffs;

(c) Jesse E. Guerra, Jr., Hilliard Munoz Guerra, L.L.P., 719 S. Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 882-1612; attorney for Plaintiff;

(d) Kevin W. Grillo, Hilliard Munoz Guerra, L.L.P., 719 S. Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 882-1612; attorney for Plaintiffs;

(e) Reynaldo A. Pena, Hilliard Munoz Guerra, L.L.P., 719 S. Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 882-1612; attorney for Plaintiffs;

(f) Edward M. Carstarphen, Ellis, Carstarphen, Dougherty & Griggs, P.C., 5847 San Felipe, Suite 1900, Houston, Texas 77057, (713) 647-6800; attorney for Plaintiffs;

(g) Kathryn Snapka, The Snapka Law Firm, 606 N. Carancahua, Suite 1151, Corpus Christi, Texas 78476, (361) 888-7676; attorney for Plaintiff;

(h) Toyota Motor Corporation, 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan, Phone: (0565) 28-2121;

(i) Toyota Motor Sales, U.S.A., Inc., 19001 South Western Ave., Torrence, California 90501, 1-800-331-4331.

Respectfully submitted,

HILLIARD MUNOZ GUERRA, LLP

By: /s/ Robert C. Hilliard
Robert C. Hilliard
State Bar No. 09677700
Federal ID #: 5912
Jesse E. Guerra, Jr.
State Bar No. 24057877
Federal ID #: 770501
Reynaldo A. Pena
State Bar No. 24042339
Federal ID # 36918
Kevin W. Grillo
State Bar No. 08493500
Federal ID # 4647
719 S. Shoreline Boulevard, Suite 500
Corpus Christi, Texas 78401
Telephone: 361.882.1612
Facsimile: 361.882.3015
Email: bobh@hmglawfirm.com

And

ELLIS, CARSTARPHEN, DOUGHERTY & GRIGGS P.C.
Edward M. Carstarphen
State Bar No. 03906700
Federal ID # 3989
5847 San Felipe, Suite 1900
Houston, Texas 77057
Telephone: 713-647-6800
Facsimile: 713-647-6884

And

THE SNAPKA LAW FIRM
Kathryn Snapka
State Bar No. 18781200
Federal ID # 1617
606 N. Carancahua, Suite 1511 (78476)
P.O. Drawer 23017
Corpus Christi, Texas 78403
Telephone: (361) 888-7676
Facsimile: (361) 884-8545
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record, pursuant to the Texas Rules of Civil Procedure on this the 23rd day of February, 2010.

/s/ Robert C. Hilliard
Robert C. Hilliard

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
VS.	§	CIVIL ACTION NO. 10-cv-00037
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	

DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION OR, ALTERNATIVELY, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Defendant Toyota Motor Sales, U.S.A., Inc.[1] ("Toyota") respectfully moves this Honorable Court to stay this matter in its entirety pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. This action is one of at least seventy (70) similar actions pending in various federal courts around the country, and at least two motions and numerous responses seeking centralization of these actions have been filed with the JPML. The JPML is scheduled to consider consolidation at the next Panel Hearing Session in March 2010. Because consolidation into a Multidistrict Litigation appears highly likely, Toyota moves to stay this action in its entirety pending the JPML's ruling. As discussed in the attached

[1] Plaintiffs in this case have not yet served Toyota Motor Corporation.

Brief in Support, a stay will promote the efficient resolution of this litigation, preserve judicial resources and limit the potential for inconsistent decisions.

In the alternative, Toyota respectfully moves this Court to extend its time to respond to Plaintiffs' Complaint. Plaintiffs expressly state in their Complaint that they intend to file an amended Complaint that will supersede their original Complaint. Yet, without any legitimate justification, Plaintiffs have refused to consent to any extension of time for Toyota to file its response to Plaintiffs' Complaint. If this case is still pending in this Court by the time Plaintiffs amend and Toyota's response to the amended complaint is due, Toyota will have to file a response to Plaintiffs' amended complaint, making its original response a nullity and entire waste of time and resources.[2] Given Plaintiffs' expressed intent to amend and inability to do so prior to March 31, 2010,[3] Toyota's requested extension of time will not delay this case one day. The refusal to grant the extension will force Toyota to file multiple responses to Plaintiffs' claims. The unreasonable nature of Plaintiffs' refusal is further compounded by the great likelihood that this case will soon become part of a consolidated MDL proceeding.

Pursuant to Local Rule 7.8, Toyota asks the Court for an expedited ruling on its Motion for extension of time. Defendant's answer is due on Monday March 1, 2010 and if the Court does not grant an extension before that date the opportunity for the Motion to be decided on its merits will be lost.

---

[2] And, as explained above, Toyota is currently defending more than seventy (70) such class actions in federal courts across the country based on the same allegations concerning the same subject matter. Refusal by counsel to consent to an imminently reasonable accommodation such as this extension of time, and instead, forcing Toyota to prepare a response that by Plaintiffs' own Complaint will be superseded and become a nullity is particularly impactful in light of the fact that Toyota is already having to address the same allegations in numerous overlapping and/or duplicative cases.

[3] *See* Pl. Compl., Doc. No. 1, ¶ 50 (providing a "Proposed Cause of Action" under the Texas Deceptive Trade Practices Act and explaining that "[c]ommensurate with the filing of this Complaint, Plaintiffs will be sending Defendants a 60 day notice letter as required under the act and will request leave to add their cause of action for Plaintiffs, individually and as representatives of the Texas Class.").

Pursuant to Local Rule 7.1(D), Toyota has conferred with Plaintiffs' counsel and Counsel cannot agree about the disposition of this motion.

Respectfully submitted,

/S/ Gene R. Ward with permission
of Cari K. Dawson as attorney-in-charge
Cari K. Dawson
(Pending Pro Hac Vice)
Georgia State Bar No. 213490
e-mail: cari.dawson@alston.com
Attorney-in-Charge for Defendant, Toyota Motor Sales U.S.A., Inc.
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Tel: (404) 881-7766 Fax: (404) 253-8567

OF COUNSEL:
Lisa Gilford
(Pending Pro Hac Vice)
California State Bar No. 171641
e-mail: lisa.gilford@alston.com
ALSTON & BIRD LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
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OF COUNSEL:
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Dallas, TX 75201
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OF COUNSEL:
Gene R. Ward
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State Bar No. 20841500
e-mail: grw@hmwpc.com

HORNBLOWER, MANNING, WARD,
HARRISON, VENECIA & RODRIGUEZ
Professional Corporation
P.O. Box 2728
Corpus Christi, Texas 78403-2728
Tel: (361) 888-8041 Fax: (361) 888-8222

CERTIFICATE OF CONSULTATION

Counsel for plaintiffs and counsel for defendant have consulted regarding the motion and do not agree.

/S/ Gene R. Ward with permission
of Cari K. Dawson as attorney-in-charge

CERTIFICATE OF SERVICE

This is to certify that I have this day, February 25, 2010, served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing **DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION OR, ALTERNATIVELY, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT (with brief in support and alternative proposed orders)** by electronically filing with the Clerk of Court using the CM/ECF system.

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Mr. Edward M. Carstarphen
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/S/ Gene R. Ward with permission
of Cari K. Dawson as attorney-in-charge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
VS.	§	CIVIL ACTION NO. 10-cv-00037
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	

PROPOSED ORDER (1)

Having considered Defendant Toyota Motor Sales, USA, Inc.'s ("Toyota") motion seeking to stay this action pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS Toyota's motion to stay these proceedings.

It is therefore ORDERED that this action, including without limitation (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the United States District Court for the Southern District of Texas and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint, is stayed pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. In the event that this Court at any time lifts the stay of this case, the Toyota shall have twenty-one (21) days from the Court's Order lifting the stay to answer, move, or otherwise plead in response to

Plaintiffs' Complaint.

SO ORDERED this _____ day of _____, 2010.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
VS.	§	CIVIL ACTION NO. 10-cv-00037
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	

[PROPOSED] ORDER [2]

Having considered Defendant Toyota Motor Sales, USA, Inc.'s ("Toyota") motion for extension of time to respond to Plaintiffs' Complaint, and Plaintiffs' expressed intent to amend its Complaint on or after March 31, 2010 to allege Texas statutory claims, for good cause shown, the Court hereby GRANTS Toyota's motion for extension.

It is therefore ORDERED that Toyota's deadline to respond to Plaintiffs' Complaint shall be extended, and Toyota shall have twenty-one (21) days following Plaintiffs' filing of an amended complaint to answer, move, or otherwise plead in response. In the event that Plaintiffs do not file an amended complaint before May 1, 2010, Toyota shall file its response by that date.

SO ORDERED this _____ day of _____, 2010.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, AS INDIVIDUALS AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	§	
VS.	§	CIVIL ACTION NO. 10-cv-00037
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC.	§	

BRIEF IN SUPPORT OF DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION OR, ALTERNATIVELY, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

INTRODUCTION

Defendant Toyota Motor Sales, USA, Inc. ("Toyota") moves to stay this case pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. The JPML's ruling will, in all likelihood, result in the transfer of this action to a consolidated Multidistrict Litigation ("MDL") proceeding. This case is one of at least seventy (70) similar actions, the vast majority of which are duplicative and/or overlapping putative class actions, pending in federal courts throughout the country.[1] The actions, including this case, are premised upon the same basic set of alleged facts and assert similar claims against the defendants.

[1] To date, actions have been filed in federal and state courts in at least the following states: California, Florida, Louisiana, Texas, South Carolina, Kentucky, Colorado, New Jersey, Puerto Rico, Indiana, Missouri, Ohio, Michigan, Kansas, Pennsylvania, New York, Oklahoma, Alabama, Mississippi, Illinois, West Virginia, Arkansas, Connecticut, Wyoming, Tennessee, Massachusetts, and Georgia.

Plaintiffs in all of the dozens of recently-filed actions claim to be owners or lessees of Toyota and Lexus automobiles subject to voluntary safety recalls related to the potential unintended acceleration of their vehicles.

To date, at least two motions and numerous responses seeking coordinated treatment of these cases have been filed with the JPML, and Toyota has been notified that the Panel will consider centralization of these cases at the next Panel Hearing Session on March 25, 2010. *See* Feb. 23, 2010 Notice to All Counsel Involved, attached hereto as Exhibit A. The need for coordination of these actions is compelling: the various proposed classes are overlapping and involve potentially millions of vehicle owners: the complaints contain similar allegations arising from the same recalls; similar pretrial matters will be presented in each case; and numerous groups of plaintiffs' counsel have requested consolidation. Plaintiffs' Complaint is virtually identical to at least five of the initial eleven cases that the JPML will consider in March, as well as to numerous other cases that have been filed around the country.[2]

Given the strong likelihood that these cases will be transferred into a MDL, the need for a stay of this action to promote the purposes of coordinated MDL treatment is equally compelling. Any action by this Court prior to such transfer would be wasteful of the Court's valuable judicial resources and would create the possibility of inconsistencies in the adjudication of dozens of overlapping class actions. Toyota, therefore, requests that this Court stay all proceedings in the present case until the JPML has ruled on consolidation. Indeed, other federal courts have already granted stays in two similar actions in which Toyota and counsel from six firms representing

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[2] Plaintiffs' action, just like five of the eleven actions currently pending before the JPML, seeks damages for breach of implied warranty based on an alleged defect in the Electronic Throttle Control System ("ETCS-i") of Plaintiffs' Toyota.

TOY-RQ-05E-00007308

plaintiffs stipulated to the stay pending a ruling by the JPML. *See Aviles v. Toyota Motor Corp., et al.,* No. 10-00706 (C.D. Cal. Feb. 22, 2010) (order granting stay pending ruling by JPML), attached hereto as Exhibit B; *Gazaryan, et al. v. Toyota Motor Sales U.S.A., Inc., et al.,* No. 10-00849 (W.D. Cal. Feb. 22, 2010) (same), attached hereto as Exhibit C.

If this Court determines that a stay is not appropriate, Toyota alternatively moves this Court to extend its time to respond to Plaintiffs' complaint. Toyota's response to Plaintiffs' Complaint is currently due on March 1, 2010. Plaintiffs, however, have indicated they intend to seek permission to file an amended complaint no sooner than March 31, 2010 to allege claims under the Texas Deceptive Trade Practices Act. Toyota contacted Plaintiffs' counsel prior to filing this Motion in an effort to seek Plaintiffs' consent to a stay pending a ruling by the JPML, or an extension of Toyota's time to respond to Plaintiffs' Complaint but Plaintiffs' counsel declined to agree to either request. Accordingly, if this Court does not grant Toyota's motion to stay, Toyota requests an order extending its time to answer or otherwise move in response to Plaintiffs' Complaint until twenty-one (21) days after Plaintiffs have amended their Complaint so that Toyota would not have to respond to multiple complaints. In the event that Plaintiff does not file an amended complaint before May 1, 2010, Toyota requests that it be permitted to file its response on or before that date.

ARGUMENT AND AUTHORITY

I. *This Court Should Stay Its Proceedings Pending a Determination by the JPML.*

The principle purposes of multidistrict coordination are to further judicial economy, minimize duplicative discovery activity, and eliminate the potential for conflicting pretrial rulings. *See, e.g., In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49, 51-52 (2d Cir. 1978). These

objectives obviously would not be served if, notwithstanding a motion for multidistrict coordination of these cases, courts allowed the matters to proceed, inviting precisely the sorts of waste and inconsistencies that the multidistrict litigation process is designed to prevent. Not surprisingly, "[a] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved."[3] *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Gordillo v. Bank of Am., N.A.*, No. 1:09-cv-01954, 2010 WL 148699, at *2 (E.D. Cal. Jan. 14, 2010) (staying litigation pending a JPML ruling); *Dittman v. DJO, LLC*, No. 08-cv-02791, 2010 WL 174555, at *1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No. 5:09-cv-130, 2009 WL 5217063, at *1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v. Merck & Co.*, No. 06-1004, 2006 WL 448695, at *1 (W.D. Tenn. Feb. 19, 2006) (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at *1 (E.D. Mo. Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427-29 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis. 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La. Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro. Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991) (granting

[3] A district court's authority to stay proceedings is well-established. It is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

stay because it fosters the purpose of the multidistrict litigation statute to coordinate related litigation).

Where a motion for transfer or notice of tag-along actions has been filed with the JPML, district courts have typically reviewed three factors to decide whether to stay pending proceedings until the JPML can rule. These factors are: (1) potential prejudice to the non-moving party if the stay is granted; (2) hardship to the moving party if the stay is not granted; and (3) the economical use of judicial resources. *See Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d. at 426, 428; *Nekritz v. Canary Capital Partners, LLC*, No. 2:03-cv-05081, 2004 WL 1462035, at *1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at *2; *Rivers*, 980 F. Supp. at 1360; *Boudreaux*, 1995 WL 83788, at *1. Even where a non-moving party claims that a stay will cause delay and prejudice, "there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay." *Arthur-Magna, Inc.*, 1991 WL 13725, at *1. *See also Krieger v. Merck & Co.*, 2005 WL 2921640, at *2 (W.D.N.Y. Nov. 4, 2005) (noting that "the risk of hardship to [the defendant] of engaging in duplicative motion practice and discovery proceedings outweighs any prejudice that could potentially inure to [the plaintiff]").

In the present case, all three considerations weigh heavily in favor of granting Toyota's motion for a stay. First, a finite, temporary stay of action in this case will not result in harm to Plaintiffs. This lawsuit is in its infancy, and any delay in the preliminary proceedings would be brief. For example, following its last hearing on January 27, 2010, the JPML decided all nine

requests for consolidation within sixteen days of the hearing (and decided seven of them within nine days). Accordingly, a finite stay of this action pending the JPML's decision will be brief and will not prejudice Plaintiffs in any respect. Indeed, when a stay is only in effect until the JPML issues a decision on transfer, courts have recognized that "there will be no extended delay in the commencement of discovery" and "[t]he plaintiffs will not be substantially prejudiced." *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-cv-01086 and 2:92-cv-01030, 1992 WL 102762, at *1 (E.D. Pa. May 7, 1992). *See also Bledsoe*, 2006 WL 335450, at *1 (commenting that "any delay [pending JPML action] is likely to be relatively short"); *Falgoust*, 2000 WL 462919, at *2 (noting that a plaintiff is not typically prejudiced by a "slight delay pending the JPML decision"). Any claim that a temporary stay will harm Plaintiffs is belied by the fact that Plaintiffs already have indicated their intent to amend the current complaint to add violations of the Texas Deceptive Trade Practice Act no sooner than March 31, 2010 – nearly a week after the JPML's Panel Hearing Session when it will consider the motions to centralize these cases.[4] *See* Compl. ¶ 50 (noting that "Plaintiffs … will request leave to add their [Texas Deceptive Trade Practices Act] cause of action" after the mandatory 60 day waiting period); Jan. 29, 2010 Letter from Hilliard Munoz Guerra LLP to Toyota Motor Sales, U.S.A., Inc. re: Sylvia Pena and Albert A. Pena, III, et al. v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc., attached hereto as Exhibit D. By Plaintiffs' own admission, therefore, this action will not begin in earnest until at least March 31, 2010.

With respect to the second factor, even if Plaintiffs could somehow demonstrate prejudice

[4] Plaintiffs have served Toyota with a purported notice letter that is dated January 29, 2010, the date this action was filed. *See* Jan. 29, 2010 Letter from Hilliard Munoz Guerra LLP to Toyota Motor Sales, U.S.A., Inc. re: Sylvia Pena and Albert A. Pena, III, et al. v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc., attached hereto as Exhibit D.

to their case due to the minimal delay, the very real hardship on Toyota in the absence of a stay substantially outweighs any alleged prejudice to Plaintiffs. If no stays issue, Toyota will be forced to continue litigating these suits in dozens of separate courts throughout the country, thereby imposing an enormous burden in terms of both time and resources on Toyota. Such effort would be particularly wasteful in a situation such as this one in which eventual consolidated treatment is almost certain. Additionally, because Plaintiffs intend to amend their complaint but, without any justification or explanation, refuse to agree to a simple extension of Toyota's time to respond, Toyota will be subjected to additional waste of time and resources absent a stay or, at a minimum, an extension of its time to respond to Plaintiffs' Complaint, because it will be forced to respond to multiple complaints in similar actions all relating to the very same issue. Even if waste of resources were no issue, by simultaneously litigating these cases, Toyota is subject to possibly conflicting substantive rulings on multiple aspects of these cases, including Toyota's motions to dismiss. In addition, any discovery in which Plaintiff s would engage pending transfer will be duplicative of the discovery engaged in by the plaintiffs in all other cases pending against Toyota. Accordingly, district courts have recognized that the risks and hardships now looming over Toyota are sufficient to warrant issuance of a stay. *See Jackson*, 2006 WL 448695, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Nekritz,* 2004 WL 1462035, at *4; *U.S. Bank*, 2002 WL 31114069, at *2; *Falgoust*, 2000 WL 462919, at *1. Third, this Court's interest in judicial economy, not to mention that of the transferee court, militates in favor of a stay. If no stay issues before the JPML rules on coordination of these cases, this Court risks burdening its docket with a case that will require time, energy, and attention, but which ultimately may not remain with this Court's caseload. *See U.S. Bank*, 2002

WL 31114069, at *2 ("If the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted."). With respect to the impact of this Court's actions on the transferee court, any efforts by this Court at case management will very likely have to be repeated by the judge to whom the multidistrict litigation is assigned. Not surprisingly, courts have often recognized that these concerns of judicial economy weigh in favor of a stay when a motion for transfer is pending before the JPML. *See Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725, at *1.

II. *Alternatively, the Court Should Grant Toyota An Extension of Time to Respond to Plaintiffs' Complaint, Particularly In Light of Plaintiffs' Expressed Intent to Amend.*

In their Complaint, Plaintiffs have a section entitled "Proposed Cause of Action" stating their intent to attempt to "add violations of the Texas Deceptive Trade Practices Act." Pl. Compl., ¶ 50. Plaintiffs allege "[c]ommensurate with the filing of this Complaint, Plaintiffs will be sending Defendants a 60 day notice letter as required under the act and will request leave to add their cause of action for Plaintiffs, individually and as representatives of the Texas Class." *Id.* Plaintiffs served a purported notice letter dated January 29, 2010. *See* Ex. D. While Plaintiffs expressly state that they intend to file an amended Complaint that will supersede their original Complaint, without any legitimate justification, Plaintiffs have refused to consent to any extension of time for Toyota to file its response to Plaintiffs' Complaint. If this case is still pending in this Court by the time Plaintiffs amend and Toyota's response to the amended complaint is due, Toyota will have to file a response to Plaintiffs' amended complaint, making its original response a nullity and entire waste of time and resources. Given Plaintiffs' expressed

intent to amend and inability to do so prior to March 31, 2010, Toyota's requested extension of time will not delay this case one day. The refusal to grant the extension will force Toyota to file multiple responses to Plaintiffs' claims.

CONCLUSION

The issuance of a stay of proceedings in this Court pending the JPML's ruling on the petitions for coordinated treatment will operate to the benefit of all – the plaintiffs, the defendants, and the respective courts in all of the related federal actions. Given the likelihood of the transfer of these cases for multidistrict coordination, the lack of prejudice to Plaintiffs, the great risk of harm to Toyota, and the demands of judicial economy, Toyota respectfully requests this Court to stay all proceedings in this matter until the JPML rules on whether to transfer this action into a coordinated MDL proceeding. If, however, this Court does not stay all proceedings in this matter, Toyota respectfully requests an extension of its time to respond to Plaintiffs' Complaint until twenty-one (21) days after Plaintiffs have filed their amended complaint.

Respectfully submitted,
/S/ Gene R. Ward with permission
of Cari K. Dawson as attorney-in-charge

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TOY-RQ-05E-00007316

CERTIFICATE OF SERVICE

This is to certify that I have this day, February 25, 2010, served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing **DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION OR, ALTERNATIVELY, MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT (with brief in support and alternative proposed orders)** by electronically filing with the Clerk of Court using the CM/ECF system.

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/S/ Gene R. Ward with permission
of Cari K. Dawson as attorney-in-charge

EXHIBIT A

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION MDL No. 2151

NOTICE TO ALL INVOLVED COUNSEL

(SEE ATTACHED SCHEDULE)

Presently pending in this litigation are two separate motions collectively seeking centralization, pursuant to 28 U.S.C. §1407, of the eleven actions listed on the attached Schedule A in a single federal district for coordinated or consolidated pretrial proceedings. The first motion was filed on February 2, 2010, by plaintiff Heather A. Lane. The second motion was filed on February 5, 2010, by plaintiffs Daniel Weimer, Jr., Colby Wenck and Ann Cavalier.

The two pending motions encompassing the actions listed on Schedule A will be set for the next Panel Hearing Session in late March 2010. **The deadline for filing motions pursuant to Rule 7.2(h) to add actions to this litigation for consideration at the Panel Hearing has now passed.** In the event that the Panel orders centralization of this docket, additional related actions not listed on Schedule A will be treated as potential tag-along actions in accordance with Panel Rules 7.4 and 7.5. Pursuant to Panel Rule 7.1(i), parties are reminded to notify the Panel promptly of any potential tag-along actions. Any party in a potential tag-along action may file an interested party response to the motions in this docket.

The due date for responsive pleadings to the two motions filed in MDL No. 2151 is now February 26, 2010. All previous response due dates with respect to this MDL are hereby extended to February 26, 2010. Any party wishing to file a response to these motions is strongly encouraged to do so in a single brief. If a party has already submitted a response to the earlier filed motion, it may either rest on that response or incorporate that response by reference in responding to the later filed motion.

FOR THE PANEL:

Jeffery N. Lüthi
Clerk of the Panel

EXHIBIT A

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION MDL No. 2151

SCHEDULE A

Central District of California

Seong Bae Choi, et al. v. Toyota Motor Corp., et al., C.A. No. 2:09-8143
Eric Kmetz, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-8478
Heather A. Lane v. Toyota Motor Sales U.S.A., Inc., C.A. No. 2:09-9158
Dale Baldiseeri v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-9386
Joseph Hauter, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 8:10-105

Middle District of Florida

Michelle Lynch v. Toyota Motor Corp., et al., C.A. No. 8:10-326

Southern District of Florida

Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc., C.A. No. 1:10-20006

Eastern District of Louisiana

Daniel Weimer, Jr., et al. v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-219
Amanda R. Maillho v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-279
Gary T. Brock v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-281

Southern District of West Virginia

Michael Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al., C.A. No. 2:09-1247

EXHIBIT B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ADILIA AVILES on behalf of herself and all others similarly situated, Plaintiff(s), v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc., Defendants.	Case No.: CV10-00706 AHM (FMOx) **CLASS ACTION** [Honorable A. Howard Matz] **ORDER GRANTING STAY** **[SUBMITTED CONCURRENTLY WITH STIPULATION TO STAY PROCEEDINGS]**

LEGAL02/31768871v2

EXHIBIT B

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

EXHIBIT C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ANI GAZARYAN, an individual; SVETLANA ABAJYAN, an individual; ELZA DZHIVALEGYAN, an individual; TAMARA HARUTYUNYAN, an individual; NERSES MAZMANYAN, an individual; KARINE MAZMANYAN, an individual; HRAYR OKKASIAN, an individual; CHRISTINE AZNAVOU, an individual; AKOP GALADZHYAN; an individual;

Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; TOYOTA MOTOR CORPORATION, a foreign corporation; and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

EXHIBIT C

LEGAL02/31768887v2

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

EXHIBIT D

CT Corporation

Service of Process Transmittal
02/02/2010
CT Log Number 516098708

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RECEIVED
FEB - 5 2010
LEGAL DEPT.

RE: **Process Served in Texas**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	RE: Sylvia Pena and Albert A. Pena, III, et al. V. Toyota Motor Corporation, etc. // To: Toyota Motor Sales, U.S.A., Inc
DOCUMENT(S) SERVED:	Letter
COURT/AGENCY:	None Specified Case # None Specified
NATURE OF ACTION:	Letter of Intent - Threatening Litigation - Electronic Trottle Control Systems
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/02/2010 postmarked on 01/29/2010
APPEARANCE OR ANSWER DUE:	60 days
ATTORNEY(S) / SENDER(S):	Robert C. Hillard Hillard Munoz Guerra LLP 719 S. Shoreline Boulevard Suite 500 Corpus Christi, TX 78401 361-882-1612
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791255399742 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

EXHIBIT D

* Robert C. Hilliard, L.L.P.
Jacobo G. Muñoz
Jesse E. Guerra Jr.

HMG
HILLIARD MUÑOZ GUERRA
TRIAL ATTORNEYS

Kevin W. Grillo, Of Counsel
** Reynaldo A. Peña

719 S. SHORELINE BLVD., SUITE 500
CORPUS CHRISTI, TEXAS 78401
BUS: (361) 882-1612 FAX: (361) 882-3015
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January 29, 2010

Toyota Motor Sales, U.S.A., Inc.
CT Corporation System
350 North St. Paul Street
Dallas, Texas 75201

CM/RRR #7007-0220-0001-1151-8504

RE: Sylvia Pena and Albert A. Pena, III, et al. v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.

Dear Sir and/or Madam:

The undersigned represents Sylvia and Albert Pena. Pursuant to the Texas Deceptive Trade Practices Act, this letter is sent as a demand on behalf of the Penas, individually, and all of those similarly situated in Texas or who acquired Toyota vehicles in Texas.

In particular, Toyota intentionally and/or knowingly sold Toyota and Lexus vehicles in Texas that had problems with sudden acceleration, including allegations of having ETCS-i control systems and/or Electronic Throttle Control Systems that did not function as intended and are unsafe. Your actions constitute violations of the Texas Deceptive Trade Practices Act, Tex. Bus. & Comm. Code sections 17.46(b)(5), 17.46(b)(7), 17.46(b)(24), violations of express and implied warranties under Tex. Bus. & Comm. Code § 17.50(a)(2); and unconscionable causes of action under Tex. Bus. & Comm. Code § 17.50(a)(3).

Plaintiff, individually, and others have suffered damages as a result of your violations. Plaintiffs have not determined all such damages but demand as a minimum the value of each vehicle, mental anguish, costs of court and attorneys' fees in an amount of at least 40% of all damages suffered by Plaintiffs.

Pursuant to Texas Deceptive Practices Code, you have 60 days to respond to this notice. After 60 days, suit will be filed for damages for violations of the Texas Deceptive Trade Practices Act as described herein.

Very truly yours,

HILLIARD MUÑOZ GUERRA LLP

Robert C. Hilliard

RCH/dee

* Mr. Hilliard is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization
** Mr. Peña is licensed to practice law in Texas and California

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

MOTION AND ORDER
FOR ADMISSION *PRO HAC VICE*

Division	Corpus Christi	Case Number	10-cv-00037
Sylvia Pena and Albert A. Pena, III, as individuals on behalf of themselves and all others similarly situated,			
versus			
Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.			

This lawyer, who is admitted to the State Bar of Georgia:

Name Firm Street City & Zip Code Telephone Licensed: State & Number Federal Bar & Number	Cari Katrice Dawson Alston & Bird LLP 1201 West Peachtree Street Atlanta, GA 30309 (404) 881-7766 GA - 213490

Seeks to appear as the attorney for this party:

Defendant, Toyota Motor Sales, U.S.A., Inc.

Dated: February 25, 2010	Signed: Cari K Dawson

COURT USE ONLY: The state bar reports that the applicant's status is: _____.

Dated: _____	Signed: _____ Deputy Clerk

Order

This lawyer is admitted *pro hac vice*.

Dated: _____ _____
United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

MOTION AND ORDER
FOR ADMISSION *PRO HAC VICE*

Division	Corpus Christi	Case Number	10-cv-00037
Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated			
versus			
Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.			

This lawyer, who is admitted to the State Bar of California:

Name Firm Street City & Zip Code Telephone Licensed: State & Number Federal Bar & Number	Lisa Gilford Alston & Bird LLP 333 South Hope Street, 16th Floor Los Angeles, CA 90071 (213) 576-1000 California - 171641

Seeks to appear as the attorney for this party:

Defendant, Toyota Motor Sales, U.S.A., Inc.

Dated: February 25, 2010 Signed: [signature]

COURT USE ONLY: The state bar reports that the applicant's status is: _____.

Dated: _____ Signed: _____
Deputy Clerk

Order

This lawyer is admitted *pro hac vice*.

Dated: _____ _____
United States District Judge

CONFERENCE MEMORANDUM

Case No. **2:10cv37**

Pena et al. v. **Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.**

Date / Time: **2/26/2010 @ 10:30am**

Appearance : Reporter : None

Counsel : Representing:

Robert Hilliard

Edward Carstarphen

Kathryn Snapka

Tom Harrison

Glenn Morris

ORDER FOLLOWING CONFERENCE

Counsel have reached an agreement concerning the pending motions and will submit an agreed order.

Time: 10

Date: **2/26/2010**

John D. Rainey

JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

MOTION AND ORDER
FOR ADMISSION *PRO HAC VICE*

Division	Corpus Christi	Case Number	10-cv-00037
Sylvia Pena and Albert A. Pena, III, as individuals on behalf of themselves and all others similarly situated,			
versus			
Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.			

This lawyer, who is admitted to the State Bar of Georgia:

Name Firm Street City & Zip Code Telephone Licensed: State & Number Federal Bar & Number	Cari Katrice Dawson Alston & Bird LLP 1201 West Peachtree Street Atlanta, GA 30309 (404) 881-7766 GA - 213490

Seeks to appear as the attorney for this party:

Defendant, Toyota Motor Sales, U.S.A., Inc.	
Dated: February 25, 2010	Signed: Cari K Dawson

COURT USE ONLY: The state bar reports that the applicant's status is: active member in good ~~standing~~.	
Dated: 2/26/10	Signed: Joyce Richards Deputy Clerk

Order

This lawyer is admitted *pro hac vice*.

Dated: 2/26/10

John D. Rainey
United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

MOTION AND ORDER
FOR ADMISSION *PRO HAC VICE*

Division	Corpus Christi	Case Number	10-cv-00037
Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated			
versus			
Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.			

This lawyer, who is admitted to the State Bar of California:

Name Firm Street City & Zip Code Telephone Licensed: State & Number Federal Bar & Number	Lisa Gilford Alston & Bird LLP 333 South Hope Street, 16th Floor Los Angeles, CA 90071 (213) 576-1000 California - 171641

Seeks to appear as the attorney for this party:

Defendant, Toyota Motor Sales, U.S.A., Inc.

Dated: February 25, 2010	Signed:

COURT USE ONLY: The state bar reports that the applicant's status is: active.

Dated: 2/26/10	Signed: Joyce Richards Deputy Clerk

Order

This lawyer is admitted *pro hac vice*.

Dated: 2/26/10

John D. Rainey
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOURTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

SYLVIA PENA AND ALBERT A. PENA, III, as individuals and on behalf of all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES U.S.A., INC., Defendants.	Case No. 2:10-cv-00037

AGREED ORDER

WHEREAS Defendant Toyota Motor Sales, USA, Inc. ("Toyota") has moved the Court for an order staying this action pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and Plaintiffs have indicated their intent to amend their Complaint and would thereafter consent and agree to a stay of this action pending a ruling by the JPML concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS leave for the Plaintiffs to file their amended Complaint and after such Complaint is filed, GRANTS Toyota's motion to stay these proceedings.

It is therefore ORDERED that Plaintiffs may forthwith file their Amended Complaint and that immediately after such filing, this action, including without limitation (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the United States

District Court for the Southern District of Texas and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint, including any amendments, is stayed pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. In the event that this Court at any time lifts the stay of this case, Toyota shall have twenty-one (21) days from the Court's Order lifting the stay to answer, move, or otherwise plead in response to Plaintiffs' Complaint, including any amendments.

SO ORDERED this _____ day of _____, 2010.

_____
UNITED STATES DISTRICT JUDGE

AGREED:

/s/ Gene R. Ward with permission of Cari K. Dawson as Attorney-in-Charge

Cari K. Dawson
Attorney-in-Charge for Defendant, Toyota Motor Sales U.S.A., Inc.
Georgia State Bar No. 213490
e-mail: cari.dawson@alston.com
ALSTON & BIRD, LLP
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Atlanta, GA 30309-3424
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OF COUNSEL:
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/s/ Robert C. Hilliard
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OF COUNSEL:
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U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Corpus Christi)
CIVIL DOCKET FOR CASE #: 2:10-cv-00037

Pena et al v. Toyota Motor Corporation et al
Assigned to: Judge John D. Rainey
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 01/29/2010
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Albert A. Pena, III
as Individuals and on Behalf of Themselves and All Others Similarly Situated

represented by **Robert C Hilliard**
Hilliard Munoz Guerra LLP
719 S Shoreline
Ste 500
Corpus Christi, TX 78401
361-882-1612
Email: bobh@hmglawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Ellis Carstarphen et al
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Fax: 713-647-6884
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Fax: 361-882-3015
Email: rpena@hmglawfirm.com
ATTORNEY TO BE NOTICED

Plaintiff

Sylvia Pena
as Individuals and on Behalf of Themselves and All Others Similarly Situated

represented by **Robert C Hilliard**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Edward Morgan Carstarphen , III
(See above for address)
ATTORNEY TO BE NOTICED

Kathryn Snapka
(See above for address)
ATTORNEY TO BE NOTICED

Kevin Walter Grillo
(See above for address)
ATTORNEY TO BE NOTICED

Reynaldo Alejandro Pena
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

Defendant

Toyota Motor Sales, U.S.A., Inc.

represented by **Gene R Ward**
Hornblower Manning et al
PO Box 2728
Corpus Christi, TX 78403-2728
361-888-8041
Fax: 361-888-8222
Email: grw@hmwpc.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/29/2010	1	COMPLAINT against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc. (Filing fee $ 350 receipt number 0541-5953241) filed by Albert A. Pena, III, Sylvia Pena.(Hilliard, Robert) (Entered: 01/29/2010)
02/01/2010		Summons Issued as to Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., filed.(vrios,) (Entered: 02/01/2010)
02/02/2010	2	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 3/9/2010 at 01:15 PM before Judge Janis Graham Jack. (Attachments: # 1 Standing Order) Parties notified. (dterrell,) (Entered: 02/02/2010)
02/03/2010	3	NOTICE *of Appearance of Co-Counsel* by Albert A. Pena, III, Sylvia Pena, filed. (Hilliard, Robert) (Entered: 02/03/2010)
02/04/2010	4	ORDER OF RECUSAL. Judge Janis Graham Jack recused. Case reassigned to Judge John D. Rainey for all further proceedings.(Signed by Judge Janis Graham Jack) Parties notified.(dperez,) (Entered: 02/04/2010)
02/09/2010	5	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 5/10/2010 at 09:40 AM in Room 406 before Judge John D. Rainey.(Signed by Judge John D. Rainey) Parties notified.(jrichards,) (Entered: 02/09/2010)
02/16/2010	6	RETURN of Service of SUMMONS Executed as to Toyota Motor Sales, U.S.A., Inc. served on 2/8/2010, filed. (Attachments: # 1 Green Card)(Hilliard, Robert) (Entered: 02/16/2010)
02/23/2010	7	CERTIFICATE OF INTERESTED PARTIES by Albert A. Pena, III, Sylvia Pena, filed.(Hilliard, Robert) (Entered: 02/23/2010)
02/25/2010	8	MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation or, alternatively, Motion for Extension of Time to Respond to Plaintiffs' Complaint* by Toyota Motor Sales, U.S.A., Inc., filed. Motion Docket Date 3/18/2010. (Attachments: # 1 Proposed Order on Motion to Stay, # 2 Proposed Order on Motion for Extension of Time)(Ward, Gene) (Entered: 02/25/2010)
02/25/2010	9	BRIEF in Support re: 8 MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation or, alternatively, Motion for Extension of Time to Respond to Plaintiffs' Complaint* by Toyota Motor Sales, U.S.A., Inc., filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Ward, Gene) (Entered: 02/25/2010)
02/25/2010	10	MOTION for Cari K. Dawson to Appear Pro Hac Vice by Toyota Motor Sales, U.S.A., Inc., filed. Motion Docket Date 3/18/2010. (Ward, Gene) (Entered: 02/25/2010)
02/25/2010	11	MOTION for Lisa Gilford to Appear Pro Hac Vice by Toyota Motor Sales, U.S.A., Inc., filed. Motion Docket Date 3/18/2010. (Ward, Gene) (Entered: 02/25/2010)

02/26/2010	12	CONFERENCE MEMORANDUM: Counsel have reached an agreement concerning the pending motions and will submit an agreed order. Appearances: Robert C Hilliard, Edward Morgan Carstarphen, Kathryn Snapka, Tom Harrison, Glenn Morris. (Signed by Judge John D. Rainey.) Parties notified. (yhausmann,) (Entered: 02/26/2010)
02/26/2010	13	ORDER granting 10 Motion to Appear Pro Hac Vice of Cari K Dawson for Defendant Toyota Motor Sales, U.S.A., Inc. (Signed by Judge John D. Rainey.) Parties notified. (yhausmann,) (Entered: 02/26/2010)
02/26/2010	14	ORDER granting 11 Motion to Appear Pro Hac Vice of Lisa Gilford for Defendant, Toyota Motor Sales, U.S.A., Inc. (Signed by Judge John D. Rainey.) Parties notified. (yhausmann,) (Entered: 02/26/2010)
03/05/2010	15	Agreed PROPOSED ORDER re: 8 MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation or, alternatively, Motion for Extension of Time to Respond to Plaintiffs' Complaint*, filed.(Snapka, Kathryn) (Entered: 03/05/2010)

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Toyota Motor Sales, U.S.A., Inc
C.T. Corporation System
350 N. St. Paul St.
Dallas, TX 75201

FILE START

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROY NELSON, **Plaintiff,** **v.** **TOYOTA MOTOR NORTH AMERICA, INC.;** **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and** **TOYOTA MOTOR SALES, U.S.A., INC.,** **Defendants.**	**Case No.: _____**

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff, Roy Nelson, individually and as the representative of all similarly situated individuals, brings this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submits and alleges the following:

INTRODUCTION

1. Plaintiff brings this class action on behalf of all persons in the state of New Mexico who own Toyota vehicles of model years 2004 through 2010, which were subject to various recalls starting in September of 2009 and continuing through at least January of 2010 due to a tendency to accelerate unexpectedly out of a driver's control.

2. Upon information and belief, some 9 million vehicles have been recalled worldwide by Toyota for defects that can send the vehicles into a rapid, unexpected, uncontrollable, and unsafe acceleration.

PARTIES

3. Plaintiff Roy Nelson is a citizen of the State of New Mexico and resides in Benalillo County, New Mexico.

4. In 2009, Mr. Nelson purchased a 2009 Toyota Tacoma, which vehicle was subject to a recall in October of 2009 for what Toyota claimed were defects in the vehicle's floor mats, which defect could lead to the floor mat holding down the accelerator pedal.

5. Plaintiff Roy Nelson brings this action on his own behalf and on behalf of all similarly situated persons (the "Class") who are defined to be the following:

> All residents of the state of New Mexico who own a Toyota vehicle of model year 2004, 2005, 2006, 2007, 2008, 2009, and/or 2010, which vehicle was subject to recall by Toyota due to a heightened risk of sudden unintended acceleration (the "Subject Vehicles").

6. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota, any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota, any federal, state or local government entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Also excluded from the Class is any individual who has asserted or who plans to assert a personal injury claim against any Defendant arising out of their ownership of one of the Subject Vehicles. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

TOY-RQ-05E-00007346

7. Defendant Toyota Motor North America, Inc. is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

8. Defendant Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

9. Defendant Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

10. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff is a resident of New Mexico. None of the Defendants are residents of New Mexico.

12. Venue is proper in the District of New Mexico pursuant to 28 U.S.C. §§ 1391(a). Defendant Toyota Motor Sales, USA, Inc., is a subject to personal jurisdiction in New Mexico, the same state, and the events and omissions giving rise to Plaintiff's claims took place in numerous states, including New Mexico

BACKGROUND

13. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

TOY-RQ-05E-00007347

14. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, Solara, 4Runner, and Tundra.

15. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

16. On September 29, 2009, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 3.8 million vehicles equipped with floor mats that allegedly could cause the accelerator pedals in those vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle. Toyota implemented that recall on October 5, 2009.

17. On November 25, 2009, Toyota announced a plan to fix the problem related to the floor mats by shortening the accelerator pedal in the affected cars. It also expanded the number of vehicles involved in that recall to a total of 4.2 million.

18. On January 21, 2010, Toyota announced that it would recall 2.3 million vehicles produced in the years 2005 through 2010 that have shown a heightened propensity to unexpectedly accelerate, allegedly due to problems with the gas pedals on those vehicles becoming stuck in a depressed position. Owners of the vehicles subject to this recall have not yet received notice of it, other than what they may have observed through media outlets.

19. On January 27, 2010, Toyota announced that it was expanding its earlier recall of cars with defective floor mats. The new recall added 1.09 million vehicles to the recall that Toyota had announced on October 5, 2009 and had previously expanded on November 25, 2009.

20. To date, Toyota has recalled approximately 9 million vehicles worldwide (nearly 6 million of those in the United States) due to an apparent propensity to unexpectedly and suddenly accelerate out of the driver's control.

21. Automotive experts outside of Toyota have expressed doubts about whether the alleged floor mat defects or sticking gas pedals could completely explain the number of unexpected acceleration problem seen in numerous Toyota models. It remains unclear whether Toyota has identified all of the causes of the unexpected acceleration problem.

22. The affected models are the 2007-2010 Camry, 2005-2010 Avalon, 2004-2009 Prius, 2005-2010 Tacoma, 2007-2010 Tundra, 2007-2010 Lexus ES350 and 2006-2010 IS250/IS350 2009, 2008-2010 Highlander, 2009-2010 Corolla, 2009-2010 Venza, 2009-2010 Matrix, 2009-2010 Pontiac Vibe, 2009-2010 Toyota RAV4, and the 2008-2010 Toyota Sequoia.

Toyota's long history of "inaccurate and misleading" descriptions of and explanations for the sudden acceleration problem

23. Since Toyota announced the recalls, investigations by government agencies and automotive experts have revealed that Toyota's problems with sudden, unexpected acceleration are long-running and that Toyota has known for years that many of its cars had an unacceptably high risk of inexplicably accelerating out of their drivers' control.

24. Since 1999, at least 2,262 Toyota and Lexus owners have reported to the NHTSA, the media, the courts and to independent investigators that their vehicles have accelerated suddenly and unexpectedly in a variety of scenarios. These incidents have resulted in 815 crashes, 341 injuries and, 19 deaths potentially related to sudden unintended acceleration.

25. Toyota initially blamed customers for improperly installing accessory floor mats and resisted taking widespread action. In 2005 and 2007, the automaker launched two small

TOY-RQ-05E-00007349

recall campaigns. The first corrected an accelerator that could stick in Lexus IS250 vehicles; the second replaced all-weather floor mats in a limited group of 2007 and 2008 Lexus and Camry vehicles.

26. Several weeks ago, State Farm, the nation's largest auto insurer, said that it warned the NHTSA in late 2007 that it was seeing an uptick in reports of unwanted acceleration in Toyotas. More recently, it has said that it has discovered that it warned regulators as early as 2004 about an unusual trend of Toyota accidents.

27. The severity and extent of Toyota's sudden acceleration problem fully entered the public's consciousness for the first time in August 2009 after a California highway patrolman and his family were killed when a Lexus that they were riding in accelerated out of the driver's control and crashed.

28. After that accident had occurred and Toyota had announced its September 2009 recall, it continued to claim that the problem with sudden acceleration in its cars was due entirely to the floor mats, and that the NHTSA had determined that no other defect existed in the vehicles.

29. On November 4, 2009, the NHTSA put out its own press release, "correcting inaccurate and misleading information put out by Toyota concerning" its recall.

30. In its press release, the NHTSA stated: "NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design."

TOY-RQ-05E-00007350

31. In December 2009, Consumer Reports reported the results of a review that it had conducted of all complaints about sudden acceleration that had been submitted to the NHTSA for sudden acceleration occurring in 2008 car models. Consumer Reports found that 41% of those complaints were about Toyotas even though Toyota only had a 16% market share in 2007 and 2008.

32. In January 2010, Toyota admitted for the first time that in addition to the floor mat problem, some of its cars were equipped with accelerator pedals that could become stuck due to corrosion. Toyota's own recall announcement indicated that the accelerator problem dates back all the way to 2005 in some of its models.

33. Since the January 2010 recall, several automotive experts have expressed their opinion in the media that Toyota has still not acknowledged the full extent of the problem, and that the explanations that it has offered so far could not account for all of the sudden acceleration events that have occurred over the years. Those experts have hypothesized that the electronic system that controls acceleration in many of Toyota's cars is defective.

34. The extent of the sudden acceleration problem in the Subject Vehicles is material information that would have impacted people's decisions to purchase those vehicles and how much to pay for them. Toyota failed to disclose the existence and extent of the sudden acceleration problem to the public when it became aware of that problem. Even after acknowledging the problem, Toyota continued to make affirmative misrepresentations about the extent and cause of the problem.

35. Prior to the recalls, Kelley Blue Book named Toyota as the best brand in terms of vehicle resale value. Since Toyota announced the September 2009 recall, however, the resale

value of its cars has dropped precipitously. This drop in resale value demonstrates that for years, Toyota purchasers have been paying more for the cars than they would have had they known about the heightened risk of sudden acceleration in the vehicles.

36. Had Toyota timely and adequately disclosed to consumers their vehicles' propensity to unexpectedly and uncontrollably accelerate, neither Plaintiff nor members of the Class would have purchased these vehicles and taken that heightened risk each time they drove. Now that they own the cars, the value of their vehicles is diminished as a result of the true dangers and defects being disclosed.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Fed. R. Civ. P. 23(b)(3).

38. **Numerosity**: Members of the Class are so numerous and geographically disbursed that their joinder would be impracticable. The Class includes tens of thousands of owners of Toyota vehicles. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

39. **Commonality**: Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated New Mexico's product liability law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

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c. Whether Toyota breached its implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota has violated New Mexico's Consumer Protection Act;

e. Whether Toyota's actions have caused damages to Plaintiff and members of the Class; and

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein.

40. **Typicality**: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defect, that defect being that Plaintiff's and Class Members' vehicles have a heightened risk of suddenly and unexpectedly accelerating, rendering the vehicles too dangerous to drive. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

41. **Adequacy**: Plaintiff will fully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor his counsel have interests contrary to or conflicting with the interests of the Class.

42. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by

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the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota are, in many cases, too small to warrant the expense of the individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

43. Plaintiff does not anticipate any difficulties in the management of this litigation.

FIRST CAUSE OF ACTION
Breach of Implied Warranty

44. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

45. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised and promoted, and sold the Subject Vehicles.

46. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and the Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

47. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the Subject Vehicles would accelerate and decelerate as expected.

48. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and the Class Members would not have purchased the Subject Vehicles or would have paid substantially less for them had they known of the vice or defect.

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49. The Subject Vehicles cannot be resold for anywhere near the amount of money for which they could have been resold had they not contained the vice or defect. In fact, resale of the cars may prove to be impossible.

50. The damages in question arose from the reasonably anticipated use of the product in question.

51. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and the Class Members, in that the Subject Vehicles have a heightened tendency to suddenly and unexpectedly accelerate out of the driver's control.

52. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles and economic losses, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

WHEREFORE, Plaintiff demands judgment against Toyota for breach of implied warranty as prayed for below.

SECOND CAUSE OF ACTION
Breach of Express Warranty

53. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

54. Toyota expressly warranted that the Subject Vehicles were safe and would accelerate as expected.

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55. The Subject Vehicles manufactured and sold by Toyota did not conform to these express representations because they caused serious injury to consumers and put consumers at heightened risk of injury when used as expected.

56. As a direct and proximate result of Toyota's breach of warranty, Plaintiff and the Class Members suffered economic damages, and will continue to suffer such damages and economic loss.

WHEREFORE, Plaintiff demands judgment against Toyota for breach of express warranty as prayed for below.

THIRD CAUSE OF ACTION
Negligence

57. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

58. Toyota had a duty to Plaintiff and the Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the heightened propensity of the Subject Vehicles to unexpectedly accelerate out of the driver's control.

59. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by designing the designing the Subject Vehicles in such a manner that they have a heightened propensity to suddenly and unexpectedly accelerate out of their driver's control.

60. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by manufacturing and/or assembling the Subject Vehicles in such a manner that they were prone to suddenly and unexpectedly accelerating out of their driver's control.

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61. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by failing to recall the Subject Vehicles at the earliest possible date when they knew that sudden, unexpected acceleration was a problem.

62. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by failing to exercise due care under the circumstances.

63. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles, economic losses, and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

WHEREFORE, Plaintiff demands judgment against Toyota for negligence as prayed for below.

FOURTH CAUSE OF ACTION
Strict Products Liability
Design Defect

64. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

65. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota vehicles in the United States, including, but not limited to, the Subject Vehicles.

66. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Subject Vehicles, including Plaintiff and the Class Members. Consequently, Plaintiff and the Class Members were expected users of the product that Toyota manufactured.

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67. The Subject Vehicles reached Plaintiff and the Class Members without substantial change in their condition from time of completion of manufacture by Toyota.

68. The propensity of the Subject Vehicles to suddenly and unexpectedly accelerate out of their driver's control could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

69. Toyota should have reasonably foreseen that the dangerous conditions of the Subject Vehicles suddenly and unexpectedly accelerating would subject Plaintiff and the Class Members to harm.

70. Because of this defective design, the Subject Vehicles are unreasonably dangerous.

71. Plaintiff and the Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

72. A safer alternative design existed for the Subject Vehicles.

73. As a direct and proximate result of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles and economic losses, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff and the Class Members for breach of its duty to design, manufacture,

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assemble market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Class Members are therefore entitled to equitable relief as described below.

WHEREFORE, Plaintiff demands judgment against Toyota for design defects as prayed for below.

FIFTH CAUSE OF ACTION
Strict Products Liability
Defective Manufacturing

74. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

75. Toyota is the manufacturer, designer, distributor, seller, or supplier of the Subject Vehicles.

76. The Subject Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Toyota were defective in their manufacture and construction such that they were unreasonably dangerous, was not fit for the ordinary purpose for which they were intended, and/or did not meet the reasonable expectations of an ordinary consumer.

77. The Subject Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Toyota, were defective in their manufacture and construction as described at the time they left the Toyota's control.

78. The Subject Vehicles are unreasonably dangerous due to their defective manufacture.

79. As a direct and proximate result of Plaintiff's purchase and use of the Subject Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce

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by Toyota, Plaintiff and the Class Members suffered economic damages, and will continue to suffer such harm, damages, and economic loss.

WHEREFORE, Plaintiff demands judgment against Toyota for manufacturing defects as prayed for below.

SIXTH CAUSE OF ACTION
New Mexico Unfair Practices Act
N.M. Stat. Ann. § 57-12-1, *et. seq.*

80. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

81. The heightened propensity of the Subject Vehicles to suddenly and unexpectedly accelerate was material information that people considering a purchase of one of those vehicles would have considered important and which information would have affected their decisions to purchase the Subject Vehicles and how much to pay for them.

82. Toyota purposely and knowingly failed to disclose this material information to Plaintiff and the Class members at the time that they purchased the Subject Vehicles with the intent to induce Plaintiff and the Class members to purchase the Subject Vehicles and pay more for them than they otherwise would have. These material omissions are "unfair or deceptive trade practices" within the meaning of the Act.

83. Toyota has also made affirmative misrepresentations to the public through statements to NHTSA and recall notices about the nature, extent, and cause of the sudden acceleration problem in the Subject Vehicles. Toyota's false, deceptive, and misleading statements and representations, which statements and representations it made knowingly, are "unfair or deceptive trade practices" within the meaning of the Act.

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84. Toyota engaged in the "unfair or deceptive trade practices" alleged above, and those "unfair or deceptive trade practices" occurred or were committed in the course, vocation or occupation of Defendants' vehicle sales business.

85. Toyota's misrepresentations about the quality and safety of the Subject Vehicles deceived the Class members into purchasing vehicles that they would not have otherwise purchased or paid more for those vehicles than they otherwise would have.

86. Toyota engaged in the "unfair or deceptive trade practices" alleged above willfully.

87. As a direct and proximate result of the Unfair Trade Practices committed by Defendants as alleged above, Plaintiff Roy Nelson and the Class members suffered monetary losses as alleged herein.

88. Plaintiff is entitled to all damages permitted by N.M. Stat. Ann. § 57-12-10 of the Act, including actual damages sustained or statutory damages, whichever is greater, attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff demands judgment for all relief that he and the State of New Mexico are entitled to under the Act as prayed for below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demand judgment in their favor and against Toyota, and pray for relief as follows:

1. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representative of the Class, and appointing counsel for Plaintiff counsel for the Class;

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2. For an award of compensatory damages according to proof;

3. For restitution and disgorgement of profits;

4. For an award of all costs incurred by Plaintiff in pursuing this action;

5. For an award of reasonable attorneys' fees.

6. For an award of any and all other damages suffered by Plaintiff and members of the class;

7. For any other relief the Court deems reasonable.

8. Plaintiff further reserve the right to amend this Complaint and add a request for punitive damages as allowed for under New Mexico law.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 23, 2010

Respectfully submitted,

s/ Brian K. Matise

Brian K. Matise
BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.
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Attorney for Plaintiff

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROY NELSON, **Plaintiff,** **v.** **TOYOTA MOTOR NORTH AMERICA, INC.;** **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and** **TOYOTA MOTOR SALES, U.S.A., INC.,** **Defendants.**	**Case No.: _____**

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff, Roy Nelson, individually and as the representative of all similarly situated individuals, brings this Class Action Complaint against Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (herein after collectively referred to as "Toyota"), and submits and alleges the following:

INTRODUCTION

1. Plaintiff brings this class action on behalf of all persons in the state of New Mexico who own Toyota vehicles of model years 2004 through 2010, which were subject to various recalls starting in September of 2009 and continuing through at least January of 2010 due to a tendency to accelerate unexpectedly out of a driver's control.

2. Upon information and belief, some 9 million vehicles have been recalled worldwide by Toyota for defects that can send the vehicles into a rapid, unexpected, uncontrollable, and unsafe acceleration.

PARTIES

3. Plaintiff Roy Nelson is a citizen of the State of New Mexico and resides in Benalillo County, New Mexico.

4. In 2009, Mr. Nelson purchased a 2009 Toyota Tacoma, which vehicle was subject to a recall in October of 2009 for what Toyota claimed were defects in the vehicle's floor mats, which defect could lead to the floor mat holding down the accelerator pedal.

5. Plaintiff Roy Nelson brings this action on his own behalf and on behalf of all similarly situated persons (the "Class") who are defined to be the following:

> All residents of the state of New Mexico who own a Toyota vehicle of model year 2004, 2005, 2006, 2007, 2008, 2009, and/or 2010, which vehicle was subject to recall by Toyota due to a heightened risk of sudden unintended acceleration (the "Subject Vehicles").

6. Excluded from the Class are Toyota; officers, directors, board members, or employees of Toyota, any entity in which Toyota has a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of Toyota, any federal, state or local government entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs. Also excluded from the Class is any individual who has asserted or who plans to assert a personal injury claim against any Defendant arising out of their ownership of one of the Subject Vehicles. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or further investigation reveal the necessity to do so.

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7. Defendant Toyota Motor North America, Inc. is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

8. Defendant Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

9. Defendant Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

10. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants.

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that Plaintiff asserts this action as a class action in which the amount in controversy exceeds $5,000,000 and minimal diversity exists. Plaintiff is a resident of New Mexico. None of the Defendants are residents of New Mexico.

12. Venue is proper in the District of New Mexico pursuant to 28 U.S.C. §§ 1391(a). Defendant Toyota Motor Sales, USA, Inc., is a subject to personal jurisdiction in New Mexico, the same state, and the events and omissions giving rise to Plaintiff's claims took place in numerous states, including New Mexico

BACKGROUND

13. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.

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14. Toyota manufactures and sells various models of passenger and commercial vehicles to customers in each of the states, including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, Solara, 4Runner, and Tundra.

15. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.

16. On September 29, 2009, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 3.8 million vehicles equipped with floor mats that allegedly could cause the accelerator pedals in those vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle. Toyota implemented that recall on October 5, 2009.

17. On November 25, 2009, Toyota announced a plan to fix the problem related to the floor mats by shortening the accelerator pedal in the affected cars. It also expanded the number of vehicles involved in that recall to a total of 4.2 million.

18. On January 21, 2010, Toyota announced that it would recall 2.3 million vehicles produced in the years 2005 through 2010 that have shown a heightened propensity to unexpectedly accelerate, allegedly due to problems with the gas pedals on those vehicles becoming stuck in a depressed position. Owners of the vehicles subject to this recall have not yet received notice of it, other than what they may have observed through media outlets.

19. On January 27, 2010, Toyota announced that it was expanding its earlier recall of cars with defective floor mats. The new recall added 1.09 million vehicles to the recall that Toyota had announced on October 5, 2009 and had previously expanded on November 25, 2009.

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20. To date, Toyota has recalled approximately 9 million vehicles worldwide (nearly 6 million of those in the United States) due to an apparent propensity to unexpectedly and suddenly accelerate out of the driver's control.

21. Automotive experts outside of Toyota have expressed doubts about whether the alleged floor mat defects or sticking gas pedals could completely explain the number of unexpected acceleration problem seen in numerous Toyota models. It remains unclear whether Toyota has identified all of the causes of the unexpected acceleration problem.

22. The affected models are the 2007-2010 Camry, 2005-2010 Avalon, 2004-2009 Prius, 2005-2010 Tacoma, 2007-2010 Tundra, 2007-2010 Lexus ES350 and 2006-2010 IS250/IS350 2009, 2008-2010 Highlander, 2009-2010 Corolla, 2009-2010 Venza, 2009-2010 Matrix, 2009-2010 Pontiac Vibe, 2009-2010 Toyota RAV4, and the 2008-2010 Toyota Sequoia.

Toyota's long history of "inaccurate and misleading" descriptions of and explanations for the sudden acceleration problem

23. Since Toyota announced the recalls, investigations by government agencies and automotive experts have revealed that Toyota's problems with sudden, unexpected acceleration are long-running and that Toyota has known for years that many of its cars had an unacceptably high risk of inexplicably accelerating out of their drivers' control.

24. Since 1999, at least 2,262 Toyota and Lexus owners have reported to the NHTSA, the media, the courts and to independent investigators that their vehicles have accelerated suddenly and unexpectedly in a variety of scenarios. These incidents have resulted in 815 crashes, 341 injuries and, 19 deaths potentially related to sudden unintended acceleration.

25. Toyota initially blamed customers for improperly installing accessory floor mats and resisted taking widespread action. In 2005 and 2007, the automaker launched two small

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recall campaigns. The first corrected an accelerator that could stick in Lexus IS250 vehicles; the second replaced all-weather floor mats in a limited group of 2007 and 2008 Lexus and Camry vehicles.

26. Several weeks ago, State Farm, the nation's largest auto insurer, said that it warned the NHTSA in late 2007 that it was seeing an uptick in reports of unwanted acceleration in Toyotas. More recently, it has said that it has discovered that it warned regulators as early as 2004 about an unusual trend of Toyota accidents.

27. The severity and extent of Toyota's sudden acceleration problem fully entered the public's consciousness for the first time in August 2009 after a California highway patrolman and his family were killed when a Lexus that they were riding in accelerated out of the driver's control and crashed.

28. After that accident had occurred and Toyota had announced its September 2009 recall, it continued to claim that the problem with sudden acceleration in its cars was due entirely to the floor mats, and that the NHTSA had determined that no other defect existed in the vehicles.

29. On November 4, 2009, the NHTSA put out its own press release, "correcting inaccurate and misleading information put out by Toyota concerning" its recall.

30. In its press release, the NHTSA stated: "NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design."

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31. In December 2009, Consumer Reports reported the results of a review that it had conducted of all complaints about sudden acceleration that had been submitted to the NHTSA for sudden acceleration occurring in 2008 car models. Consumer Reports found that 41% of those complaints were about Toyotas even though Toyota only had a 16% market share in 2007 and 2008.

32. In January 2010, Toyota admitted for the first time that in addition to the floor mat problem, some of its cars were equipped with accelerator pedals that could become stuck due to corrosion. Toyota's own recall announcement indicated that the accelerator problem dates back all the way to 2005 in some of its models.

33. Since the January 2010 recall, several automotive experts have expressed their opinion in the media that Toyota has still not acknowledged the full extent of the problem, and that the explanations that it has offered so far could not account for all of the sudden acceleration events that have occurred over the years. Those experts have hypothesized that the electronic system that controls acceleration in many of Toyota's cars is defective.

34. The extent of the sudden acceleration problem in the Subject Vehicles is material information that would have impacted people's decisions to purchase those vehicles and how much to pay for them. Toyota failed to disclose the existence and extent of the sudden acceleration problem to the public when it became aware of that problem. Even after acknowledging the problem, Toyota continued to make affirmative misrepresentations about the extent and cause of the problem.

35. Prior to the recalls, Kelley Blue Book named Toyota as the best brand in terms of vehicle resale value. Since Toyota announced the September 2009 recall, however, the resale

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value of its cars has dropped precipitously. This drop in resale value demonstrates that for years, Toyota purchasers have been paying more for the cars than they would have had they known about the heightened risk of sudden acceleration in the vehicles.

36. Had Toyota timely and adequately disclosed to consumers their vehicles' propensity to unexpectedly and uncontrollably accelerate, neither Plaintiff nor members of the Class would have purchased these vehicles and taken that heightened risk each time they drove. Now that they own the cars, the value of their vehicles is diminished as a result of the true dangers and defects being disclosed.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Fed. R. Civ. P. 23(b)(3).

38. **Numerosity**: Members of the Class are so numerous and geographically disbursed that their joinder would be impracticable. The Class includes tens of thousands of owners of Toyota vehicles. Judicial economy favors a class action mechanism instead of forcing each class member to bring a separate action individually.

39. **Commonality**: Common questions of law and fact predominate over any individual questions of separate Class members. The common questions of law and fact include, but are not limited to, the following:

a. Whether Toyota violated New Mexico's product liability law;

b. Whether the defects in the vehicles recalled by Toyota render them unfit for their intended use;

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c. Whether Toyota breached its implied warranties of merchantability and fitness for a particular purpose;

d. Whether Toyota has violated New Mexico's Consumer Protection Act;

e. Whether Toyota's actions have caused damages to Plaintiff and members of the Class; and

f. Whether Toyota should be required to furnish replacement and or rental vehicles to Plaintiff and members of the Class during the period for which they are denied the use of their defective vehicles due to the inherent dangers therein.

40. **Typicality**: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defect, that defect being that Plaintiff's and Class Members' vehicles have a heightened risk of suddenly and unexpectedly accelerating, rendering the vehicles too dangerous to drive. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

41. **Adequacy**: Plaintiff will fully and adequately assert and protect the interests of the Class. Plaintiff has retained counsel who is experienced in class actions and complex mass tort litigation. Neither Plaintiff nor his counsel have interests contrary to or conflicting with the interests of the Class.

42. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is in the millions of dollars, the individual damages suffered by

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the individual damages suffered by each of the Class members as a result of the wrongful conduct by Toyota are, in many cases, too small to warrant the expense of the individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

43. Plaintiff does not anticipate any difficulties in the management of this litigation.

FIRST CAUSE OF ACTION
Breach of Implied Warranty

44. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

45. At all times herein, Toyota designed, manufactured, assembled, marketed, compounded, portrayed, distributed, recommended, advertised and promoted, and sold the Subject Vehicles.

46. At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and the Class Members, Toyota knew of the use for which the Subject Vehicles were intended and impliedly warranted the product to be of a certain quality.

47. Toyota embarked on and carried out a common scheme of marketing and selling automobiles by falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the Subject Vehicles would accelerate and decelerate as expected.

48. The Subject Vehicles contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and the Class Members would not have purchased the Subject Vehicles or would have paid substantially less for them had they known of the vice or defect.

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49. The Subject Vehicles cannot be resold for anywhere near the amount of money for which they could have been resold had they not contained the vice or defect. In fact, resale of the cars may prove to be impossible.

50. The damages in question arose from the reasonably anticipated use of the product in question.

51. Toyota breached the implied warranties of merchantability and fitness for a particular purpose when the Subject Vehicles were sold to Plaintiff and the Class Members, in that the Subject Vehicles have a heightened tendency to suddenly and unexpectedly accelerate out of the driver's control.

52. As a direct and proximate cause of Toyota's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles and economic losses, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

WHEREFORE, Plaintiff demands judgment against Toyota for breach of implied warranty as prayed for below.

SECOND CAUSE OF ACTION
Breach of Express Warranty

53. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

54. Toyota expressly warranted that the Subject Vehicles were safe and would accelerate as expected.

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55. The Subject Vehicles manufactured and sold by Toyota did not conform to these express representations because they caused serious injury to consumers and put consumers at heightened risk of injury when used as expected.

56. As a direct and proximate result of Toyota's breach of warranty, Plaintiff and the Class Members suffered economic damages, and will continue to suffer such damages and economic loss.

WHEREFORE, Plaintiff demands judgment against Toyota for breach of express warranty as prayed for below.

THIRD CAUSE OF ACTION
Negligence

57. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

58. Toyota had a duty to Plaintiff and the Class Members to provide a safe product in design and manufacture, to notify the NHTSA, and to warn the NHTSA of the heightened propensity of the Subject Vehicles to unexpectedly accelerate out of the driver's control.

59. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by designing the designing the Subject Vehicles in such a manner that they have a heightened propensity to suddenly and unexpectedly accelerate out of their driver's control.

60. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by manufacturing and/or assembling the Subject Vehicles in such a manner that they were prone to suddenly and unexpectedly accelerating out of their driver's control.

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61. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by failing to recall the Subject Vehicles at the earliest possible date when they knew that sudden, unexpected acceleration was a problem.

62. Toyota breached its duty of reasonable care to Plaintiff and the Class Members by failing to exercise due care under the circumstances.

63. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles, economic losses, and other damages and are entitled to compensatory damages, and equitable and declaratory relief according to proof.

WHEREFORE, Plaintiff demands judgment against Toyota for negligence as prayed for below.

FOURTH CAUSE OF ACTION
Strict Products Liability
Design Defect

64. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

65. At all times material hereto, Toyota was engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Toyota vehicles in the United States, including, but not limited to, the Subject Vehicles.

66. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Subject Vehicles, including Plaintiff and the Class Members. Consequently, Plaintiff and the Class Members were expected users of the product that Toyota manufactured.

TOY-RQ-05E-00007375

67. The Subject Vehicles reached Plaintiff and the Class Members without substantial change in their condition from time of completion of manufacture by Toyota.

68. The propensity of the Subject Vehicles to suddenly and unexpectedly accelerate out of their driver's control could not have been contemplated by any reasonable person expected to operate the Subject Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Subject Vehicles even though Subject Vehicles were operated by expected users in a reasonable manner.

69. Toyota should have reasonably foreseen that the dangerous conditions of the Subject Vehicles suddenly and unexpectedly accelerating would subject Plaintiff and the Class Members to harm.

70. Because of this defective design, the Subject Vehicles are unreasonably dangerous.

71. Plaintiff and the Class Members have used the Subject Vehicles reasonably and as intended, to the fullest degree possible given the defective nature of the accelerator pedals, and, nevertheless, have suffered damages through no fault of their own.

72. A safer alternative design existed for the Subject Vehicles.

73. As a direct and proximate result of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and the Class Members have sustained and will continue to sustain the loss of use of their vehicles and economic losses, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff and the Class Members for breach of its duty to design, manufacture,

TOY-RQ-05E-00007376

assemble market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Class Members are therefore entitled to equitable relief as described below.

WHEREFORE, Plaintiff demands judgment against Toyota for design defects as prayed for below.

FIFTH CAUSE OF ACTION
Strict Products Liability
Defective Manufacturing

74. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

75. Toyota is the manufacturer, designer, distributor, seller, or supplier of the Subject Vehicles.

76. The Subject Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Toyota were defective in their manufacture and construction such that they were unreasonably dangerous, was not fit for the ordinary purpose for which they were intended, and/or did not meet the reasonable expectations of an ordinary consumer.

77. The Subject Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Toyota, were defective in their manufacture and construction as described at the time they left the Toyota's control.

78. The Subject Vehicles are unreasonably dangerous due to their defective manufacture.

79. As a direct and proximate result of Plaintiff's purchase and use of the Subject Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce

TOY-RQ-05E-00007377

by Toyota, Plaintiff and the Class Members suffered economic damages, and will continue to suffer such harm, damages, and economic loss.

WHEREFORE, Plaintiff demands judgment against Toyota for manufacturing defects as prayed for below.

SIXTH CAUSE OF ACTION
New Mexico Unfair Practices Act
N.M. Stat. Ann. § 57-12-1, *et. seq.*

80. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

81. The heightened propensity of the Subject Vehicles to suddenly and unexpectedly accelerate was material information that people considering a purchase of one of those vehicles would have considered important and which information would have affected their decisions to purchase the Subject Vehicles and how much to pay for them.

82. Toyota purposely and knowingly failed to disclose this material information to Plaintiff and the Class members at the time that they purchased the Subject Vehicles with the intent to induce Plaintiff and the Class members to purchase the Subject Vehicles and pay more for them than they otherwise would have. These material omissions are "unfair or deceptive trade practices" within the meaning of the Act.

83. Toyota has also made affirmative misrepresentations to the public through statements to NHTSA and recall notices about the nature, extent, and cause of the sudden acceleration problem in the Subject Vehicles. Toyota's false, deceptive, and misleading statements and representations, which statements and representations it made knowingly, are "unfair or deceptive trade practices" within the meaning of the Act.

TOY-RQ-05E-00007378

84. Toyota engaged in the "unfair or deceptive trade practices" alleged above, and those "unfair or deceptive trade practices" occurred or were committed in the course, vocation or occupation of Defendants' vehicle sales business.

85. Toyota's misrepresentations about the quality and safety of the Subject Vehicles deceived the Class members into purchasing vehicles that they would not have otherwise purchased or paid more for those vehicles than they otherwise would have.

86. Toyota engaged in the "unfair or deceptive trade practices" alleged above willfully.

87. As a direct and proximate result of the Unfair Trade Practices committed by Defendants as alleged above, Plaintiff Roy Nelson and the Class members suffered monetary losses as alleged herein.

88. Plaintiff is entitled to all damages permitted by N.M. Stat. Ann. § 57-12-10 of the Act, including actual damages sustained or statutory damages, whichever is greater, attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff demands judgment for all relief that he and the State of New Mexico are entitled to under the Act as prayed for below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demand judgment in their favor and against Toyota, and pray for relief as follows:

1. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representative of the Class, and appointing counsel for Plaintiff counsel for the Class;

TOY-RQ-05E-00007379

2. For an award of compensatory damages according to proof;

3. For restitution and disgorgement of profits;

4. For an award of all costs incurred by Plaintiff in pursuing this action;

5. For an award of reasonable attorneys' fees.

6. For an award of any and all other damages suffered by Plaintiff and members of the class;

7. For any other relief the Court deems reasonable.

8. Plaintiff further reserve the right to amend this Complaint and add a request for punitive damages as allowed for under New Mexico law.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 23, 2010

Respectfully submitted,

s/ Brian K. Matise

Brian K. Matise
BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.
40 Inverness Drive East
Englewood, CO 80111
Telephone: (303) 792-5595
Facsimile: (303) 708-0527
E-mail: bmatise@burgsimpson.com

Attorney for Plaintiff

TOY-RQ-05E-00007380

U.S. District Court
District of New Mexico − Version 3.2.3 (Albuquerque)
CIVIL DOCKET FOR CASE #: 1:10−cv−00161−ACT−RHS

Nelson v. Toyota Motor North America, Inc. et al
Assigned to: Magistrate Judge Alan C. Torgerson
Referred to: Magistrate Judge Robert Hayes Scott
Demand: $5,000,000
Cause: 28:1332 Diversity−Fraud

Date Filed: 02/23/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth−In−Lending
Jurisdiction: Diversity

Plaintiff

Roy Nelson represented by **Burg Simpson**
Eldredge Hersh &Jardine, P.C.
40 Inverness Drive East
Englewood , CA 80112
(303) 792−5595
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian K Matise
40 Inverness Drive East
Englewood , CO 80112
303−792−5595
Email: bmatise@burgsimpson.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor North America, Inc.

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc.

Defendant

Toyota Motor Sales, U.S.A., Inc.

Date Filed	#	Docket Text
02/23/2010	1	COMPLAINT and Jury Demand against all defendants (Filing Fee − Online Payment), filed by Roy Nelson. (Attachments: #1 Civil Cover Sheet)(Matise, Brian) Modified on 2/24/2010 (jc). (Entered: 02/23/2010)
02/23/2010		Filing Fee Received: $ 350 receipt number 10840000000001399483 re 1 Complaint filed by Roy Nelson (Payment made via Pay.gov)(Matise, Brian) (Entered: 02/23/2010)
02/23/2010		Magistrate Judge Alan C. Torgerson and Magistrate Judge Robert Hayes Scott assigned. (kdf) (Entered: 02/23/2010)
02/23/2010	2	PLEASE TAKE NOTICE that this case has been randomly assigned to United States Magistrate Judge Alan C. Torgerson to conduct all proceedings in this matter, including trial. Appeal from a judgment entered by a Magistrate Judge will be to the United States Court of Appeals for the Tenth Circuit. **It is the responsibility of the case filer to serve a copy of this Notice upon all parties with the summons and complaint.** *Consent is strictly voluntary, and a party is free to withhold consent without adverse consequences. Should a party*

		choose to consent, notice should be made within 21 days after service of this notice. For e−filers, visit our website at www.nmcourt.fed.us for more information and instructions. [THIS IS A TEXT−ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (kdf) (Entered: 02/23/2010)
02/24/2010		Summons Issued as to Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. (kdf) (Entered: 02/24/2010)

FILE START

CONFIRMED FILE DATE: 2/1/2010

FILED
Loren Jackson
District Clerk
Time: FEB 01 2010
By Harris County, Texas Deputy
7:30pm

CAUSE NO. 2010-06628

MICHAEL CLEIGHTON HARRIS, INDIVIDUALLY and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, MINORS, Plaintiffs	§	IN THE DISTRICT COURT OF
VS.	§	OF HARRIS COUNTY, TEXAS
TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; and FRED HAAS TOYOTA WORLD, LTD. Defendants	§	189 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

COMES NOW MICHAEL CLEIGHTON HARRIS, individually and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, minors, complaining of TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; and FRED HAAS TOYOTA WORLD, LTD., Defendants, and in support of his cause of action, respectfully shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff alleges that discovery in this matter is intended to be conducted under Level 2 by Rule 190.3, Texas Rules of Civil Procedure.

PARTIES

2. MICHAEL CLEIGHTON HARRIS, RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS were all residents of Harris County, Texas, at the time of the incidents alleged herein. Plaintiff MICHAEL CLEIGHTON HARRIS is the surviving husband

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MAR - 4 2010
LEGAL DEPARTMENT

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of TRINA RENEE HARRIS, Deceased; and RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS are the surviving minor children of Plaintiff MICHAEL CLEIGHTON HARRIS and TRINA RENEE HARRIS, Deceased.

3. TOYOTA MOTOR SALES, U.S.A., INC. (hereinafter known as "Defendant TOYOTA"), is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant TOYOTA designs, develops, manufactures, and sells Toyota motor vehicles, including the vehicle which is the subject of this cause of action. It may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

4. CTS CORPORATION (hereinafter known as "Defendant CTS") is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant CTS designs and manufacturers electronic components and sensors used in the gas pedal systems of Toyota vehicles, including the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

5. FRED HAAS TOYOTA WORLD, LTD. (hereinafter known as "Defendant FRED HAAS"), is a limited partnership doing business in the state of Texas, which maintains its principal place of business 20400 I-45 North, Spring, Texas. Defendant FRED HAAS sells and leases vehicles, including leasing the Toyota vehicle which is the subject of this cause of action. It should be served with process through its registered agent, Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas, 77079.

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TOY-RQ-05E-00007385

VENUE AND JURISDICTION

6. Venue is proper in Harris County, Texas, pursuant to VTCA Civil Practice and Remedies Code, Section 15.002 (a)(1), in that all or a substantial part of the events or omissions giving rise to the claim occurred in this county.

7. Plaintiff has incurred damages in excess of the minimum jurisdictional limits of this court.

BACKGROUND FACTS

8. On or about December 18, 2009, between 10:00 p.m. and midnight, TRINA RENEE HARRIS, age 34, was driving a leased 2009 Toyota Corolla owned by Defendant FRED HAAS. She was traveling westbound on Berry Road in Houston, Harris County, Texas, returning home from a short trip to a neighborhood store. As she drove towards the intersection of Berry Road and the Hardy Toll Road East, the 2009 Toyota Corolla she was driving malfunctioned and suddenly accelerated uncontrollably at a high rate of speed. The vehicle sped through the intersection and crashed into the Hardy Toll Road cement embankment, resulting in the death of Mrs. Harris.

WRONGFUL DEATH
TEX. CIV. PRAC. AND REM. CODE, CHAPTER 71

9. Plaintiff MICHAEL CLEIGHTON HARRIS brings this action as the surviving legal spouse of TRINA RENEE HARRIS and as next friend of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, their minor children. Plaintiff alleges liability as to all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS for injuries resulting in the death of TRINA RENEE HARRIS, such death caused by the Defendants' and their agents' wrongful acts, neglect, carelessness, unskillfulness, manufacturing defect, design

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defect, negligence and default. Plaintiff maintains that TRINA RENEE HARRIS would have been entitled to bring this action for her injuries in her own right if she had lived.

PRODUCTS LIABILITY

10. One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if:

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

This rule applies although:

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not brought the product from or entered into any contractual relation with the seller.

Restatement (Second) of Torts § 402A, *Parsons v. Ford Motor Co.*, 85 S.W.3d 323 (Tex.App.-Austin, 2002).

Texas has adopted section 402A of the Restatement (Second)of Torts providing for strict liability for the sale of dangerously defective products, *McKisson vs. Sales Affiliates, Inc.*, 416 S.W.2d 787, 788-789 (Tex. 1967). A manufacturer who places into the stream of commerce a dangerous product by reason of some defect is strictly liable in tort to someone who sustains injury because of the defect. *Darryl vs. Ford Motor Co.*, 440 S.W.2d 630, 633 (Tex. 1969). The essential elements of a strict liability case are as follows:

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(a) a product defect;

(b) that existed at the time the product left the manufacturer's hands;

(c) the defect made the product unreasonably dangerous; and

(d) the defect was a producing cause of Plaintiff's injuries. *Rourke v. Garza*, 530 S.W.2d 794, 798, 801 (Tex. 1975).

11. Defendant TOYOTA designed and manufactured the 2009 Toyota Corolla that was leased from Defendant FRED HAAS by TRINA RENEE HARRIS, deceased; and Defendant CTS designed and manufactured the electronic components and sensors used in such vehicle. This 2009 Toyoto Corolla vehicle contained a defect in its accelerator pedal and/or its components and sensors that caused uncontrollable acceleration on the day of the accident, resulting in the death of Mrs. Harris. The vehicle referenced was a completely unmodified new car at the time of the inception of its lease to Mrs. Harris, and the defect existed at the time the product left the manufacturer's hands. The defect present within Mrs. Harris's 2009 Toyota Corolla caused her car to accelerate uncontrollably, making the vehicle unreasonably dangerous during any use of the vehicle whatsoever. The defect within the vehicle that caused it to accelerate uncontrollably immediately prior to the accident referenced is the proximate and producing cause of Mrs. Harris's accident and her subsequent death.

NEGLIGENCE

12. Defendant TOYOTA MOTOR SALES, U.S.A., INC., had a duty to abide by all safety standards and industry regulations when manufacturing and selling automobiles within the United States, and to avoid producing an unreasonably dangerous product for use by the general public. Defendant TOYOTA negligently breached such duty in the following respects:

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a. by designing and manufacturing a defective vehicle, and in particular the accelerator system;

b. by not properly testing its vehicles, and particular the accelerator system ;

c. by failing to take sufficient corrective action when it was made aware of malfunctions with its accelerator pedals; and

d. by failing to sufficiently warn consumers of the dangers of its defective vehicles, and in particular of its defective accelerator pedals;

These defects proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death.

13. Defendant CTS had a duty to design and manufacture electronic components and sensors to be used in the accelerator systems of Toyota vehicles such that the accelerator systems would function in a safe and predictable manner. Defendant CTS breached such duty in the following respects:

a. by designing and manufacturing defective products;

b. by not properly testing its products;

c. by failing to take sufficient corrective action when it was made aware of malfunctions with its products; and

d. by failing to sufficiently warn consumers of the dangers of its defective products;

14. Defendant FRED HAAS had a duty as owner and lessor of its vehicle to notify its lessee of any known potentially dangerous conditions of the vehicle driven by TRINA RENEE HARRIS. Defendant TOYOTA began notifying owners, including Defendant FRED HAAS, at least by late October, 2009, that the accelerators of such vehicles may stick. Defendant FRED HAAS failed to notify TRINA RENEE HARRIS of a potential danger and failed to make her aware that a problem existed.

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TOY-RQ-05E-00007389

DAMAGES

15. Defendants' negligence, as described above, directly and proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death. During the time period of uncontrollable acceleration, Mrs. Harris undoubtedly realized her plight and thereby suffered extreme emotional distress and feared for her life and safety.

16. As a direct and proximate cause of Defendants' negligence, as described above, Plaintiff MICHAEL CLEIGHTON HARRIS and his minor children have been caused severe mental pain and suffering, mental anguish, emotional trauma, grief, and sorrow. They have all suffered the loss of love, comfort, companionship, society, care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that they would, in reasonable probability, have received from TRINA RENEE HARRIS had she lived. Further, Plaintiff is a Petty Officer First Class with the United States Navy and his wife, TRINA RENEE HARRIS, was a stay-at-home wife and mother to their minor children. As such, Mrs. Harris handled all the family, financial, and household matters while Plaintiff was deployed throughout the world, including to theaters of war in Iraq, Afghanistan, and Iran. His loss of her contributions to the family and to his career are incalculable and irreplaceable, but Plaintiff seeks the sum of $100,000.000.00 (One Hundred Million and no/100 Dollars) in recompense.

17. Further, Plaintiff claims damages for those amounts expended for emergency attendants, funeral expenses, and all related costs on behalf of TRINA RENEE HARRIS.

EXEMPLARY NEGLIGENCE

18. The negligence of all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS, was of such a character as to make them guilty of gross negligence.

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Their actions involved such willful acts or omissions and gross neglect as to expose others to an extreme degree of risk, and could only have resulted from a conscious indifference to the rights, safety and welfare of others. Plaintiff hereby sues for exemplary damages in an amount of $100,000.000.00 (One Hundred Million and no/100 Dollars).

JURY DEMAND

19. Plaintiff hereby formally makes this demand for a jury trial, pursuant to Rule 216, Texas Rules of Civil Procedure, and tenders the required jury fee.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final hearing that Plaintiff have judgment against Defendants, jointly and severally, with prejudgment and post-judgment interests thereon at the legal rate, for costs of court and attorney's fees where applicable, and for such other and further relief, special and general, at law and in equity, to which he may show himself justly entitled.

RESPECTFULLY SUBMITTED,

KENNETH P. MINGLEDORFF
TBN 14176800
JUDY P. MINGLEDORFF
SBN: 16088765
430 Highway 6 South, Suite 215
Houston, Texas 77079
Phone (281) 497-7180 FAX (281) 497-4150

ATTORNEYS FOR PLAINTIFFS

Certified Document Number: 44448016 - Page 8 of 8

TOY-RQ-05E-00007391

I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this February 2, 2010

Certified Document Number: 44448016 Total Pages: 8

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

CT Corporation

Service of Process Transmittal
02/09/2010
CT Log Number 516135979

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RECEIVED
FEB 12 2010
LEGAL DEPARTMENT

RE: **Process Served in Texas**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Michael Cleighton Harris, etc., Pltfs. vs. Toyota Motor Sales USA, Inc., et al., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Citation, Original Petition
COURT/AGENCY:	189th Judicial District Court, Harris County, TX Case # 201006628
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Wrongful Death - On or about 12/18/2009 due to defective leased 2009 Toyota
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Process Server on 02/09/2010 at 10:57
APPEARANCE OR ANSWER DUE:	By 10:00 a.m. on the Monday next following the expiration of 20 days
ATTORNEY(S) / SENDER(S):	Kenneth P. Mingledorff 430 Highway 6 South Suite 215 Houston, TX 77079 281-497-7180
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791256159371 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation record keeping purposes only and is provided to the recipient quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, th answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not

RECEIPT NUMBER 5223 0.00
TRACKING NUMBER 72499722 CIV

CAUSE NUMBER 201006628

PLAINTIFF: HARRIS, MICHAEL CLEIGHTON (INDIVIDUALLY AND ON BEH
vs.
DEFENDANT: TOYOTA MOTOR SALES U S A INC

In The 189th **Judicial District Court of Harris County, Texas**

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

THIS PROCESS WAS DELIVERED TO YOU AT: 1:57 this 16 FEB 20 10 CONSTABLE Dallas County, Texas, Precinct 5 By: Badgell

TO: TOYOTA MOTOR SALES U S A INC (A CORPORATION) BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM

350 NORTH ST PAUL ST DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 1st day of February, 20 10, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 3rd day of February, 20 10.

Issued at request of:
MINGLEDORFF, KENNETH P
430 HIGHWAY 6 SOUTH
HOUSTON, TX 77079
Tel: (281) 497-7180
Bar Number: 14176800

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: JOHNSON, CHARLETA MA YS9/NIG/8620

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the _____ day of _____, 20____, at_____ o'clock ___.M., endorsed the date of delivery thereon, and executed it at _____, _____,
(street address) (city)

in _____ County, Texas on the _____ day of _____, 20____, at_____ o'clock ___. M., by delivering to _____, by delivering to its
(the defendant corporation named in citation)

_____, in person, whose name is _____,
(registered agent, president, or vice-president)

a true copy of this citation, with a copy of the _____ Petition attached,
(description of petition, e.g., "Plaintiffs Original"

and with accompanying copies of _____.
(additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: $ _____

By: _____
(signature of officer)

Printed Name: _____

_____
Affiant Other Than Officer

As Deputy for: _____
(printed name & title of sheriff or constable)

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____
Notary Public

N.INT.CITC.P

FILED
Loren Jackson
District Clerk
FEB 01 2010
Time: 2:30pm
By
Harris County, Texas
Deputy

2010-06628

CAUSE NO. _____

MICHAEL CLEIGHTON HARRIS, INDIVIDUALLY and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, MINORS, Plaintiffs	§	**IN THE DISTRICT COURT OF**
VS.	§	**OF HARRIS COUNTY, TEXAS**
TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; and FRED HAAS TOYOTA WORLD, LTD. Defendants	§	189 **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

COMES NOW MICHAEL CLEIGHTON HARRIS, individually and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, minors, complaining of TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; and FRED HAAS TOYOTA WORLD, LTD., Defendants, and in support of his cause of action, respectfully shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff alleges that discovery in this matter is intended to be conducted under Level 2 by Rule 190.3, Texas Rules of Civil Procedure.

RECEIVED
FEB 12 2010
LEGAL DEPARTMENT

PARTIES

2. MICHAEL CLEIGHTON HARRIS, RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS were all residents of Harris County, Texas, at the time of the incidents alleged herein. Plaintiff MICHAEL CLEIGHTON HARRIS is the surviving husband

of TRINA RENEE HARRIS, Deceased; and RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS are the surviving minor children of Plaintiff MICHAEL CLEIGHTON HARRIS and TRINA RENEE HARRIS, Deceased.

3. TOYOTA MOTOR SALES, U.S.A., INC. (hereinafter known as "Defendant TOYOTA"), is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant TOYOTA designs, develops, manufactures, and sells Toyota motor vehicles, including the vehicle which is the subject of this cause of action. It may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

4. CTS CORPORATION (hereinafter known as "Defendant CTS") is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant CTS designs and manufacturers electronic components and sensors used in the gas pedal systems of Toyota vehicles, including the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

5. FRED HAAS TOYOTA WORLD, LTD. (hereinafter known as "Defendant FRED HAAS"), is a limited partnership doing business in the state of Texas, which maintains its principal place of business 20400 I-45 North, Spring, Texas. Defendant FRED HAAS sells and leases vehicles, including leasing the Toyota vehicle which is the subject of this cause of action. It should be served with process through its registered agent, Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas, 77079.

TOY-RQ-05E-00007396

VENUE AND JURISDICTION

6. Venue is proper in Harris County, Texas, pursuant to VTCA Civil Practice and Remedies Code, Section 15.002 (a)(1), in that all or a substantial part of the events or omissions giving rise to the claim occurred in this county.

7. Plaintiff has incurred damages in excess of the minimum jurisdictional limits of this court.

BACKGROUND FACTS

8. On or about December 18, 2009, between 10:00 p.m. and midnight, TRINA RENEE HARRIS, age 34, was driving a leased 2009 Toyota Corolla owned by Defendant FRED HAAS. She was traveling westbound on Berry Road in Houston, Harris County, Texas, returning home from a short trip to a neighborhood store. As she drove towards the intersection of Berry Road and the Hardy Toll Road East, the 2009 Toyota Corolla she was driving malfunctioned and suddenly accelerated uncontrollably at a high rate of speed. The vehicle sped through the intersection and crashed into the Hardy Toll Road cement embankment, resulting in the death of Mrs. Harris.

WRONGFUL DEATH
TEX. CIV. PRAC. AND REM. CODE, CHAPTER 71

9. Plaintiff MICHAEL CLEIGHTON HARRIS brings this action as the surviving legal spouse of TRINA RENEE HARRIS and as next friend of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, their minor children. Plaintiff alleges liability as to all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS for injuries resulting in the death of TRINA RENEE HARRIS, such death caused by the Defendants' and their agents' wrongful acts, neglect, carelessness, unskillfulness, manufacturing defect, design

TOY-RQ-05E-00007397

defect, negligence and default. Plaintiff maintains that TRINA RENEE HARRIS would have been entitled to bring this action for her injuries in her own right if she had lived.

PRODUCTS LIABILITY

10. One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if:

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

This rule applies although:

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not brought the product from or entered into any contractual relation with the seller.

Restatement (Second) of Torts § 402A, *Parsons v. Ford Motor Co.*, 85 S.W.3d 323 (Tex.App.-Austin, 2002).

Texas has adopted section 402A of the Restatement (Second)of Torts providing for strict liability for the sale of dangerously defective products, *McKisson vs. Sales Affiliates, Inc.*, 416 S.W.2d 787, 788-789 (Tex. 1967). A manufacturer who places into the stream of commerce a dangerous product by reason of some defect is strictly liable in tort to someone who sustains injury because of the defect. *Darryl vs. Ford Motor Co.*, 440 S.W.2d 630, 633 (Tex. 1969). The essential elements of a strict liability case are as follows:

TOY-RQ-05E-00007398

(a) a product defect;

(b) that existed at the time the product left the manufacturer's hands;

(c) the defect made the product unreasonably dangerous; and

(d) the defect was a producing cause of Plaintiff's injuries. *Rourke v. Garza*, 530 S.W.2d 794, 798, 801 (Tex. 1975).

11. Defendant TOYOTA designed and manufactured the 2009 Toyota Corolla that was leased from Defendant FRED HAAS by TRINA RENEE HARRIS, deceased; and Defendant CTS designed and manufactured the electronic components and sensors used in such vehicle. This 2009 Toyoto Corolla vehicle contained a defect in its accelerator pedal and/or its components and sensors that caused uncontrollable acceleration on the day of the accident, resulting in the death of Mrs. Harris. The vehicle referenced was a completely unmodified new car at the time of the inception of its lease to Mrs. Harris, and the defect existed at the time the product left the manufacturer's hands. The defect present within Mrs. Harris's 2009 Toyota Corolla caused her car to accelerate uncontrollably, making the vehicle unreasonably dangerous during any use of the vehicle whatsoever. The defect within the vehicle that caused it to accelerate uncontrollably immediately prior to the accident referenced is the proximate and producing cause of Mrs. Harris's accident and her subsequent death.

NEGLIGENCE

12. Defendant TOYOTA MOTOR SALES, U.S.A., INC., had a duty to abide by all safety standards and industry regulations when manufacturing and selling automobiles within the United States, and to avoid producing an unreasonably dangerous product for use by the general public. Defendant TOYOTA negligently breached such duty in the following respects:

a. by designing and manufacturing a defective vehicle, and in particular the accelerator system;

b. by not properly testing its vehicles, and particular the accelerator system ;

c. by failing to take sufficient corrective action when it was made aware of malfunctions with its accelerator pedals; and

d. by failing to sufficiently warn consumers of the dangers of its defective vehicles, and in particular of its defective accelerator pedals;

These defects proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death.

13. Defendant CTS had a duty to design and manufacture electronic components and sensors to be used in the accelerator systems of Toyota vehicles such that the accelerator systems would function in a safe and predictable manner. Defendant CTS breached such duty in the following respects:

a. by designing and manufacturing defective products;

b. by not properly testing its products;

c. by failing to take sufficient corrective action when it was made aware of malfunctions with its products; and

d. by failing to sufficiently warn consumers of the dangers of its defective products;

14. Defendant FRED HAAS had a duty as owner and lessor of its vehicle to notify its lessee of any known potentially dangerous conditions of the vehicle driven by TRINA RENEE HARRIS. Defendant TOYOTA began notifying owners, including Defendant FRED HAAS, at least by late October, 2009, that the accelerators of such vehicles may stick. Defendant FRED HAAS failed to notify TRINA RENEE HARRIS of a potential danger and failed to make her aware that a problem existed.

TOY-RQ-05E-00007400

DAMAGES

15. Defendants' negligence, as described above, directly and proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death. During the time period of uncontrollable acceleration, Mrs. Harris undoubtedly realized her plight and thereby suffered extreme emotional distress and feared for her life and safety.

16. As a direct and proximate cause of Defendants' negligence, as described above, Plaintiff MICHAEL CLEIGHTON HARRIS and his minor children have been caused severe mental pain and suffering, mental anguish, emotional trauma, grief, and sorrow. They have all suffered the loss of love, comfort, companionship, society, care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that they would, in reasonable probability, have received from TRINA RENEE HARRIS had she lived. Further, Plaintiff is a Petty Officer First Class with the United States Navy and his wife, TRINA RENEE HARRIS, was a stay-at-home wife and mother to their minor children. As such, Mrs. Harris handled all the family, financial, and household matters while Plaintiff was deployed throughout the world, including to theaters of war in Iraq, Afghanistan, and Iran. His loss of her contributions to the family and to his career are incalculable and irreplaceable, but Plaintiff seeks the sum of $100,000.000.00 (One Hundred Million and no/100 Dollars) in recompense.

17. Further, Plaintiff claims damages for those amounts expended for emergency attendants, funeral expenses, and all related costs on behalf of TRINA RENEE HARRIS.

EXEMPLARY NEGLIGENCE

18. The negligence of all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS, was of such a character as to make them guilty of gross negligence.

TOY-RQ-05E-00007401

Their actions involved such willful acts or omissions and gross neglect as to expose others to an extreme degree of risk, and could only have resulted from a conscious indifference to the rights, safety and welfare of others. Plaintiff hereby sues for exemplary damages in an amount of $100,000.000.00 (One Hundred Million and no/100 Dollars).

JURY DEMAND

19. Plaintiff hereby formally makes this demand for a jury trial, pursuant to Rule 216, Texas Rules of Civil Procedure, and tenders the required jury fee.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final hearing that Plaintiff have judgment against Defendants, jointly and severally, with prejudgment and post-judgment interests thereon at the legal rate, for costs of court and attorney's fees where applicable, and for such other and further relief, special and general, at law and in equity, to which he may show himself justly entitled.

RESPECTFULLY SUBMITTED,

KENNETH P. MINGLEDORFF
TBN 14176800
JUDY P. MINGLEDORFF
SBN: 16088765
430 Highway 6 South, Suite 215
Houston, Texas 77079
Phone (281) 497-7180 FAX (281) 497-4150

ATTORNEYS FOR PLAINTIFFS

TOY-RQ-05E-00007402

CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516193832

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

RE: **Process Served in Texas**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Michael Cleighton Harris, Individually and on Behalf of Rhazhane Michae Harris and Teona Renee Harris, etc., Pltfs. vs. Toyota Motor Sales, U.S.A., Inc., et al., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Citation, First Amended Petition
COURT/AGENCY:	189th Judicial District Court, Harris County, TX Case # 201006628
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Defective Electronic Throttle Control system on a leased 2009 Toyota Corolla
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Process Server on 02/22/2010 at 15:17
APPEARANCE OR ANSWER DUE:	By 10:00 a.m. on the Monday next after the expiration of 20 days after you were served - File Written Answer // Within 50 days - Request for Disclosure
ATTORNEY(S) / SENDER(S):	Kenneth P. Mingledorff 430 Highway 6 South Houston, TX 77079 2814977180
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790696445990 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECEIPT NUMBER 4663 0.00
TRACKING NUMBER 72504678 ATY

CAUSE NUMBER 201006628

PLAINTIFF: HARRIS, MICHAEL CLEIGHTON (INDIVIDUALLY AND ON BEH
vs.
DEFENDANT: TOYOTA MOTOR SALES U S A INC

In The 189th **Judicial District Court of Harris County, Texas**

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

THIS PROCESS WAS DELIVERED TO YOU AT: 3:17 O'CLOCK P M. this 22 Feb 20 10. JAIME [illegible] CONSTABLE Dallas County, Texas, Precinct 5 By: Arroyo Badge# 535 Deputy

TO: TOYOTA MOTOR SALES U S A INC (A CORPORATION) BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM

350 NORTH ST PAUL ST DALLAS TX 75201

Attached is a copy of PLAINTIFF'S FIRST AMENDED PETITION.

This instrument was filed on the 16th day of February, 20 10, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 17th day of February, 20 10.

Issued at request of:
MINGLEDORFF, KENNETH P
430 HIGHWAY 6 SOUTH
HOUSTON, TX 77079
Tel: (281) 497-7180
Bar Number: 14176800

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: JOHNSON, CHARLETA MA YS9/FDC/8632

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the _____ day of _____, 20____, at_____ o'clock ___.M., endorsed the date of delivery thereon, and executed it at _____, _____,
(street address) (city)

in _____ County, Texas on the _____ day of _____, 20____, at_____ o'clock ___. M., by delivering to _____, by delivering to its
(the defendant corporation named in citation)

_____, in person, whose name is _____,
(registered agent, president, or vice-president)

a true copy of this citation, with a copy of the _____ Petition attached,
(description of petition, e.g., "Plaintiffs Original"

and with accompanying copies of _____.
(additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: $ _____

By: _____
(signature of officer)

Printed Name: _____

_____
Affiant Other Than Officer

As Deputy for: _____
(printed name & title of sheriff or constable)

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____
Notary Public

N.INT.CITC.P

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

CAUSE NO. 2010-06628

MICHAEL CLEIGHTON HARRIS, INDIVIDUALLY and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, MINORS, Plaintiffs	§	IN THE DISTRICT COURT OF
VS.	§	OF HARRIS COUNTY, TEXAS
TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; DENSO INTERNATIONAL AMERICA, INC.; And FRED HAAS TOYOTA WORLD, LTD, Defendants	§	189TH JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MICHAEL CLEIGHTON HARRIS, individually and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, minors, complaining of TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; DENSO INTERNATIONAL AMERICA, INC., and FRED HAAS TOYOTA WORLD, LTD., Defendants, and in support of his cause of action, respectfully shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff alleges that discovery in this matter is intended to be conducted under Level 2 by Rule 190.3, Texas Rules of Civil Procedure.

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

PARTIES

2. MICHAEL CLEIGHTON HARRIS, RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS were all residents of Harris County, Texas, at the time of the incidents alleged herein. Plaintiff MICHAEL CLEIGHTON HARRIS is the surviving husband of TRINA RENEE HARRIS, Deceased; and RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS are the surviving minor children of Plaintiff MICHAEL CLEIGHTON HARRIS and TRINA RENEE HARRIS, Deceased.

3. TOYOTA MOTOR SALES, U.S.A., INC. (hereinafter known as Defendant TOYOTA), is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant TOYOTA designs, develops, manufactures, and sells Toyota motor vehicles, including the vehicle which is the subject of this cause of action. It may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

4. CTS CORPORATION (hereinafter known as Defendant CTS) is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant CTS designs and manufacturers electronic components, sensors, and/or ETC's (electronic throttle control systems) used in Toyota vehicles, including the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

5. FRED HAAS TOYOTA WORLD, LTD. (hereinafter known as Defendant FRED HAAS), is a limited partnership doing business in the state of Texas, which maintains its principal place of business 20400 I-45 North, Spring, Texas. Defendant

FRED HAAS sells and leases vehicles, including leasing the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas, 77079.

6. DENSO INTERNATIONAL AMERICA, INC. (hereinafter known as "Defendant DENSO") is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant DENSO designs and manufacturers electronic components, sensors, and/or ETC's (electronic throttle control systems) used in the gas pedal systems of Toyota vehicles, including the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

VENUE AND JURISDICTION

7. Venue is proper in Harris County, Texas, pursuant to VTCA Civil Practice and Remedies Code, Section 15.002 (a)(1), in that all or a substantial part of the events or omissions giving rise to the claim occurred in this county.

8. Plaintiff has incurred damages in excess of the minimum jurisdictional limits of this court.

BACKGROUND FACTS

9. On or about December 18, 2009, between 10:00 p.m. and midnight, TRINA RENEE HARRIS, age 34, was driving a leased 2009 Toyota Corolla owned by Defendant FRED HAAS. She was traveling westbound on Berry Road in Houston, Harris County, Texas, returning home from a short trip to a neighborhood store. As she drove towards the intersection of Berry Road and the Hardy Toll Road East, the 2009

Toyota Corolla she was driving malfunctioned and suddenly accelerated uncontrollably at a high rate of speed. The vehicle sped through the intersection and crashed into the Hardy Toll Road cement embankment, resulting in the death of Mrs. Harris.

WRONGFUL DEATH
TEX. CIV. PRAC. AND REM. CODE, CHAPTER 71

10. Plaintiff MICHAEL CLEIGHTON HARRIS brings this action as the surviving legal spouse of TRINA RENEE HARRIS and as next friend of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, their minor children. Plaintiff alleges liability as to all Defendants, TOYOTA, CTS, and FRED HAAS for injuries resulting in the death of TRINA RENEE HARRIS caused by the Defendants' and their agents' wrongful acts, neglect, carelessness, unskillfulness, manufacturing defect, design defect, negligence and default. Plaintiff maintains that TRINA RENEE HARRIS would have been entitled to bring this action for her injuries in her own right if she had lived.

PRODUCTS LIABILITY

11. One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if:

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

This rule applies although:

(1) the seller has exercised all possible care in the preparation and sale of his product, and

(2) the user or consumer has not brought the product from or entered into any contractual relation with the seller.

Restatement (Second) of Torts § 402A, *Parsons v. Ford Motor Co.*, 85 S.W.3d 323 (Tex.App.-Austin, 2002).

Texas has adopted Section 402A of the Restatement (Second) of Torts providing for strict liability for the sale of dangerously defective products, *McKisson vs. Sales Affiliates, Inc.*, 416 S.W.2d 787, 788-789 (Tex. 1967). A manufacturer who places into the stream of commerce a dangerous product by reason of some defect is strictly liable in tort to someone who sustains injury because of the defect. *Darryl vs. Ford Motor Co.*, 440 S.W.2d 630, 633 (Tex. 1969). The essential elements of a strict liability case are as follows:

(a) a product defect;

(b) that existed at the time the product left the manufacturer's hands;

(c) the defect made the product unreasonably dangerous; and

(d) the defect was a producing cause of Plaintiff's injuries. *Rourke v. Garza*, 530 S.W.2d 794, 798, 801 (Tex. 1975).

12. Defendant TOYOTA designed and manufactured the 2009 Toyota Corolla that was leased from Defendant FRED HAAS by TRINA RENEE HARRIS, deceased; and Defendants CTS and DENSO designed and manufactured the electronic components, sensors, and/or ETC's (electronic throttle control systems) used in such vehicle. This 2009 Toyota Corolla vehicle contained a defect in its accelerator pedal and/or its components and sensors that caused uncontrollable acceleration on the day of the accident, resulting in the death of Mrs. Harris. The vehicle referenced was a

completely unmodified new car at the time of the inception of its lease to Mrs. Harris, and the defect existed at the time the product left the manufacturer's hands. The defect present within Mrs. Harris's 2009 Toyota Corolla caused her car to accelerate uncontrollably, making the vehicle unreasonably dangerous during any use of the vehicle whatsoever. The defect within the vehicle that caused it to accelerate uncontrollably immediately prior to the accident referenced is the proximate and producing cause of Mrs. Harris's accident and her subsequent death.

NEGLIGENCE

13. Defendant TOYOTA MOTOR SALES, U.S.A., INC., had a duty to abide by all safety standards and industry regulations when manufacturing and selling automobiles within the United States, and to avoid producing an unreasonably dangerous product for use by the general public. Defendant TOYOTA negligently breached such duty in the following respects:

(a) by designing and manufacturing a defective vehicle, and in particular the accelerator system;

(b) by not properly testing its vehicles, and in particular the accelerator system ;

(c) by failing to take sufficient corrective action when it was made aware of malfunctions with its accelerator pedals; and

(d) by failing to sufficiently warn consumers of the dangers of its defective vehicles, and in particular of its defective accelerator pedals;

These defects proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death.

14. Defendant CTS had a duty to design and manufacture electronic components, sensors, and/or ETC's (electronic throttle control systems) to be used in

the accelerator systems of Toyota vehicles such that the accelerator systems would function in a safe and predictable manner. Defendant CTS breached such duty in the following respects:

(a) by designing and manufacturing defective products;

(b) by not properly testing its products;

(c) by failing to take sufficient corrective action when it was made aware of malfunctions with its products; and

(d) by failing to sufficiently warn consumers of the dangers of its defective products.

15. Defendant DENSO had a duty to design and manufacture electronic components, sensors, and/or ETC's (electronic throttle control systems) to be used in the accelerator systems of Toyota vehicles such that the accelerator systems would function in a safe and predictable manner. Defendant DENSO breached such duty in the following respects:

(a) by designing and manufacturing defective products;

(b) by not properly testing its products;

(c) by failing to take sufficient corrective action when it was made aware of malfunctions with its products; and

(d) by failing to sufficiently warn consumers of the dangers of its defective products.

16. Defendant FRED HAAS had a duty as owner and lessor of its vehicle to notify its lessee of any known potentially dangerous conditions of the vehicle driven by TRINA RENEE HARRIS. Defendant TOYOTA began notifying owners, including Defendant FRED HAAS, at least by late October, 2009, that the accelerators of such vehicles may stick. Defendant FRED HAAS failed to notify TRINA RENEE HARRIS of a

potential danger and failed to make her aware that a problem existed. Pursuant to Texas Civ. Prac. & Rem. Code 82.003, Defendant FRED HAAS had actual knowledge of a defect in the vehicle it leased to Plaintiffs' decedent at the time FRED HAAS, through lease, supplied the product; and Decedent's death resulted from the known defect.

DAMAGES

17. Defendants' negligence, as described above, directly and proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death. During the time period of uncontrollable acceleration, Mrs. Harris undoubtedly realized her plight and thereby suffered extreme emotional distress and feared for her life and safety.

18. As a direct and proximate cause of Defendants' negligence, as described above, Plaintiff MICHAEL CLEIGHTON HARRIS and his minor children have been caused severe mental pain and suffering, mental anguish, emotional trauma, grief, and sorrow. They have all suffered the loss of love, comfort, companionship, society, care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that they would, in reasonable probability, have received from TRINA RENEE HARRIS had she lived. Further, Plaintiff is a Petty Officer First Class with the U.S. Navy and his wife, TRINA RENEE HARRIS, was a stay-at-home mother to their minor children. As such, Mrs. Harris handled all the family, financial, and household matters while Plaintiff was deployed throughout the world, including to theaters in Iraq, Afghanistan, and Iran. His loss of her contributions to the family and to his career are

incalculable and irreplaceable, but Plaintiff seeks the sum of $100,000,000.00 (One Hundred Million and no/100 Dollars) in recompense.

19. Further, Plaintiff claims damages for those amounts expended for emergency attendants, funeral expenses, and all related costs on behalf of TRINA RENEE HARRIS.

EXEMPLARY NEGLIGENCE

20. The negligence of all Defendants, TOYOTA, CTS, DENSO and FRED HAAS, was of such a character as to make them guilty of gross negligence. Their actions involved such willful acts or omissions and gross neglect as to expose others to an extreme degree of risk, and could only have resulted from a conscious indifference to the rights, safety and welfare of others. Plaintiff hereby sues for exemplary damages in an amount of $100,000.000.00 (One Hundred Million and no/100 Dollars).

REQUEST FOR DISCLOSURE

21. Pursuant to Rule 194, T.R.C.P., Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) – (l).

JURY DEMAND

22. Plaintiff hereby formally makes this demand for a jury trial, pursuant to Rule 216, Texas Rules of Civil Procedure, and has tendered the required jury fee.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final hearing that the Plaintiff have judgment against Defendants, jointly and severally, with prejudgment and post-

judgment interests thereon at the legal rate, for costs of Court and attorney's fees where applicable, and for such other and further relief, special and general, at law and in equity, to which he may show himself justly entitled.

Respectfully submitted,

MINGLEDORFF LAW FIRM

KENNETH P. MINGLEDORFF
SBN 14176800
JUDY P. MINGLEDORFF
SBN: 16088765
430 Highway 6 South, Suite 215
Houston, Texas 77079
(281) 497-7180
Facsimile: (713) 497-4150

ATTORNEYS FOR PLAINTIFF

TOY-RQ-05E-00007414

TeamConnect@toyota.com

02/16/2010 01:07 PM

To Masahiro_Akiyama@mail.toyota.co.jp, daisuke_nishida@mta.mx.toyota.co.jp, rie_toshie_kato@mta.mx.toyota.co.jp,

cc

bcc

Subject New Product Liability Lawsuit Notification - Harris, Michael

*** Please do not reply to this message ***

A new Product Liability lawsuit has been opened in TeamConnect.

Matter Name: Harris, Michael
Matter Number: 2010-01-48662
Date Opened: 01/20/2010
Model: Corolla
Model Year: 2009

SERVICE OF PROCESS FORM

TO: DOROTHY SUTTON, TMS LEGAL **DATE:** 3/2/10

RECEIVED

FR: Linda Andrade

MAR - 4 2010

COMPANY: Gulf States Toyota, Inc. LEGAL DEPARTMENT

RE: SERVICE OF PROCESS FOR: Michael Cleighton Harris, Individually and on
(case name)
Behalf of Rhazhane Michae Harris and Teona Renee Harris, Minors vs. Toyota Motor Sales, U.S.A., Inc., CTS Corporation and Fred Haas Toyota World, LTD. In the District Court of Harris County, Texas, 189 Judicial District.

Enclosed are the originals (including service envelope) of the following documents Service/received on Fred Haas Toyota World, LTD
(name of company)

- ☐ Summons/Citation
- ☐ Subpoena/Subpoena
- ☒ Complaint/Petition
- ☒ Amended Complaint/Petition
- ☐ OTHER: (i.e., Discovery, Notice of Deposition, Affidavit, Medical Records Authorization, etc.)

The documents were served 2/25/10 on by the following method:
(date)

- ☒ Personal Service/Hand Delivery
- ☐ Certified Mail
- ☐ U.S. Mail
- ☐ Express Mail (FedEx, UPS, etc.)
- ☐ Fax
- ☒ OTHER
  Delivered to GST by dealership courier on 2/25/10. Originals were received by registered agent Mr. Boude Storey, who did not retain service envelope and/or date.

SERVICE OF PROCESS FORM

FILED
Loren Jackson
District Clerk
FEB 01 2010
Time:
By
Harris County, Texas
Deputy

CAUSE NO. _____

MICHAEL CLEIGHTON HARRIS,	§	**IN THE DISTRICT COURT OF**
INDIVIDUALLY and on behalf of	§	
RHAZHANE MICHAE HARRIS	§	
and TEONA RENEE HARRIS,	§	
MINORS, Plaintiffs	§	
	§	
VS.	§	**OF HARRIS COUNTY,**
TEXAS		
	§	
TOYOTA MOTOR SALES, U.S.A., INC.;	§	
CTS CORPORATION; and	§	
FRED HAAS TOYOTA WORLD, LTD.	§	
Defendants	§	_____ **JUDICIAL**
DISTRICT		

PLAINTIFF'S REQUEST FOR DISCLOSURE TO DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.

TO: TOYOTA MOTOR SALES, U.S.A., INC., by and through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, Texas, 75201.

MICHAEL CLEIGHTON HARRIS, individually and on behalf of RHAZHANE MICHAE HARRIS and TEONA RENEE HARRIS, minors, pursuant to Rule 194 of the Texas Rules of Civil Procedure, hereby requests that you make the following disclosures. Such answers are due fifty (50) days after the service of the Request for Disclosure, pursuant to Texas Rules of Civil Procedure 194.3.

RESPECTFULLY SUBMITTED,

KENNETH P. MINGLEDORFF
TBN 14176800
JUDY P. MINGLEDORFF
TBN 16088675
430 Highway 6 South, Suite 215
Houston, Texas 77079
(281) 497-7180 FAX (281) 497-4150

REQUESTS FOR DISCLOSURE

(a) The correct names of the parties to the lawsuit;

(b) The name, address, and telephone number of any potential parties;

(c) The legal theories, and, in general, the factual bases of the responding party's claims or defenses;

(e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(f) For any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and bibliography;

(g) Any indemnity and insuring agreements described in Rule 192.3(f);

(h) Any settlement agreements described in Rule 192.3(g);

(i) Any witness statements described in Rule 192.3(h);

(k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;

(l) The name, address, and telephone number of any person who may be designated as a responsible third party.

HARRIS, MICHAEL CORRESPONDENCE

TOY-RQ-05E-00007421

HARRIS, MICHAEL PLEADINGS

TOY-RQ-05E-00007422

HARRIS, MICHAEL DSC TO TOYOTA

TOY-RQ-05E-00007423

HARRIS, MICHAEL DSC TO OTHERS

TOY-RQ-05E-00007424

HARRIS, MICHAEL EXPERT DEPOS

TOY-RQ-05E-00007425

HARRIS, MICHAEL OTHER DEPOS

TOY-RQ-05E-00007426

HARRIS, MICHAEL MEDICAL REPORTS

TOY-RQ-05E-00007427

HARRIS, MICHAEL PL REPORTS

TOY-RQ-05E-00007428

HARRIS, MICHAEL ATTORNEY NOTES

TOY-RQ-05E-00007429

HARRIS, MICHAEL LITIGATION HOLD

TOY-RQ-05E-00007430

Harris, Michael

TMC

TOY-RQ-05E-00007431

Harris, Michael

Technical

TOY-RQ-05E-00007432

Harris, Michael

Expert

TOY-RQ-05E-00007433

Harris, Michael

Police/Investigation

TOY-RQ-05E-00007434