FILE START

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE, Individually and on Behalf of Others Similarly Situated,	)	Case No.
Plaintiff,	)	**CLASS ACTION**
v.	)	
TOYOTA MOTOR NORTH AMERICA, INC., a California corporation; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**, a Kentucky corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.**, a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.**, a California corporation; **NEW UNITED MOTOR MANUFACTURING, INC.**, a California Joint Venture, and **TOYOTA MOTOR CORPORATION**, a Japanese corporation,	)	**CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF**
Defendants.	)	**JURY TRIAL DEMANDED**

CLASS ACTION

This is a class action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System (ETCS-i). Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical fail-safes

to enable drivers to bring their vehicles back under control if a runaway event should occur, as many other vehicle manufacturers have done. The plaintiff brings this action on behalf of himself and all others similarly situated.

Plaintiff, Daniel D. Lee, by his undersigned counsel, makes the allegations in this Class Action upon actual knowledge, and as to all other matters upon information and belief and the investigation of his counsel.

JURISDICTION AND VENUE

1. This action asserts claims under Ohio law for negligence, breach of express and implied warranties, for unjust enrichment, and violations of Ohio's Consumer Sales Practices Act.

2. The court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interests and costs and is a class action in which the members of the class are citizens of a different state than the defendants.

3. The plaintiff, Daniel D. Lee, is a resident of Erie County, Ohio. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. ("TMMK"), is a Kentucky corporation; Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC. is a California corporation. Defendant NUMMI is a California Joint Venture and/or TMMK was involved, directly or indirectly, in the manufacture and assembly of the 2007 Toyota Corolla owned by plaintiff, as well as all other Toyota vehicles that are the subject of this action.

4. The court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of Ohio, have sufficient minimum contacts with the

State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this court permissible under traditional notions of fair play and substantial justice. The State of Ohio has a substantial and paramount interest in preventing the practices alleged herein from occurring in Ohio.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The plaintiff, Daniel D. Lee, is a resident of the City of Huron in Erie County, Ohio. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Erie County, Ohio.

PRELIMINARY STATEMENT

6. The plaintiff seeks damages, restitution and equitable relief for himself and on behalf of all others similarly situated, who have purchased or leased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary electronic and/or mechanical fail-safes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

7. The plaintiff, Daniel D. Lee, is the owner of a 2007 Toyota Corolla which is equipped with the ETCS-i.

8. Runaway acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, manufacturers must provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such a fail-safe.

9. Reports of unintended accelerations of vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

10. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

11. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to deceptively market ETCS-i-equipped vehicles despite knowledge that they are unreasonably dangerous by virtue of their design.

12. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota Corolla without incorporating an electronic or mechanical fail-safe similar to those provided by Toyota's manufacturing competitors, Toyota has dangerously misled the plaintiff and thousands of unsuspecting consumers throughout Ohio.

13. Toyota engaged in unfair and deceptive marketing of its ETSC-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Traffic Safety Administration's ("NHTSA") investigators.

14. When the NHTSA opened an investigation[1] of 2002 and 2003 model year Camrys (all equipped with ETCS-I), the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal, or (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed -- both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

15. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

a. Consumer complaints, including those from fleet operators;

b. Field reports, including dealer field reports;

c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

d Property damage claims;

e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or co-defendant.

[1] Defect Petition DP04-003; Investigaiton PE-4-021

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint).

16. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect"; however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

"(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

"(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

17. Toyota, through TMNA, thus *deceptively concealed* from NHTSA as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which carried him/her for a considerable distance, would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

[2] "Long duration" is defined as lasting longer than one (1) second.

18. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

19. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat as the cause, knowing that floor mats were almost never the cause.

20. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

[3] ODI Resume, PE04-021, Date Closed 07/22/2004

21. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action under the Consumers Legal Remedies Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive.* (Emphasis supplied.)

22. The engineering analysis described the first redundancy as follows: "Application of the brake - Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added.) This indicates a pressing need for an electronic or mechanical fail-safe.

23. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory" saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats.* The advisory stated that the company would soon be recalling certain 2007 - 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States.

24. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

25. Without the remedies provided by Ohio law there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a fail-safe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

26. The Toyota models at risk ("Class Vehicles") include, but are not limited to, the following:

Toyota Camrys from Model Year ("MY") 2002 though 2009

Toyota FJ Cruisers from MY 2003 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

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Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PARTIES

27. The plaintiff, Daniel D. Lee, is a resident of Erie County, Ohio. In August 2007, Plaintiff Lee leased a 2007 Toyota Corolla from Metro Toyota in Cuyahoga County, Ohio. In reality, the 2007 Toyota Corolla is unreasonably dangerous as designed and manufactured by Toyota.

28. Plaintiff did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate fail-safes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

29. As a consequence of defendants' unlawful and misleading business practices, plaintiff has suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

30. Plaintiff appears in this action on behalf of himself and on behalf of all others similarly situated.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

31. Toyota vehicles containing the ETCS-i system have been purchased throughout Ohio and are in wide use on Ohio roads.

32. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles. Nor are they informed that Toyota does not incorporate an adequate electronic or mechanical fail-safe into its design.

33. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to them.

34. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the defendants:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby

ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicles, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles.

CLASS ALLEGATIONS

35. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The class that plaintiff seeks to represent is composed of and defined as follows:

All citizens of Ohio who purchased one or more of the following ETCS-I vehicles listed on Exhibit A. These include, but are not limited to, all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007-2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Toyota Highlanders from MY 2004 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons ftom MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

36. Excluded from the class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and

any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

37. Excluded from the class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

38. The members of the class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the class members' claims in a class action will provide substantial benefit to the parties and the court.

39. Plaintiff's claims are typical of the claims of the class, and plaintiff has no interests adverse to the interests of other members of the class.

40. This dispute raises questions of law and fact that are common to all class members, which predominate over questions that arise on an individual basis for class members. The common questions of law and fact include, without limitation, the following:

A. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout Ohio and the United States?

B. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?

C. Was Toyota engaged in unfair business practices?

D. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles by, among other things, making misrepresentations or omissions to NHTSA?

E. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?

F. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?

E. Did plaintiff and others similarly situated suffer damages?

G. The extent of damages suffered by plaintiff and the class and the appropriate amount of compensation.

H. Was Toyota unjustly enriched?

I. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

J. Are the plaintiff and the class entitled to injunctive relief?

41. Plaintiff, as a representative party, will fairly and adequately protect the interests of the class and has retained counsel experienced and competent in the prosecution of class action litigation.

42. The nature of this action and the nature of the laws available to the class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named plaintiff experienced, is representative of

the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

43. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the class.

FIRST CLAIM FOR RELIEF
(Negligence)

44. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

45. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under Ohio law.

46. Each of the Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETSC-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

47. Toyota was negligent, and breached this duty owed to the plaintiffs.

48. The following acts and omissions by the defendants were negligent:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis **(FMEA)** or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

49. At all times relevant, the Toyota Defendants sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public.

50. The Toyota Defendants' marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Ohio law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

52. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public the Toyota Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

53. As a result of the foregoing, plaintiff and the class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

55. Plaintiff and the class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

56. The circumstances, as described in this Complaint, are such that allowing the Toyota Defendants to retain all of the benefits provided by plaintiff and the class would be inequitable. Further, plaintiff has requested that the vehicle be repaired or replaced in accordance with the vehicle's warranty coverage. The Toyota Defendants have wrongfully denied warranty coverage on the vehicle, thereby benefitting the defendants by retaining the

funds defendants should have expended to repair or replace the plaintiff's and class members' vehicles

57. The Toyota Defendants have been unjustly enriched at the expense of plaintiff and the class and, as a matter of equity, the Toyota Defendants should be required to make plaintiff and the class whole in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of Consumer Sales Practices Act)

58. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

59. Plaintiff brings this action on his own behalf, on behalf of the class defined above, and on behalf of the general public.

60. Plaintiff and each member of the class are "consumers" within the meaning of Ohio Consumer Practices Act, O.R.C. § 1345.01(D).

61. The Ohio Consumer Sales Practices Act ("CSPA") codified at O.R.C. § 1345.01 *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

62. Prior to plaintiffs' purchase of Class Vehicles, Toyota, by selling, marketing, advertising, and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CSPA, Ohio Revised Code § 1345.02(B)(2).

63. Prior to plaintiffs' purchase of Class Vehicles, Toyota, by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CSPA, Ohio Revised Code § 1345.02(B)(2).

64. Prior to seeking relief under the OCSPA, the plaintiffs wrote Toyota, via certified mail, notifying Toyota of its wrongful conduct and providing Toyota an opportunity to cure. More than sixty (60) days have passed since plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CSPA.

65. The plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CSPA including, but not limited to, diminished and/or lost value for the vehicles they purchased, lost and/or diminished use, enjoyment, and utility of such vehicles, and annoyance, aggravation, and inconvenience resulting from Toyota's violations of the CSPA.

66. For each violation of the CSPA Toyota is liable to each plaintiff for the sum of $200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against the Toyota Defendants as follows:

A. For an order certifying this case as a class action and appointing plaintiff and their counsel to represent the class;

B. Awarding damages to plaintiff and the other class members for all causes of action alleged herein;

C. Awarding restitution and disgorgement as a result of the Toyota Defendants' unfair business practices;

D. For an order requiring the Toyota Defendants to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;

E. All equitable remedies available under Ohio law;

F. Awarding each plaintiff its actual damages or $200, whichever may be greater as provided in Ohio's Consumer Sales Practices Act;

G. Awarding attorneys' fees, expenses and costs;

H. Punitive damages;

I. Awarding pre- and post-judgment interest; and

J. Providing such other and further relief as this Court may deem just and proper.

JURY DEMAND

A jury trial is endorsed herein.

Respectfully submitted,

/s/ John T. Murray

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TOY-RQ-05E-00010654

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Daniel D. Lee
Plaintiff

v.

Toyota Motor North America, Inc.
Defendant

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: John T. Murray
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 02/08/2010, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 02/08/2010

Signature of the attorney or unrepresented party

Toyota Motor North America, Inc.
Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

JS 44 (Rev. 12/07)

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

Daniel D. Lee

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Murray & Murray Co., 111 E. Shoreline Dr., Sandusky, Ohio 44870

DEFENDANTS

Toyota Motor North America, Inc.

County of Residence of First Listed Defendant Los Angeles County California
(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: Product liability case against Toyota related to vehicles' sudden acceleration

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 02/08/2010

SIGNATURE OF ATTORNEY OF RECORD /s/ John T. Murray

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

1. ☑ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regardfor the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is ☐ **RELATED** to another **PENDING** civil case. This action is ☐ **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation **For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.**

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

☐	AKRON	**(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)**
☐	CLEVELAND	**(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)**
☐	YOUNGSTOWN	**(Counties: Columbiana, Mahoning and Trumbull)**

WESTERN DIVISION

☑	TOLEDO	**(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)**

JS 44 Reverse (Rev. 12/07)

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.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE, Individually and on Behalf of Others Similarly Situated, Plaintiff, v. **TOYOTA MOTOR NORTH AMERICA, INC.,** a California corporation; **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**, a Kentucky corporation; **TOYOTA MOTOR MANUFACTURING KENTUCKY, INC.**, a Kentucky corporation; **TOYOTA MOTOR SALES U.S.A., INC.**, a California corporation; **NEW UNITED MOTOR MANUFACTURING, INC.**, a California Joint Venture, and **TOYOTA MOTOR CORPORATION**, a Japanese corporation, Defendants.	)	Case No. **CLASS ACTION** **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF** **JURY TRIAL DEMANDED**

CLASS ACTION

This is a class action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System (ETCS-i). Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical fail-safes

to enable drivers to bring their vehicles back under control if a runaway event should occur, as many other vehicle manufacturers have done. The plaintiff brings this action on behalf of himself and all others similarly situated.

Plaintiff, Daniel D. Lee, by his undersigned counsel, makes the allegations in this Class Action upon actual knowledge, and as to all other matters upon information and belief and the investigation of his counsel.

JURISDICTION AND VENUE

1. This action asserts claims under Ohio law for negligence, breach of express and implied warranties, for unjust enrichment, and violations of Ohio's Consumer Sales Practices Act.

2. The court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interests and costs and is a class action in which the members of the class are citizens of a different state than the defendants.

3. The plaintiff, Daniel D. Lee, is a resident of Erie County, Ohio. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. ("TMMK"), is a Kentucky corporation; Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC. is a California corporation. Defendant NUMMI is a California Joint Venture and/or TMMK was involved, directly or indirectly, in the manufacture and assembly of the 2007 Toyota Corolla owned by plaintiff, as well as all other Toyota vehicles that are the subject of this action.

4. The court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of Ohio, have sufficient minimum contacts with the

State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this court permissible under traditional notions of fair play and substantial justice. The State of Ohio has a substantial and paramount interest in preventing the practices alleged herein from occurring in Ohio.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The plaintiff, Daniel D. Lee, is a resident of the City of Huron in Erie County, Ohio. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Erie County, Ohio.

PRELIMINARY STATEMENT

6. The plaintiff seeks damages, restitution and equitable relief for himself and on behalf of all others similarly situated, who have purchased or leased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary electronic and/or mechanical fail-safes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

7. The plaintiff, Daniel D. Lee, is the owner of a 2007 Toyota Corolla which is equipped with the ETCS-i.

8. Runaway acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, manufacturers must provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such a fail-safe.

9. Reports of unintended accelerations of vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

10. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

11. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to deceptively market ETCS-i-equipped vehicles despite knowledge that they are unreasonably dangerous by virtue of their design.

12. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota Corolla without incorporating an electronic or mechanical fail-safe similar to those provided by Toyota's manufacturing competitors, Toyota has dangerously misled the plaintiff and thousands of unsuspecting consumers throughout Ohio.

13. Toyota engaged in unfair and deceptive marketing of its ETSC-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Traffic Safety Administration's ("NHTSA") investigators.

14. When the NHTSA opened an investigation[1] of 2002 and 2003 model year Camrys (all equipped with ETCS-I), the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal, or (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed -- both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

15. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

a. Consumer complaints, including those from fleet operators;

b. Field reports, including dealer field reports;

c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

d Property damage claims;

e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or co-defendant.

[1] Defect Petition DP04-003; Investigaiton PE-4-021

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint).

16. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect"; however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

"(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

"(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

17. Toyota, through TMNA, thus *deceptively concealed* from NHTSA as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which carried him/her for a considerable distance, would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

[2] "Long duration" is defined as lasting longer than one (1) second.

18. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

19. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat as the cause, knowing that floor mats were almost never the cause.

20. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

[3] ODI Resume, PE04-021, Date Closed 07/22/2004

21. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," urgently supports this action under the Consumers Legal Remedies Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive.* (Emphasis supplied.)

22. The engineering analysis described the first redundancy as follows: "Application of the brake - Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added.) This indicates a pressing need for an electronic or mechanical fail-safe.

23. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory" saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats.* The advisory stated that the company would soon be recalling certain 2007 - 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest recall in Toyota's history and the sixth largest in the United States.

24. Toyota's advisory is dangerously misleading, for the following reasons, among others:

- By representing that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

25. Without the remedies provided by Ohio law there is a real and imminent danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a fail-safe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

26. The Toyota models at risk ("Class Vehicles") include, but are not limited to, the following:

Toyota Camrys from Model Year ("MY") 2002 though 2009

Toyota FJ Cruisers from MY 2003 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

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Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PARTIES

27. The plaintiff, Daniel D. Lee, is a resident of Erie County, Ohio. In August 2007, Plaintiff Lee leased a 2007 Toyota Corolla from Metro Toyota in Cuyahoga County, Ohio. In reality, the 2007 Toyota Corolla is unreasonably dangerous as designed and manufactured by Toyota.

28. Plaintiff did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate fail-safes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

29. As a consequence of defendants' unlawful and misleading business practices, plaintiff has suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

30. Plaintiff appears in this action on behalf of himself and on behalf of all others similarly situated.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

31. Toyota vehicles containing the ETCS-i system have been purchased throughout Ohio and are in wide use on Ohio roads.

32. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles. Nor are they informed that Toyota does not incorporate an adequate electronic or mechanical fail-safe into its design.

33. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to them.

34. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the defendants:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby

ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicles, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles.

CLASS ALLEGATIONS

35. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The class that plaintiff seeks to represent is composed of and defined as follows:

All citizens of Ohio who purchased one or more of the following ETCS-I vehicles listed on Exhibit A. These include, but are not limited to, all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007-2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Toyota Highlanders from MY 2004 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons ftom MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

36. Excluded from the class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and

any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

37. Excluded from the class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

38. The members of the class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the class members' claims in a class action will provide substantial benefit to the parties and the court.

39. Plaintiff's claims are typical of the claims of the class, and plaintiff has no interests adverse to the interests of other members of the class.

40. This dispute raises questions of law and fact that are common to all class members, which predominate over questions that arise on an individual basis for class members. The common questions of law and fact include, without limitation, the following:

A. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout Ohio and the United States?

B. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?

C. Was Toyota engaged in unfair business practices?

D. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles by, among other things, making misrepresentations or omissions to NHTSA?

E. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?

F. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?

E. Did plaintiff and others similarly situated suffer damages?

G. The extent of damages suffered by plaintiff and the class and the appropriate amount of compensation.

H. Was Toyota unjustly enriched?

I. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

J. Are the plaintiff and the class entitled to injunctive relief?

41. Plaintiff, as a representative party, will fairly and adequately protect the interests of the class and has retained counsel experienced and competent in the prosecution of class action litigation.

42. The nature of this action and the nature of the laws available to the class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named plaintiff experienced, is representative of

the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

43. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the class.

FIRST CLAIM FOR RELIEF
(Negligence)

44. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

45. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under Ohio law.

46. Each of the Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETSC-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

47. Toyota was negligent, and breached this duty owed to the plaintiffs.

48. The following acts and omissions by the defendants were negligent:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis **(FMEA)** or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

49. At all times relevant, the Toyota Defendants sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public.

50. The Toyota Defendants' marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Ohio law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

52. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public the Toyota Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

53. As a result of the foregoing, plaintiff and the class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

55. Plaintiff and the class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

56. The circumstances, as described in this Complaint, are such that allowing the Toyota Defendants to retain all of the benefits provided by plaintiff and the class would be inequitable. Further, plaintiff has requested that the vehicle be repaired or replaced in accordance with the vehicle's warranty coverage. The Toyota Defendants have wrongfully denied warranty coverage on the vehicle, thereby benefitting the defendants by retaining the

funds defendants should have expended to repair or replace the plaintiff's and class members' vehicles

57. The Toyota Defendants have been unjustly enriched at the expense of plaintiff and the class and, as a matter of equity, the Toyota Defendants should be required to make plaintiff and the class whole in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of Consumer Sales Practices Act)

58. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

59. Plaintiff brings this action on his own behalf, on behalf of the class defined above, and on behalf of the general public.

60. Plaintiff and each member of the class are "consumers" within the meaning of Ohio Consumer Practices Act, O.R.C. § 1345.01(D).

61. The Ohio Consumer Sales Practices Act ("CSPA") codified at O.R.C. § 1345.01 *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

62. Prior to plaintiffs' purchase of Class Vehicles, Toyota, by selling, marketing, advertising, and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CSPA, Ohio Revised Code § 1345.02(B)(2).

63. Prior to plaintiffs' purchase of Class Vehicles, Toyota, by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CSPA, Ohio Revised Code § 1345.02(B)(2).

64. Prior to seeking relief under the OCSPA, the plaintiffs wrote Toyota, via certified mail, notifying Toyota of its wrongful conduct and providing Toyota an opportunity to cure. More than sixty (60) days have passed since plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CSPA.

65. The plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CSPA including, but not limited to, diminished and/or lost value for the vehicles they purchased, lost and/or diminished use, enjoyment, and utility of such vehicles, and annoyance, aggravation, and inconvenience resulting from Toyota's violations of the CSPA.

66. For each violation of the CSPA Toyota is liable to each plaintiff for the sum of $200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against the Toyota Defendants as follows:

A. For an order certifying this case as a class action and appointing plaintiff and their counsel to represent the class;

B. Awarding damages to plaintiff and the other class members for all causes of action alleged herein;

C. Awarding restitution and disgorgement as a result of the Toyota Defendants' unfair business practices;

D. For an order requiring the Toyota Defendants to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;

E. All equitable remedies available under Ohio law;

F. Awarding each plaintiff its actual damages or $200, whichever may be greater as provided in Ohio's Consumer Sales Practices Act;

G. Awarding attorneys' fees, expenses and costs;

H. Punitive damages;

I. Awarding pre- and post-judgment interest; and

J. Providing such other and further relief as this Court may deem just and proper.

JURY DEMAND

A jury trial is endorsed herein.

Respectfully submitted,

/s/ John T. Murray

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TOY-RQ-05E-00010681

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Daniel D. Lee
Plaintiff

v.

Toyota Motor North America, Inc.
Defendant

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: John T. Murray
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 02/08/2010, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 02/08/2010

Signature of the attorney or unrepresented party

Toyota Motor North America, Inc.
Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

JS 44 (Rev. 12/07)

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

Daniel D. Lee

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Murray & Murray Co., 111 E. Shoreline Dr., Sandusky, Ohio 44870

DEFENDANTS

Toyota Motor North America, Inc.

County of Residence of First Listed Defendant Los Angeles County California
(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: Product liability case against Toyota related to vehicles' sudden acceleration

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 02/08/2010

SIGNATURE OF ATTORNEY OF RECORD /s/ John T. Murray

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

1. ☑ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regardfor the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is ☐ **RELATED** to another **PENDING** civil case. This action is ☐ **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation **For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.**

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

☐	AKRON	**(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)**
☐	CLEVELAND	**(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)**
☐	YOUNGSTOWN	**(Counties: Columbiana, Mahoning and Trumbull)**

WESTERN DIVISION

☑	TOLEDO	**(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)**

JS 44 Reverse (Rev. 12/07)

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.

UNITED STATES DISTRICT COURT
Northern District of Ohio

Daniel D. Lee

Plaintiff

v.

Toyota Motor North

Defendant

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND ORDER OF REFEREE

Case Number: **3:10cv280**

Judge Carr

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Fed. R. Civ. P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures	Party Represented	Date

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to **Vernelis K. Armstrong** United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S. C. 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ***ONLY IF*** ALL PARTIES HAVE CONSENTED ***ON THIS FORM*** TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

UNITED STATES DISTRICT COURT
Northern District of Ohio

NOTICE & ORDER

Pursuant to 28 U.S.C. §636(c)(1) and LR 73.1, a Magistrate Judge of the Northern District of Ohio may, upon consent of all parties to an action, and entry of an order of reference by the Judge, exercise trial jurisdiction in civil actions, both jury and non-jury, and enter final judgment therein.

If all parties to this action consent and an order of reference is entered, the case will be assigned to a Magistrate Judge pursuant to LR 73.1. If all parties do not consent, or if an order of reference is not entered, the action will remain with the Judge to whom it is assigned. The decision of counsel on this matter of consent is entirely voluntary. Your response is joint, and disclosure of individual decisions is not required.

Pursuant to Local Civil Rule 73.1, Recusal, Resignation or Death of Magistrate Judge, where the parties have consented of the transfer of a civil case to a Magistrate Judge under section (a) above, if the Magistrate Judge thereafter recuses, resigns or dies, the case shall be returned to the District Court Judge. The Clerk shall immediately assign another Magistrate Judge by the random draw and notify the parties of such new assignment. Within ten (10) days after such notification by the Clerk, the parties shall indicate their consent, or lack thereof, to transferring the case to the newly-assigned Magistrate Judge under 28 U.S.C. §636(c). If the parties do not consent to the transfer, the case shall remain with the District Court Judge.

At the time the last appearance of counsel is made on behalf of the named defendant, the parties are to communicate with each other on this matter. ***It is the responsibility of plaintiff's counsel to initiate such consultation. The response is to be returned within ten (10) days of the last appearance.*** The response must contain the signatures of all counsel.

Pursuant to 28 U.S.C. §636(c)(3) all appeals relating to magistrate consent cases must be heard only in the court of appeals.

Please return the completed response form to the Office of Clerk of the Court as promptly as possible. If an order of reference is entered by the Court, you will be advised by the Clerk as to which Magistrate Judge the case has been assigned for further proceedings.

Geri M. Smith,
Clerk of Court

(See form on the reverse side)

o:\forms\consent.pdf
revised January 2002

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
Plaintiff,	)	**Judge James G. Carr**
vs.	)	**AFFIDAVIT OF KEITH M. BABCOCK**
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA)
) ss:
COUNTY OF RICHLAND)

I, Keith M. Babcock, having been duly worn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of South Carolina, Fed. ID No. 1143.

2. I am admitted to practice before the following courts:

South Carolina

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above-captioned matter has been tendered to the Clerk, in accordance with Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

Keith M. Babcock, Fed. ID No. 1143
LEWIS & BABCOCK
P. O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000
kmb@lewisbabcock.com

Sworn to Before me this
18th day of February, 2010
2/18/2010
Patricia K. McCright
PATICIA K. MCCRIGHT, Notary for S.C
my commsin expires: 2/12/19

TOY-RQ-05E-00010689

The Supreme Court of South Carolina

Certificate of Good Standing

I, Daniel E. Shearouse, Clerk of the Supreme Court of South Carolina, do hereby certify that Keith Moss Babcock was duly sworn and admitted as an attorney in this state on May 11, 1977 and is an active member of the South Carolina Bar.

DANIEL E. SHEAROUSE, CLERK

BY Gayle B. Watts
DEPUTY CLERK FOR BAR ADMISSIONS

Columbia, South Carolina

February 16, 2010

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

Keith M. Babcock
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray

John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on February 18, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray

James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010692

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Keith M. Babcock
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**AFFIDAVIT OF BENJAMIN L. BAILEY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF WEST VIRGINIA)
) ss:
COUNTY OF KANAWHA)

I, Benjamin L. Bailey, having been duly worn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of West Virginia, ID No. 200.

2. I am admitted to practice before the following courts:

West Virginia State Courts

U.S. Supreme Court

U.S. Court of Appeals for the Fourth Circuit

U.S. District Courts for the Northern and Southern Districts of West Virginia

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above-captioned matter has been tendered to the Clerk, in accordance with Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

Benjamin L. Bailey, ID No. 200
BAILEY & GLASSER, LLP
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 facsimile
bbailey@baileyglasser.com

TOY-RQ-05E-00010695

STATE OF WEST VIRGINIA

I, Rory L. Perry II, Clerk of the Supreme Court of Appeals of West Virginia, hereby do certify that Ben L. Bailey, of Charleston, West Virginia, an attorney duly licensed to practice law in this State, was admitted to practice law before the Supreme Court of Appeals of West Virginia, the highest court of the State, on the 28th day of April, 1981; that he is an attorney in good standing in said Court and is currently on active status and that his private and professional characters are good.

Given under my hand and seal of said Court, at Charleston, West Virginia, this 17th day of February, 2010, and in the 147th year of the State.

Clerk, Supreme Court of Appeals of West Virginia

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

Benjamin L. Bailey
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray

John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on February 18, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray

James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010698

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Benjamin L. Bailey
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**AFFIDAVIT OF**
	)	**A. CAMDEN LEWIS**
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF SOUTH CAROLINA)
) ss:
COUNTY OF RICHLAND)

I, A. Camden Lewis, having been duly worn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of South Carolina, Fed. ID No. 2669.

2. I am admitted to practice before the following courts:

South Carolina

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above-captioned matter has been tendered to the Clerk, in accordance with Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

A. Camden Lewis, Fed. ID No. 2669
LEWIS & BABCOCK
P. O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000
acl@lewisbabcock.com

Sworn to Before me this
18th day of February, 2010

Melanie B. Blease

Melanie B. Blease, Notary for S.C.
My Commission expires 8/1/16

TOY-RQ-05E-00010701

The Supreme Court of South Carolina

Certificate of Good Standing

I, Daniel E. Shearouse, Clerk of the Supreme Court of South Carolina, do hereby certify that Arthur Camden Lewis was duly sworn and admitted as an attorney in this state on September 30, 1972 and is an active member of the South Carolina Bar.

DANIEL E. SHEAROUSE, CLERK

BY Gayle B. Watts
DEPUTY CLERK FOR BAR ADMISSIONS

Columbia, South Carolina

February 16, 2010

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

A. Camden Lewis
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray

John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on February 18, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray

James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010704

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

A. Camden Lewis
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**AFFIDAVIT OF ROBERT P. LOREA**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF WEST VIRGINIA)
) ss:
COUNTY OF KANAWHA)

I, Robert P. Lorea, having been duly worn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of West Virginia, ID No. 7476.

2. I am admitted to practice before the following courts:

West Virginia State Courts

U.S. Supreme Court

U.S. Court of Appeals for the Fourth Circuit

U.S. District Courts for the Northern and Southern Districts of West Virginia

U.S. Bankruptcy Court for the Northern District of West Virginia

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above-captioned matter has been tendered to the Clerk, in accordance with Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

Robert P. Lorea, ID No. 7476
BAILEY & GLASSER, LLP
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 facsimile
rloreaq@baileyglasser.com

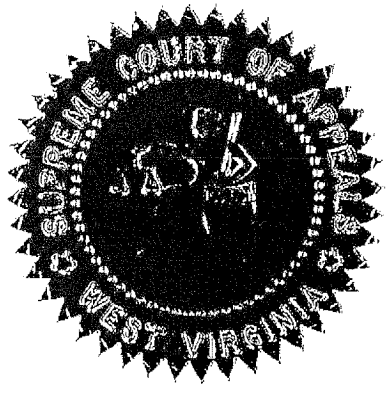
TOY-RQ-05E-00010707

STATE OF WEST VIRGINIA

I, Rory L. Perry II, Clerk of the Supreme Court of Appeals of West Virginia, hereby do certify that Robert P. Lorea, of Charleston, West Virginia, an attorney duly licensed to practice law in this State, was admitted to practice law before the Supreme Court of Appeals of West Virginia, the highest court of the State, on the 6th day of October, 1997; that he is an attorney in good standing in said Court and is currently on active status and that his private and professional characters are good.

Given under my hand and seal of said Court, at Charleston, West Virginia, this 17th day of February, 2010, and in the 147th year of the State.

Clerk, Supreme Court of Appeals of West Virginia



UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

Robert P. Lorea
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray

John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on February 18, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray

James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010710

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Robert P. Lorea
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

DANIEL D. LEE, **Plaintiff,** vs. TOYOTA MOTOR NORTH AMERICA, INC., et al., **Defendants.**	)	**Case No. 3:10-cv-00280** **Judge James G. Carr** **AFFIDAVIT OF ERIC B. SNYDER**

STATE OF WEST VIRGINIA)
) ss:
COUNTY OF KANAWHA)

I, Eric B. Snyder, having been duly worn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of West Virginia, ID No. 9143.

2. I am admitted to practice before the following courts:

West Virginia State Courts

Pennsylvania State Courts

U.S. Supreme Court

U.S. Court of Appeals for the Fourth Circuit

U.S. District Court for the Southern District of West Virginia

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above-captioned matter has been tendered to the Clerk, in accordance with Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

Eric B. Snyder, ID No. 9143
BAILEY & GLASSER, LLP
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110
esnyder@baileyglasser.com

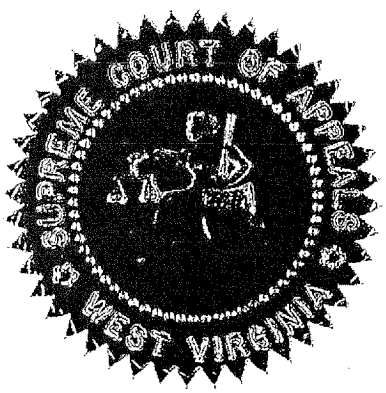
TOY-RQ-05E-00010713

STATE OF WEST VIRGINIA

I, Rory L. Perry II, Clerk of the Supreme Court of Appeals of West Virginia, hereby do certify that Eric B. Snyder, of Charleston, West Virginia, an attorney duly licensed to practice law in this State, was admitted to practice law before the Supreme Court of Appeals of West Virginia, the highest court of the State, on the 24th day of September, 2002; that he is an attorney in good standing in said Court and is currently on active status and that his private and professional characters are good.

Given under my hand and seal of said Court, at Charleston, West Virginia, this 17th day of February, 2010, and in the 147th year of the State.

Clerk, Supreme Court of Appeals of West Virginia



UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

Eric B. Snyder
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray

John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on February 18, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray

James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010716

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Eric B. Snyder
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Keith M. Babcock
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

s/James G. Carr
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Benjamin L. Bailey
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

S/James G. Carr
Chief Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

A. Camden Lewis
Lewis & Babcock
P. O. Box 11208
Columbia, South Carolina 29211

s/James G. Carr
Chief Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Robert P. Lorea
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

s/ James G. Carr
Chief Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Eric B. Snyder
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

S/ James G. Carr

Chief Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**MOTION FOR ADMISSION**
	)	***PRO HAC VICE***
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Now comes the plaintiff, by and through counsel, James L. Murray of the law firm of Murray & Murray Co., L.P.A., and requests this court to issue orders allowing the following attorney to appear *pro hac vice* in the above-styled cause:

Edgar F. Heiskell, III
Bailey & Glasser
209 Capitol Street
Charleston, WV 25301

In support of this motion, plaintiff incorporates by reference the Affidavit for the attorney attached hereto. The prescribed fee has been tendered to the Clerk of the United States District Court, Northern District of Ohio, Western Division. Said motion is being made pursuant to Local Civil Rule 83.5(h).

A proposed order is also attached.

Respectfully submitted,

/s/ James L. Murray
John T. Murray (0008793)
jotm@murrayandmurray.com
Telephone: (419) 624-3125
James L. Murray (006 8471)
jlm@murrayandmurray.com
Telephone: (419) 624-3129
Dennis E. Murray, Sr. (0008783)
dmsr@murrayandmurray.com
Telephone: (419) 624-3130
William H. Bartle (# 000 8795)
whb@murrayandmurray.com
Telephone: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Facsimile: (419) 624-0707

CERTIFICATION

I hereby certify that on March 4, 2010, a copy of foregoing Motion for Admission *Pro Hac Vice* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ James L. Murray
James L. Murray (006 8471)
jlm@murrayandmurray.com

Attorney or Plaintiff

TOY-RQ-05E-00010724

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Edgar F. Heiskell, III
Bailey & Glasser
209 Capitol Street
Charleston, WV 25301

_____
Judge James G. Carr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

DANIEL D. LEE, Plaintiff, vs. TOYOTA MOTOR NORTH AMERICA, INC., et al., Defendants.	)	Case No. 3:10-cv-00280 Judge James G. Carr AFFIDAVIT OF EDGAR F. HEISKELL, III

STATE OF WEST VIRGINIA)
)ss:
COUNTY OF KANAWHA)

I, Edgar F. Heiskell, III, having been duly sworn, hereby states as follows:

1. I am a licensed attorney and a member in good standing of the Bar of the State of West Virginia, ID No. 1668.

2. I am admitted to practice before the following courts:

West Virginia State Courts

U.S. Supreme Court

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Eighth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Federal Claims

U.S. District Court for the Northern District of West Virginia

U.S. District Court for the Southern District of West Virginia

3. The prescribed fee in the sum of One Hundred ($100.00) Dollars for my admittance to practice before this court in the above captioned matter has been tendered to the Clerk, in accordance with the Local Civil Rule 83.5(h).

4. I consent and state that I will conduct myself in accordance with the applicable ethical standards in the course of these proceedings.

Further Affiant sayeth naught.

Edgar E. Heiskell, III
Attorney at Law
P.O. Box 3232
Charleston, WV 25332
(304) 545-5404
(304) 342-1110 facsimile
hheiskell@att.net

STATE OF WEST VIRGINIA

I, Rory L. Perry II, Clerk of the Supreme Court of Appeals of West Virginia, hereby do certify that Edgar F. Heiskell, III of Charleston, West Virginia, an attorney duly licensed to practice law in this State, was admitted to practice law before the Supreme Court of Appeals of West Virginia, the highest Court of this State, on the 3rd day of October 1966, that he is an attorney in good standing in said Court and is currently on active status, and that his private and professional characters are good.

Given under my hand and the seal of said Court, at Charleston, West Virginia, this 2nd day of March, 2010, and in the 147th year of the State.

Clerk, Supreme Court of Appeals of West Virginia

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

DANIEL D. LEE,	)	**Case No. 3:10-cv-00280**
	)	
Plaintiff,	)	**Judge James G. Carr**
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
TOYOTA MOTOR NORTH AMERICA, INC., et al.,	)	
	)	
Defendants.	)	

Upon motion of the plaintiff, by and through counsel, it is the JUDGMENT, ORDER and DECREE of this court that the following attorney be and hereby is granted leave to appear *pro hac vice* in the above-styled cause:

Edgar F. Heiskell, III
Bailey & Glasser
209 Capitol Street
Charleston, WV 25301

s/ James G. Carr

Chief Judge James G. Carr

Armstrong, Cat04

U.S. District Court
Northern District of Ohio (Toledo)
CIVIL DOCKET FOR CASE #: 3:10-cv-00280-JGC

Lee v. Toyota Motor North America, Inc., et al
Assigned to: Judge James G. Carr
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/08/2010
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

Daniel D. Lee
Individually and on behalf of all others similarly situated

represented by **John T. Murray**
Murray & Murray
111 East Shoreline Drive
Sandusky, OH 44870-2517
419-624-3125
Fax: 419-624-0707
Email: jotm@murrayandmurray.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

A. Camden Lewis
Lewis & Babcock
P.O. Box 11208
Columbia, SC 29211
803-771-8000
ATTORNEY TO BE NOTICED

Benjamin L. Bailey
Bailey & Glasser
209 Capitol Street
Charleston, WV 25301
304-345-6555
ATTORNEY TO BE NOTICED

Dennis E. Murray , Sr.
Murray & Murray
111 East Shoreline Drive
Sandusky, OH 44870-2517
419-624-3000
Fax: 419-624-0707
Email: dms@murrayandmurray.com
ATTORNEY TO BE NOTICED

Edgar F. Heiskell , III
553 Dryden Place
P.O. Box 5301

TOY-RQ-05E-00010730

Charlottesville, VA 22905-5301
434-293-0700
Fax: 434-293-4227
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Eric B. Snyder
Bailey & Glasser
203 Capitol Street
Charleston, WV 25301
304-345-6555
ATTORNEY TO BE NOTICED

Keith M. Babcock
Lewis & Babcock
P.O. Box 11208
Columbia, SC 29211
803-771-8000
ATTORNEY TO BE NOTICED

Robert P. Lorea
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Charleston, WV 25301
304-345-6555
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111 East Shoreline Drive
Sandusky, OH 44870-2517
419-624-3000
Fax: 419-624-0707
Email: jlm@murrayandmurray.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor North America, Inc.

TOY-RQ-05E-00010731

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.

Defendant

Toyota Motor Manufacturing Kentucky, Inc.

Defendant

Toyota Motor Sales U.S.A., Inc.

Defendant

Toyota Motor Corporation

Defendant

New United Motor Manufacturing, Inc.

Date Filed	#	Docket Text
02/08/2010	1	**Complaint** with jury demand against All Defendants. Filing fee paid $350, Receipt number 0647-3948784. Filed by Daniel D. Lee. (Attachments: # 1 Waiver of the Service of Summons, # 2 Civil Cover Sheet) (Murray, James). Modified on 2/9/2010 (M,C). (Entered: 02/08/2010)
02/08/2010		Judge James G. Carr assigned to case. (M,C) (Entered: 02/08/2010)
02/09/2010	2	Magistrate Consent Form issued to counsel. Service by waiver. (M,C) (Entered: 02/09/2010)
02/12/2010		**Notice** to Attorney Eric B. Snyder. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. (P,G) (Entered: 02/12/2010)
02/12/2010		**Notice** to Attorney Keith M. Babcock. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. (P,G) (Entered: 02/12/2010)
02/12/2010		**Notice** to Attorney Robert P. Lorea. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are

TOY-RQ-05E-00010732

		available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. Notice sent to attorney by U.S. Mail on 2/12/2010. (P,G) (Entered: 02/12/2010)
02/12/2010		**Notice** to Attorney A. Camden Lewis. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. (P,G) (Entered: 02/12/2010)
02/12/2010		**Notice** to Attorney Benjamin L. Bailey. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. (P,G) (Entered: 02/12/2010)
02/18/2010	3	**Motion** for attorney Keith M. Babcock to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3963262, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Proposed Order, # 2 Affidavit)(Murray, James) (Entered: 02/18/2010)
02/18/2010	4	**Motion** for attorney Benjamin L. Bailey to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3963281, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Affidavit, # 2 Proposed Order)(Murray, James) (Entered: 02/18/2010)
02/18/2010	5	**Motion** for attorney A. Camden Lewis to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3963290, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Proposed Order, # 2 Affidavit)(Murray, James) (Entered: 02/18/2010)
02/18/2010	6	**Motion** for attorney Robert P. Lorea to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3963305, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Proposed Order, # 2 Affidavit)(Murray, James) (Entered: 02/18/2010)
02/18/2010	7	**Motion** for attorney Eric B. Snyder to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3963321, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Proposed Order, # 2 Affidavit)(Murray, James) (Entered: 02/18/2010)
02/23/2010	8	**Order** granting Motion for appearance pro hac vice by Keith M. Babcock (Related Doc # 3). Judge James G. Carr on 2/23/10.(C,D) (Entered: 02/23/2010)
02/23/2010	9	**Order** granting Motion for appearance pro hac vice by Benjamin L. Bailey (Related Doc # 4). Judge James G. Carr on 2/23/10.(C,D) (Entered: 02/23/2010)
02/23/2010	10	**Order** granting Motion for appearance pro hac vice by A. Camden Lewis

TOY-RQ-05E-00010733

		(Related Doc # 5). Judge James G. Carr on 2/23/10.(C,D) (Entered: 02/23/2010)
02/23/2010	11	**Order** granting Motion for appearance pro hac vice by Robert P. Lorea (Related Doc # 6). Judge James G. Carr on 2/23/10.(C,D) (Entered: 02/23/2010)
02/23/2010	12	**Order** granting Motion for appearance pro hac vice by Eric B. Snyder (Related Doc # 7). Judge James G. Carr on 2/23/10.(C,D) (Entered: 02/23/2010)
02/24/2010		**Notice** to Attorney Edgar F. Heiskell, III. The Court finds no record of your being admitted to practice in the Northern District of Ohio. Pursuant to LR 83.5, please apply for admission or file a motion to be admitted pro hac vice within 10 business days. The local rules and the attorney admission application are available on the court's web site at: www.ohnd.uscourts.gov. If you are not the attorney of record in this case, file a motion to withdraw as attorney pursuant to LR 83.9 within 10 business days. (P,G) (Entered: 02/24/2010)
03/04/2010	13	**Motion** for attorney Edgar F. Heiskell, III to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-3982009, filed by Plaintiff Daniel D. Lee. (Attachments: # 1 Proposed Order, # 2 Affidavit)(Murray, James) (Entered: 03/04/2010)
03/05/2010	14	**Order** granting Motion for appearance pro hac vice by Edgar F. Heiskell, III (Related Doc # 13). Judge James G. Carr on 3/5/10.(C,D) (Entered: 03/05/2010)

TOY-RQ-05E-00010734

FILE START

FILED

10 FEB -8 PM 3:51

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

BY:

WEXLER WALLACE LLP
MARK J. TAMBLYN (State Bar No. 179272)
Email: mjt@wexlerwallace.com
NEHA DUGGAL (State Bar No. 251336)
Email: nd@wexlerwallace.com
455 Capitol Mall, Suite 231
Sacramento, California 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

WEXLER WALLACE LLP
KENNETH A. WEXLER
Email: kaw@wexlerwallace.com
55 West Monroe Street, Suite 3300
Chicago, Illinois 60603
Telephone: (312) 346-2222
Facsimile: (312) 342-0022

Attorneys for *Plaintiff*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PETER WISNER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No. CV10-00942-SJO(FFMx)

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

BY FAX

Plaintiff Peter Wisner, ("Plaintiff"), individually and on behalf of all others similarly situated, alleges by and through his attorneys, upon information and belief as to matters pertaining to himself, and as to all other matters based on public information and investigation of his counsel, as follows:

JURISDICTION AND VENUE

1. The Court has original jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d)(2).

2. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(1) because Defendant Toyota Motor Sales is headquartered in this judicial district. Venue is also proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

3. The members of the putative Class have suffered aggregate damages exceeding $5,000,000, exclusive of interest and costs.

PARTIES

4. Plaintiff Peter Wisner is a resident of Santa Barbara, California. On September 9, 2009, Plaintiff purchased a 2009 Toyota Avalon "Limited" for approximately $38,000 (after deduction for a trade-in), exclusive of taxes and fees. Mr. Wisner's Toyota Avalon is subject of Toyota's recall.

5. Defendant Toyota Motor Sales, U.S.A, Inc. ("Toyota Motor Sales") is a California corporation headquartered in Los Angeles, California. Toyota Sales is a wholly owned subsidiary of Toyota Motor Corporation. Toyota Motor Sales manufactures, distributes, and sells Toyota automobiles throughout the United States.

6. Defendant Toyota Motor Corporation ("Toyota Corporation") is a Japanese corporation headquartered in Japan. Toyota Corporation wholly owned and controlled Toyota Motor Sales, which manufactured, distributed and sold Toyota automobiles in Los Angeles. Toyota Corporation is therefore subject to personal jurisdiction in this district.

7. At all times herein mentioned, each of the Defendants was the agent, servant, representative, officer, director, partner or employee of the other. At all times, each of the Defendants was acting within the scope and course of his/her/its authority as such agent, servant, representative, officer, director, partner or employee, and with the permission and consent of each Defendant. Additionally, at all times herein mentioned, Defendants were members of, and engaged in, a joint

venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of the joint venture, partnership and common enterprise.

FACTS

8. This class action complaint seeks to remedy Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A, Inc.'s (collectively "Defendants" or "Toyota") conduct in connection with their marketing and sale of millions of Toyota vehicles equipped with defective electronic throttle control systems ("ETCS") that can cause vehicles to suddenly accelerate.

9. Toyota is a multinational corporation headquartered in Japan with substantial business ties to the United States and California in particular. With 227 billion dollars in revenue, it is the world's largest automaker by sales. Through years of aggressive campaigning, Toyota has carefully crafted a reputation for safety and reliability its consumers depend upon. Toyota's reputation for safety has helped make it the leader amongst automakers worldwide.

10. Toyota recently announced the recall of millions of vehicles to attempt to correct a defect that causing certain of it vehicles' gas pedals to stick and cause uncontrolled acceleration.

11. In the late 1990's, Toyota marketed and sold vehicles that were equipped with ETCS. The ETCS was controlled by electronic signals that were transmitted from the gas pedal to the engine throttle. An accelerator sensor determines how far the gas pedal is depressed and sends the data to a computer unit which controls a motorized engine throttle. In turn, the computer unit detects how far the accelerator is depressed and informs the engine throttle motor how far to open the throttle valve.

12. At the early stage of the Toyota's ETCS marketing, Toyota continued to include a mechanical linkage amid the accelerator and the ETCS. However, in later models, Toyota began marketing and selling vehicles with the mechanical linkage. Furthermore, the ETCS did not include a reliable way to instruct the ETCS

to automatically reduce the engine to rest when the brakes are pumped.

13. Many of Defendants' vehicles currently include an electronic ignition button as opposed to a mechanical ignition switch. Therefore, these cars do not have a way to turn off the engine if they experience unintended acceleration. The lack of safety systems in these cars leaves consumers with no way of stopping or slowing down the car should they experience such acceleration and, consequently, owning vehicles worth not nearly as much as the consumers paid for them.

14. Toyota USA Group President Irv Miller recently released a statement confessing, "there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." Toyota self-servingly characterizes the situation as a rare occurrence that happens when the accelerator pedal mechanisms become worn.

15. The recall includes the following vehicles: 2009-2010 Toyota Rav4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra and 2008-2010 Sequoia.

16. As part of the recall campaign, new car sales of vehicles subject to the pedal recall were suspended indefinitely until the problem is remedied. The recall is separate from an earlier recall of approximately 4.2 million Toyota and Lexus vehicles to correct a different problem in which the gas pedals stuck under a loose floor mat. For the vehicles affected by both recalls, their accelerator pedals could be at risk of both becoming trapped under floor mats and becoming stuck due to mechanical problems.

17. The underlying problem purportedly relates to buildup of condensation on sliding surfaces in the accelerator system that helps drivers push down or release the gas pedal. Toyota believes the problem is a progressive wear issue.

18. The company cites that the pedal may mechanically stick in a partially depressed position or return slowly to the idle position.

19. Toyota claims it is unaware of any accidents or injuries due to the gas

pedal problems. However, the National Highway Traffic Safety Administration ("NHTSA") has attributed five (5) deaths and seventeen (17) injuries to unintended acceleration in Toyota vehicles since 2006.

20. Toyota claims these cases are rare, and the company claims it is being aggressive in addressing the problem at great expense. However, NHTSA's safety complaints database reveals Toyota had a significantly higher number of complaints than other companies for the sample year of 2008. Toyota and Lexus accounted for more than a third of all the unintended acceleration incidents found among 2008 model vehicles. Toyota racked up more unintended acceleration complaints than Chrysler, GM, Honda, and Nissan combined.

21. Now, particularly following the announcement of the recall, millions of car owners are left with vehicles that need expensive repair; are left with a feeling of insecurity in driving their vehicles; and are left with vehicles that have diminished market value.

22. Toyota is also facing scrutiny from the United States government. The U.S. House of Representatives Committee on Energy and Oversight has announced that it will conduct a hearing on February 25, 2010 to discuss Toyota's response to the recalls. Committee chairman Henry Waxman states that the "hearing will help us better understand how quickly and effectively Toyota and the National Highway Traffic Safety Administration responded to consumer complaints about the safety of the recalled Toyota vehicles."

23. It appears that Toyota has turned a blind eye to the acceleration issue for many years. U.S. Congressman Bart Stupak (D-Menominee), chairman of the House and Commerce Subcommittee on Oversight and Investigations released a statement regarding Toyota's recall and reported that the sudden acceleration issue in the recalls is not a new phenomenon. He further reported "incidences of sticking accelerators have been ongoing with Toyota vehicles for up to a decade, and have led to a disproportionately high number of deaths."

24. Despite, Defendants' knowledge that Toyota vehicles were equipped with ETCS that were prone to unintended acceleration, Toyota continued to market and sell such vehicles to the public, endangering their lives.

25. Toyota has instructed drivers have received instructions not to pump the brakes, which can apparently deplete the brakes' power assist. In the event of a faulty accelerator occurrence, Toyota cautions that the vehicle should be driven to the nearest safe location, shut-off, and a Toyota dealer should be contacted for assistance.

26. On February 1, 2010, Toyota announced that it will be making available a purported "fix" for the sudden acceleration problem, in the form of pedal reinforcement. Toyota acknowledges, however, that newly manufactured models will be equipped with a redesigned assembly. Despite this, Toyota is not making a redesigned assembly to its millions of affected customers, unless on a "case-by-case" basis and only at the discretion of Toyota dealers as explained by Toyota Motor Sales' Chief Operating Officer, Jim Lentz, during a February 1 National Public Radio interview.

27. What is more, this purported "fix" does nothing to compensate consumers for the diminishment of the market values of their vehicles as a direct consequence of the defect – repaired or not.

CLASS ACTION ALLEGATIONS

28. This class action is properly brought pursuant to the provisions of provisions of Rule 23 of the Federal Rules of Civil Procedure. Plaintiff brings this class action on behalf of himself and the following proposed Class:

> All persons or entities in the United States who own a Toyota vehicle equipped with an ETCS (the "Class").

29. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded

or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are business entities for purposes of Plaintiff's claim for relief under the California Consumers Legal Remedies Act, Civil Code § 1750, *et seq*. Also specifically excluded are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

30. **Numerosity**. **Fed.R.Civ.P. 23(a)(1)** - Members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed class contains millions of members. The precise number of class members is unknown to Plaintiff. Class members are known by Defendants, however, and thus, may be notified of the pendency of this action by direct mail, email, and supplemented by published notice.

31. **Existence and Predominance of Common Questions of Fact and Law – Fed.R.Civ.P. 23(a)(2), 23(b)(3)** - Common questions of fact and law predominate over any questions affecting only individual members of the Class. The predominating common or class-wide questions of fact include the following:

a. Whether Toyota vehicles are outfitted with ETCS which cause sudden acceleration;

b. Whether Defendants sold, marketed, and/or distributed vehicles equipped with ETCS in the United States;

c. The nature and extent of Defendants' prior knowledge of their vehicles' tendency to suddenly and uncontrollably accelerate;

d. Whether Defendants delayed in implementing a recall;

e. Whether Defendants' proposed fix is proper and adequate;

f. Whether Defendants' conduct has caused vehicles subject of the recall to have diminished market value;

g. Whether Defendants' conduct as described herein constitutes a violation of the breach of implied warranty;

h. Whether Defendants' conduct as described herein constitutes a violation of the California Consumers Legal Remedies Act;

i. Whether Defendants' conduct as described herein constitutes a violation of California Business and Professions Code Sections 17200 and 17500 et. seq.;

j. Whether the Class is entitled to restitution;

k. Whether Plaintiff and the Class are entitled to damages, and if so, by what measure; and

l. Whether the Defendants have been unjustly enriched as a result of Defendants' conduct described herein;

32. Defendants' defenses, to the extent that any such defenses apply, are applicable generally to Plaintiff and the entire Class and are not distinguishable as to proposed Class members.

33. **Typicality - Fed.R.Civ.P. 23(a)(3).** Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damages, including irreparable harm, as a proximate or legal result of the common course of conduct of Defendants as complained of herein. Plaintiff's claims are typical of the Class because Defendants subjected all Class members to the same course of conduct.

34. **Adequacy – Fed.R.Civ.P.23(a)(4).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff has retained counsel highly experienced in the prosecution of complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff and his counsel will

fairly and adequately protect the interests of all members of the Class.

35. **Superiority – Fed.R.Civ.P. 23(b)(3).** A class action issuperior to any other methods available for both fair and efficient adjudication of the rights of each Class member. Joinder of individual members of the Class is impracticable. Individual litigation would be unnecessarily costly and burdensome and would deter individual claims. To process individual cases would increase both the expenses and the delay not only to Class members, but also to Defendants and the Court. In contrast, a class action in this matter will avoid case management difficulties and provide multiple benefits to the litigating parties, including efficiency, economy of scale, unitary adjudication with consistent results and equal protection of the rights of each Class member, all by way of the comprehensive and efficient supervision of the litigation by a single court.

36. In the alternative, the Class may be certified because:

a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual members of the proposed Class that would establish incompatible standards of conduct for Defendants;

b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to members of the Class as a whole.

37. Defendants benefited from the sale of their vehicles to Plaintiff and the Class. The benefit to Defendants can be identified from the sale of such vehicles to Plaintiff and the Class and such monies can be restored to Plaintiff and the Class. Such monies are the property of the Plaintiff and the Class. All or a portion of this benefit retained by Defendants is money in which Plaintiff and the Class have an ownership interest. Plaintiff and the Class were injured in fact and lost money as a result of Defendants' unfair, unlawful and fraudulent business practices described herein.

FIRST CLAIM FOR RELIEF
(For Violations of the Consumers Legal Remedies Act, Cal.Civ.Code §§ 1750 *et seq.*)

38. Plaintiff realleges and hereby incorporates all proceeding paragraphs as if they were fully set forth herein.

39. This claim is brought against Defendants pursuant to the Consumers Legal Remedies Act ("CLRA"), California Civil Code section 1750, *et seq.*

40. Defendants are "persons" within the meaning of Civil Code §§ 1761(c) and 1770.

41. Defendants sell "goods" within the meaning of Civil Code §§ 1761(a) and 1770.

42. Plaintiff and the Class are consumers within the meaning of Civil Code § 1761(d).

43. Plaintiff's purchase of a Toyota vehicle equipped with a ETCS, marketed and sold by Defendants constitutes a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

44. Defendants' conduct violated and continues to violate the CLRA in at least the following respects:

a. In violation of section 1770(a)(5) of the CLRA, Defendants represented that goods or services have characteristics or benefits which they do not have.

b. In violation of section 1770(a)(7) of the CLRA, Defendants represented that goods or services are of a particular standard, quality, or grade when they are of another; and

c. In violation of section 1770(a)(9) of the CLRA, Defendants advertised goods or services with the intent not to sell them as advertised.

d. In violation of section 1770(a)(16) of the CLRA, Defendants represented that the subject of the transaction was supplied in accordance with a previous representation when it has not.

45. Defendants engaged in these unfair or deceptive acts and practices with the intent that they result, and which did result, in the sale of the subject vehicles to Plaintiff and the Class.

46. By engaging in unfair or deceptive conduct in violation of the CLRA, Defendants actively concealed and failed to disclose material facts about the true characteristics of the transaction leading to Plaintiff and Class Members' purchase of the subject vehicles.

47. The fact that consumers were entering into a sale for a defective vehicle instead is material in that a reasonable person would have considered it an important factor in deciding whether to complete the transaction for the subject vehicle or not.

48. As a direct and proximate result of Defendants' violations of law, Plaintiff and the Class have been injured. Pursuant to the provisions of Civil Code section 1782, Plaintiff has provided notice to Defendants in conjunction with the filing of this complaint (although the Complaint is an appropriate notice of violations) of his intention to seek damages under Civil Code sections 1750 et seq. unless these Defendants correct, repair, replace or otherwise rectify Defendants' violations of the CLRA. The notice demands that Defendants take steps as are

appropriate to rectify the violations and requiring Defendants to give notice to all affected consumers of their intent to act. If Defendants fail to adequately respond to Plaintiff's demand within thirty (30) days from the date the notice is served, Plaintiff will amend this complaint to seek actual and punitive damages along with restitution and disgorgement of all earnings, profits, compensation and benefits obtained by Defendants as a result of their violations of the CLRA.

49. Plaintiff seeks an order enjoining the unlawful practices described herein and an Order requiring Defendants to notify the Class of their violations of the CLRA and the remedy they will provide to them. Plaintiff and the Class are entitled to equitable relief in the form of

SECOND CLAIM FOR RELIEF
(For Violations of Cal. Bus. & Prof. Code §§ 17200, et seq.)

50. Plaintiff realleges and hereby incorporates all proceeding paragraphs as if they were fully set forth herein.

51. Defendants' practices as alleged in this complaint constitute unlawful, unfair, and fraudulent practices under the Unfair Competition Law, Business and Professions Code section 17200 *et seq.* ("UCL").

52. Defendants committed unlawful acts and practices by:

a. Engaging in conduct, as alleged herein, that violates the CLRA, Cal. Civ. Code §§ 1750 *et seq.*; and,

b. Engaging in conduct, as alleged herein, that constitutes unjust enrichment.

53. Defendants committed unfair business practices by:

a. Engaging in conduct, as alleged herein, where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and the other Class members.

b. Engaging in conduct, as alleged herein, that is immoral,

unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the other Class members; and

c. Engaging in conduct, as alleged herein, that undermines or violates the stated policies underlying the CLRA, Civ. Code §§ 1750 *et seq.* which seekS to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace, and thus provide a sufficient predicate for Plaintiff's claims for unfair business practices.

54. Defendants committed fraudulent business practices by engaging in conduct, as alleged herein, that was and is likely to deceive consumers acting reasonably under the circumstances. Defendants fraudulent practices include but are not limited to:

a. Failing to adequately disclose and/or concealing from Plaintiff and Class members that the subject vehicles are equipped with defective ECTS in that they uncontrollably accelerate;

b. Selling to Plaintiff and Class members Toyota vehicles that are equipped with ECTS that are defective in that they uncontrollably accelerate;

c. Failing to adequately remedy the inherent defect that causes the subject vehicles to suddenly and uncontrollably accelerate.

55. Plaintiff and the Class members have suffered injury in fact and have lost money and property as a result of Defendants' unlawful, unfair, or fraudulent practices, in that, among other things:

a. Plaintiff and Class members would not have paid for the subject vehicles had they known the vehicles contained such defects;

b. Plaintiff and Class members have been deprived of making an informed decision about the vehicles they have purchased; and

c. The Toyota vehicles subject of the recall owned by Plaintiff and the Class are worth less in the marketplace as a result of Defendants' conduct.

56. The above-described unfair, unlawful and fraudulent business

practices conducted by Defendants present a threat and likelihood of harm and deception to members of the Class in that Defendants have systematically perpetrated and continue to perpetrate the unfair, unlawful and fraudulent conduct upon members of the public by engaging in the conduct described herein.

57. Pursuant to Business and Professions Code §§ 17200 and 17203, Plaintiff, on behalf of himself and the Class, seeks an order enjoining Defendants from continuing to engage in unlawful, unfair or fraudulent business practices, and any other acts prohibited by law. Plaintiff also seeks an order providing restitution and disgorgement of all profits relating to the subject vehicles, and injunctive and declaratory relief as may be appropriate.

THIRD CLAIM FOR RELIEF
(For Violations of the Breach of Express and Implied Warranty)

58. Plaintiff realleges and hereby incorporates all proceeding paragraphs as if they were fully set forth herein.

59. Defendants have marketed, advertised, distributed and sold vehicles containing ETCS that are defective. Defendants have misrepresented the dangers of the subject vehicles to consumers.

60. At the time Defendants sold the subject vehicles to consumers, Defendants knew that the vehicles would be used for the specific purpose of transporting consumers.

61. Defendants also knew that consumers relied on Defendants knowledge and expertise in selling vehicles that were reliable and safe to transport consumers.

62. Plaintiff and the Class members did not discover and could not have discovered through reasonable diligence, the existence of these hidden defects at the time of purchase. Plaintiff and Class members have only learned of the defects on or about the time of Toyota's recalls.

63. Defendants have publicly issued a recall for vehicles that have defective ETCS and have recently admitted that they are researching a fix for this

defect.

64. Defendants' vehicles are unfit for their intended purposes as their design and manufacture is defective in that it causes vehicles to uncontrollably accelerate.

65. Defendants have failed to deliver to Plaintiff and Class members the thing purchased, have delivered a thing other than the thing purchased, and have thus breached the express and implied warranties of sale.

66. As a result, Plaintiff and Class members have suffered significant economic damages, including but not limited diminution in value of their Toyota vehicles.

FOURTH CLAIM FOR RELIEF
(Negligence)

67. Plaintiff realleges and hereby incorporates all proceeding paragraphs as if they were fully set forth herein.

68. Defendants had a duty to the Plaintiff and Class members, as a manufacturer of vehicles, to sell safe and reliable vehicles.

69. Defendants also had a duty to ensure the vehicles' safety by conducting thorough research and investigation before putting them on the market.

70. Defendants also had a duty to thoroughly test the vehicles' safety after being put on notice of the vehicles' tendency to uncontrollably accelerate.

71. Defendants breached their duty to the Plaintiff and Class members. Plaintiff and Class members have been inconvenienced in dealing with such defective cars and in having to drive unsafe and unreliable cars.

72. Defendants' breach of their duty to consumers proximately caused damages to Plaintiff and Class members who have experienced significant economic damages.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

73. Plaintiff realleges and hereby incorporates all proceeding paragraphs

as if they were fully set forth herein.

74. This claim is brought in the alternative to any statutory and contract claims.

75. By their unlawful, unfair, deceptive, and wrongful acts and omissions, Defendants were unjustly enriched at the expense of Plaintiff and the Class, who paid a substantial sum of money for a vehicle they would not have purchased had they known of the defect.

76. Defendants were aware and had knowledge of the benefit they were receiving as a result of their unlawful, unfair, deceptive, and wrongful acts and omissions, as hereinabove alleged, and have enjoyed the benefit of their financial gains, to the detriment and at the expense of Plaintiff and the Class.

77. Defendants' retention of some or all of the monies they have gained through their wrongful acts and practices would be unjust considering the circumstances of their obtaining those monies.

78. Plaintiff has no adequate remedy at law.

79. Plaintiff, on behalf of himself and all others similarly situated, is entitled to seek restitution from Defendants and an order disgorging all profits, benefits, and other compensation obtained by Defendants for their wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendants as follows:

1. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel of record to represent the Class;
2. For restitution, disgorgement and/or other equitable relief as the Court deems proper;

3. That pursuant to sections 17203 and 17204 of the Business and Professions Code, Defendants be permanently enjoined from performing or proposing to perform any of the aforementioned acts of unfair, unlawful and fraudulent business practices;

4. For compensatory damages sustained by Plaintiff and all others similarly situated as a result of Defendants' unlawful acts and conduct;

5. For a permanent injunction prohibiting Defendants from engaging in the conduct and practices complained of herein;

6. For pre-judgment and post-judgment interest;

7. For reasonable attorneys' fees and costs of suit, including expert witness fees; and

8. For such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 8, 2010

WEXLER WALLACE LLP

By: _____
Mark J. Tamblyn

Neha Duggal
455 Capitol Mall, Suite 231
Sacramento, California 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Kenneth A. Wexler
WEXLER WALLACE LLP
55 West Monroe Street, Suite 3300
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Attorneys for *Plaintiff, individually and on behalf of all others similarly situated*

DECLARATION OF PETER WISNER PURSUANT TO CALIFORNIA CIVIL CODE § 1780(c)

I, Peter Wisner, declare as follows:

1. I submit this declaration pursuant to section 1780(c) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. I am a resident of Santa Barbara, California.

3. Defendant Toyota Motor Sales, U.S.A., Inc. is California corporation headquartered in Los Angeles, California. Defendant Toyota Motor Corporation is a Japanese corporation that owns and controls Toyota Motor Sales, U.S.A., Inc., a California corporation that conducts business in Los Angeles County.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on February 8, 2010 in Santa Barbara, California.

Peter Wisner

PETER WISNER

TOY-RQ-05E-00010753

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV10- 942 SJO (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Mark J. Tamblyn (SBN 179272)
Neha Duggal (SBN 251336)
WEXLER WALLACE LLP
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETER WISNER, individually and on behalf of all others similarly situated, PLAINTIFF(S) v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALE, U.S.A., INC. DEFENDANT(S).	CASE NUMBER CV10-00942-SJO(FFMx) **SUMMONS**

TO: DEFENDANT(S): TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALE, U.S.A., INC.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Mark J. Tamblyn, whose address is 455 Capitol Mall, Suite 231, Sacramento, California 95814. If you fail to do so, 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, U.S. District Court

Dated: - 8 FEB 2010

By: MARILYN DAVIS
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
PETER WISNER

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

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Mark J. Tamblyn, WEXLER WALLACE LLP, 455 Capitol Mall, Suite 231, Sacramento, California 95814; Tel: (916) 492-1100

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 - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	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. 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 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☑ Yes ☐ No ☑ MONEY DEMANDED IN COMPLAINT: $ Over $5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violations of Business & Professions Code sections 17200, et seq; Civil Code sections 1750, et seq; Breach of express and implied warranties; negligence

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
☐ 400 State Reapportionment	☐ 110 Insurance	☐ 310 Airplane	☑ 370 Other Fraud	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 540 Mandamus/ Other	☐ 740 Railway Labor Act
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	BANKRUPTCY	☐ 550 Civil Rights	☐ 790 Other Labor Litigation
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	☐ 555 Prison Condition	☐ 791 Empl. Ret. Inc. Security Act
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	FORFEITURE/ PENALTY	PROPERTY RIGHTS
☐ 490 Cable/Sat TV	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability	CIVIL RIGHTS	☐ 610 Agriculture	☐ 820 Copyrights
☐ 810 Selective Service	☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 620 Other Food & Drug	☐ 830 Patent
☐ 850 Securities/Commodities/ Exchange	☐ 190 Other Contract	☐ 362 Personal Injury-Med Malpractice	☐ 442 Employment	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 840 Trademark
☐ 875 Customer Challenge 12 USC 3410	☐ 195 Contract Product Liability	☐ 365 Personal Injury-Product Liability	☐ 443 Housing/Accommodations	☐ 630 Liquor Laws	SOCIAL SECURITY
☐ 890 Other Statutory Actions	☐ 196 Franchise	☐ 368 Asbestos Personal Injury Product Liability	☐ 444 Welfare	☐ 640 R.R. & Truck	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	☐ 445 American with Disabilities - Employment	☐ 650 Airline Regs	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	☐ 210 Land Condemnation	☐ 462 Naturalization Application	☐ 446 American with Disabilities - Other	☐ 660 Occupational Safety /Health	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 220 Foreclosure	☐ 463 Habeas Corpus-Alien Detainee	☐ 440 Other Civil Rights	☐ 690 Other	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 230 Rent Lease & Ejectment	☐ 465 Other Immigration Actions			☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 240 Torts to Land				FEDERAL TAX SUITS
☐ 900 Appeal of Fee Determination Under Equal Access to Justice	☐ 245 Tort Product Liability				☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV10-00942

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☑ Yes
If yes, list case number(s): 09-8143; 09-8478; 10-105; 10-0849; 10-710

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☑ A. Arise from the same or closely related transactions, happenings, or events; or
☑ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☑ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Toyota Motor Sales, U.S.A., Inc. - Los Angeles County Toyota Motor Corporation - Japan	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date February 8, 2010

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

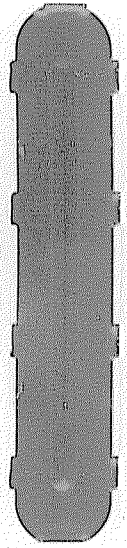
Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

TOY-RQ-05E-00010757

FILE START

HARDY, MONTY

2010-02-48852
EARLY WARNING



TOY-RQ-05E-00010759

CT Corporation

Service of Process Transmittal

03/02/2010
CT Log Number 516235136

TO: Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY 41018-

RE: **Process Served in Kentucky**

FOR: Toyota Motor Engineering & Manufacturing North America, Inc. (Domestic State: KY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Roxanne Early and Edward Ransom, individually and as Legal Heirs to Estate of Sharon Ransom, Pltfs. vs. Toyota Motor Corporation, et al. including Toyota Motor Engineering & Manufacturing North America, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Complaint
COURT/AGENCY:	USDC, TX Case # 3:10-cv-00332-L
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Wrongful death from sudden acceleration; 2008 Toyota Avalon (VIN 4T1BK36B48U278056
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 03/02/2010 postmarked on 02/27/2010
APPEARANCE OR ANSWER DUE:	Within 21 Days
ATTORNEY(S) / SENDER(S):	E. Todd Tracy The Tracy Firm 5473 Blair Road, Ste. 200 Dallas, TX 75231 214-324-9000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799444417870 Image SOP Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED: **ADDRESS:** **TELEPHONE:**	C T Corporation System 4169 Westport Road Louisville, KY 40207 502-721-0133

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

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.

JS 44 (Rev. 12/07)

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
Roxanne Early et al

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

(c) Attorney's (Firm Name, Address, and Telephone Number) E. Todd Tracy
The Tracy Firm
5473 Blair Rd, Ste 200
Dallas TX 75231
214-324-9000

DEFENDANTS Toyota Motor Corporation
Toyota Motor Engineering & Manufacting North America
Toyota Motor Manufacturing, Kentucky, 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	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health		☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other	LABOR	☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☒ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability		☐ 710 Fair Labor Standards Act	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury			☐ 720 Labor/Mgmt. Relations	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability				☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise				☐ 740 Railway Labor Act	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		☐ 790 Other Labor Litigation	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence		☐ 791 Empl. Ret. Inc. Security Act	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:			☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General		IMMIGRATION	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty		☐ 462 Naturalization Application	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other		☐ 463 Habeas Corpus - Alien Detainee	☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights		☐ 465 Other Immigration Actions	☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

SOCIAL SECURITY	FEDERAL TAX SUITS
☐ 861 HIA (1395ff)	☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 862 Black Lung (923)	☐ 871 IRS—Third Party 26 USC 7609
☐ 863 DIWC/DIWW (405(g))	
☐ 864 SSID Title XVI	
☐ 865 RSI (405(g))	

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 Judgement

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: 28 1332

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 2/18/10 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT
for the
Northern District of Texas

Roxanne Early, et al

V.

Toyota Motor Corporation, et al

Civil Action No. 3:10-cv-00332-L

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Summons in a Civil Action

TO: *(Defendant's name and address)*
Toyota Motor Engineering & Manufacturing North America, Inc.
CT CORPORATION SYSTEM, 4169 WESTPORT RD., LOUISVILLE, KY 40207

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it), 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's attorney, whose name and address are:

E Tracy
5473 Blair Rd
Suite 200
Dallas , TX 75231

If you fail to do so, 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

02/18/2010
DATE

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____ by:

(1) personally delivering a copy of each to the individual at this place, _____

_____ ; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____ who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is

_____ ; or

(4) returning the summons unexecuted to the court clerk on _____ ; or

(5) other (*specify*) _____

_____

_____

_____

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROXANNE EARLY AND EDWARD RANSOM, INDIVIDUALLY AND AS LEGAL HEIRS TO THE ESTATE OF SHARON RANSOM, DECEASED;	§	RECEIVED
	§	MAR - 2 2010
Plaintiffs,	§	LEGAL DEPARTMENT
VS.	§	**CIVIL ACTION NO. _____**
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., AND TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE OF SAID COURT:

COMES NOW, ROXANNE EARLY AND EDWARD RANSOM, INDIVIDUALLY AND AS LEGAL HEIRS TO THE ESTATE OF SHARON RANSOM, DECEASED (hereinafter referred to as "Plaintiffs"), and respectfully file this Original Complaint against TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., AND TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. (hereinafter referred to as "Defendants"), and in support hereof would state and show the following:

A. Parties

1. Plaintiff Roxanne Early is the biological mother of Sharon Ransom, deceased. She resides in and is a citizen of Pittsburgh, Pennsylvania.

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2. Plaintiff Edward Ransom is the surviving spouse of Sharon Ransom, deceased. He resides in and is a citizen of Grapevine, Texas.

3. Defendant Toyota Motor Corporation is a foreign Corporation doing business in Texas, and service of process upon this Defendant may be had by serving its president, Shoichiro Toyoda, at 1 Toyota-Cho, Toyota, 0471, Japan.

4. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a foreign Corporation and at all times doing business in State of Texas and service of process upon this Defendant may be had by serving Secretary of State/Corporate Division, State Capitol, Ste. 152, Frankfort, Kentucky 40601.

5. Defendant Toyota Motor Manufacturing, Kentucky, Inc. is a foreign Corporation and at all times doing business in State of Texas and service of process upon this Defendant may be had by serving its registered agent for service, CT Corporation System at 4169 Westport Rd., Louisville, KY 40207.

B. Jurisdiction

6. This Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332. The parties to this lawsuit are citizens of different states, and the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

C. Facts

7. On December 26, 2009, Monty Hardy was driving a 2008 Toyota Avalon (VIN 4T1BK36B48U278056) traveling northbound in the 2800 block of Lonesome Dove Road in Southlake, Texas. Sharon Ransom was the restrained right front seat passenger. Hadassah Vance and Wendy Akion were the restrained rear seated passengers. All of the

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occupants of the vehicle were tragically and needlessly killed when the vehicle experienced Sudden Unwanted Acceleration (SUA). Due to this SUA condition, the vehicle failed to allow the driver to stop at the intersection of Lonesome Dove Road and Burney Drive. Instead, the vehicle accelerated through the intersection, through a drainage area, struck a fence and tree and ultimately landed in a small pond. None of the restrained occupants were able to extricate themselves and they all perished by drowning.

D. Cause(s) of Action as to Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Kentucky, Inc.

8. Defendants designed, manufactured, marketed, assembled, and/or tested said vehicle in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second) Torts, in that the vehicle was unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested because of the following defects:

a. Toyota has experienced what is commonly referred to as Sudden Unwanted Acceleration (SUA) incidents since 2003 involving numerous make, model and year vehicles dating back to 1999;
b. Toyota and/or the NHTSA has had thousands of reported incidents where various make, model and year vehicles experienced Sudden Unwanted Acceleration (SUA);
c. Citizens have petitioned the NHTSA numerous times since 2003 requesting that Sudden Unwanted Acceleration (SUA) on various make, model and year vehicles dating back to 1999 be investigated;
d. The NHTSA and outside NHTSA vendors have tested various Toyota make, model and year vehicles to see if they are prone to accelerate when subjected to electrical magnetic interference or EMI. The results proved that Toyota's engine rpm increased;
e. Toyota has had various recalls, technical service bulletins, silent recalls, and dealer notices to evaluate the electronic control unit that governs the ETCSI/ECU on various make, model and year vehicles since 1999;
f. Toyota has had language in its owner's manuals outlining that EMI, radio interference, 2-way radios or other devices in certain

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Toyota vehicles can cause vehicles to accelerate or not function properly;

g. Toyota has conducted algorithm flashover on certain make, model and year vehicles;

h. Toyota investigated incidents of Sudden Unwanted Acceleration (SUA) and corrected these issues in countries other than the United States months and years before any action was taken by Toyota in the United States;

i. Toyota has consistently blamed Sudden Unwanted Acceleration (SUA) on driver error;

j. Toyota issued recalls on numerous make, model and year vehicles for floor mat interference with gas pedal operation as causing some Sudden Unwanted Acceleration (SUA) incidents;

k. Toyota issued a recall on numerous make, model and year vehicles for gas pedal sticking as causing some Sudden Unwanted Acceleration (SUA) incidents;

l. Toyota has failed to issue a sticky gas pedal recall on numerous other vehicles;

m. Toyota has failed to issue any recall on issues related to electrical issues such as EMI, radio interference, algorithm issues, computer code or chip manufacturing issues, electronic control unit circuitry issues including manufacturing, connection, software problems, heat/cold/moisture/vibration of the electronic control unit on ETCSI/ECU issues. Some people have also complained that when the cruise control is engaged, the vehicle can suddenly accelerate;

n. Toyota has recently disclosed that it is having software problems on its Prius brakes. However, Toyota still has not addressed the accelerator issues with these other vehicles;

o. Further, the NHTSA announced on February 4, 2010 that it is probing Toyota's electronic throttle systems as the cause for Sudden Unwanted Acceleration (SUA);

p. Toyota withheld data from the NHTSA regarding Sudden Unwanted Acceleration (SUA) incidents;

q. The NHTSA has also received an anonymous letter addressing throttle cable problems that Toyota's upper management knew about and covered up because Toyota owns a large stake in the company;

r. Defendants also failed to use a 3 channel electrical system that has multiple redundant systems so that if an electrical surge/fault/short circuit occurs, a malfunction or fault cannot occur which can lead to Sudden Unwanted Acceleration (SUA);

s. Defendants failed to use a brake override design like multiple other vehicle manufacturers such that when the brakes are applied, the engine throttle is overcome;

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t. Defendants failed to use a smart pedal design like other vehicle manufacturers such that when the brakes are applied, the engine throttle is overcome;

u. Defendants have failed to conduct critical design analysis on its electronic control unit system to evaluate what will happen when certain faults occur with the electrical system, when the software for the ECU suffers a software failure, when the ECU gets too hot, cold or wet, when the ECU is contaminated during manufacturing;

v. Defendants failed to have adequate quality control procedures and manufacturing quality controls in place for its ECU supplier;

w. Defendants failed to insure that electrical circuitry are installed and manufactured properly;

x. Defendants failed to conduct proper engineering analysis, failure mode effects analysis, fault tree analysis, design, quality control analysis, root cause analysis, emerging hazard analysis to evaluate the potential risks, hazard and danger of unwanted vehicle acceleration due to electronic issues with the ECU, software issues in the ECU, environmental conditions of the ECU or mechanical issues of the throttle;

y. Defendants knew its vehicles were prone to experience Sudden Unwanted Acceleration (SUA) because Defendants had its EDR supplier stop recording engine speed/RPM, if the brake pedal was depressed, if accelerator pedal was depressed, if cruise control was on, the position of the transmission selector lower because this data would indict Defendants' Sudden Unwanted Acceleration (SUA) problems. Alternatively, Defendants is preventing access to all of the EDR data and is only furnishing the bare amount of data. Back in 2003 and earlier, Defendants' EDR data included engine speed/engine RPM, brake application and gas pedal depression. This goes directly to defendants notice of the problem and willingness to cover up the problem;

z. Toyota's President and Vice President told the NHTSA that Defendants knew over one year ago (November 2008) that it had Sudden Unwanted Acceleration (SUA) problems but failed to conduct a timely recall which exposed millions of people to Sudden Unwanted Acceleration (SUA) incidents;

aa. Toyota has furnished a defective design and unreasonably dangerous vehicle that is prone to Sudden Unwanted Acceleration (SUA), loss of control and loss of braking. Toyota had prior notice and knowledge of this same condition and elected to sell these vehicles knowing they were placing people at risk. Defendants failure to install or retrofit with a brake override or smart pedal design is a design defect;

bb. Toyota failed to prevent or guard against its vehicles from experiencing Sudden Unwanted Acceleration (SUA) by using safer alternative designs such as brake override/smart pedal designs;

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cc. Toyota failed to warn, advise or instruct users on what to do in the event a Sudden Unwanted Acceleration (SUA) occurred;

dd. Toyota failed to properly test for Sudden Unwanted Acceleration (SUA) when it had notice of prior complaints, prior NHTSA investigations and prior lawsuits;

ee. Toyota failed to conduct proper engineering analysis for Sudden Unwanted Acceleration (SUA) when it had notice of prior complaints, prior NHTSA investigations and prior lawsuits;

ff. Toyota furnished a defectively manufactured vehicle whose components cause the vehicle to experience Sudden Unwanted Acceleration (SUA), loss of control and loss of braking; and

gg. The subject vehicle experienced Sudden Unwanted Acceleration (SUA) for any of the reasons described above. Further, the cruise control was engaged at the time of the subject crash. As a result, decedent was killed and his two passengers were seriously injured because the vehicle could not be stopped.

9. Defendants were negligent in the following respects as it relates to the subject vehicle and its component parts:

a. Failing to monitor the quality control ETCSI/electronic control unit supplier;

b. Failing to impose rigorous manufacturing quality standards on its ETCSI/electronic control unit supplier;

c. Failing to timely recall vehicles after thousands of Sudden Unwanted Acceleration (SUA) complaints were reported directly to Toyota and the NHTSA;

d. Failing to undertake any post sale duty to warn users about the potential risks, hazards and dangers that customers were having with Sudden Unwanted Acceleration (SUA) incidents with this vehicle and others across the world;

e. Failing to use brake override/ smart pedal devices that have been used by manufacturers for decades;

f. Toyota has failed to issue a sticky gas pedal recall on numerous other vehicles;

g. Toyota has failed to issue any recall on issues related to electrical issues such as EMI, radio interference, algorithm issues, computer code or chip manufacturing issues, electronic control unit circuitry issues including manufacturing, connection, software problems, heat/cold/moisture/vibration of the electronic control unit on ETCSI/electronic control unit. Some people have also complained that when the cruise control is engaged, the vehicle can suddenly accelerate;

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h. Toyota has recently disclosed that it is having software problems on its Prius brakes. However, Toyota still has not addressed the accelerator issues with these other vehicles;

i. Toyota withheld data from the NHTSA regarding Sudden Unwanted Acceleration (SUA) incidents;

j. The NHTSA has also received an anonymous letter addressing throttle cable problems that Toyota's upper management knew about and covered up because Toyota owns a large stake in the company;

k. Defendants also failed to use a 3 channel electrical system that has multiple redundant systems so that if an electrical surge/fault/short circuit occurs, a malfunction or fault cannot occur which can lead to Sudden Unwanted Acceleration (SUA);

l. Defendants failed to use a brake override design like multiple other vehicle manufacturers such that when the brakes are applied, the engine throttle is overcome;

m. Defendants failed to use a smart pedal design like other vehicle manufacturers such that when the brakes are applied, the engine throttle is overcome;

n. Defendants failed to have adequate quality control procedures and manufacturing quality controls in place for its ETCSI/ECU supplier;

o. Defendants failed to insure that electrical circuitry are installed and manufactured properly;

p. Defendants failed to conduct proper engineering analysis, failure mode effects analysis, fault tree analysis, design, quality control analysis, root cause analysis, emerging hazard analysis to evaluate the potential risks, hazard and danger of unwanted vehicle acceleration due to electronic issues with the ETCSI/ECU, software issues in the ECU, environmental conditions of the ETCSI/ECU or mechanical issues of the throttle;

q. Defendants knew its vehicles were prone to experience Sudden Unwanted Acceleration (SUA) because Defendants had its EDR supplier stopped recording engine speed, engine RPM, if brake was depressed, if accelerator pedal was depressed, if cruise control was on, the position of the transmission selector level because this data would indict Defendants' Sudden Unwanted Acceleration (SUA) problems. Alternatively, Defendants is preventing access to all of the EDR data and is only furnishing the bare amount of data. Back in 2003 and earlier, Defendants' EDR data included engine throttle, engine RPM and brake/accelerator application percentage. This goes directly to Defendants notice of the problem and willingness to cover up the problem;

r. Toyota's President and Vice President told the NHTSA that Defendants knew over one year ago that it had Sudden Unwanted Acceleration (SUA) problems but failed to conduct a timely recall

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which exposed millions of people to Sudden Unwanted Acceleration (SUA) incidents;

s. Toyota has admitted in its commercials that it breached its duty to its consumers which is an admission of negligence.

10. Defendants misrepresented the Quality, Reliability, and Safety of its vehicle:

a. Defendants have admitted in commercials that it violated its duty to provide quality, reliability and safety of its vehicles;
b. Defendants touted it brand for decades so that people would rely on these representations;
c. Defendants have now breached these representations to the detriment of its users;
d. Defendants have admitted in its commercials that it has violated its trust and let its customers down.

11. The foregoing acts and/or omissions of Defendants were a producing and/or proximate cause of the Plaintiffs' damages.

12. The foregoing acts and/or omissions of Defendants were a producing and/or proximate cause of Sharon Ransom's fatal injuries.

E. Damages To Plaintiffs

13. As a result of the acts and/or omissions of Defendants, Sharon Ransom suffered conscious physical and emotional pain, torment, mental anguish, and/or emotional distress prior to her death, and these injuries survive her death through her estate.

14. As a result of the acts and/or omissions of Defendants, Plaintiffs Roxanne Early and Edward Ransom, have suffered past and future: loss of consortium, and mental anguish as a result of the fatal injuries to Sharon Ransom.

15. As a result of the acts and/or omissions of Defendants, Plaintiffs Roxanne Early and Edward have become obligated to pay reasonable and necessary medical,

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funeral, and burial expenses as a result of the fatal injuries to Sharon Ransom.

16. The above and foregoing acts and/or omissions of Defendants, resulting in the fatal injuries to Sharon Ransom, have caused actual damages to Plaintiffs in an amount in excess of the minimum jurisdictional limits of this Court.

G. Prayer

17. For the reasons presented herein, Plaintiffs pray that upon a final trial of this cause, Plaintiffs recover judgment against Defendants for:

a. economic and non-economic damages;
b. prejudgment and post-judgment interest beginning December 26, 2009;
c. costs of suit; and
d. all other relief the Court deems proper.

Respectfully submitted,

The TRACY firm

/s/ E. Todd Tracy
E. Todd Tracy (Lead Counsel)
State Bar No. 20178650
etoddtracy@vehiclesafetyfirm.com
I. Scott Lidji
State Bar No. 24000336
slidji@vehiclesafetyfirm.com
5473 Blair Road, Suite 200
Dallas, TX 75231
(214) 324-9000 Phone
(972) 387-2205 Fax

ATTORNEYS FOR PLAINTIFFS

TOY-RQ-05E-00010772

T CORPORATION SYSTEM
4169 WESTPORT RD.
LOUISVILLE, KY 40207

Law Enforcement and TxDOT Use Only

[X] FATAL [ ] CMV INVOLVED [ ] SCHOOL BUS RELATED [ ] RAILROAD RELATED [ ] MEDICAL ADVISORY BOARD [ ] HIT AND RUN [ ] AMENDMENT/SUPPLEMENT

Texas Peace Officer's Crash Report

Form CR-3 (Rev. 03/09) Page 1 of 2

Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML, or by mailing to the Texas Department of Transportation, Crash Records, PO Box 149349, Austin, TX 78714.
Questions? Call: 512/486-5780

PLACE WHERE CRASH OCCURRED

COUNTY: Tarrant | CITY OR TOWN: Southlake

IF CRASH WAS OUTSIDE CITY LIMITS INDICATE FROM NEAREST TOWN: ____ MILES [ ] N [ ] S [ ] E [ ] W OF ____

LOC #: 09sp081524

ORI #: TX2430200

DPS #: ____

ROAD ON WHICH CRASH OCCURRED: 2800 (BLOCK NUMBER) LONESOME DOVE RD (STREET OR ROAD NAME) ____ (ROUTE NUMBER OR STREET CODE)

CONSTRUCTION ZONE WORKERS PRESENT: [ ] YES [X] NO | SPEED LIMIT: 30

INTERSECTING STREET OR RR-X-ING NUMBER: 1500 (BLOCK NUMBER) BURNEY LN (STREET OR ROAD NAME) ____ (ROUTE NUMBER OR STREET CODE)

CONSTRUCTION ZONE WORKERS PRESENT: [ ] YES [X] NO | SPEED LIMIT: 30

NOT AT INTERSECTION ____ [ ] FT. [ ] MI. [ ] [ ] [ ] [ ] N S E W OF ____ (SHOW MILEPOST OR NEAREST INTERSECTING NUMBERED HIGHWAY. IF NONE, SHOW NEAREST INTERSECTING STREET OR REFERENCE POINT.)

MILE POST: ____

LATITUDE: 32.97948

LONGITUDE: -97.12710

DATE OF CRASH: 12 (MONTH) 26 (DATE) 2009 (YEAR)

DAY OF WEEK: Saturday

HOUR: 11:19 [X] AM USE 12:00 AM FOR "MIDNIGHT" [ ] PM USE 12:00 PM FOR "NOON"

UNIT # 1

UNIT #: 1 | 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER

VIN: 4T1BK36B48U278056

ALTERED VEHICLE HEIGHT: [ ] YES [X] NO

YEAR MODEL: 2008 | COLOR & MAKE: Blue Toyota | MODEL NAME: AVALON | BODY STYLE: 4 Door Automobile | LICENSE PLATE: 2010 (YEAR) TX (STATE) DXS424 (NUMBER)

DRIVER'S NAME: HARDY (LAST), MONTY (FIRST) M (MIDDLE) | ADDRESS (STREET, CITY, STATE, ZIP): 1100 SHADY OAKS DR, Southlake, TX, 76092 | PHONE NUMBER

DRIVER'S LICENSE: TX (STATE) 08750729 (NUMBER) C / Non-CDL (CLASS/TYPE) ____ (ENDORSEMENTS) P32 (RESTRICTIONS) 12/11/1953 (DATE OF BIRTH)

LICENSE STATUS: 1 (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)

DRIVER'S ETHNICITY: 1 (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) | DRIVER'S SEX: [X] MALE [ ] FEMALE | DRIVER'S OCCUPATION: OTHER | POLICE, FIREFIGHTER, EMS ON EMERGENCY [ ] IF CHECKED, PLEASE EXPLAIN IN NARRATIVE

TYPE OF ALCOHOL SPECIMEN TAKEN: 4 (1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED) | TEST RESULTS: ____

TYPE OF DRUG SPECIMEN TAKEN: 3 (1-BLOOD 2-URINE 3-NONE 4-REFUSED) | TEST RESULTS: ____ | DRUG CATEGORY 1.: ____ 2.: ____

[ ] LESSEE [X] OWNER: SAME, (NAME (ALWAYS SHOW, LESSEE IF LEASED, OTHERWISE SHOW OWNER)) | ADDRESS (STREET, CITY, STATE, ZIP): ____

LIABILITY INSURANCE: [X] YES [ ] NO [ ] EXP | INSURANCE COMPANY: SOUTHERN COUNTY MUTUAL | POLICY NUMBER: 46ETX300791508266 | VEHICLE DAMAGE RATING: FL-4, FD-2, R&T-2

UNIT

UNIT #: ____ | 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER

VIN: ____ | ALTERED VEHICLE HEIGHT: [ ] YES [ ] NO

YEAR MODEL: ____ | COLOR & MAKE: ____ | MODEL NAME: ____ | BODY STYLE: ____ | LICENSE PLATE: ____ (YEAR) ____ (STATE) ____ (NUMBER)

DRIVER'S NAME: ____ (LAST) ____ (FIRST) ____ (MIDDLE) | ADDRESS (STREET, CITY, STATE, ZIP): ____ | PHONE NUMBER

DRIVER'S LICENSE: ____ (STATE) ____ (NUMBER) ____ (CLASS/TYPE) ____ (ENDORSEMENTS) ____ (RESTRICTIONS) ____ (DATE OF BIRTH)

LICENSE STATUS: ____ (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)

DRIVER'S ETHNICITY: ____ (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) | DRIVER'S SEX: [ ] MALE [ ] FEMALE | DRIVER'S OCCUPATION: ____ | POLICE, FIREFIGHTER, EMS ON EMERGENCY [ ] IF CHECKED, PLEASE EXPLAIN IN NARRATIVE

TYPE OF ALCOHOL SPECIMEN TAKEN: ____ (1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED) | TEST RESULTS: ____

TYPE OF DRUG SPECIMEN TAKEN: ____ (1-BLOOD 2-URINE 3-NONE 4-REFUSED) | TEST RESULTS: ____ | DRUG CATEGORY 1.: ____ 2.: ____

[ ] LESSEE [ ] OWNER: ____ (NAME (ALWAYS SHOW, LESSEE IF LEASED, OTHERWISE SHOW OWNER)) | ADDRESS (STREET, CITY, STATE, ZIP): ____

LIABILITY INSURANCE: [ ] YES [ ] NO [ ] EXP | INSURANCE COMPANY: ____ | POLICY NUMBER: ____ | VEHICLE DAMAGE RATING: ____

EXHIBIT 1 (tabbies)

DAMAGE TO PROPERTY OTHER THAN VEHICLES

PIPE FENCE (OBJECT) | JULIANO, MIKE, (NAME OF OWNER (LAST, FIRST, MIDDLE)) | 2997 LAKE DR, Southlake, TX, 76092 (ADDRESS (STREET, CITY, STATE, ZIP)) | 15 (FEET FROM CURB) | $ 400 (DAMAGE ESTIMATE)

IN YOUR OPINION, DID THIS CRASH RESULT IN AT LEAST $1,000.00 DAMAGE TO ANY ONE PERSON'S PROPERTY? [X] YES [ ] NO

CHARGES FILED

NAME: ____ CHARGE: ____ CITATION #: ____

NAME: ____ CHARGE: ____ CITATION #: ____

TIME NOTIFIED OF CRASH: 12/26/09 (DATE) 11:20 AM (HOUR) | HOW: Dispatched | TIME ARRIVED AT SCENE: 12/26/09 (DATE) 11:23 AM (HOUR) | DATE OF REPORT: 1/4/10

TYPED OR PRINTED NAME OF INVESTIGATOR: C. GARRETT | ID #: 123 | AGENCY: Southlake Police Department | DIST/AREA: ____ | REPORT COMPLETE [X] YES [ ] NO

Form CR-3
(Rev. 03/09)

LOC#: 09sp081524

SEAT POSITION	SOLICITATION	EJECTED	RESTRAINT USED	AIRBAG	HELMET USE	INJURY SEVERITY
1-FRONT LEFT 2-FRONT CENTER 3-FRONT RIGHT 4-SECOND SEAT LEFT 5-SECOND SEAT CENTER 6-SECOND SEAT RIGHT 7-THIRD SEAT LEFT 8-THIRD SEAT CENTER 9-THIRD SEAT RIGHT 10-CARGO AREA 11-OUTSIDE VEHICLE 12-UNKNOWN	INDICATES PERSONS DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT AS/FOR AN ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY. (Y = SOLICIT N = NO SOLICIT)	1-NO 2-YES 3-YES, PARTIAL 4-NOT APPLICABLE 5-UNKNOWN	1-SHOULDER & LAP BELT 2-SHOULDER BELT ONLY 3-LAP BELT ONLY 4-CHILD SEAT, FACING FORWARD 5-CHILD SEAT, FACING REAR 6-CHILD SEAT, UNK. 7-BOOSTER SEAT 8-NONE 9-OTHER 10-UNKNOWN	1-NOT APPLICABLE 2-NOT DEPLOYED 3-DEPLOYED, FRONT 4-DEPLOYED, SIDE 5-DEPLOYED, OTHER 6-UNKNOWN	1-WORN-DAMAGED 2-WORN-NOT DAMAGED 3-WORN-UNK DAMAGE 4-NOT WORN 5-UNKNOWN IF WORN	K-KILLED A-INCAPACITATING INJURY B-NON INCAPACITATING C-POSSIBLE INJURY N-NOT INJURED U-UNKNOWN

UNIT # 1 — TOWED DUE TO DISABLING DAMAGE [X] YES [ ] NO — VEHICLE REMOVED TO B&B WRECKER EULESS — BY B&B WRECKER

ITEM #	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED. NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
1	1	HARDY, MONTY,	1100 SHADY OAKS DR, Southlake, TX, 76092	N	1	1	3	4	56	M	K
2	3	RANSOM, SHARON,	3208 WILD OAK TRAIL, Grapevine, TX, 76051	N	1	1	3	4	56	F	K
3	4	VANCE, HADASSAH,	2400 SH 121 #1007, Euless, TX, 76039	N	1	1	2	4	35	F	K
4	6	AKION, WENDY,	330 E LAS COLINAS BLVD#1720, IRVING, TX, 75039	N	1	1	2	4	38	F	K
5											

UNIT # — TOWED DUE TO DISABLING DAMAGE [ ] YES [ ] NO — VEHICLE REMOVED TO — BY

ITEM #	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED. NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
6											
7											
8											
9											
10											

PED., PEDAL., MOT. CONVEY, ETC.	COMPLETE IF CASUALTIES NOT IN MOTOR VEHICLE CASUALTY NAME (LAST, FIRST, MI)	ADDRESS	SOL	ALCOHOL SPECIMEN TAKEN	RESULT	DRUG SPECIMEN TAKEN	RESULT	HELMET	AGE	SEX	INJURY CODE

DISPOSITION OF KILLED OR INJURED

ITEM #	TAKEN TO	BY
1	BAYLOR GRAPEVINE	SOUTHLAKE EMS
2	BAYLOR GRAPEVINE	GRAPEVINE EMS
3	BAYLOR GRAPEVINE	SOUTHLAKE EMS

IF AMBULANCE USED, SHOW

TIME NOTIFIED	TIME ARRIVED AT SCENE	AMBULANCE UNIT #	# OF ATTENDANTS INCLUDING DRIVER	# OF PERSONS TRANSPORTED FOR TREATMENT
11:20AM	11:25AM	M401	3	4
11:57AM	12:05PM	M561	3	
11:28AM	11:35AM	M402	3	

COMPLETE THIS SECTION IF PERSON KILLED (If a driver or occupant dies within 30 days of the crash, please complete this area and mail the supplement to the Crash Records Bureau)

ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH
1	12/26/2009	12:37 PM	2	12/27/2009	4:15 AM	3	12/26/2009	12:38 PM			

INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH ADDITIONAL SHEETS IF NECESSARY)

Unit 1 was n/b 2800 Lonesome Dove when unit 1 failed to stop at the stop sign at Burney Lane. Unit 1 continued n/b driving through a metal pipe fence before the FL of unit 1 struck a tree causing unit 1 to flip upside down into a pond in approximately 6' of water trapping all four occupants under water. There were no visible signs of braking prior to the collision and unit 1 was dragged out of the water, prior to investigator's arrival, over the same path it entered the pond. Investigator's were informed by relative that unit 1 had a previous problem with the accelerator sticking and the driver was having recent medical problems with seizures. Witness-Kathleen Carrabine (817)251-9497, Susan Dumas (214)801-3424, Mike Juliano (972)467-8484, Gavin Fearey (312)259-1969.

DIAGRAM — INDICATE NORTH

1-TWO-WAY, NOT DIVIDED
2-TWO-WAY, DIVIDED, UNPROTECTED MEDIAN
3-TWO-WAY, DIVIDED, PROTECTED BARRIER
4-ONE WAY
5-UNKNOWN

See attachment

FACTORS AND CONDITIONS LISTED ARE THE INVESTIGATOR'S OPINION

UNIT #	FACTORS/CONDITIONS CONTRIBUTING			OTHER FACTORS/CONDITIONS MAY OR MAY NOT HAVE CONTRIBUTED			VEHICLE DEFECTS CONTRIBUTING		VEHICLE DEFECTS MAY HAVE CONTRIBUTED	
1	1 22	2	3	1 47	2 74	3	1	2	1	2
	1	2	3	1	2	3	1	2	1	2

1-ANIMAL ON ROAD - DOMESTIC
2-ANIMAL ON ROAD - WILD
3-BACKED WITHOUT SAFETY
4-CHANGED LANE WHEN UNSAFE
5-10 SEE VEHICLE DEFECTS
11-DISABLED IN TRAFFIC LANE
12-DISREGARD STOP AND GO SIGNAL
13-DISREGARD STOP SIGN OR LIGHT
14-DISREGARD TURN MARKS AT INTERSECTION
15-DISREGARD WARNING SIGN AT CONSTRUCTION
16-DISTRACTION IN VEHICLE
17-DRIVER INATTENTION
18-DROVE WITHOUT HEADLIGHTS
19-FAILED TO CONTROL SPEED
20-FAILED TO DRIVE IN SINGLE LANE
21-FAILED TO GIVE HALF OF ROADWAY
22-FAILED TO HEED WARNING SIGN
23-FAILED TO PASS TO LEFT SAFELY
24-FAILED TO PASS TO RIGHT SAFELY
25-FAILED TO GIVE SIGNAL OR WRONG SIGNAL
26-FAILED TO STOP AT PROPER PLACE
27-FAILED TO STOP FOR SCHOOL BUS
28-FAILED TO STOP FOR TRAIN
29-FAILED TO YIELD ROW-EMERGENCY VEHICLE
30-FAILED TO YIELD ROW-OPEN INTERSECTION
31-FAILED TO YIELD ROW-PRIVATE DRIVE
32-FAILED TO YIELD ROW-STOP SIGN
33-FAILED TO YIELD ROW-TO PEDESTRIAN
34-FAILED TO YIELD ROW-TURNING LEFT
35-FAILED TO YIELD ROW-TURN ON RED
36-FAILED TO YIELD ROW-YIELD SIGN
40-FATIGUED OR ASLEEP
41-FAULTY EVASIVE ACTION
42-FIRE IN VEHICLE
43-FLEEING OR EVADING POLICE
44-FOLLOWED TOO CLOSELY
45-HAD BEEN DRINKING
46-HANDICAPPED DRIVER (EXP. IN NARRATIVE)
47-ILL (EXP. IN NARRATIVE)
48-IMPAIRED VISIBILITY (EXP. IN NARRATIVE)
49-IMPROPER START FROM PARKED POSITION
50-LOAD NOT SECURED
51-OPENED DOOR INTO TRAFFIC LANE
52-OVERSIZE VEHICLE OR LOAD
53-OVERTAKE AND PASS INSUFFICIENT CLEARANCE
54-PARKED AND FAILED TO SET BRAKES
55-PARKED IN TRAFFIC LANE
56-PARKED WITHOUT LIGHTS
57-PASSED IN NO PASSING ZONE
58-PASSED ON RIGHT SHOULDER
59-PEDPEDALCYCMOT.COM. FTR/ROW TO VEHICLE
60-SPEEDING-UNSAFE (UNDER LIMIT)
61-SPEEDING OVER LIMIT
62-TAKING MEDICATION (EXP. IN NARRATIVE)
63-TURNED IMPROPERLY - CUT CORNER ON LEFT
64-TURNED IMPROPERLY - WIDE RIGHT
65-TURNED IMPROPERLY - WRONG LANE
66-TURNED WHEN UNSAFE
67-UNDER INFLUENCE - ALCOHOL
68-UNDER INFLUENCE - DRUG
69-WRONG SIDE APPROACH OR IN INTERSECTION
70-WRONG SIDE NOT PASSING
71-WRONG WAY - ONE WAY ROAD
72-CELLULAR PHONE USE
73-ROAD RAGE
74-OTHER FACTOR (WRITE ON LINE)

Defective Accelerator

VEHICLE DEFECTS
5-DEFECTIVE OR NO HEADLAMPS
6-DEFECTIVE OR NO STOP LAMPS
7-DEFECTIVE OR NO TAIL LAMPS
8-DEFECTIVE OR NO TURN SIG. LAMPS
9-DEFECTIVE OR NO TRAILER BRAKES
10-DEFECTIVE OR NO VEHICLE BRAKES
11-DEFECTIVE OR NO STEERING MECH.
12-DEFECTIVE OR SLICK TIRES
13-DEFECTIVE TRAILER HITCH

TRAFFIC CONTROL: 1-NONE, 2-INOPERATIVE, 3-OFFICER, 4-FLAGMAN, 5-SIGNAL LIGHT, 6-FLASHING RED LIGHT, 7-FLASHING YELLOW LIGHT, 8-STOP SIGN, 9-YIELD SIGN, 10-WARNING SIGN, 11-CENTER STRIPE/DIVIDER, 12-NO PASSING ZONE, 13-RR GATE/SIGNAL, 14-SCHOOL ZONE, 15-CROSSWALK, 16-BIKE LANE, 17-OTHER — [8]

ROADWAY RELATION: 1-ON ROADWAY, 2-OFF ROADWAY, 3-SHOULDER, 4-MEDIAN — [2]

PART OF ROADWAY: 1-MAIN LANE, 2-SERVICE ROAD, 3-ENTRANCE RAMP, 4-EXIT RAMP, 5-CONNECTOR, 6-DETOUR, 7-OTHER — [1]

ROADWAY ALIGNMENT: 1-STRAIGHT, LEVEL, 2-STRAIGHT, GRADE, 3-STRAIGHT, HILLCREST, 4-CURVE, LEVEL, 5-CURVE, GRADE, 6-CURVE, HILLCREST, 7-OTHER, 8-UNKNOWN — [1]

LIGHT CONDITION: 1-DAYLIGHT, 2-DARK, NOT LIGHTED, 3-DARK, LIGHTED, 4-DARK, UNK LIGHTING, 5-DAWN, 6-DUSK, 8-OTHER, 9-UNKNOWN — [1]

TYPE OF ROAD SURFACE: 1-CONCRETE, 2-BLACKTOP, 3-BRICK, 4-GRAVEL, 5-DIRT, 6-OTHER, 7-UNKNOWN — [2]

WEATHER: 1-CLEAR / CLOUDY, 2-RAIN, 3-SLEET/HAIL, 4-SNOW, 5-FOG, 6-BLOWING SAND/SNOW, 7-SEVERE CROSSWINDS, 8-OTHER, 9-UNKNOWN — [1]

SURFACE CONDITION: 1-DRY, 2-WET, 3-STANDING WATER, 4-SNOW, 5-SLUSH, 6-ICE, 7-SAND, MUD, DIRT, 8-OTHER, 9-UNK — [1]

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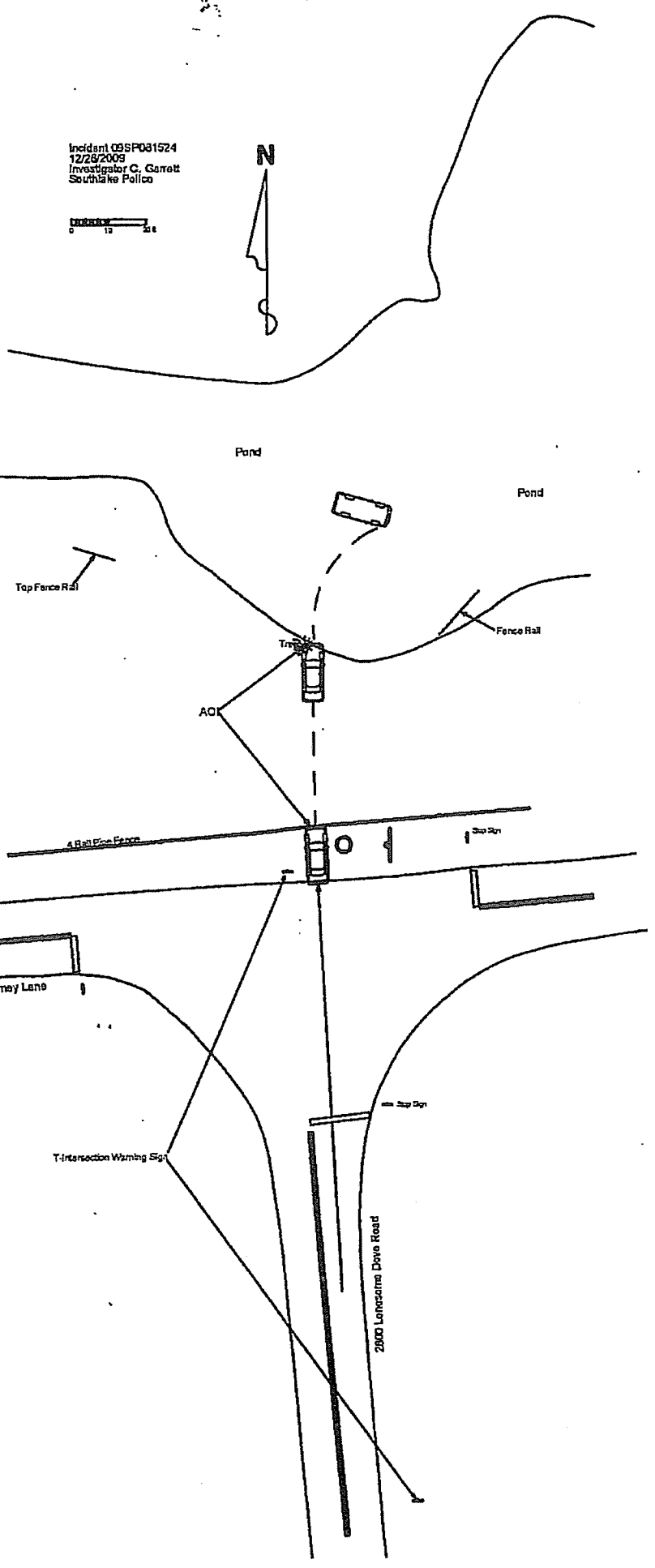
Incident 09SP081524
12/28/2009
Investigator C. Garrett
Southlake Police
N
S
Pond
Pond
Top Fence Rail
Fence Rail
AOI
4 Rail Pine Fence
Stop Sign
1500 Burney Lane
Stop Sign
T-Intersection Warning Sign
2800 Lonesome Dove Road

LOC#: 09sp081524

SEAT POSITION		SOLICITATION	EJECTED	RESTRAINT USED		AIRBAG	HELMET USE	INJURY SEVERITY
1-FRONT LEFT	7-THIRD SEAT LEFT	INDICATES PERSON'S DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT AS FOR AN ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY. (Y = SOLICIT N = NO SOLICIT)	1-NO	1-SHOULDER & LAP BELT	7-BOOSTER SE	1-NOT APPLICABLE	1-WORN-DAMAGED	K-KILLED
2-FRONT CENTER	8-THIRD SEAT CENTER		2-YES	2-SHOULDER BELT ONLY	8-NONE	2-NOT DEPLOYED	2-WORN-NOT DAMAGED	A-INCAPACITATING INJURY
3-FRONT RIGHT	9-THIRD SEAT RIGHT		3-YES, PARTIAL	3-LAP BELT ONLY	9-OTHER	3-DEPLOYED, FRONT	3-WORN-DMG DAMAGE	B-NON INCAPACITATING
4-SECOND SEAT LEFT	10-CARGO AREA		4-N/A	4-CHILD SEAT, FACING FWD	10-UNK	4-DEPLOYED, SIDE	4-NOT WORN	C-POSSIBLE INJURY
5-SECOND SEAT CENTER	11-OUTSIDE VEHICLE		5-UNKNOWN	5-CHILD SEAT, FACING REAR		5-DEPLOYED, OTHER	5-UNKNOWN IF WORN	N-NOT INJURED
6-SECOND SEAT RIGHT	12-UNKNOWN			6-CHILD SEAT, UNK		6-UNKNOWN		U-UNKNOWN

UNIT # See Below DATE/TIME: 12/26/2009 / 11:19 AM COUNTY: Tarrant ROAD: 2800 LONESOME DOVE RD

COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ECT.
HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED.

ITEM NO.	UNIT	SEAT POSITION	NAME (LAST NAME FIRST)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
11												
12												
13												
14												
15												
16												
17												
18												
19												
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21												
22												
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41												
42												
43												
44												
45												
46												
47												
48												
49												
50												

DISPOSITION OF KILLED OR INJURED

IF AMBULANCE USED, SHOW

ITEM NUMBER	TAKEN TO	BY	TIME NOTIFIED	TIME ARRIVED AT SCENE	AMULANCE UNIT #	NO. ATTENDANTS INC. DRIVER
4	BAYLOR GRAPEVINE	SOUTHLAKE EMS	11:20AM	11:25AM	M401	3

COMPLETE THIS SECTION IF PERSON KILLED

ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH
4	12/27/2009	12:50AM									

Southlake Police Department

OFFENSE Report

ORI: TX2203200 **Incident No. 09SP081524** 1/5/2010

Incident

CAD No. 0900228560 | Other No. | Type Non-Criminal | Date Occur 12/26/2009 11:21
Status Open | Clear. Date | Enter By: Sewell,T. #151 | Exc. Clear.
Inv. Status Active | Report By: Sewell,T. #151 12/26/2009 | Approv. By: Tripp,C. #192 12/27/2009
Fam. Viol. No | Narrative I09SP081524.doc | Investigator Garrett,C. #123
Description
Major Accident: Vehicle rollover into pond

Dispatch Location BURNEY LN Southlake

- Offense No. 1

Offense Recording Date 12/26/2009 18:04

Off. Begin Date 12/26/2009 11:22 | Off. End Date 12/26/2009 15:05 | Entry Method | Attempt/Complete Completed
Drug Seized | Gang Related | Hi-Speed Pursuit | Weapons Used
Offense Code | Offense INFORMATION REPORT | | No. of Premises 0
Bias Motivation | | Agg Asslt/Homic. Circumst. |
Offense Addr. 2800 BURNEY LN Southlake | | | Loc.Type
Remarks

Victim(s)

Name	DOB	Race	Sex	DL	Address

Victims (Organizations)

Name	Phone	Address

Other Involved Person(s)

Name	Role	DOB	Race	Sex	DL	Address
Akion, Wendy Forte	Involved	08/06/1971	Black	Fem	02830994	330 East Los Colinas Blvd 1720, Irving, TX
Vance, Hadassah	Involved	04/03/1974	Black	Fem	00238849	2400 State Hwy 121 1007, Euless, TX 76039
Ransom, Sharon Renee	Involved	10/15/1953	Black	Fem	08370556	3298 Wild Oak Trail , Grapevine, TX 76051
Juliano, Mike	Witness	12/07/1955	White	Male		2997 LAKE DR , Southlake, TX 76092 (972)467-8484 (H)
Fearey, Gavin D	Witness	12/18/1969	White	Male		2912 Chris Ln , Grapevine, TX 76051 (312)257-1969 (H)
Carrabine, Kathleen	Witness	07/10/1966		Fem		961 THOUSAND OAKS CT , Southlake, TX (817)251-9497 (H) (214)923-3369
Dumas, Susan	Witness			Fem	09279525	2901 FLAMINGO CIR , Southlake, TX 76092 (214)801-3424 (334)393-2551

Incident Property

Status	Item Type	Item Name	Make	Model	Color	Qty	Value
Found	Purse/Handbags/W	mens wallet			Brown	1	

Serial #
Description: mens brown tri-fold leather wallet
Involved Person Hardy,Monty M

Southlake Police Department

OFFENSE Report

ORI: TX2203200 **Incident No. 09SP081524** 1/22/2010

Found	**Other**	**Texas Drivers License**		**1**
Serial #		Description: **#08750729**		
Involved Person	**Hardy,Monty M**			
Found	**Credit/Debit Cards**	**Discover Card**		**1**
Serial #		Description: **credit card**		
Involved Person	**Hardy,Monty M**			
Found	**Other**			**1**
Serial #		Description: **misc. contents**		
Involved Person	**Hardy,Monty M**			
Evidence	**Recordings-**	**CD-R containining**		**1**
Serial #		Description:		
Involved Person	**Hardy,Monty M**			
Evidence	**Recordings-**	**CD-R**	**TDK**	
Serial #		Description: **Accident related photos**		
Involved Person	**Hardy,Monty M**			

Southlake Police Department

Incident ARREST Report

ORI: TX2203200 **Incident No. 09SP081524** 1/5/2010

Incident

CAD No. **0900228560** Other No. Type **Non-Criminal** Date Occur **12/26/2009 11:21**

Status **Open** Clear. Date Except. Clear.

Invest. Status **Active** Report By: **Sewell,T. #151** **12/26/2009** Approve By: **Tripp,C. #192** **12/27/2009**

Fam. Violence **No** Narrative **I09SP081524.doc**

Description
Major Accident: Vehicle rollover into pond

Offense No. 1

Offense Recording Date **12/26/2009 18:04**

Off. Begin Date **12/26/2009 11:22** Off. End Date **12/26/2009 15:05** Offense **INFORMATION REPORT**

Offense Address **2800 BURNEY LN Southlake**

Southlake Police Department

Incident Involved Persons Report

ORI: TX2203200 Incident No. 09SP081524 1/5/2010

Incident

CAD No. 0900228560 Other No. Type Non-Criminal Date Occur 12/26/2009 11:21
Status Open Clear. Date Enter By: Sewell,T. #151 Exc. Clear.
Inv. Status Active Report By: Sewell,T. #151 12/26/2009 Approv. By: Tripp,C. #192 12/27/2009
Fam. Viol. No Narrative I09SP081524.doc
Description
Major Accident: Vehicle rollover into pond

Persons

Akion, Wendy Forte Race: Black Sex: Female HT: 5' WT: 155
Skin Tone: Dark Hair Color: Brown Eyes: Brown
Title:
Clothing:
Alias:
Role: Involved Person

Vitals
DOB: 8/6/1971 Ethnicity: Non-Hispanic Marital Status: Resid. Status:
DOD: 12/27/2009 # of Dependents: Date Married: Separate Date: Divorce Date:
Religion: Jehovah's Witness Citizenship: U.S. citizen Place of Birth:

Known Address(es)
Address: 330 East Los Colinas Blvd Irving, TX 75039, APT: 1720 Yrs @ Addr: Date Enter: 12/30/2009

Identifications
ID Type: Driver License ID No.: 02830994 Issued By: TX Date Issued: Date Expired: 8/6/2012
Comment: ID Proof: Date Entered: 12/30/2009

Medical Conditions
Employment
Education
Physical Characteristics
Advanced Characteristics
Phone Numbers

Vance, Hadassah Race: Black Sex: Female HT: 5' 9" WT: 250
Skin Tone: Dark Brown Hair Color: Brown Eyes: Black
Title:
Clothing:
Alias:
Role: Involved Person

Vitals
DOB: 4/3/1974 Ethnicity: Non-Hispanic Marital Status: Resid. Status:
DOD: 12/26/2009 # of Dependents: Date Married: Separate Date: Divorce Date:
Religion: Jehovah's Witness Citizenship: U.S. citizen Place of Birth:

Known Address(es)
Address: 2400 State Hwy 121 Euless, TX 76039, APT: 1007 Yrs @ Addr: Date Enter: 12/30/2009

Southlake Police Department

Incident Involved Persons Report

ORI: TX2203200 Incident No. 09SP081524 1/5/2010

Identifications
ID Type: Driver License ID No.: 00238849 Issued By: TX Date Issued: Date Expired: 4/3/2012
Comment: ID Proof: Date Entered: 12/30/2009

Medical Conditions

Employment

Education

Physical Characteristics

Advanced Characteristics

Phone Numbers

Ransom, Sharon Renee

Race: Black Sex: Female HT: 5' 2" WT: 133
Skin Tone: Hair Color: Brown Eyes: Brown
Title:
Clothing:
Alias:
Role: Involved Person

Vitals
DOB: 10/15/1953 Ethnicity: Non-Hispanic Marital Status: Resid. Status:
DOD: 12/26/2009 # of Dependents: Date Married: Separate Date: Divorce Date:
Religion: Jehovah's Witness Citizenship: U.S. citizen Place of Birth:

Known Address(es)
Address: 3298 Wild Oak Trail Grapevine, TX 76051 Yrs @ Addr: Date Enter: 12/30/2009

Identifications
ID Type: Driver License ID No.: 08370556 Issued By: TX Date Issued: Date Expired: 10/15/2015
Comment: ID Proof: Date Entered: 12/30/2009

Medical Conditions
Condition: Deceased/drowning Date Entered: 12/30/2009
Remarks:

Employment

Education

Physical Characteristics

Advanced Characteristics

Phone Numbers

Known Address(es)
Address: 1100 SHADY OAKS DR Southlake, TX 76092 Yrs @ Addr: Date Enter: 12/27/2009

Identifications
ID Type: Driver License ID No.: 08750729 Issued By: TX Date Issued: Date Expired:
Comment: ID Proof: Date Entered: 12/27/2009

Medical Conditions

Employment

Education

Southlake Police Department

Incident Involved Persons Report

ORI: TX2203200 Incident No. 09SP081524 1/5/2010

Physical Characteristics
Advanced Characteristics
Phone Numbers
Known Address(es)
Address: 2997 LAKE DR Southlake, TX 76092 Yrs @ Addr: Date Enter: 12/30/2009
Identifications
Medical Conditions
Employment
Education
Physical Characteristics
Advanced Characteristics
Phone Numbers
(1) Phone No. (2) Phone No. (3) Phone No. (4) Phone No.
(972)467-8484 Home
Known Address(es)
Address: 2912 Chris Ln Grapevine, TX 76051 Yrs @ Addr: Date Enter: 12/30/2009
Identifications
Medical Conditions
Employment
Education
Physical Characteristics
Advanced Characteristics
Phone Numbers
(1) Phone No. (2) Phone No. (3) Phone No. (4) Phone No.
(312)257-1969 Home
Known Address(es)
Address: 961 THOUSAND OAKS CT Southlake, TX 76092 Yrs @ Addr: Date Enter: 12/30/2009
Identifications
Medical Conditions
Employment
Education
Physical Characteristics
Advanced Characteristics
Phone Numbers
(1) Phone No. (2) Phone No. (3) Phone No. (4) Phone No.
(817)251-9497 Home (214)923-3369 Cell
Known Address(es)
Address: 2901 FLAMINGO CIR Southlake, TX 76092 Yrs @ Addr: Date Enter: 12/30/2009
Identifications
ID Type:Driver License ID No.:09279525 Issued By:TX Date Issued: Date Expired:
Comment: ID Proof: Date Entered:12/30/2009

Southlake Police Department

Incident Involved Persons Report

ORI: TX2203200 Incident No. 09SP081524 1/5/2010

Medical Conditions

Employment

Education

Physical Characteristics

Advanced Characteristics

Phone Numbers

(1) Phone No.	(2) Phone No.	(3) Phone No.	(4) Phone No.
(214)801-3424 Cell	(334)393-2551		

Southlake Police Department

Incident PROPERTY Report

ORI: TX2203200 | Incident No. 09SP081524 | 1/5/2010

Incident

CAD No. **0900228560** | Other No. | Date Occurred **12/26/2009 11:21** | Type **Non-Criminal** | Narrative **I09SP081524.doc**

Status **Open** | Clearance Date | Enter. By **Sewell,T. #151** | Exc. Clear.

Inv. Status **Active** | Report By **Sewell,T. #151** **12/26/2009** | Approv. By **Tripp,C. #192** **12/27/2009**

Family Viol. **No**

Description

Major Accident: Vehicle rollover into pond

Property Items

Recorded	Status	Jurisd.	Item Type	Make	Model	Size	Color	Serial Number	Struct.
12/27/09	Found		Purse/Handbags/Wallets				Brown		

Stolen/Damaged Qnty 1 Tot. Value | Recovered Qnty Tot. Value Date

Evidence: | Recover Location:

Item Name: **mens wallet** | Description: **mens brown tri-fold leather wallet**

Involved Person **Hardy,Monty M**

Recorded	Status	Jurisd.	Item Type	Make	Model	Size	Color	Serial Number	Struct.
12/27/09	Found		Other						

Stolen/Damaged Qnty **1** Tot. Value | Recovered Qnty Tot. Value Date

Evidence: | Recover Location:

Item Name: **Texas Drivers** | Description: **#08750729**

Involved Person **Hardy,Monty M**

Recorded	Status	Jurisd.	Item Type	Make	Model	Size	Color	Serial Number	Struct.
12/27/09	Found		Credit/Debit Cards						

Stolen/Damaged Qnty 1 Tot. Value | Recovered Qnty Tot. Value Date

Evidence: | Recover Location:

Item Name: **Discover Card** | Description: **credit card**

Involved Person **Hardy,Monty M**

TOY-RQ-05E-00010785

Southlake Police Department

Incident PROPERTY Report

ORI: TX2203200 **Incident No. 09SP081524** 1/5/2010

12/27/09 Found Other

Stolen/Damaged Recovered

Qnty 1 Tot. Value Qnty Tot. Value Date

Evidence: Recover Location:

Item Name: Description: **misc. contents**

Involved Person **Hardy,Monty M**

12/27/09 Evidence Recordings-Audio/Visual

Stolen/Damaged Recovered

Qnty 1 Tot. Value Qnty Tot. Value Date

Evidence: Recover Location:

Item Name: **CD-R** Description:

Involved Person **Hardy,Monty M**

01/05/10 Evidence Y Recordings-Audio/Visual TDK

Stolen/Damaged Recovered

Qnty Tot. Value Qnty Tot. Value Date

Evidence: Recover Location:

Item Name: **CD-R** Description: **Accident related photos**

Involved Person **Hardy,Monty M**

TOY-RQ-05E-00010786

Southlake Police Department

Incident VEHICLE Report

ORI: TX2203200 | Incident No. 09SP081524 | 1/5/2010

Incident

CAD No. **0900228560** | Other No. | Date Occurred **12/26/2009 11:21** | Type **Non-Criminal** | Narrative **I09SP081524.doc**

Status **Open** | Clearance Date | Enter By **Sewell,T. #151** | Exc. Clear

Inv. Status **Active** | Report By **Sewell,T. #151** | **12/26/2009** | Approve By **Tripp,C. #192** | **12/27/2009**

Family Viol. **No**

Description

Major Accident: Vehicle rollover into pond

- Vehicle

Status	Year	Make	Model	Color	VIN Number	State	License	Exp. Date	Value	Plate Type
OTHER	2008	TOYOTA	AVALON	BLUE	4T1BK36B48U278056	TX	DXS424			

Type: | Wrecker Co: **B&B** | Wrecker Call'd: **12/26/09 11:28** | Wrecker Arriv'd: **12/26/09 11:36** | Enter'd: **12/26/09**

Description:

TOY-RQ-05E-00010787

Southlake Department of Public Safety
Police Services
Case Report

Offense Number: 09SP081524
Offense: Information Report
Officer: T. Sewell ID# 151

Narrative:

On 12.26.2009 at approximately 11:21 hours Southlake Police and Fire/EMS were dispatched to the area of Lonesome Dove and Burney Lane in reference to a major accident. Corporal R. Baker #193, Officer L. Lewis #103, and Officer J. Sutton #1262 were first to arrive on the scene at 11:23 hours. The three officers entered the water in an attempt to extricate victims from the vehicle. After forcing their way into the vehicle the officers were able to extricate a female from the passenger compartment. Officers re-entered the water multiple times in an attempt to remove additional victims but were unable. I, Officer T. Sewell #151, was dispatched to assist at 11:33 hours. While responding, I encountered a B&B Wrecker Service flatbed wrecker who was already responding to the incident. I assisted the wrecker with the response and we arrived on scene at 11:36 hours. Upon approaching the scene, I observed a large-scale rescue effort still in progress. All personnel were actively working to rescue the trapped victims. At 11:46 hours Grapevine Dive Team 561 arrived on scene and at 11:51 their divers were in the water continuing the rescue effort.

At 11:57 the second victim was pulled from the water followed by the third at 12:00. The last victim was pulled from the water at 12:05 hours. Following a detailed search of the water by Grapevine's Dive Team the vehicle was removed by B&B Wrecker at 12:31 hours.

See Officer Supplements for additional information.

-End of Report-

Southlake Department of Public Safety
Police Services

Offense Number: 09SP081524
Offense: Information Report – Death Investigation
Officer Name: J. Sutton **ID#** 1262

Narrative:

On Saturday, December 26, 2009 at 1121 hrs I, Officer J. Sutton #1262, Cpl. R. Baker #193, Officer L. Lewis #103, Officer D. Aldridge #112 and Sergeant C. Tripp #192 responded to the intersection of Burney Lane and Lonesome Dove Rd. regarding a major accident. While we were en-route dispatch advised that there was one vehicle upside down in a pond, and that the occupant(s) were trapped inside. I then initiated my overhead lights and siren (code 3 response). I arrived on scene at 1123 hrs.

Upon my arrival I observed the two rear wheels and rear bumper of an inverted blue passenger car to be protruding from the surface of the pond directly north of Burney Ln. at Lonesome Dove Rd. The vehicle appeared to be approximately 35 feet from the shoreline of the pond.

Cpl. Baker, Officer Lewis, and I exited our vehicles and ran to the edge of the pond. We removed our duty gear and entered the water along with two citizens. One of the citizens, a white male named Mike, was later identified as the homeowner at 2997 Lake Drive and the other was a white male with a British accent. Upon reaching the vehicle Cpl. Baker and I, with the help of Mike, were able to open the rear passenger side door and locate an unconscious person inside. After attempting to pull the person from the vehicle Cpl. Baker asked for a knife. I pulled out my knife and Cpl. Baker handed me a dive mask. I submerged and attempted to locate the seatbelt. When I was unable to locate the seatbelt I handed Cpl. Baker the knife. Cpl. Baker located and cut the seatbelt. After cutting the person's seatbelt we were able to extract a black female from the car.

Cpl. Baker and I dragged her to the shoreline where Officer Lewis (who had already exited the water) and Officer Aldridge pulled her up onto the land. Southlake EMS personnel who were waiting on shore then began patient care.

Cpl. Baker and I proceeded back to the vehicle in order to attempt to locate and rescue any other persons that might be in the vehicle. Cpl. Baker was able to feel one other person in the vehicle but was unable to free the person. I was unable to open any other doors or windows. Feeling the submerged passenger side rear window I yelled for someone to get me a tool to break the window. Officer Lewis threw me an ASP baton which I deployed and used it to strike the submerged window. After striking the window several times with no success I discontinued my attempts to break it.

Feeling the effects of the cold, Cpl. Baker and I exited the water and entered the fire engine. We were then moved by Southlake EMS personnel to the ambulance where we were given blankets and heat packs.

Southlake Department of Public Safety
Police Services

Offense Number: 09SP081524
Offense: Information Report – Death Investigation
Officer Name: J. Sutton **ID#** 1262

I completed a Critical Incident Report for the code 3 response and unit 264's video was downloaded and tagged for review.

There is nothing further to report at this time.

Southlake Department of Public Safety
Police Services
Supplemental Narrative

Offense Number: 09SP081524
Offense: Supplemental Report-Death Investigation
Officer Name: Cpl. R. Baker **ID# 193**

On Saturday 12-26-09 at approximately 1121 hours, SDPS communications dispatched Engine 401, Medic 401, and any available police units to a major accident in the area of Lonesome Dove Road and Burney Lane. Dispatch further advised a vehicle had flipped and was submerged in a pond close to the intersection. Officer J. Sutton #1262, Officer D. Aldridge #112, Sergeant C. Tripp #192 and I checked en-route from various locations inside the police complex at 667 N. Carroll Avenue and Officer L. Lewis #103 responded from the Town Square area. Officer Sutton and I responded Code-3 and arrived on scene at 1123 hours.

Upon arrival, we were met by numerous citizens, who were all pointing to the pond, which is located on the north side of Burney Lane directly across from Lonesome Dove Road. I observed the rear portion of an unknown type passenger car submerged approximately 30-35 feet off the shore line. The vehicle's rear wheels were facing upward, indicating the vehicle had flipped over. The on-looking citizens were screaming frantically that the driver was trapped inside the car.

Sutton, Lewis, Aldridge and I jumped over the pipe fence and began doffing our gun belts, uniform shirts, and ballistic vests. A white male citizen standing by the shoreline, later identified as Mike Juliano, advised he would help us. Another white male citizen standing by the pond, later identified as Gavin Fearey, advised he would help too. Both Mike and Gavin entered the water, followed by me, then Lewis and Sutton.

Upon entering the water, I was shocked by how cold it was. Mike and Gavin reached the vehicle first, followed by me and then Sutton. Mike yelled out that he was able to get a door open (which was the rear passenger door) and could feel a person. I swam over to Mike, who was saying, "I can't get them out and hold the door". I advised Mike to hold the door open and I would get them out. I tried pulling the person out of the vehicle, but they were being restrained by a seat belt. I was thrown a divers mask by an unknown bystander and put it on. I dove under the water to try to unsecure the seat belt but the water was so murky and dirty that I was unable to see anything at all. I came back to the surface and yelled out that I needed a knife so I could cut the seatbelt. I then began feeling around the person's body trying to locate the strap. Officer Sutton yelled back that he had one and swam over and handed it to me. I located the seatbelt strap and cut it in two. Sutton and I began pulling the person, who was still stuck inside the vehicle. After several tries, we were able to free the person which turned out to be a

Officer: ID#:
Approving Supervisor: ID#:

TOY-RQ-05E-00010791

black female wearing black pantyhose. Sutton and I dragged the black female towards the shoreline, where Officers Lewis and Aldridge, who were both in the water, took possession of her. I swam back to the vehicle to attempt to locate any more occupants.

Once I arrived back at the vehicle, Mike stated that he thought there was another person inside the vehicle. I began feeling around inside the vehicle and could feel what I thought was a human foot. I began pulling the foot and then I could feel the leg as well. I instructed Sutton to swim around to the other side of the vehicle an attempt to open the door or break out the window. I then yelled out to the on-looking citizens and asked if anyone of them was a good swimmer that could help us out. A white female (unknown name) yelled back that she was a good swimmer and that she would help. She took off her clothes down to her undergarments and jumped in the water.

I continued trying to pull the person out of the vehicle, but was not having any success. Officer Sutton was trying diligently to get in from the other side but he too was not having any success. The white female made it to the vehicle and I asked if she could dive under the water and undo the seatbelt. In a shivering voice, she stated, "The water is too cold." I thanked her for jumping in the water and trying to help, and then she swam back toward the shoreline.

I then dove under the water again and attempted to swim into the vehicle to release the seatbelt, but was unable to do so. At this point, I was unable to feel my extremities and was shaking uncontrollably. I heard Officer Sutton yell to me that he was getting hypothermic. I informed Sutton to leave and go get warm. After making that statement, I decided it would be a smart idea to get out of the water before I needed treatment and became a patient myself.

I swam back to the shore and informed fire personnel there was another subject in the vehicle, but we were unable to get them out. Fire staff instructed me to take off my wet clothes and go get in the back of an engine. I took off my shirt and walked to the engine and got in. Officer Sutton, Officer Lewis and I sat in the engine wrapped in blankets for a while after that. Sutton and I were then moved to the back of an ambulance, where we sat with hot packs under our arm pits.

I have no further details to report at this time.

Southlake Case #09SP081524
Supplement-Death Investigation
Sergeant C. Tripp #192

On Saturday, December 26, 2009 at approximately 1121 hours, I was at 667 N. Carroll Avenue readying the newly completed police facility for the pending move-in the following Monday. I had observed Officer J. Sutton #1262 in a corridor at the new station. Corporal R. Baker #193 and Officer D. Aldridge #112 were in the men's locker room relocating the contents of their lockers. Officer L. Lewis #103 was in the Town Square area. Officers Sutton and Aldridge were dispatched to a burglar alarm, but were re-directed when Keller-Southlake Communications broadcast a major vehicle accident via police radio. The location provided was the area of the Lonesome Dove and Burney intersection. Additional information was then provided which indicated that reports were coming in via 9-1-1 that the vehicle had overturned and had come to rest in a pond. All on-duty personnel responded.

Officer Sutton and Corporal Baker both utilized a code-3 response, arriving on the scene simultaneously with Officer Lewis at 1123 hours. Officer Aldridge arrived at 1124 hours, and I arrived at 1126 hours. Upon my arrival, I immediately observed Officer Lewis kneeling down on the bank of the pond coughing and trying to catch her breath. She was wet from her neck down to her feet. I then observed a white female civilian wearing a bra and panties, also wet, putting on her clothing, which was dry. EMS personnel were working on what appeared to be a black female patient who had apparently been pulled from the water.

I then observed Corporal Baker and Officer Sutton in the pond attempting to access an overturned submerged vehicle. Officer Sutton was wearing a dive mask trying to see underwater, but advised that he could not see anything. He and Corporal Baker were attempting to break the window of the vehicle, but were unable to. After several attempts to free additional occupants, both exited the water. Both had red skin, blue lips, and were visibly shivering. The outdoor temperature was approximately 43 degrees Farenheit, and the wind was blowing at 7-15 mph. Patches of snow from the recent snowfall were still surrounding the pond and scattered on the grassy area.

I obtained emergency blankets from each of the patrol vehicles on scene and began wrapping them around Sutton, Baker, and Lewis. I advised them to sit inside a patrol vehicle and get warm. Officer Sutton sat in the vehicle for a few minutes, but then got out and began walking around again. He appeared disoriented, and stated that he could not sit still. Fearing that he was experiencing the effects of adrenaline coupled with hypothermia, I asked the first Southlake paramedic I saw to provide Sutton with medical attention. When I then attempted to locate Baker and Lewis to check their status, I was unable to locate them, due to them having their duty belts removed. I was advised that they were inside a fire engine getting warm.

TOY-RQ-05E-00010793

Communications advised that Care Flight was launching at 1127. I collaborated with the Fire Incident Commander C. Altom and we agreed that the optimum landing zone would be at 1101 E. Dove, Carroll Middle School. I assigned Officer Aldridge to respond to that location and direct Care Flight to the landing zone. Detective K. Fulgium #136, who had been working off-duty security, arrived on the scene in uniform and began to assist with scene control, marking off the unsecured areas with crime scene tape. I assigned him to respond to the landing zone to assist Officer Aldridge. Care Flight was landed at 1135 in the Carroll Middle School Stadium parking lot.

Knowing that at least one occupant of the vehicle was still inside, I attempted to use another method to free them. I requested that B&B Wrecker expedite their response to the scene. Officer Sewell arrived on the scene at 1136 along with a flatbed wrecker. Fire personnel cut the bottom pipe of the pipe fence with a saw, and the flatbed wrecker was backed into the opening of the fence. I asked the wrecker driver to release the winch cable so that it could be hooked onto the vehicle to remove it from the water. The cable was not long enough, so the driver hooked an additional chain to the cable. After this was completed, Southlake Fire personnel advised me not to pull the vehicle out of the water, stating that the Grapevine Dive Team was approximately two minutes away. Efforts to remove the vehicle were discontinued at that time. Grapevine Dive Team 561 arrived on the scene at 1146 and began efforts to remove additional occupants from the vehicle. At approximately 1157, a second occupant was removed from the vehicle.

Due to the fact that scene integrity was being compromised by the large amount of first-responders, I utilized the patrol digital camera to obtain photographs of the scene, the vehicle and the second occupant removed from the water.

At 1154, I contacted Sergeant R. McAmis to have a Crime Scene Investigator respond to the location. Detective R. Anderson #196 was notified to respond. I also requested that communications notify an accident investigator to respond. Officer A. Wells #171 was notified at 1158.

I observed that members of the media were grouping in an unsafe area in the street near the command post at approximately 1400 Burney Lane, just outside the original taped off area. I expanded the scene at that time and moved the media staging area to the corner of Burney Lane and Lake Drive so that the accident investigation team and crime scene investigators would be able to utilize the area for measurements.

A third occupant of the vehicle was removed at 1200 hours, and the fourth and final occupant was removed at 1205 hours. At approximately 1211 hours, the divers advised that they could locate no additional persons in the water.

At 1215, I again checked the welfare of Officer Lewis, Officer Sutton, and Corporal Baker. All still appeared to be experiencing the effects of the cold water, and I advised dispatch that they were all out of service. They all remained on the scene until the fire apparatus were removed and they were able to drive their vehicles out. Officer Sutton and Corporal Baker traveled to the DPS West facility in order to obtain dry clothing and take a shower. Officer Lewis traveled to her residence to obtain dry clothing, then obtained medical treatment at a Care Now facility.

The vehicle was removed from the water to an area just south of the bank of the pond at approximately 1231 hours. The license plate was revealed to be Texas #DXS424. A cursory search revealed that the vehicle had been approximately half-filled with silt and mud. The vehicle was left in that location for the remainder of the investigation. Prior to the arrival of Detective Anderson with the Criminal Investigations equipment, Detective Fulgium utilized the patrol camera to take numerous additional photos of the vehicle after it was removed from the water.

A registration check on the license plate revealed that the registered owner Monty Hardy resided at 1100 Shady Oaks in Southlake. Due to the condition of the victims, we were unable to determine whether the registered owner was actually in the vehicle at the time of the collision.

At 1505 hours, Officer Aldridge, Detective Fulgium and I turned over the scene to Sergeant G. Music #162 and the Crash Team and responded to a missing child call. Upon arrival, the child had been located, and I continued attempting to identify the registered owner. I requested a driver license inquiry on the registered owner, which revealed that Monty Hardy was a white male born in 1953. I met with Detective Anderson, who had been to Baylor Medical Center. He stated that the person who he believed to have been the driver was a white male approximately 50-60 years of age.

At 1541 hours, Detective Anderson and I traveled to 1100 Shady Oaks and were met by Monika Diaz and a Channel 8 news team. A female, later identified as Linda Hardy was standing on the porch with the front door open crying. The media personnel got into their vehicle and left the area. We went inside with Ms. Hardy and advised her of the day's events. We asked her to provide a photo of her husband. Ms. Hardy provided an expired driver license, and Detective Anderson stated that he believed that Mr. Hardy

was the deceased person that he had seen. Ms. Hardy was provided with the telephone number to the Tarrant County Medical Examiner's Office.

Ms. Hardy advised that her husband had been in the vehicle with some of the ladies from their Jehovah Witness Hall calling on people in the area. Detective Anderson asked Ms. Hardy who would be able to identify those ladies, and she stated that her pastor would know them. Detective Anderson telephoned her pastor, who agreed to come to the residence and drive Ms. Hardy to identify her husband and assist with identification of the additional occupants of the vehicle.

I transported the digital media to the Southlake DPS facility, where the photos were downloaded onto a CD-R, which was packaged as evidence and placed into West evidence locker R.

TOY-RQ-05E-00010796

Southlake Department of Public Safety
Police Services
Supplement

Offense Number: 09SP081524
Offense: Death Investigation
Officer Name: Richard Anderson ID# 196

Narrative: On December 26, 2009 I, Detective Richard Anderson was the on call crime scene investigator for the Southlake Police Department. I was contacted by Sgt. R. McAmis at approximately 12:11 pm and advised there was a motor vehicle accident at the intersection of north Lonesome Dove Road and Burney Lane. Sgt. McAmis informed me that there were two fatalities. I was then enroute to Southlake. While enroute Sgt. McAmis called and updated the information that there were two fatalities and two persons that were resuscitated and being transported to Baylor Grapevine. I arrived on the scene at approximately 1:05 pm.

I then contacted Sgt. Cindy Tripp who was the on duty shift supervisor on the scene. Sgt. Tripp informed me that a blue 2008 Toyota motor vehicle had been north bound in N. Lonesome Dove Road. The vehicle did not stop at the stop sign at the intersection of Burney Lane and went through a pipe fence struck a tree and came to rest upside down in a pond north of the intersection. A female witness following the vehicle reported not seeing a driver behind the steering wheel and no brake lights being activated prior to entering the intersection and the accident occurring at approximately 11:20am.

Sgt. Tripp then advised me that Southlake PD Officers had arrived on the scene in three minutes and were able to extricate a b/f from the vehicle within minutes and Southlake EMS worked to resuscitate her. The female was flown by Care Flight to Baylor Grapevine. At the time officers believed there was one more person in the vehicle but they were unable to free the person and the officers were being overcome by the cold water. Rescue efforts were suspended and they awaited a response from Grapevine Fire Rescue with a dive rescue team. Sgt. Tripp stated that the Grapevine dive team arrived at approximately 11:46am and went into the pond. Between this time and 12:05pm three additional victims were recovered. Sgt. Tripp stated that post recovery Southlake and Grapevine EMS worked to resuscitate the victims and they were transported by ambulance to Baylor Grapevine.

Sgt Tripp stated that this appeared to be a motor vehicle accident and there was no apparent criminal activity. She had contacted the Southlake Police Department traffic division and Sgt. Gaylon Music responded and he had taken control of the scene and began reconstructing the accident scene. Tripp and Detective Fulgium had taken photos when the vehicle was still in the pond and they then took a panoramic view of the whole intersection and the scene.

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When I arrived the victims had all been transported and the vehicle had been extricated from the pond. I then photographed the scene from a closer in point of view. I then took a series of close up photos of the vehicle. The officers and the divers recovered a total of three purses and a bag from the car and pond. Detective Fulgium checked the contents and he was only able to find one driver license belonging to Wendy Forte Akion. The driver had been noted to be a white male and the three passengers were identified as black females. The car was registered to a Monty Hardy of Southlake.

I then cleared the scene and went to Baylor Grapevine in order to try to identify the victims. At the hospital I went to the emergency room and I learned that the driver and a female had been declared dead and the other two females had been moved to the intensive care unit. I was taken to the intensive care unit of the hospital and I met with the in charge nurse whom I identified as Heather Wheaton (817-329-2528). I asked Heather if they had found any identification on any of the victims and she told me that they had found nothing. Heather told me that the females were in the hospital as Jane, Mary and Sally Doe. The male was listed as John Doe. I had the driver license of Wendy Akion with a photograph of her and we compared it to the victims that were in ICU. The faces of the victims were very swollen and there were airways in their mouths and tubes in their noses and I found it impossible to determine if either of the victims was Wendy Akion. Heather and the attending doctors compared the driver license to the patient and they were unable to make the comparison. Heather and I then went to the morgue in the hospital where the bodies of the male and female were being stored. We pulled the gurney out and unzipped the body bag with the female and neither Heather nor I could make a comparison with the driver license. I then asked Heather to unzip the body bag containing the male victim. I looked at the face of the victim and it was a white male with full male pattern balding with gray hair around the sides. I then told Heather that I would try to identify the victims and call her back.

I then went back to the emergency room to see if they had contacted the Tarrant County Medical Examiner office. I was told by the charge nurse that they had made contact about the two deceased persons but had not spoken to an investigator. As I stood at the desk the investigator called and I spoke to him. He identified himself as John Briggs and he said he was a field investigator. He said he would not be responding to the scene or the hospital. He said he had contacted the transport company to pick up the bodies. I told him we did not have the victims identified as of yet but I was going to be enroute to the address of the registered owner to continue the investigation.

I then contacted Sgt. Cindy Tripp and asked her to meet me at the residence of the registered owner which was listed as 1100 Shady Oaks in Southlake. Sgt. Tripp and I arrived at the house and found a channel 8 news crew there. Reporter Monika Diaz was on the front porch and I could hear the female resident of the home crying and speaking loudly. As Sgt. Tripp and I approached the porch the reporter left

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without comment and I walked onto the porch and saw two females at the front door. I made contact with them and identified myself and Sgt. Tripp as Officers with the Southlake Police Department. The female identified herself as Mrs. Linda Hardy. The older female identified herself as Marie Semen and that she was Linda's mother. The reporter had already alerted Mrs. Hardy about the accident. She asked me what was going on and I asked her if we could step inside the house to talk. I then asked her if they still owned the Toyota involved in the accident. She responded that they did own the vehicle and her husband was out with the vehicle. I then informed Mrs. Hardy that the vehicle was involved in an accident and that the male driver was deceased as a result of the accident. Mrs. Hardy then broke down emotionally and began crying. After a few minutes I asked her if she had a photo of her husband so I could verify it was him. Mrs. Hardy found an old expired driver license and showed it to me. I then verified the deceased person I saw in the hospital morgue was Monty Hardy. I noted the time of notification was 15:41pm. I verified the identity on the DL as belonging to Monty Myrio Hardy a w/m dob of 12/11/1953.

I then asked Mrs. Hardy if she could tell me what he was doing this morning and who was with him. She told me that they are Jehovah's Witness's and he was out doing missionary work for the church. Mrs. Hardy did not know who was with him in the car. I asked Mrs. Hardy if she could tell me who at the church would be responsible for the missionary work and might know who the ladies in the car were. She said that Brother Don Hanson (817-919-0326) was who her husband worked with on the missionary work. I then called Don Hanson and was able to get a hold of him. I told Mr. Hanson about the accident and the conditions of the occupants of the vehicle. I asked Mr. Hanson if he could come to the Hardy home as Mrs. Hardy needed help in her time of need. Mr. Hanson said he would be enroute.

While waiting for Brother Hanson, I asked Mrs. Hardy if Monty Hardy had any medical issues because a witness had told responding officers that she did not see a driver behind the wheel just before it crashed. I told Mrs. Hardy that her husband may have had some type of medical incident just prior to the crash. Mrs. Hardy told me that he has epilepsy but he is on a new medicine. She told me that his doctor had told him it was safe for him to drive while taking the medicine. She was unable to provide the name of the medicine at this time because of situation. Mrs. Hardy also stated that she had asked him not to go out driving today and he insisted he would be alright. When I asked her why she did not want him to go out, she just said she had a bad feeling when he left. While we were talking, Mrs. Semen made a comment about what a safe driver Monty was and how he loved that blue car. She then made a comment about the only problem he had was that the accelerator would stick. Linda Hardy then said they had received a recall notice on the car but Monty had taken it to the dealer.

Mr. Hanson arrived at the house. I told him that Mr. Hardy was deceased and that there was a B/F in the car that was also deceased. I then told him there were two other B/F's in the vehicle and that they were in the ICU at Baylor Hospital in

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Grapevine. I then asked him if he could tell me who was with Mr. Hardy. Mr. Hanson told me there were 27 "sisters" doing missionary work today and he did not know who was with Mr. Hardy. Mr. Hanson said he did know all of them and could identify them. I then re-contacted John Briggs at the TCME office and updated him with the information on Monty Hardy. I then told him that Mr. Don Hanson could identify the body if he was able to view it. Briggs stated that he wanted Mr. Hanson to go to the hospital first so they could contact relatives while the two women were still on life support.

Mr. Hanson and his wife then left the residence with Mrs. Hardy and her mother and went to Baylor Grapevine. Hanson was able to identify the female in ICU room 15 as Sharon Ransom, dob 10/15/1953 and the female in ICU room 19 as Wendy Forte Akion DOB 08/06/1971. After leaving the hospital Mr. Hanson took Mrs. Hardy to the office of the Tarrant County Medical Examiner and met with investigator Briggs. Investigator Briggs had taken photos of the two deceased persons and he showed a photo of the male to Mrs. Hardy and she did identify the photo as being her husband Monty Hardy. Mrs. Hanson looked at the photo of the female and identified her as Hadassah Vance.

Southlake Officers had recovered four purses and bags belonging to the female victims. Sgt. Gaylon Music transported the property to the Southlake DPS West facility and I took custody of the items there. The purses had been in the car and pond and they were full of water and mud. I drained them as best I could and then placed a fan on them in an attempt to dry them. I then secured the property for the weekend. I then cleared the call at approximately 19:30 pm and at that time Ms. Ransom and Ms. Akion were still alive on life support in the Baylor ICU. The hospital and Brother Hanson took responsibility for notifying the families of the females.

December 27, 2009 (Sunday). When I returned to work on this date I was advised that Ms. Akion had died at 12:50 am and Ms. Ransom had died at 4:15 am. The hospital advised that both bodies had been transported to the Tarrant County Medical Examiner Office and the investigator had been notified of their deaths.

December 28, 2009 (Monday). I was contacted by Tom Bolin who stated he was related to Linda Hardy and was representing her and the family. He asked if they could go to B& B Wrecker Service and look in the car for Mr. Hardy's wallet. I told him that we had a hold on the vehicle until the accident investigation was complete. I also advised him that Officer Aldridge had recovered the wallet and its contents and it was in the Southlake property room. Mr. Bolin asked if they could come and retrieve the property and we made arrangements for him to bring Mrs. Hardy to the West Facility to pick up the wallet. At approximately 11:30 am on this date Mr. Bolin appeared at the West with Mrs. Hardy and a group of family and relatives. The family asked for details about the accident and I spoke to them about the facts as I knew them at the time. I did mention to Mrs. Hardy that a witness at the

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intersection stated that she did not see a driver behind the steering wheel and that Mr. Hardy may have been slumped over. Mrs. Hardy stated that Monty Hardy had epilepsy but was taking a new medicine but the doctor told him it would not affect his ability to drive. Mrs. Hardy had already mentioned that they had received a recall notice on the Toyota vehicle he was driving. She said the recall was for an acceleration problem.

I then released the property to Mrs. Hardy. I then asked her to sign a consent to search the vehicle so we could obtain the black box recorder and anything related to the accident. She did sign the consent form at this time.

On this date I was contacted by the Ransom and Forte Akion families about any property belonging to the deceased members of their families. In addition Brother Hanson called and told me that he had been in contact with all the families and he and the church were helping them in their time of need. Brother Hanson said he had been contacted by all three families and they asked him to pick up the property and take it to their homes. I confirmed this with the families and I subsequently released all the property to Brother Hanson.

I contacted the Tarrant County Medical Examiner Office and received the following information about the case numbers for the deceased individuals:

0915161 Monty Hardy w/m 12/11/1953
0915162 Hadassah Vance b/f 04/03/1974
0915181 Wendy Forte Akion b/f 08/06/1971
0915186 Sharon Ransom b/f 10/15/1953

I was also advised that autopsies had been completed by Dr. Marc Krouse and that manner of death was accidental and the cause of death was drowning due to motor vehicle/fixed object collision for all four decedents. I requested copies of the autopsies when they were available.

December 29, 2009. I contacted the NHTSA hotline and reported the incident and requested investigative help from the agency. I made report of the incident and it was assigned case number 216527. The report was made at 12:35 am EST.

At 4:22 EST I was contacted by:
Gregory Mango
Chief, Defects Assessment Division
Office of Defects Investigation
US DOT / NHTSA
(202)-366-5226

Mr. Mango stated he was responding to the reported accident in Southlake. I discussed the circumstances involving the accident. Mr. Mango then explained that

this particular model of Toyota was under a recall notice because of engineering defects involving the throttle pedal and the floor mat. He said if the floor mat on the driver side is not attached it has the tendency to move forward and under the throttle pedal. This can cause an unintended acceleration of the vehicle and has been the cause of previous accidents. Mr. Mango did say his agency was interested in the follow up investigation. Mr. Mango stated that he was in Washington DC and his engineers are located in other areas of the country. He said he would have an Ohio based engineer contact me about the investigation.

December 30, 2009. I was contacted by Bill Collins (937-666-3271) who stated he was a federal engineer and he was working on the Toyota recall and defect problem. Mr. Collins was put on a speaker phone and we had a conference call that included Officer Chris Garrett who is working the accident. Mr. Collins addressed the unintended acceleration problem that prompted the recall. He stated that the design flaws with the accelerator pedal and the floor mat can cause the floor mat to jam under the pedal causing the vehicle to accelerate. The drivers in previous accidents have been unable to cure the problem while the vehicle is accelerating and have crashed at high speeds. Toyota is now having dealers drill holes in the floor mats and is using ties to secure them to the seat rails on the floor so they cannot move forward. The problem is further complicated by owners putting secondary floor mats on top of the originals to protect them. These mats have no means of being secured and are prone to move forward also.

Mr. Collins asked us to go to the car and take photos of the driver area paying specific attention to the floor mats and accelerator pedal. He also asked us to remove the pedal and send it to his lab for analysis.

December 31, 2009. Officer Chris Garrett and I went to B & B Wrecker Service in Euless on this date and we met with the owner Andy Chesney. Mr. Chesney had the vehicle secured and he had his employees bring the vehicle to the wash bay in his shop area. The driver area was covered in mud from the pond. I then took a panoramic series of photos around the vehicle. We then attempted to open the driver door but it was jammed shut. We had to forcibly remove the door to gain entry. The seat and floor area was covered with gooey clay mud from the pond. This was scrapped out and during this process we encountered miscellaneous property that included several bibles. We placed the found items into a cardboard box. I found that the property actually protected the floor board and throttle area. The driver floor area was relatively clear of the debris from the pond. We noted the air bags had deployed and included was the bag under the dash. We had to cut away the bag to see the throttle area. The accident caused intrusion by the frame into the driver area. It was noted that the floor mat on the driver side was not on the floor and we did not find it in the vehicle. The floor mat on the passenger side was in place and the two floor mats in the rear seat area were also in place.

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I photographed the inside of the vehicle as we worked through the process. We then made access into the truck by removing the rear seat and accessing the release. Inside the trunk we located the driver side floor mat and a set of after market floor mats that were still on the retail hanger and did not appear to have been used.

The accelerator pedal looked to be free and clear of any obstruction. I took photos of the pedal and the surrounding area. At this time the B & B Wrecker Service mechanic removed the pedal assembly from the car and Officer Chris Garrett took possession of the assembly and transported it to the Southlake DPS.

At this time we did not do any further investigative work and we left the vehicle to be secured by B & B. Officer Garrett will complete the return on the consent to search and return it to the Southlake Municipal Court. Garrett will also forward the material to Mr. Collins in Ohio. I prepared a CD-R with all the photos to go along with the accelerator assembly.

January 4, 2010. As of this date the criminal investigation portion of this case has been terminated. Officer Chris Garrett of the Southlake DPS traffic division will complete the accident investigation, supplement the case and close the case.

TOY-RQ-05E-00010803

Southlake Department of Public Safety
Police Services
Supplemental Narrative

Offense Number: 09SP081524
Offense: Motor Vehicle Accident – Death Investigation
Detective Name: Keith Fulgium ID# 136

Narrative:

On December 26, 2009, I (Detective Keith Fulgium) was working an off duty job at 800 Blessed Way when I heard a radio broadcast for officers to respond to a major accident at Lonesome Dove and Burney Lane. The Keller/Southlake Emergency Communications Center (KSECC) dispatcher reported that a motor vehicle had rolled over and was upside down in a body of water.

I did not initially respond to the scene due to the number of officers that were enroute to the call and because I was working in an off duty capacity. I monitored the radio traffic and heard a radio broadcast that officers had pulled one person from the vehicle. I then heard another a radio broadcast that there was still another person trapped inside the vehicle. I decided to respond to the scene to provide assistance.

I traveled to the scene and met with Sgt. C Tripp. I asked Sgt. Tripp if there were any children inside the vehicle and she said she did not know. I offered to enter the water and attempt to extricate the other person from the vehicle. Sgt. Tripp said she needed someone to establish a landing zone for a Care Flight air ambulance helicopter to land and asked that I assist Officer D Aldridge with establishing a landing zone. I traveled to Carroll Middle School and assisted Officer Aldridge with establishing a landing zone and remained at the scene while the helicopter was on the ground.

Grapevine Fire Department's Dive Team arrived at the accident scene and started extricating victims from the vehicle. Fire Department personnel decided to transport the remaining victims by ambulance to Baylor Regional Medical Center in Grapevine, Texas. The Care Flight helicopter left the scene and traveled to Baylor Regional Medical Center in Grapevine. After the helicopter left the landing zone, Officer Aldridge and I traveled back to the accident scene.

When I arrived at the scene, I observed Grapevine and Southlake Fire Personnel providing emergency care (CPR) to a white male who was lying on a gurney. I noticed that crime scene tape had been set up, but was very close to the scene and I observed two news reporters filming the victim and the firefighters. I met with Sgt. Tripp and asked her if she wanted me to move back the crime scene tape to provide additional space for crews to work. Sgt. Tripp thought it was a good idea and I had the reporters move approximately 100 yards west of the accident scene. I then placed a new crime scene tape barricade around the entire scene to keep civilians and press from walking into the scene.

Detective R Anderson was the on-call crime scene investigator who was dispatched to respond to the scene. I am a crime scene investigator also and was asked to assist Detective Anderson with processing the crime scene. I observed Sgt. Tripp with a digital camera and asked her if I could use the camera to take photographs of the scene. Sgt. Tripp gave me the camera and informed me that she had previously taken some photographs of the scene.

I did not have my crime scene kit or camera with me, so I did not take an identity shot with the case number, date, name, etc... I started my crime scene photographs by taking photos of the area from all sides at a distance. I then moved closer and photographed the area again. I then photographed the debris field of car parts and the medical debris that was left on the ground next to the lake. I also photographed pieces of the metal fence pipes that were strewn about the scene. I located one piece of fence pipe lying on the ground west of the tree that the vehicle struck. I located the other two pieces of the pipe fence inside the lake, close to the southern edge of the lake. I then photographed the vehicle as it was pulled from the lake by B&B Wrecker.

Detective Anderson arrived on scene and I informed him that I had already started taking photographs of the area with Sgt. Tripp's digital camera. After the car was pulled from the lake, I entered the back drivers side door and removed two purses from the floor board. Det. Anderson photographed the interior of the car prior to me removing the purses. I placed the purses next to Sgt. Tripp's patrol vehicle. Grapevine Fire Department Personnel left the scene and I had B&B move their tow truck from the intersection so I could photograph the intersection. I observed tire skid marks on the ground that appeared to be from an unrelated incident. The skid marks were in the intersection and were in a circle and appeared to have been made by someone driving in a tight circular pattern while rapidly accelerating which is commonly referred to as "doing a donut" in the intersection. I did not see any skid marks that led to the edge of the roadway in the direction that he victim's vehicle was traveling nor did I observe any ice or standing water on the roadway. I photographed the intersection and the direction / path of travel that the victim's vehicle traveled.

Southlake traffic officers and accident investigators arrived on scene and started mapping the scene with specialized equipment. I left the scene with Detective Anderson still finishing his photographs and returned to my off duty job. Three Southlake Police Officers had entered the water in attempt to remove victims from the vehicle. The officers that went into the water were exposed to very cold water and were out of service recuperating for the remainder of their shift. While the officers were out of service the patrol division was extremely short staffed. I informed Sgt. Tripp that I would assist patrol by taking calls, due to the short staffing. I responded to several calls for service from my off duty job to assist the patrol division.

SOUTHLAKE DEPARTMENT OF PUBLIC SAFETY

** Consent to Search **

I, Linda Hardy (Name of Person), have been informed by Det. Richard Anderson 196 (Officers Name & I.D. #) who made proper identification as a law enforcement officer of the Southlake Department of Public Safety, and who informed me of my Constitutional Right to refuse to have a search conducted of my 2008 Toyota Vehicle (Vehicle, business, residence, ect) located at B&B Wrecker 1201 W Euless Blvd (Actual Physical Address) Euless TX 76039 and described as Blue Toyota 2008 Texas DXS 424 (Describe property in detail.) VIN 4T1BK36B48U427805G. Further, I do not have to consent to this search and if I chose to submit to this search, I have the right to stop this search at any time. I understand these rights and agree to waive these rights, and allow a complete search of the premises and property, including all buildings, vehicles and outbuildings, both inside and outside. This permission is given freely and without any threats or promises made to me of any kind.

x Linda Hardy — SIGNATURE

12-28-09 — DATE

11:45 AM — TIME

WITNESSES: Mel Hardy WITNESSES: Tom Bolin

Inventory of Seized Property

Accelerator Pedal Assembly	

I, _____, a duly sworn Peace Officer under the laws of the State of Texas executed the above consent to search at the above date and time and seized the above listed property.

_____
AFFIANT

Subscribed and sworn to before me on this the _____ day of _____, 20____.

Time: _____ Court #: _____

_____
MAGISTRATE

SOUTHLAKE DEPARTMENT OF PUBLIC SAFETY

Property Report

☐ EVIDENCE ☐ FOUND ☐ SAFEKEEPING

Location Deposited: WestR Report #: 09SPD81524 Juvenile: ___ Yes X No

Charge/Offense: Death Investigation Citation #: _____

Date: 12-26-09 Time: 1120 Officer: C. Tripp ID #: 192

Address Seized: 1101 N. Carroll City: Southlake

Comp/Victim/Owner: Hardy, Monty Phone #: _____

Address: 1100 Shady Oaks DOB: _____

SUSPECTS

1) Name: _____ Phone #: _____

Address: _____ DOB: _____

2) Name: _____ Phone #: _____

Address: _____ DOB: _____

Item	Qty.	Description	Marked
1	1	CD-R Containing photos	

Comments: _____

Case Number: 09SPD81524

SOUTHLAKE DEPARTMENT OF PUBLIC SAFETY

Property Report

☐ EVIDENCE ☒ FOUND ☐ SAFEKEEPING

Location Deposited: Locker "wet" Report #: 09SP08 1524 Juvenile: __ Yes ✓ No

Charge/Offense: Found Property Citation #:

Date: 12/27/09 Time: 1500 Officer: D. Aldridge ID #: 112

Address Seized: 2997 Lake Dr. City: Southlake

~~Comp/Victim~~/Owner: Monty Myrio Hardy Phone #:

Address: 1100 N. Shady Oaks Dr. Southlake, TX. 76092 DOB: 12-11-53

SUSPECTS

1) Name: _____ Phone #: _____

Address: _____ DOB: _____

2) Name: _____ Phone #: _____

Address: _____ DOB: _____

Item	Qty.	Description	Marked
1	1	Brown Wallet	
2	1	Texas Drivers License # 08750729	
3	1	Discover Card Credit Card	
4	1	Misc. Contents	

Comments: _____

Case Number: 09SP08 1524

Richard Anderson

From: Gregory.Magno@dot.gov
Sent: Tuesday, December 29, 2009 3:22 PM
To: Richard Anderson
Subject: RE: TOYOTA AVALON ACCELERATION ISSUE=216527 PROJ=12

Thanks!

Gregory E. Magno
Chief, Defects Assessment Division
Office of Defects Investigation
US DOT / NHTSA

(202) 366-5226

From: Richard Anderson [mailto:RAnderson@ci.southlake.tx.us]
Sent: Tuesday, December 29, 2009 4:21 PM
To: Magno, Gregory (NHTSA)
Subject: FW: TOYOTA AVALON ACCELERATION ISSUE=216527 PROJ=12

Richard Anderson
Criminal Investigator
817-748-8129

From: NHTSAHotline@ [mailto:telesishq.com NHTSAHotline@telesishq.com]
Sent: Tuesday, December 29, 2009 11:35 AM
To: Richard Anderson
Subject: TOYOTA AVALON ACCELERATION ISSUE=216527 PROJ=12

When replying, type your text above this line.

Notification of Case Registration (All times are GMT-0500)

Project: NHTSA Hotline Center
Case: TOYOTA AVALON ACCELERATION
Case Number: 216527

Date: 12/29/2009 **Time:** 12:35:07

Description:
Entered on 12/29/2009 at 12:35:07 EST (GMT-0500) by Monica White:

SOUTH LAKE, TEXAS POLICE DEPARTMENT AND HE WANT NHTSA TO TAKE A LOOK AT THE VEHICLE TO SEE IF IT WAS CAUSED BY THE DEFECTIVE ACCELERATION.

2008 TOYOTA AVALON VEHICLE ACCELERATION PROBLEM. CONTACT STATED THERE WAS A RECALL NOTICE AND CONTACT TOOK THE VEHICLE TO THE DEALER AND THEY STATED NOTHING IS WRONG. CONTACT WAS DRIVING AND THE VEHICLE ACCELERATED HIT A TREE AND ENDED UP IN A POND. THERE WERE FOUR PEOPLE IN THE VEHICLE AND ALL FOUR DROWNED INTO THE POND IN THE VEHICLE. THIS HAPPEN DECEMBER 26TH 2009

Contact Information:

Phone:817-748-8129 **NHTSA ID:**179333

Richard Anderson

From: NHTSAHotline@ [telesishq.com NHTSAHotline@telesishq.com]
Sent: Tuesday, December 29, 2009 11:35 AM
To: Richard Anderson
Subject: TOYOTA AVALON ACCELERATION ISSUE=216527 PROJ=12

When replying, type your text above this line.

Notification of Case Registration (All times are GMT-0500)

Project: NHTSA Hotline Center
Case: TOYOTA AVALON ACCELERATION
Case Number:216527

Date:12/29/2009 **Time:**12:35:07

Description:
Entered on 12/29/2009 at 12:35:07 EST (GMT-0500) by Monica White:
SOUTH LAKE, TEXAS POLICE DEPARTMENT AND HE WANT NHTSA TO TAKE A LOOK AT THE VEHICLE TO SEE IF IT WAS CAUSED BY THE DEFECTIVE ACCELERATION.

2008 TOYOTA AVALON VEHICLE ACCELERATION PROBLEM. CONTACT STATED THERE WAS A RECALL NOTICE AND CONTACT TOOK THE VEHICLE TO THE DEALER AND THEY STATED NOTHING IS WRONG. CONTACT WAS DRIVING AND THE VEHICLE ACCELERATED HIT A TREE AND ENDED UP IN A POND. THERE WERE FOUR PEOPLE IN THE VEHICLE AND ALL FOUR DROWNED INTO THE POND IN THE VEHICLE. THIS HAPPEN DECEMBER 26TH 2009

Contact Information:

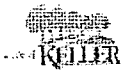
Phone:817-748-8129 **NHTSA ID:**179333

Richard Anderson

From: Tina M. Smith [tsmith@cityofkeller.com]
Sent: Saturday, December 26, 2009 3:31 PM
To: Richard Anderson
Subject: 27 ON ACCIDENT
Attachments: image001.gif

```
  NAME: HARDY, MONTY, MYRIO
 DESCRIPTION: WHITE\MALE\12111953\5-08\182\BROWN\GREEN
     SEX OFF:   COMM IMPED:   ORGAN DONOR: N VISA EXP:
PHYSICAL ADD: 1100 N SHADY OAKS DR
CI/CO/ST/ZIP: SOUTHLAKE,TARRANT,TEXAS,76092-0000
 MAILING ADD: 1100 N SHADY OAKS DR
   CI/ST/ZIP: SOUTHLAKE,TEXAS,76092-0000
  REC STATUS: ELIGIBLE
ADMIN STATUS:
 CARD STATUS:
HME THR ASMT:                          EXP:
   CARD TYPE: DL #: 08750729 CLASS: C  TYPE: DL  EXPIR DATE: 12112015
RESTRICTIONS: P32 OTHER
ENDORSEMENTS:
********** END OF RECORD**********
MRI: 76853877 IN: NDLS 41964 AT 26DEC2009 15:29:22
OUT: KLRA 16 AT 26DEC2009 15:29:22
```

TINA PORTER
DISPATCHER
P 817 743 4522 F 817 743 4595
City of Keller, Texas
Follow us at: www.twitter.com/cityofkeller



Ranked #7 by *MONEY* magazine of "Best Places to Live" in 2009!
Come see why at www.kellereconomicdevelopment.com or www.cityofkeller.com

P Please consider the environment before printing this e-mail.

Richard Anderson

From: Cynthia Tripp
Sent: Saturday, December 26, 2009 6:08 PM
To: Richard Anderson
Subject: FW: 09sp081524
Attachments: image001.jpg

Cynthia Tripp

From: Bethany Walsh [mailto:bwalsh@cityofkeller.com]
Sent: Saturday, December 26, 2009 12:34 PM
To: Cynthia Tripp; Gaylon Music; Alton Wells
Subject: 09sp081524

REGARDING INQUIRY ON: DXS424

Insurance Status: Confirmed
Registered To: MONTY M HARDY
OLN: Not Available
Vehicle Registration (LIC): DXS424
Vehicle Id Number (VIN): 4T1BK36B48U278056
Vehicle Make: TOYT
Vehicle Model: UTS
Vehicle Year: 2008
Additional Detail: Confirmed in DB

Insurance Carrier: Southern County Mutual Insurance Company/ Hartford Underwriters General Agency Inc
NAIC#: 27863
Policy ID #: 46ETX300791508266
Policy Type: Personal
Policy Effective date: 20091205
Policy Expiration date: 20100605
Mileage Expiration: Not Available
MRI: 76647314 IN: FRVP 39358 AT 26DEC2009 12:32:37
OUT: SLX2 391 AT 26DEC2009 12:32:37

LIC DXS424 JAN/2010 OLD # DXS424 JAN/2009 EWT 3600 GWT 3600
PASSENGER PLT, STKR REG CLASS 25 $ 70.80 TARRANT CNTY
TITLE 05734139502092340 ISSUED 03/06/2008 ODOMETER 36 REG DT 01/20/2009
2008,TOYT,UTS,4D,4T1BK36B48U278056,PASS, SALES PRICE $ 31588.00
PREV OWN TOYOTA OF IRVING, INC,IRVING,TX
OWNER MONTY M HARDY,ID#=465-98-3780,,
1100 N SHADY OAKS DR,,SOUTHLAKE,TX,76092
LIEN 02/09/2008,TOYOTA MOTOR CREDIT CORP,,PO BOX 105386,,ATLANTA,GA,3034
8
PLATE AGE: 1 LAST ACTIVITY 02/07/2009 RENEW OFC: 220
REMARKS RELEASE OF PERSONAL INFO RESTRICTED.ACTUAL MILEAGE.PAPER TITLE.
MRI: 76647317 IN: MVD 66942 AT 26DEC2009 12:32:38
OUT: SLX2 391 AT 26DEC2009 12:32:38

Bethany Walsh

12/26/2009

SOUTHLAKE DEPARTMENT OF PUBLIC SAFETY

Property Report

☐ EVIDENCE ☒ FOUND ☐ SAFEKEEPING

Location Deposited: Locker "Wet" Report #: 09SP08 1524 Juvenile: ___ Yes ✓ No

Charge/Offense: Found Property Citation #: _____

Date: 12/27/09 Time: 1500 Officer: D. Aldridge ID #: 112

Address Seized: 2997 Lake Dr. City: Southlake

~~Comp/Victim~~/Owner: Monty Myrio Hardy Phone #: _____

Address: 1100 N. Shady Oaks Dr. Southlake, TX. 76092 DOB: 12-11-53

SUSPECTS

1) Name: _____ Phone #: _____

Address: _____ DOB: _____

2) Name: _____ Phone #: _____

Address: _____ DOB: _____

Item	Qty.	Description	Marked
1	1	Brown Wallet	
2	1	Texas Drivers License # 08750729	
3	1	Discover Card Credit Card	
4	1	Misc. Contents	

Comments: _____

Case Number: 09SP08 1524

City of Southlake, Texas

Department of Public Safety
Police Services

Property Release Form

Date: 12/28/2009 Time: 10:14 AM Case #: 09SP081524

I, Donald Hanson , certify by the below signature that I have received the following items from the Southlake Department of Public Safety.

Item #	Qty	Description	Serial #	Value (Est.)
1	1	Purse - misc. contents - Wendy Akion		
2	1	Purse - misc contents - Sharon Ransom		
3	1	Bag – misc. religious literature – Hadassah Vance		
4	1	Plastic bag of misc. items		
5	1	Purse – misc. documents		

Name of person receiving property: Donald Hanson

Signature of person receiving property: Donald Hanson

ID Type: Texas DL ID #: 054470532

Officer Name: R. Anderson ID#: 196

Richard Anderson

From: Ben Brown
Sent: Monday, January 04, 2010 10:42 AM
To: Richard Anderson
Subject: Toyota info

Richard,

Kelly Spencer just called me back and told me that Toyota is willing to come to where the car is stored and do two things:

1. Download the data available from the event data recorder (EDR) and share the info with us, and
2. Complete a computer diagnostic.

She said that the process is non-destructive, and will not change or delete the data on the EDR in any way. It leaves everything intact when the download is complete, but they do have to remove some trim panels to get to it.

I told her that I would pass the info along to you.

Thanks,

Ben

Ben A. Brown
Lieutenant, Professional Standards
Southlake Department of Public Safety
2100 W. Southlake Blvd.
Southlake, TX 76092
(817) 748-8207
bbrown@ci.southlake.tx.us

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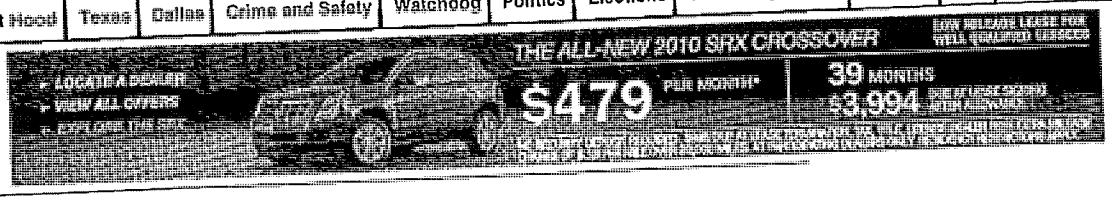

Home > News > Local News RSS Mobile Newsletters MY YAHOO!

LOCAL NEWS

2 dead, 2 hospitalized after car flips into Southlake pond

Posted Saturday, Dec. 26, 2009 Comments ( ) (0) Buzz up!

ARTICLE | MAP | COMMENTS

By MITCH MITCHELL
mitchmitchell@star-telegram.com

Map of Lonesome Dove Road and Burney Lane, Southlake, TX

Have more to add? News tip? Tell us

Two people were dead and two were in the hospital in critical condition Saturday after their car smashed through a fence, hit a tree and flipped over into a Southlake pond, trapping them inside, witnesses and Southlake officials said.

The accident happened at about 11:20 a.m. when the car drove through the intersection of Lonesome Dove Road and Burney Lane, through a pipe fence, and landed upside down into a pond in water about six feet deep, the Southlake Department of Public Safety reported in a news release.

Rescuers freed one person, who was taken to an area hospital by helicopter ambulance, the release said. The Grapevine Fire Department dive team freed three other people from the vehicle. They were taken to a hospital by ambulance, the release said.

Details on the accident, including a description of the vehicle and the names of the driver and the passenger, were not being released as officials investigate the incident and notify family members, the release said.

Staff writer Jessamy Brown contributed to this report.

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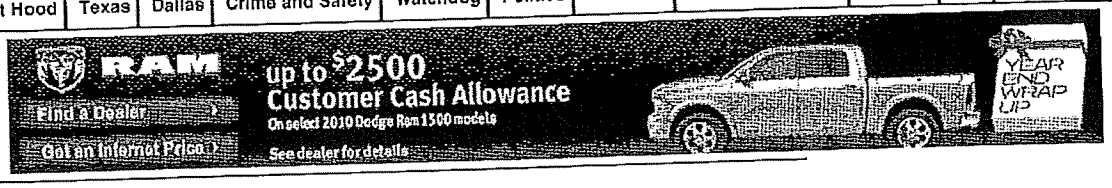

Home > News > Local News

RSS Mobile Newsletters

LOCAL NEWS

In Southlake accident, all 4 occupants of car have died

Posted Sunday, Dec. 27, 2009 Comments ( ) (0) Buzz up!

Topics: Southlake, Texas

ARTICLE | PHOTOS (1) | COMMENTS

BY MIKE LEE
mikelee@star-telegram.com

All four people traveling in a car that overturned in a Southlake pond Saturday have died.

Wendy Akion, 38, of Irving and Sharon Ransom, 56, of Grapevine died overnight at a Grapevine hospital, authorities said.

The other two occupants, identified as Monty Hardy, 56, of Southlake and Vance Hadassah, 35, of Euless, were pronounced dead Saturday, authorities said. The four were riding in a Toyota Avalon at about 11:20 a.m.

Saturday when the car went through a pipe fence at Lonesome Dove Road and Burney Lane, hit a tree and flipped over in about 6 feet of water, witnesses and police said.

Avalons are among the millions of Toyotas subject to a recall. The floor mats can interfere with the accelerator pedal, federal officials say.

Police said it's too early in the investigation to say what contributed to the accident.

Looking for comments?

View photos

2 are dead, 2 gravely injured after car lands in pond upside down

Have more to add? News tip? Tell us

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www.ClassesUSA.com

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TOY-RQ-05E-00010818

Keller Police Department

Dispatch Times & Communications

Call For Service / Police Report

CALL FOR SERVICE

Police Number: 09SP081524
Call Source: Actual 911 emerge
Call Received by: Porter,T. #174
Call Entered by: Porter,T. #174
Call Type: MAJOR ACCIDE
Date / Time Call Received: 12/26/2009 11:19:10
Call Dispatched by: Walsh,B. #199
Call Cleared by: Walsh,B. #199

Reportee

Reportee (First,Middle,Last): WINDALL
Reportee Street Number:
Reportee Street Name: BURNEY LN
Reportee Apt:
Reportee City: Southlake
Phone: 817 308-1100

Location

Location Name:
Location Type:
Street Number:
Street Name: BURNEY LN
Apt:
City: Southlake
Zip:
County: Tarrant
Intersection: LONESOME DOVE AVE

Police Units

Unit Number: M401
Officer Name: Clements,K. #414
Unit Disposition: Clear and Available
Case Number:

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 21 : 15
Arrived:	12	26	2009	11 : 25 : 31
Cleared:	12	26	2009	12 : 51 : 31

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Unit Number: E401
Officer Name: Altom,C. #466
Unit Disposition: Clear and Available
Case Number:

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 21 : 06
Arrived:	12	26	2009	11 : 26 : 20
Cleared:	12	26	2009	13 : 30 : 44

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Keller Police Department

Call For Service / Police Report

Unit Number: 255
Officer Name: Sewell,T. #151
Unit Disposition: Report
Case Number: 09SP081524

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 21 : 32
Arrived:	12	26	2009	11 : 23 : 19
Cleared:	12	26	2009	15 : 04 : 25

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name : Hardy
First Name : Monty
Middle Name :
DOB : 12/11/1953
ID :
ID Type :
Sex : Male
Race : White

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE : DXS424
STATE : TX
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Unit Number: 220
Officer Name: Tripp,C, #192
Unit Disposition: Inactive
Case Number: 09SP081524

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 21 : 32
Arrived:	12	26	2009	11 : 28 : 52
Cleared:	12	26	2009	15 : 05 : 16

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Unit Number: 224
Officer Name: Lewis,L. #103
Unit Disposition: Inactive
Case Number: 09SP081524

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 21 : 32
Arrived:	12	26	2009	11 : 23 : 08
Cleared:	12	26	2009	15 : 07 : 52

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Keller Police Department

Call For Service / Police Report

Unit Number: 227
Officer Name: Sutton,J. #1262
Unit Disposition: Inactive
Case Number: 09SP081524

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 22 : 19
Arrived:	12	26	2009	11 : 23 : 22
Cleared:	12	26	2009	15 : 27 : 39

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Unit Number: M402
Officer Name: Arthur,R. #1258
Unit Disposition: Clear and Available
Case Number:

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 28 : 28
Arrived:	12	26	2009	11 : 35 : 37
Cleared:	12	26	2009	13 : 31 : 06

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Unit Number: E402
Officer Name: Carroll,W. #450
Unit Disposition: Clear and Available
Case Number:

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 30 : 21
Arrived:	12	26	2009	11 : 39 : 15
Cleared:	12	26	2009	13 : 22 : 14

Police District: 1
Date/Time Arrested:
Prisoner transport:
Mileage Out:
Mileage In:

Occupant/Suspect

Last Name :
First Name :
Middle Name :
DOB :
ID :
ID Type :
Sex :
Race :

Vehicle

YEAR :
MODEL :
BODY STYLE :
COLOR :
MAKE :
LICENSE :
STATE :
LICENSE EXPIRATION DATE :
Wrecker :
D/T WRECKER CALLED :
D/T WRECKER ARRIVED :

Keller Police Department

Call For Service / Police Report

Unit Number: C401

Officer Name: Starr,M. #472

Unit Disposition: Clear and Available

Case Number:

Time	Month	Day	Year	Hour : Min : Sec
Dispatched:	12	26	2009	11 : 20 : 15
Enroute:	12	26	2009	11 : 49 : 47
Arrived:	12	26	2009	12 : 23 : 56
Cleared:	12	26	2009	13 : 57 : 35

Police District: 1

Date/Time Arrested:

Prisoner transport:

Mileage Out:

Mileage In:

Occupant/Suspect

Last Name :

First Name :

Middle Name :

DOB :

ID :

ID Type :

Sex :

Race :

Vehicle

YEAR :

MODEL :

BODY STYLE :

COLOR :

MAKE :

LICENSE :

STATE :

LICENSE EXPIRATION DATE :

Wrecker :

D/T WRECKER CALLED :

D/T WRECKER ARRIVED :

12/26/2009 11:19:23

12/26/2009 11:20:33 : Smith,T. #174
VEH ROLLOVER IN THE POND

12/26/2009 11:21:30 : Sanders,C. #194

2997 lake

12/26/2009 11:22:33 : Smith,T. #174
PUT CAREFLITE ON STANDBY

12/26/2009 11:24:35 : Walsh,B. #199
1 subject trapped in the water, officer going in

12/26/2009 11:24:46 : Smith,T. #174
SOMEONE IS TRAPPED IN WATER POLICE GOING IN

12/26/2009 11:25:00 : Smith,T. #174
CAREFLITE IS ON STANDBY

12/26/2009 11:26:26 : Smith,T. #174
E401 HAS BURNEY COMMAND

12/26/2009 11:27:28 : Smith,T. #174
LAUNCH CAREFLITE

12/26/2009 11:28:07 : Smith,T. #174
ETA 5 MINS

12/26/2009 11:28:08 : Walsh,B. #199
need bb asap

12/26/2009 11:28:28 : Walsh,B. #199
diverting 55s bb

12/26/2009 11:29:06 : Walsh,B. #199
calling water rescue team from grapevine

12/26/2009 11:29:10 : Smith,T. #174
NEED WATER RESCUE FROM GRAPEVINE

12/26/2009 11:29:39 : Walsh,B. #199
bb step it up

12/26/2009 11:30:34 : Smith,T. #174
LV GOING TO BE AT CARROLL MIDDLE

12/26/2009 11:30:55 : Smith,T. #174
CAREFLITE ONE MIN OUT

12/26/2009 11:30:57 : Walsh,B. #199
LZ is 1101 E dove

12/26/2009 11:31:35 : Smith,T. #174
GRAPEVINE ENR WITH DIVE TEAM

12/26/2009 11:32:04 : Walsh,B. #199
223 working the LZ

12/26/2009 11:32:34 : Walsh,B. #199
still one in the water

12/26/2009 11:33:03 : Walsh,B. #199
224 doesnt have her belt on, cant get her on the radio

12/26/2009 11:33:18 : Walsh,B. #199
careflite inslte

12/26/2009 11:33:45 : Walsh,B. #199
255 will be enrt code with bb

12/26/2009 11:35:34 : Walsh,B. #199
careflit on the ground

12/26/2009 11:35:32 : Smith,T. #174
M401 ENR CODE 3

12/26/2009 11:35:47 : Smith,T. #174
CAREFLITE ON THE GROUND

12/26/2009 11:36:06 : Walsh,B. #199
careflite is in the stadium parking lot, on north carroll,

12/26/2009 11:36:25 : Smith,T. #174
GET ETA FOR GRAPEVINE

12/26/2009 11:36:54 : Walsh,B. #199
bb and 255 on

12/26/2009 11:37:35 : Smith,T. #174
ETA LESS THAN 8 MINS

12/26/2009 11:37:54 : Smith,T. #174
THEY ARE ENR CODE 3

12/26/2009 11:39:28 : Walsh,B. #199
133 out at lz

12/26/2009 11:39:33 : Smith,T. #174

M402 AT LV

12/26/2009 11:39:44 : Smith,T. #174
BRING CAREFLITE CREW TO THE SCENE

12/26/2009 11:43:34 : Walsh,B. #199
sc 255

12/26/2009 11:46:46 : Smith,T. #174
dive 561 on scene

12/26/2009 11:50:58 : Smith,T. #174
CONTACT PIO AND HAVE

12/26/2009 11:51:13 : Smith,T. #174
DIVE TEAM IN THE WATER

12/26/2009 11:53:08 : Walsh,B. #199
132 on call for cid

12/26/2009 11:54:00 : Walsh,B. #199
220 will take care of notifying on call cid

12/26/2009 11:53:57 : Sanders,C. #194

PIO contacted will contact c starr

12/26/2009 11:54:21 : Walsh,B. #199
sc 220 133

12/26/2009 11:54:32 : Walsh,B. #199
sgt music
contact see who is on call for accident invest

12/26/2009 11:57:00 : Smith,T. #174
VIVTIM 2 OUT OF THE WATER

12/26/2009 11:57:30 : Smith,T. #174
NEED ANOTHER MEDIC

12/26/2009 11:58:09 : Walsh,B. #199
contacting wells, made contact with his wife, she will text him and have him call us asap

---

12/26/2009 12:00:44 : Smith,T. #174
VIVTIM 3 OUT OF WATER

12/26/2009 12:03:45 : Smith,T. #174
M402 ENR CODE 3

12/26/2009 12:05:56 : Smith,T. #174
4TH VICTIM COMING OUT NOW

12/26/2009 12:06:43 : Smith,T. #174
M401 ENR BACK TO SCENE CODE 3

12/26/2009 12:10:11 : Smith,T. #174
CAREFLITE ENR TO BAYLOR LESS THE CREW

12/26/2009 12:10:02 : Walsh,B. #199
careflite has been enrt to baylor, with out the crew, they will meet them

12/26/2009 12:10:23 : Smith,T. #174
CREW ON BOARD WITH THE MEDIC

12/26/2009 12:10:45 : Smith,T. #174
M401 BACK ON SCENE

12/26/2009 12:11:30 : Smith,T. #174
DIVE TEAM CLEARED THE VEH AND HAVE SEARCHED THE POND TOTAL OF 4 VICTIMS

12/26/2009 12:12:28 : Walsh,B. #199
calling out keller crash team per Sgt Musio, in addition to Southlake crash invesigator

12/26/2009 12:15:09 : Walsh,B. #199
227-224-229
out of service on scene

12/26/2009 12:16:05 : Smith,T. #174
M401 ENR BACK TO BAYLOR BM 20

12/26/2009 12:16:25 : Smith,T. #174
ENR CODE 3

12/26/2009 12:17:24 : Smith,T. #174
E562 CLEAR AND AVAILABLE

12/26/2009 12:19:38 : Sanders,C. #194

Roanoke crash team notified

12/26/2009 12:21:14 : Smith,T. #174
M401 OUT AT HOSP EM 25

12/26/2009 12:24:54 : Walsh,B. #199
media staged at lake dr and burney

12/26/2009 12:27:17 : Walsh,B. #199
250 enrt to the west to get a car and be enrt

12/26/2009 12:31:24 : Smith,T. #174
VEH OUT OF THE WATER

12/26/2009 12:42:31 : Walsh,B. #199
have crash team repsond directly too the scene

12/26/2009 12:45:06 : Sanders,C. #194

Ofcr Hicks nrt from his station 2

12/26/2009 12:47:39 : Walsh,B. #199
250 out at the west station

12/26/2009 12:56:56 : Sanders,C. #194

clr hosp

12/26/2009 12:59:12 : Walsh,B. #199
252 out at the west

12/26/2009 13:02:56 : Walsh,B. #199
250 and 252 is enrt from 125
352 enrt from keller

12/26/2009 13:22:41 : Walsh,B. #199
keller and roanoke on scene

12/26/2009 13:24:22 : Smith,T. #174
grapevine dive team clear the scene

12/26/2009 13:30:46 : Smith,T. #174
command terminated

12/26/2009 14:01:45 : Walsh,B. #199
132 enrt to baylor
133 enr to 125

12/26/2009 14:22:40 : Walsh,B. #199
133 is clear 123

Old CallType : MAJOR ACCIDENT
New CallType : Backup
Updated By : Walsh,B. #199
Old CallType : Backup
New CallType : MAJOR ACCIDENT
Updated By : Walsh,B. #199

12/26/2009 15:22:11 : Walsh,B. #199
crash team cleared

12/26/2009 17:29:51 : Sanders,C. #194

Linda Hardy notified at 1541 abt her husband per det anderson

---

12/26/2009 18:36:20 : Walsh,B. #199
ID 132 notifyed BB to put a hold on the Vehicle Dxs424
death notification at 1541 to Mrs Linda Hardy

Richard Anderson

From: Novella Young [NYoung@TarrantCounty.com]
Sent: Wednesday, December 30, 2009 4:11 PM
To: Richard Anderson
Subject: FW: Autopsie reports

Importance: High

The four requested reports listed below are pending completion by Dr. Marc A. Krouse. Copies of these reports will be forwarded to you upon completion by the doctor.

Novella Young
Custodian of Records
Tarrant County Medical Examiner
200 Feliks Gwozdz Place
Fort Worth, TX 76104-4919
(817)920-5700 x143 voice
(817)920-5713 facsimile
nyoung@tarrantcounty.com

-----Original Message-----
From: Novella Young
Sent: Wednesday, December 30, 2009 4:10 PM
To: Novella Young
Subject: FW: Autopsie reports

Novella Young
Custodian of Records
Tarrant County Medical Examiner
200 Feliks Gwozdz Place
Fort Worth, TX 76104-4919
(817)920-5700 x143 voice
(817)920-5713 facsimile
nyoung@tarrantcounty.com
-----Original Message-----
From: Richard Anderson [mailto:RAnderson@ci.southlake.tx.us]
Sent: Wednesday, December 30, 2009 4:06 PM
To: Novella Young
Subject: Autopsie reports

I am the investigator on an accident that occurred on 12/26/2009 that resulted in the deaths of four individuals. Could you please send me the autopsy reports on them. The individuals and case numbers are as follows:

0915161	Monty Hardy	w/m 12/11/1953
0915162	Hadassah Vance	b/f 04/03/1974
0915181	Wendy Akion	b/f 08/06/1971
0915186	Sharon Ransom	b/f 10/15/1953

You may send them via e-mail. The most critical is that of Mr. Monty who was the driver of the car.

Richard Anderson
Criminal Investigator
817-748-8129

TOY-RQ-05E-00010829

Richard Anderson

To: nyoung@tarrantcounty.com
Subject: Autopsie reports

I am the investigator on an accident that occurred on 12/26/2009 that resulted in the deaths of four individuals. Could you please send me the autopsy reports on them. The individuals and case numbers are as follows:

0915161	Monty Hardy	w/m 12/11/1953
0915162	Hadashah Vance	b/f 04/03/1974
0915181	Wendy Akion	b/f 08/06/1971
0915186	Sharon Ransom	b/f 10/15/1953

You may send them via e-mail. The most critical is that of Mr. Monty who was the driver of the car.

Richard Anderson
Criminal Investigator
817-748-8129

TOY-RQ-05E-00010830

Richard Anderson

From: Don Hanson [hanstech@verizon.net]
Sent: Sunday, December 27, 2009 8:10 AM
To: Richard Anderson
Subject: Accident - Monty Hardy

Mr. Anderson,

Here is some information on the other passengers in the automobile with Monty Hardy.

Wendy Akion died sometime around 1:00 AM at Baylor ICU.
Her estranged husband had been contacted and was present at the hospital.
She resided at 330 Las Colinas Blvd.Apt # 17202, Irving, TX

Sharon Ransome passed away around 4:00 AM at Baylor ICU.
Her husband had been notified and was present at the hospital.
Se resided at 3208 Wild Oak Trail, Grapevine, TX

Hadassa Vance died at the accident scene and was identified at the county examiner's morge.
Her mother, Lou Jones has been notified and is returning to Grapevine from San antonio, TX sometime today.
Hadassa resided at2400 State Hwy. 121 Apartment 1007, Euless, TX.

Sincerely,

Don Hanson

TOY-RQ-05E-00010831

Tarrant Appraisal District

Real Estate

12/30/2009

Account Number: 03941876
Georeference: A 706-8A06
Property Location: 1100 Shady Oaks Dr, Southlake
Owner Information: Hardy, Monty Etux Linda
1100 Shady Oaks Dr
Southlake Tx 76092-5019

3 Prior Owners
Legal Description: Hood, Thomas M Survey
A 706 Tr 8A06
Taxing Jurisdictions: 022 City of Southlake
220 Tarrant County
224 Tarrant County Hospital Dist
225 Tarrant County College Dist
919 Carroll ISD

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Certified Values for Tax Year 2009

	Land	Impr	2009 Total**
Market Value	$120,000	$67,000	$187,000
Appraised Value *			$157,345
Approximate Size ***			1,100
Land Acres			0.0000
Land SqFt			0

* Appraised value may be less than market value due to state-mandated limitations on value increases
** A zero value indicates that the property record has not yet been completed for the indicated tax year
*** Rounded

5-Year Value History

Tax Year	XMPT	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2008	010	$70,276	$72,765	$143,041	$120,000	$67,000	$187,000
2007	010	$63,888	$66,150	$130,038	$72,000	$67,000	$139,000
2006	010	$58,080	$60,137	$118,217	$72,000	$67,000	$139,000
2005	010	$52,800	$54,670	$107,470	$72,000	$58,300	$130,300

2009 Notice Sent: 04/30/2009 **Protest Deadline:** 06/01/2009

Exemptions: General Homestead

Property Data

Deed Date: 04/29/1992
Deed Vol: 010629
Deed Page: 1886
Year Built: 1981
Pct Complete: 100
TAD Map: 2102 468
MAPSCO: 025D
Agent: None

Class: 007
State Code: A1 Single Family
Garage Bays: 02
Central Air: Y
Central Heat: Y
Pool: N

Richard Anderson

From: Patricia Villalva [pvillalva@cityofkeller.com]
Sent: Sunday, December 27, 2009 10:37 AM
To: Richard Anderson
Subject: 09sp081524 fire number 09sf001838

Wendy Akion's mother called yesterday wondering if her daughter's purse or cell phone had been recovered. I spk with Sgt Tripp and she said all the recovered items were in the property room. She told me to give the mother your number and have her call you tomorrow.
The mother's name is Ethel Forte 919 601 0697 the family is in from North Carolina

SEARCH ON AKION,WENDY,19710806

NAME: AKION, WENDY, FORTE
DESCRIPTION: BLACK\FEMALE\08061971\5-10\155\BROWN\BROWN
SEX OFF: N COMM IMPED: N ORGAN DONOR: N VISA EXP:
PHYSICAL ADD: 330 E LAS COLINAS BLVD #1720
CI/CO/ST/ZIP: IRVING,DALLAS,TEXAS,75039
MAILING ADD: PO BOX 814
CI/ST/ZIP: COPPELL,TEXAS,75019
REC STATUS: ELIGIBLE
ADMIN STATUS:
CARD STATUS:
HME THR ASMT: EXP:
CARD TYPE: DL #: 02830994 CLASS: C TYPE: DL EXPIR DATE: 08062012
RESTRICTIONS: A WITH CORRECTIVE LENSES
ENDORSEMENTS:

CONVICTION: DRIVING SAFETY COURSE
OFF DT: 07292005 CONV DT: 09022005
OFFENSE LOC: TX,IRVING CMV: N HAZMAT: N
********** END OF RECORD**********
MRI: 78036699 IN: NDLS 28467 AT 27DEC2009 10:32:44
OUT: KLRZ 24 AT 27DEC2009 10:32:44

SEARCH ON RANSOM,SHARON,19531015

NAME: RANSOM, SHARON, RENEE
DESCRIPTION: BLACK\FEMALE\10151953\5-02\133\BROWN\BROWN
SEX OFF: N COMM IMPED: N ORGAN DONOR: VISA EXP:
PHYSICAL ADD: 3208 WILD OAK TRAIL
CI/CO/ST/ZIP: GRAPEVINE,TARRANT,TEXAS,76051-0000
MAILING ADD: 3208 WILD OAK TRAIL
CI/ST/ZIP: GRAPEVINE,TEXAS,76051-0000
REC STATUS: ELIGIBLE
ADMIN STATUS:
CARD STATUS:
HME THR ASMT: EXP:

CARD TYPE: DL #: 08370556 CLASS: C TYPE: DL EXPIR DATE: 10152015
RESTRICTIONS:
ENDORSEMENTS:

CONVICTION: MVI INSPECTION VIOLATION
OFF DT: 03032009 CONV DT: 08112009
OFFENSE LOC: TX,DALLAS CMV: N HAZMAT: N

CONVICTION: DRIVING SAFETY COURSE
OFF DT: 08182004 CONV DT: 12042004
OFFENSE LOC: TX,IRVING CMV: N HAZMAT: N
********** END OF RECORD**********
MRI: 78039671 IN: NDLS 28645 AT 27DEC2009 10:35:45
OUT: KLRZ 25 AT 27DEC2009 10:35:45

SEARCH ON HARDY,MONTY,19531211

NAME: HARDY, MONTY, MYRIO
DESCRIPTION: WHITE\MALE\12111953\5-08\182\BROWN\GREEN
SEX OFF: N COMM IMPED: N ORGAN DONOR: N VISA EXP:
PHYSICAL ADD: 1100 N SHADY OAKS DR
CI/CO/ST/ZIP: SOUTHLAKE,TARRANT,TEXAS,76092-0000
MAILING ADD: 1100 N SHADY OAKS DR
CI/ST/ZIP: SOUTHLAKE,TEXAS,76092-0000
REC STATUS: ELIGIBLE
ADMIN STATUS:
CARD STATUS:
HME THR ASMT: EXP:
CARD TYPE: DL #: 08750729 CLASS: C TYPE: DL EXPIR DATE: 12112015
RESTRICTIONS: P32 OTHER
ENDORSEMENTS:
********** END OF RECORD**********
MRI: 78040430 IN: NDLS 28687 AT 27DEC2009 10:36:25
OUT: KLRZ 26 AT 27DEC2009 10:36:25

SEARCH ON VANCE,HADASSAH,19740403

NAME: VANCE, HADASSAH
DESCRIPTION: BLACK\FEMALE\04031974\5-09\250\BLACK\BROWN
SEX OFF: N COMM IMPED: N ORGAN DONOR: VISA EXP:
PHYSICAL ADD: 2400 STATE HWY 121 1007
CI/CO/ST/ZIP: EULESS,TARRANT,TEXAS,76039-0000
MAILING ADD: 2400 STATE HWY 121 1007
CI/ST/ZIP: EULESS,TEXAS,76039-0000
REC STATUS: ELIGIBLE
ADMIN STATUS:
CARD STATUS:
HME THR ASMT: EXP:
CARD TYPE: DL #: 00238849 CLASS: C TYPE: DL EXPIR DATE: 04032012
RESTRICTIONS: A WITH CORRECTIVE LENSES

TOY-RQ-05E-00010834

ENDORSEMENTS:

CRASH DT: 07022007 CRASH LOC: CRASH#: 7251339
SEVERITY: NON-INJURY ACCIDENT CMV: N HAZMAT: N
********** END OF RECORD**********
MRI: 78040987 IN: NDLS 28721 AT 27DEC2009 10:36:57
OUT: KLRZ 27 AT 27DEC2009 10:36:57

REGARDING INQUIRY ON: DXS424

Insurance Status:	Confirmed
Registered To:	MONTY M HARDY
OLN:	Not Available
Vehicle Registration (LIC):	DXS424
Vehicle Id Number (VIN):	4T1BK36B48U278056
Vehicle Make:	TOYT
Vehicle Model:	UTS
Vehicle Year:	2008
Additional Detail:	Confirmed in DB

Insurance Carrier:	Southern County Mutual Insurance Company/ Hartford Underwriters General Agency Inc
NAIC#:	27863
Policy ID #:	46ETX300791508266
Policy Type:	Personal
Policy Effective date:	20091205
Policy Expiration date:	20100605
Mileage Expiration:	Not Available

MRI: 78043378 IN: FRVP 34280 AT 27DEC2009 10:39:11
OUT: KLRZ 28 AT 27DEC2009 10:39:11

R-JAN/10 LIC DXS424,OLD # DXS424
08,TOYT,4D,4T1BK36B48U278056
MONTY M HARDY,1100 N SHADY OAKS DR,SOUTHLAKE,TX
LIEN RECORDED
RELEASE OF PERSONAL INFO RESTRICTED.ACTUAL MILEAGE.PAPER TITLE.
MRI: 78043383 IN: MVD 61093 AT 27DEC2009 10:39:11
OUT: KLRZ 30 AT 27DEC2009 10:39:13

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TARRANT COUNTY

100 E. Weatherford Street
Fort Worth, Texas 76196
817-884-1111

Case #: (Case # must be 7 digits) Find

County: All Counties Find

Month: December Day: 26 Year: 2009

Search Results:

Case Count: 1

Case #	CO	Last Name	First Name	DOB	Age	DOD	Died/Found	Race	Sex
0915162	Tarrant	Vance	Hadassah	4/3/1974	35	12/26/2009	D	Black	F

Police Department:	Southlake DPS	**Police Svc #:**	09SP081524
Deceased Address:	2400 SH 121 #1007 , Euless, Texas 76039	**Time Of Death**	12:38 PM
Occurred Location:	2800 N. Lonesome Dove , Southlake, Texas 76092		
Place Of Death:	ER	**Prosector:**	Marc Krouse, M.D.
Place Of Death Address:	1650 W. College , Grapevine, Texas	**Manner Of Death:**	ACCIDENT
Cause Of Death:	DROWNING Due to:MOTOR VEHICLE - FIXED OBJECT COLLISION (PASSENGER)		

Click this link if the death occurred before October 28, 2002

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Tarrant County Medical Examiner and Forensic Science Laboratories

Serving Tarrant, Denton and Parker Counties

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Telephone (817) 920-5700 Fax (817) 920-5713

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100 E. Weatherford Street
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MEDICAL EXAMINER
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LOGIN
REGISTER

Case #: (Case # must be 7 digits) Find

County: All Counties Find

Month: December Day: 27 Year: 2009

Search Results:

Case Count: 1

Case #	CO	Last Name	First Name	DOB	Age	DOD	Died/Found	Race	Sex
0915181	Tarrant	Akion	Wendy	8/6/1971	38	12/27/2009	D	Black	F

Police Department:		**Police Svc #:**	
Deceased Address:	330 E. Los Colinas #1720 , Irving, Texas 75039	**Time Of Death**	12:50 AM
Occurred Location:	2800 N. Lonesome Dove , Southlake, Texas 76092		
Place Of Death:	Hospital	**Prosector:**	Marc Krouse, M.D.
Place Of Death Address:	1650 W. College , Grapevine, Texas	**Manner Of Death:**	ACCIDENT
Cause Of Death:	DROWNING Due to:MOTOR VEHICLE - FIXED OBJECT COLLISION (PASSENGER)		

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100 E. Weatherford Street
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REGISTER

Case #: (Case # must be 7 digits) Find

County: All Counties Find

Month: December Day: 27 Year: 2009

Search Results:

Case Count: 1

Case #	CO	Last Name	First Name	DOB	Age	DOD	Died/Found	Race	Sex
0915186	Tarrant	Ransom	Sharon	10/15/1953	56	12/27/2009	D	Black	F

Police Department:		**Police Svc #:**	
Deceased Address:	3208 Wild Oak Trl. , Grapevine, Texas 76051	**Time Of Death**	4:15 AM
Occurred Location:	2800 N. Lonesome Dove , Southlake, Texas 76092		
Place Of Death:	Hospital	**Prosector:**	Marc Krouse, M.D.
Place Of Death Address:	1650 W. College , Grapevine, Texas	**Manner Of Death:**	ACCIDENT
Cause Of Death:	DROWNING Due to:MOTOR VEHICLE - FIXED OBJECT COLLISION (PASSENGER)		

Click this link if the death occurred before October 28, 2002

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TARRANT COUNTY

100 E. Weatherford Street
Fort Worth, Texas 76196
817-884-1111

Case #: (Case # must be 7 digits) Find

County: All Counties Find

Month: December Day: 26 Year: 2009

Search Results:

Case Count: 1

Case #	CO	Last Name	First Name	DOB	Age	DOD	Died/Found	Race	Sex
0915161	Tarrant	Hardy	Monty	12/11/1953	56	12/26/2009	D	White	M

Police Department:	Southlake DPS	**Police Svc #:**	09SP081524
Deceased Address:	1100 North Shady Oaks , Southlake, Texas 76092	**Time Of Death**	12:37 PM
Occurred Location:	2800 N. Lonesome Dove , Southlake, Texas 76092		
Place Of Death:	ER	**Prosector:**	Marc Krouse, M.D.
Place Of Death Address:	1650 W. College , Grapevine, Texas	**Manner Of Death:**	ACCIDENT
Cause Of Death:	DROWNING Due to:MOTOR VEHICLE - FIXED OBJECT COLLISION (DRIVER)		

Click this link if the death occurred before October 28, 2002

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Tarrant County Medical Examiner and Forensic Science Laboratories

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200 Feliks Gwozdz Place, Fort Worth, TX 76104-4919

Telephone (817) 920-5700 Fax (817) 920-5713

(817) 283-2121
METRO (817) 267-3103

1201 W. EULESS BLVD.
EULESS, TEXAS 76040

Euless B&B
WRECKER SERVICE

VEHICLE INSPECTION

January 12, 2010

SLPDW Lot# A912267 Space: B-1 Yr/Make: '08 Toyota
Model/Color: Avalon, 4d Blue License: DXS424

Date	Printed Name	Company	Reason for Visit	Signature
1/12/10	CHRIS GARRETT	SOUTHLAKE POLICE	INSPECTION	
1/12/10	Richard Atkinson	Southlake PD	Inspection	
1/12/10	MARK FORSTE	LINDA HANDY	INSPECTION	
1/12/10	Bill Collins	NHTSA	"	
1/12/10	Mark Jakstis	TMS	"	
1/12/10	Kelli Spencer	HDBDK	Inspection	
1-12-10	Tom Bolin	Linda Handy Family	Inspection	
1-12-10	April Yergin	ATA	Inspection	April Yergin
1/12/10	David C. Wright	McCombs Wright LLP	Inspection	
1/12/10	Michael Runyd	Rimkus Consulting	Inspection	
1/12/2010	Rick Reynolds	Rimkus Consulting	Inspection	
		MHG Civil.		
	Greg Magno	USDOT	Inspection	

LIGHT OR HEAVY DUTY • 24 HOUR TOWING SERVICE

MEETING @ DPS EAST 01/12/10

Who	Representing	email
BILL COLLINS	NHTSA	BILL.COLLINS@DOT.GOV
Richard Anderson	Southlake DPS	RAnderson@ci.southlake.TX.US
Kelli Spencer	Toyota	Kspencer@hdbdk.com
Mark Jakstis	TMS	mark_jakstis@toyota.com
April Yergin	ATA Associates, INC	yergina@ataassociates.com
David C. Wright	Linda Hardy	dcw@mccunewright.com
Mark Forster	LINDA HARDY	mcforster@HOTMAIL.Com
Chris Garrett	Southlake Police	CGARRETT@ci.southlake.TX.US.
TOM BOLIN	FAMILY	

ARRIVED AT B&B

GREGORY MAGNO	NHTSA	GGREGORY.MAGNO@DOT.GOV
MICHAEL RANGEL	RIMKUS CONSULTING	MHRANGEL@RIMKUS.COM
RICK REYNOLDS	"	

Southlake Department of Public Safety
Police Services
Supplemental Narrative

Offense Number: 09SP081524
Offense: Fatality Motor Vehicle Crash
Officer Name: C. Garrett **ID# 123**

Narrative:

On 12-26-09 at approximately 1210 hours I, Officer C. Garrett was off duty when I was notified by Sgt. G. Music that there was a motor vehicle crash at the intersection of Lonesome Dove Road and Burney Lane and to respond to the Southlake DPS West Station in order to pick up investigation equipment. I arrived at the West station at approximately 1258 hours and was informed by Sgt. Music that there were four fatalities from the crash. We loaded investigation equipment in unit 246 and proceeded to the crash scene where we arrived at approximately 1315 hours.

Upon arrival at the crash scene I observed a blue Toyota Avalon with Texas license plate DXS424 resting on the grassy bank approximately fifteen feet south of a pond. The Toyota was upright and facing southbound which lined the Toyota up with a missing section of metal pipe fence and in a pretty much direct line from Lonesome Dove Road. The front end of the Toyota had heavy front end damage and was missing the front bumper and front left wheel assembly. There was also damage to the top of the vehicle from an apparent roll over. The driver and three occupants were no longer at the scene after being transported by EMS personnel to Baylor Hospital in Grapevine. It was a clear cold day and the roadway surface was dry and clear of any sand, dirt or debris. There were still some patches of snow in the grassy areas that were left over from a snow two days earlier, but the roads were dry. There were no signs of ice on the pond surface.

I was advised by emergency personnel on scene that at approximately 1120 hours they were dispatched to a motor vehicle crash where a vehicle flipped upside down into the pond trapping all four occupants inside the vehicle. Southlake officers arrived on scene approximately three minutes later and were joined by a few bystanders when they jumped into the water in an attempt to assist the occupants trapped in the vehicle. The Toyota was upside down submerged in the water with only a portion of the rear trunk visible above the water. The water was extremely cold and murky with zero visibility and the officers could not tell how many occupants were inside. The officers were able to extricate one female from the right rear seat before all the rescuers were overcome by the frigid conditions.

TOY-RQ-05E-00010842

The Grapevine Fire Department dive team arrived at approximately 1146 hours and recovered three more occupants from the Toyota. The first removed by the dive team was a female in the left rear seat, next was a female in the right front and last was the male driver. All four occupants were still wearing seat belts which had to be cut.

I and members of the crash team then set up the department total station unit and mapped the crash scene. I was unable to map the exact final resting position of the Toyota in the pond due to it being removed from the pond prior to my arrival. I had to use scene photographs that were taken by Sgt. Tripp, who was the on duty patrol sergeant, to estimate the position and location of the Toyota in the water. Prior to the crash the Toyota was travelling north bound on Lonesome Dove Road when it failed to stop at the stop sign at Burney Lane. The Toyota continued in a straight line across Burney Lane where it vaulted off the roadway and crashed through a four rail steel pipe fence that is approximately 14 feet from the edge of the roadway. The base of the fence sits at a lower elevation than the edge of the roadway. The Toyota crashed through the fence between two vertical support posts which are spaced approximately 10 feet apart. The bottom rail of the fence was slightly bent and had black marks that appeared to be rubber tire marks and scrapes that were caused by the underside of the Toyota as it passed over the rail. This horizontal bottom rail was approximately 1 foot off the ground and was not broke off the fence by the collision. The bottom rail was cut off the fence by fire department personnel and was in two pieces lying off to the side. The top rail was found approximately 90 feet to the north west lying in the grass. The top rail was positioned approximately 4 feet off the ground when it was attached to the fence. A third rail was found approximately 61 feet to the north east and lying just inside the pond. The fourth rail was not found at the time of the investigation, but was later found by the homeowner who stated it was in the water in the same path the Toyota entered the pond.

After striking the fence the Toyota continued in a straight path until the front left of the vehicle struck a larger diameter tree. The tree trunk leans at an angle to the left which caused the front left wheel to absorb most of the impact. The wheel was pushed up under the vehicle causing intrusion into the driver side floor board area which pinned the driver side door shut. This action ripped the front left wheel assembly off the Toyota and caused the Toyota to flip upside down into the pond. The divers attempted to locate the front left wheel assembly in the water, but were unsuccessful.

There were no visible signs of braking observed on the roadway and I was not able to observe where the Toyota landed after vaulting off the roadway. Any evidence of where the Toyota travelled across the grassy area into the pond was covered up by the first responders and when the Toyota was dragged out from the pond over the same path it entered the pond.

Southlake patrol officers were able to collect the names of four witnesses, which are listed in the report jacket, and passed those names on to me. On 12-29-09 I made contact with Kathleen Carrabine. Carrabine stated she was driving east bound on Burney Lane approaching the intersection of Lonesome Dove when she observed a blue vehicle speed

TOY-RQ-05E-00010843

through the intersection in front of her going north on Lonesome Dove Road. The vehicle crashed through the fence, struck a tree and then flipped upside down into the pond and immediately sunk under the water. Carrabine's first impression was that she did not see a driver behind the steering wheel as the vehicle went by. Carrabine believed the vehicle was speeding, but not travelling as fast as a highway speed. From Carrabine's angle she could not see the brake light's and said she could not tell if the vehicle was slowing down or speeding up. She also did not smell anything unusual and did not hear any sound the vehicle was making other than the collision. Carrabine could not remember exactly how close to the intersection she was at the time, only saying she felt she was fairly close. Carrabine then drove up to the intersection, got out of her vehicle and yelled for someone to call 911. She did not go up to the pond.

On 12-30-09 I was able to contact Susan Dumas who stated she was putting her trash out at the curb at 2901 Flamingo when she heard a loud crash at which time she looked up and observed a car fly into the water. Dumas believes the first crash she heard was the vehicle striking the fence and by the time she looked up she saw the vehicle go into the water. Dumas then flagged a car down in the street and asked them to call 911.

On 12-31-09 I made contact with Mike Juliano who is the property owner where the pond is located. Juliano stated he learned of the crash when his son, who was upstairs in the house, came down and said he heard a car crash outside. Juliano ran outside and observed the Toyota upside down in the pond, but could not see any sign of movement or hear any sound from inside the vehicle. Juliano said he arrived at the pond at about the same time another citizen, Gavin Fearey and his wife did. Juliano said the police then arrived on scene at which time Juliano, Gavin Fearey and the police all got into the water to help. Juliano stated he did not hear the collision from inside his house. I was never able to make contact with Fearey, but was told by Juliano that he spoke to Fearey at the scene and that Fearey drove up on the crash scene after it happened and did not witness the crash.

On 12-31-09 Southlake Detective Richard Anderson and I went to B & B wrecker to inspect the Toyota at the request of NHTSA Investigator Bill Collins. Investigator Collins pointed out some issues to look for mostly having to due with the accelerator pedal sticking on the floor mat. With the assistance of B & B mechanic Steve we had to forcibly pry the driver side door open to gain access to the driver's side of the compartment. The floor board area was not visible due to being covered up by personal belongings and mud from the pond. We carefully removed the belongings and mud, placing the personal belongings in a cardboard box. There was a larger leather soft satchel at the bottom of the pile which helped keep the mud from coming in contact with most of the carpet on the floor board. The items found belonged to all of the occupants that had been in the vehicle and I believe they fell into the floor board area when the vehicle was tuned over by the wrecker and pulled out of the pond. The driver's floor mat was not in place covering the floor board and later found in the trunk of the vehicle. I believe the floor mat was removed from the car some time prior to the day of the crash. I could observe detents in the carpet which were made by the bottom of the floor mat, but

TOY-RQ-05E-00010844

the detents were shallow and appeared to have been partially smoothed out by repeated contact with the driver's feet. The passenger side floor mat was still in place and the detents in the carpet under the mat were deeper and more pronounced. The two plastic hooks directly in front of the driver seat that hold the floor mat in position were in place and did not appear to be damaged. The two rear floor mats were displaced during the crash and were found on the rear seat. In the trunk of the vehicle we also found a set of new after market floor mats that were still hooked together and did not appear to have been used. The accelerator pedal and the brake pedal were both in the normal up position and free of any obstruction. Both pedals appeared to be in good condition with no noticeable damage. At the request of Investigator Collins we had B & B mechanic Steve remove the accelerator pedal from the vehicle for future inspection. The pedal was released back to the vehicle owner's family on 01-12-09. The speedometer and tachometer both appeared to be undamaged and both needles were resting in the zero position. There was no visible sign of a tap mark inside the gauge housing that might have been imprinted by the needles.

On 01-12-09, Detective Anderson and I met with members of the Hardy family along with their legal representation, NHTSA investigators, insurance company investigators and Toyota Motors representatives to download information from the Toyota's EDR and inspect the vehicle. With the Hardy family's consent Toyota representative Mark Jakstis was able to successfully download the recorded information from the EDR. The recording starts with the first impact with the fence and recorded a Delta V of 1.6mph. The second impact with the tree recorded a Delta V of 15.4mph. The time between the two impacts was 758 milliseconds. The EDR did not have the capability to record braking or acceleration and did not record any information prior to the first impact. With a distance of 49 feet between the fence and tree and assuming a constant velocity, it was calculated the Toyota was travelling approximately 44mph when it contacted the tree. Adding the velocity change of 1.6mph at the first impact to the velocity the Toyota was travelling at the second impact the Toyota was travelling approximately 45.6mph prior to the first impact.

The driver of the Toyota was identified as Monty Hardy who is also the registered owner of the Toyota. A computer check of Hardy's driver's license lists a P32 driving restriction. I contacted the driver license section of the Texas Department of Public Safety and was advised the restriction was instated from a medical advisory board review for a medical reason. DPS could not tell me how long the restriction has been in place or what specifically the medical condition was. DPS did verify Hardy was approved to operate the type of vehicle he was driving the day of the crash. I was advised by Detective Anderson and Sgt. Tripp that when they spoke to Hardy's wife the day of the incident she told them that Monty had recently experienced some seizures and that he was going to go see the doctor about that. I have attempted to meet with Mrs. Hardy, but have not been able to do so as of this report.

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The Tarrant County Medical Examiners initial report list the cause of death for all four occupants of the vehicle as drowning. We have requested a copy of the final medical examiners report once it is available. At this time I do not have any further information or evidence as to the cause of the crash.

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Form CR-3
(Rev. 03/09)
Page 2 of 2

LOC#: 09sp081524

SEAT POSITION	SOLICITATION	EJECTED	RESTRAINT USED	AIRBAG	HELMET USE	INJURY SEVERITY
1-FRONT LEFT 7-THIRD SEAT LEFT 2-FRONT CENTER 8-THIRD SEAT CENTER 3-FRONT RIGHT 9-THIRD SEAT RIGHT 4-SECOND SEAT LEFT 10-CARGO AREA 5-SECOND SEAT CENTER 11-OUTSIDE VEHICLE 6-SECOND SEAT RIGHT 12-UNKNOWN	INDICATES PERSON'S DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT AS FOR AN ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY. (Y = SOLICIT N = NO SOLICIT)	1-NO 2-YES 3-YES, PARTIAL 4-NOT APPLICABLE 5-UNKNOWN	1-SHOULDER & LAP BELT 7-BOOSTER SEAT 2-SHOULDER BELT ONLY 8-NONE 3-LAP BELT ONLY 9-OTHER 4-CHILD SEAT, FACING FORWARD 10-UNKNOWN 5-CHILD SEAT, FACING REAR 6-CHILD SEAT, UNK.	1-NOT APPLICABLE 2-NOT DEPLOYED 3-DEPLOYED, FRONT 4-DEPLOYED, SIDE 5-DEPLOYED, OTHER 9-UNKNOWN	1-WORN-DAMAGED 2-WORN-NOT DAMAGED 3-WORN-UNK DAMAGE 4-NOT WORN 5-UNKNOWN IF WORN	K-KILLED A-INCAPACITATING INJURY B-NON-INCAPACITATING C-POSSIBLE INJURY N-NOT INJURED U-UNKNOWN

UNIT # 1 — TOWED DUE TO DISABLING DAMAGE [X] YES [ ] NO — VEHICLE REMOVED TO B&B WRECKER EULESS — BY B&B WRECKER

ITEM #	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED. NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
1	1	HARDY, MONTY,	1100 SHADY OAKS DR, Southlake, TX, 76092	N	1	1	3	4	56	M	K
2	3	RANSOM, SHARON,	3208 WILD OAK TRAIL, Grapevine, TX, 76051	N	1	1	3	4	56	F	K
3	4	VANCE, HADASSAH,	2400 SH 121 #1007, Euless, TX, 76039	N	1	1	2	4	35	F	K
4	6	AKION, WENDY,	330 E LAS COLINAS BLVD#1720, IRVING, TX, 75039	N	1	1	2	4	38	F	K
5											

UNIT # — TOWED DUE TO DISABLING DAMAGE [ ] YES [ ] NO — VEHICLE REMOVED TO _____ BY _____

ITEM #	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED. NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
6											
7											
8											
9											
10											

PED., PEDAL., MOT. CONVEY, ETC.	COMPLETE IF CASUALTIES NOT IN MOTOR VEHICLE CASUALTY NAME (LAST, FIRST, MI)	ADDRESS	SOL	ALCOHOL SPECIMEN TAKEN	RESULT	DRUG SPECIMEN TAKEN	RESULT	HELMET	AGE	SEX	INJURY CODE

DISPOSITION OF KILLED OR INJURED

ITEM #	TAKEN TO	BY
1	BAYLOR GRAPEVINE	SOUTHLAKE EMS
2	BAYLOR GRAPEVINE	GRAPEVINE EMS
3	BAYLOR GRAPEVINE	SOUTHLAKE EMS

IF AMBULANCE USED, SHOW

TIME NOTIFIED	TIME ARRIVED AT SCENE	AMBULANCE UNIT #	# OF ATTENDANTS INCLUDING DRIVER	# OF PERSONS TRANSPORTED FOR TREATMENT
11:20AM	11:25AM	M401	3	4
11:57AM	12:05PM	M561	3	
11:28AM	11:35AM	M402	3	

COMPLETE THIS SECTION IF PERSON KILLED (If a driver or occupant dies within 30 days of the crash, please complete this area and mail the supplement to the Crash Records Bureau)

ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH
1	12/26/2009	12:37 PM	2	12/27/2009	4:15 AM	3	12/26/2009	12:38 PM			

INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH ADDITIONAL SHEETS IF NEEDED/ARY)

Unit 1 was n/b 2800 Lonesome Dove when unit 1 failed to stop at the stop sign at Burney Lane. Unit 1 continued n/b driving through a metal pipe fence before the FL of unit 1 struck a tree causing unit 1 to flip upside down into a pond in approximately 6' of water trapping all four occupants under water. There were no visible signs of braking prior to the collision and unit 1 was dragged out of the water, prior to investigator's arrival, over the same path it entered the pond. Investigator's were informed by relative that unit 1 had a previous problem with the accelerator sticking and the driver was having recent medical problems with seizures. Witness-Kathleen Carrabine (817)251-9497, Susan Dumas (214)801-3424, Mike Juliano (972)467-8484, Gavin Fearey (312)259-1989.

DIAGRAM — INDICATE NORTH

1-TWO-WAY, NOT DIVIDED
2-TWO-WAY, DIVIDED, UNPROTECTED MEDIAN
3-TWO-WAY, DIVIDED, PROTECTED BARRIER
4-ONE WAY
5-UNKNOWN

See attachment

FACTORS AND CONDITIONS LISTED ARE THE INVESTIGATOR'S OPINION

UNIT #	FACTORS/CONDITIONS CONTRIBUTING			OTHER FACTORS/CONDITIONS MAY OR MAY NOT HAVE CONTRIBUTED			VEHICLE DEFECTS CONTRIBUTING		VEHICLE DEFECTS MAY HAVE CONTRIBUTED	
1	22			47	74					

1-ANIMAL ON ROAD - DOMESTIC
2-ANIMAL ON ROAD - WILD
3-BACKED WITHOUT SAFETY
4-CHANGED LANE IN NON-LANE
5-13 SEE VEHICLE DEFECTS
14-DISABLED IN TRAFFIC LANE
15-DISREGARD STOP AND GO SIGNAL
16-DISREGARD STOP SIGN OR LIGHT
17-DISREGARD TURN MARKS AT INTERSECTION
18-DISREGARD WARNING SIGN AT CONSTRUCTION
19-DISTRACTION IN VEHICLE
20-DRIVER INATTENTION
21-DRIVE WITHOUT HEADLIGHTS
22-FAILED TO CONTROL SPEED
23-FAILED TO DRIVE IN SINGLE LANE
24-FAILED TO GIVE HALF OF ROADWAY
25-FAILED TO HEED WARNING SIGN
26-FAILED TO PASS TO LEFT SAFELY
27-FAILED TO PASS TO RIGHT SAFELY
28-FAILED TO GIVE SIGNAL OR WRONG SIGNAL
29-FAILED TO STOP AT PROPER PLACE
30-FAILED TO STOP FOR SCHOOL BUS
31-FAILED TO STOP FOR TRAIN
32-FAILED TO YIELD ROW-EMERGENCY VEHICLE
33-FAILED TO YIELD ROW-OPEN INTERSECTION
34-FAILED TO YIELD ROW-PRIVATE DRIVE
35-FAILED TO YIELD ROW-STOP SIGN
36-FAILED TO YIELD ROW-TO PEDESTRIAN
37-FAILED TO YIELD ROW-TURNING LEFT
38-FAILED TO YIELD ROW-TURN ON RED
39-FAILED TO YIELD ROW-YIELD SIGN
40-FATIGUED OR ASLEEP
41-FAULTY EVASIVE ACTION
42-FIRE IN VEHICLE
43-FLEEING OR EVADING POLICE
44-FOLLOWED TOO CLOSELY
45-HAD BEEN DRINKING
46-HANDICAPPED DRIVER (EXP. IN NARRATIVE)
47-ILL (EXP. IN NARRATIVE)
48-IMPAIRED VISIBILITY (EXP. IN NARRATIVE)
49-IMPROPER START FROM PARKED POSITION
50-LOAD NOT SECURED
51-OPENED DOOR INTO TRAFFIC LANE
52-OVERSIZE VEHICLE OR LOAD
53-OVERTAKE AND PASS INSUFFICIENT CLEARANCE
54-PARKED AND FAILED TO SET BRAKES
55-PARKED IN TRAFFIC LANE
56-PARKED WITHOUT LIGHTS
57-PASSED IN NO PASSING ZONE
58-PASSED ON RIGHT SHOULDER
59-PEDESTRIAN/OTHER/NOT COMPLYING W/TRAFFIC CONTROL
60-SPEEDING-UNSAFE (UNDER LIMIT)
61-SPEEDING OVER LIMIT
62-TAKING MEDICATION (EXP. IN NARRATIVE)
63-TURNED IMPROPERLY - CUT CORNER ON LEFT
64-TURNED IMPROPERLY - WIDE RIGHT
65-TURNED IMPROPERLY - WRONG LANE
66-TURNED WHEN UNSAFE
67-UNDER INFLUENCE - ALCOHOL
68-UNDER INFLUENCE - DRUG
69-WRONG SIDE - APPROACH OR IN INTERSECTION
70-WRONG SIDE NOT PASSING
71-WRONG WAY - ONE WAY ROAD
72-CELLULAR/CELL PHONE USE
73-ROAD RAGE
74-OTHER FACTOR (WRITE ON LINE)

Defective Accessories

VEHICLE DEFECTS
5-DEFECTIVE OR NO HEADLAMPS
6-DEFECTIVE OR NO STOP LAMPS
7-DEFECTIVE OR NO TAIL LAMPS
8-DEFECTIVE OR NO TURN SIG. LAMPS
9-DEFECTIVE OR NO TRAILER BRAKES
10-DEFECTIVE OR NO VEHICLE BRAKES
11-DEFECTIVE OR NO STEERING MECH.
12-DEFECTIVE OR SUCK TIRES
13-DEFECTIVE TRAILER HITCH

TRAFFIC CONTROL: 1-NONE, 2-INOPERATIVE, 3-OFFICER, 4-FLAGMAN, 5-SIGNAL LIGHT, 6-FLASHING RED LIGHT, 7-FLASHING YELLOW LIGHT, 8-STOP SIGN, 9-YIELD SIGN, 10-WARNING SIGN, 11-CENTER STRIP DIVIDER, 12-NO PASSING ZONE, 13-RR GATE/SIGNAL, 14-SCHOOL ZONE, 15-CROSSWALK, 16-BIKE LANE, 17-OTHER — .8

ROADWAY RELATION: 1-ON ROADWAY, 2-OFF ROADWAY, 3-SHOULDER, 4-MEDIAN — 2

PART OF ROADWAY: 1-MAIN LANE, 2-SERVICE ROAD, 3-ENTRANCE RAMP, 4-EXIT RAMP, 5-CONNECTOR, 6-DETOUR, 7-OTHER — 1

ROADWAY ALIGNMENT: 1-STRAIGHT, LEVEL, 2-STRAIGHT, GRADE, 3-STRAIGHT, HILLCREST, 4-CURVE, LEVEL, 5-CURVE, GRADE, 6-CURVE, HILLCREST, 7-OTHER, 8-UNKNOWN — 1

LIGHT CONDITION: 1-DAYLIGHT, 2-DARK, NOT LIGHTED, 3-DARK, LIGHTED, 4-DARK, UNK LIGHTING, 5-DAWN, 6-DUSK, 8-OTHER, 9-UNKNOWN — 1

TYPE OF ROAD SURFACE: 1-CONCRETE, 2-BLACKTOP, 3-BRICK, 4-GRAVEL, 5-DIRT, 6-OTHER, 7-UNKNOWN — 2

WEATHER: 1-CLEAR / CLOUDY, 2-RAIN, 3-SLEET/HAIL, 4-SNOW, 5-FOG, 6-BLOWING SAND/SNOW, 7-SEVERE CROSSWINDS, 8-OTHER, 9-UNKNOWN — 1

SURFACE CONDITION: 1-DRY, 2-WET, 3-STANDING WATER, 4-SNOW, 5-SLUSH, 6-ICE, 7-SAND, MUD, DIRT, 8-OTHER, 9-UNK — 1

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LOC#: 09sp081524

SEAT POSITION	SOLICITATION	EJECTED	RESTRAINT USED	AIRBAG	HELMET USE	INJURY SEVERITY
1-FRONT LEFT 2-FRONT CENTER 3-FRONT RIGHT 4-SECOND SEAT LEFT 5-SECOND SEAT CENTER 6-SECOND SEAT RIGHT 7-THIRD SEAT LEFT 8-THIRD SEAT CENTER 9-THIRD SEAT RIGHT 10-CARGO AREA 11-OUTSIDE VEHICLE 12-UNKNOWN	INDICATES PERSON'S DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT AS FOR AN ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY. (Y = SOLICIT N = NO SOLICIT)	1-NO 2-YES 3-YES, PARTIAL 4-N/A 5-UNKNOWN	1-SHOULDER & LAP BELT 2-SHOULDER BELT ONLY 3-LAP BELT ONLY 4-CHILD SEAT, FACING FWD 5-CHILD SEAT, FACING REAR 6-CHILD SEAT, UNK. 7-BOOSTER SE 8-NONE 9-OTHER 10-UNK	1-NOT APPLICABLE 2-NOT DEPLOYED 3-DEPLOYED, FRONT 4-DEPLOYED, SIDE 5-DEPLOYED, OTHER 6-UNKNOWN	1-WORN-DAMAGED 2-WORN-NOT DAMAGED 3-WORN-UNK DAMAGE 4-NOT WORN 5-UNKNOWN IF WORN	K-KILLED A-INCAPACITATING INJURY B-NON-INCAPACITATING C-POSSIBLE INJURY N-NOT INJURED U-UNKNOWN

UNIT # See Below DATE/TIME: 12/26/2009 / 11:19 AM COUNTY: Tarrant ROAD: 2800 LONESOME DOVE RD

ITEM NO.	UNIT	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS' NAMES, POSITIONS, RESTRAINTS USED, ECT. - HOWEVER, IT IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED. NAME (LAST NAME FIRST)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												
21												
22												
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44												
45												
46												
47												
48												
49												
50												

DISPOSITION OF KILLED OR INJURED

IF AMBULANCE USED, SHOW

ITEM NUMBER	TAKEN TO	BY	TIME NOTIFIED	TIME ARRIVED AT SCENE	AMBULANCE UNIT #	NO. ATTENDANTS INC. DRIVER
4	BAYLOR GRAPEVINE	SOUTHLAKE EMS	11:20AM	11:25AM	M401	3

COMPLETE THIS SECTION IF PERSON KILLED

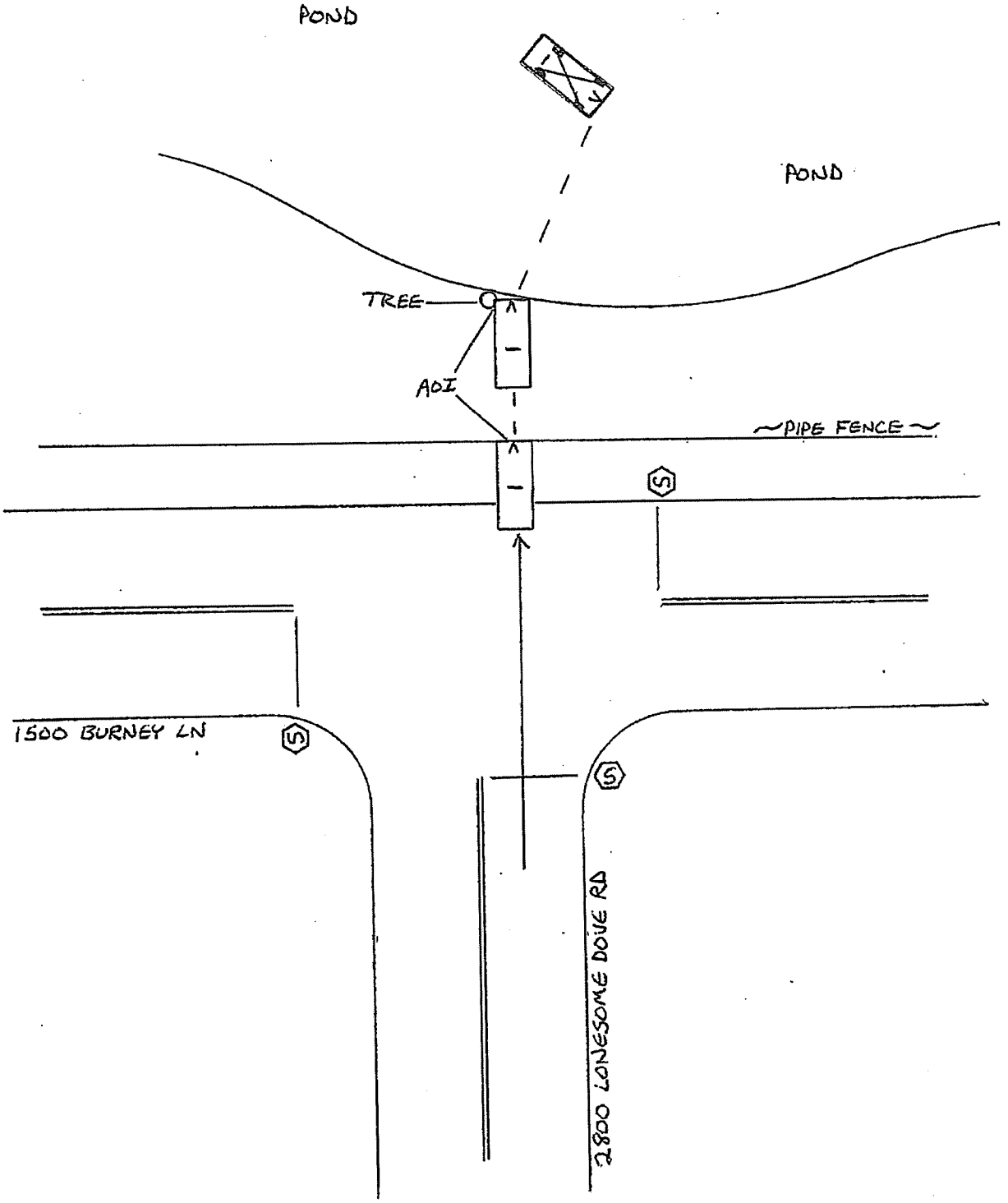
ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH	ITEM NUMBER	DATE OF DEATH	TIME OF DEATH
4	12/27/2009	12:50AM									

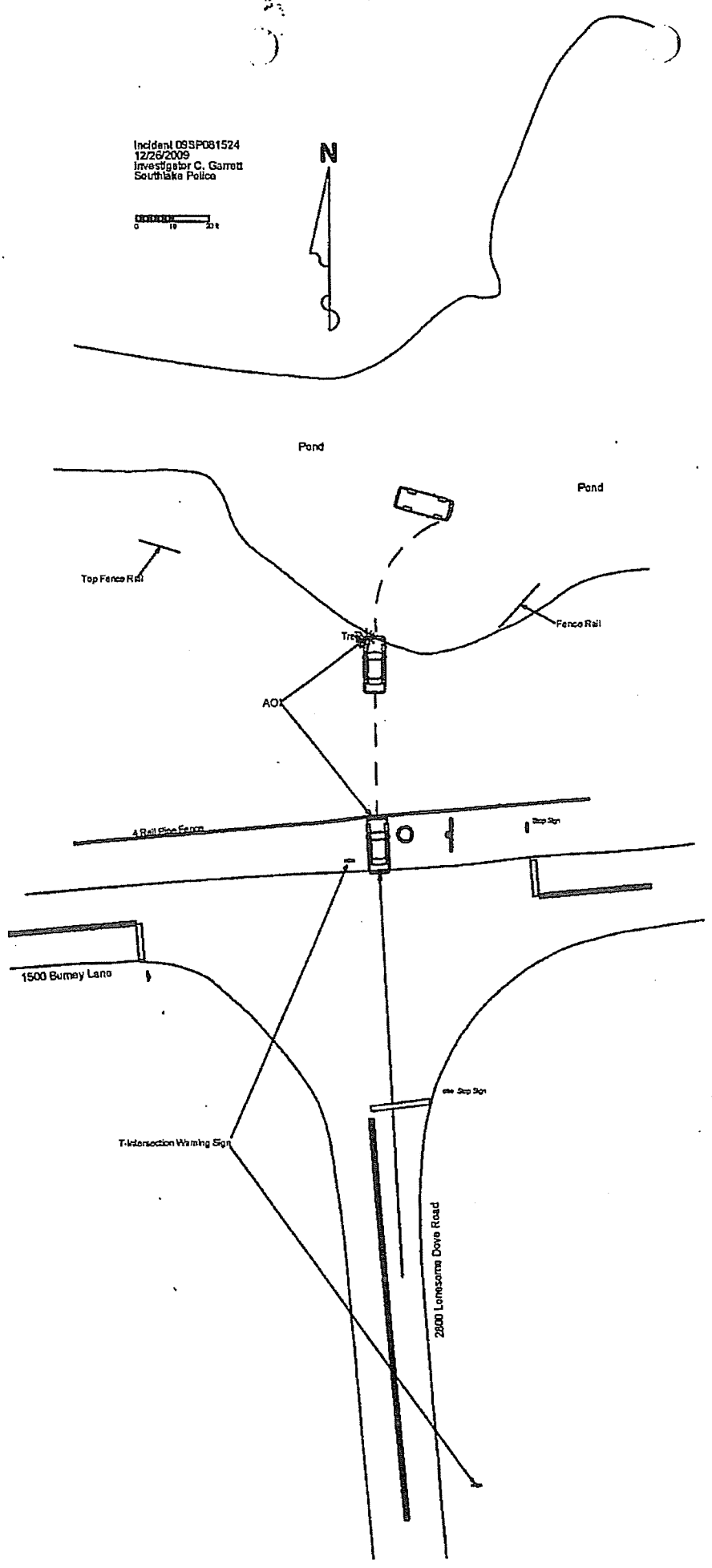
09sp081524

CITY WHERE ACCIDENT OCCURRED	Southlake	ROAD ON WHICH ACCIDENT OCCURRED	LONESOME DOVE RD
NAME AND ID NO. OF INVESTIGATOR	C. GARRETT, #123	DATE AND TIME OF ACCIDENT	12/26/09 0.47152777

NOT TO SCALE

Indicate North




Incident 09SP081524
12/26/2009
Investigator C. Garrett
Southlake Police
N
Pond
Pond
Top Fence Rail
Fence Rail
AOI
4 Rail Pipe Fence
Stop Sign
1500 Burney Lane
T-Intersection Warning Sign
2800 Lonesome Dove Road

File: 09sp081524
Date: 12/26/09 2:52:51 PM
Method: Radial with Angle
Units: FD
Project note:

Point	X	Y	Z	Type	Name	Note
1	0.00	0.00	0.00	Point		Origin
2	25.12	48.59	0.48	Point		rp1
3	-51.46	6.73	0.18	Point		rp2
4	-134.02	9.91	-1.88	Point		ep1
5	-80.14	13.63	-1.42	Point		ep1
6	-69.22	13.83	-0.99	Point		ep1
7	-58.29	14.19	-0.94	Point		ep1
8	-45.31	11.29	-0.65	Point		ep1
9	-36.73	5.23	-0.58	Point		ep1
10	-26.32	-5.06	-0.33	Point		ep1
11	-15.53	-18.82	0.13	Point		ep1
12	-10.06	-29.85	0.49	Point		ep1
13	-7.03	-45.56	0.72	Point		ep1
14	-4.08	-70.07	1.47	Point		ep1
15	7.31	-206.15	3.24	Point		ep1
16	27.35	-201.73	2.84	Point		ep1
17	17.71	-81.17	1.89	Point		ep1
18	16.66	-60.43	1.31	Point		ep1
19	31.61	-131.85	2.13	Point		wsign
20	17.36	-39.99	0.76	Point		ep1
21	20.22	-24.28	0.50	Point		ep1
22	23.95	-14.89	0.15	Point		ep1
23	29.92	-4.79	-0.11	Point		ep1
24	38.49	4.91	-0.41	Point		ep1
25	52.49	14.66	-0.67	Point		ep1
26	66.54	19.70	-0.85	Point		ep1
27	80.24	22.33	-1.31	Point		ep1
28	94.98	24.48	-1.54	Point		ep1
29	92.50	45.50	-1.80	Point		ep1
30	76.10	43.76	-1.53	Point		ep1
31	48.86	42.24	-1.35	Point		ep1
32	25.84	40.08	-1.17	Point		ep1
33	-29.15	37.61	-1.25	Point		ep1
34	-91.69	33.14	-1.36	Point		ep1
35	-57.89	10.22	-1.44	Point		stop
36	24.61	-22.14	-0.12	Point		stop
37	46.38	50.21	-2.51	Point		stop
38	20.15	-24.21	0.44	Point		sbar
39	3.27	-26.19	0.60	Point		sbar
40	47.51	42.26	-1.33	Point		sbar
41	48.25	31.26	-1.00	Point		sbar
42	-59.51	14.23	-0.96	Point		sbar
43	-59.95	24.59	-0.90	Point		sbar
44	-64.33	24.66	-0.96	Point		lll
45	-96.46	22.23	-1.21	Point		lll
46	80.72	34.51	-1.38	Point		lll
47	80.58	33.82	-1.37	Point		lll
48	49.85	31.36	-1.03	Point		lll
49	3.27	-29.81	0.79	Point		lll
50	5.91	-64.91	1.71	Point		lll
51	12.38	-141.83	2.98	Point		lll
52	-2.34	42.30	-1.78	Point		asign
53	0.93	53.56	-3.25	Point		fpost
54	-8.87	52.54	-3.54	Point		fpost
55	-18.81	51.79	-3.27	Point		fpost
56	-28.78	51.06	-3.28	Point		fpost

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57	-78.46	46.99	-2.87	Point	fpost
58	10.72	54.32	-3.87	Point	fpost
59	30.75	55.64	-4.00	Point	fpost
60	50.49	57.05	-4.26	Point	fpost
61	64.01	58.02	-4.23	Point	cutp
62	13.27	48.87	-2.57	Point	fpole
63	-48.74	127.17	-5.47	Point	fpole
64	-59.76	130.47	-5.26	Point	ew
65	-83.00	150.16	-6.59	Point	ew
66	-64.13	149.48	-6.82	Point	ew
67	-47.14	149.51	-6.57	Point	ew
68	-39.28	146.48	-6.62	Point	ew
69	-31.78	131.45	-6.61	Point	ew
70	-21.52	122.64	-6.74	Point	ew
71	-9.66	113.10	-6.55	Point	ew
72	-0.37	106.61	-6.33	Point	ew
73	11.76	100.68	-6.91	Point	tree
74	2.66	103.10	-5.77	Point	tree
75	22.71	99.00	-6.75	Point	ew
76	39.64	105.62	-6.50	Point	ew
77	51.92	111.34	-6.01	Point	ew
78	63.79	118.57	-6.58	Point	ew
79	80.59	121.44	-6.62	Point	ew
80	84.42	272.22	-6.97	Point	ew
81	65.46	273.49	-6.87	Point	ew
82	40.22	198.91	-4.96	Point	ew
83	37.08	197.39	-4.91	Point	ew
84	41.93	196.60	-5.62	Point	ew
85	41.90	228.99	-6.91	Point	ew
86	37.65	211.37	-6.75	Point	ew
87	29.47	197.20	-6.61	Point	ew
88	3.13	177.64	-6.83	Point	ew
89	-18.65	175.98	-6.80	Point	ew
90	-22.46	124.70	-4.87	Point	ew
91	-77.37	184.51	-6.99	Point	fpole
92	50.35	117.36	-7.14	Point	fpole
93	25.40	64.88	-4.14	Point	fpole
94	42.99	106.24	-6.61	Point	

TOY-RQ-05E-00010852

PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

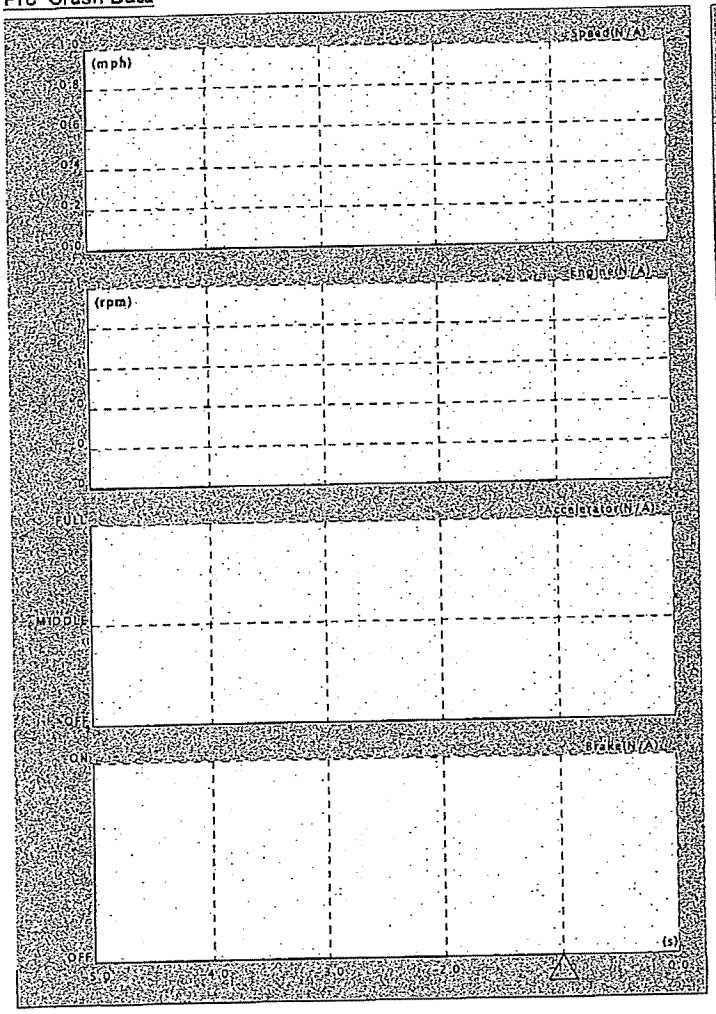
Graph Data

Latest/Frozen	BANK1
Freeze Signal	Freeze

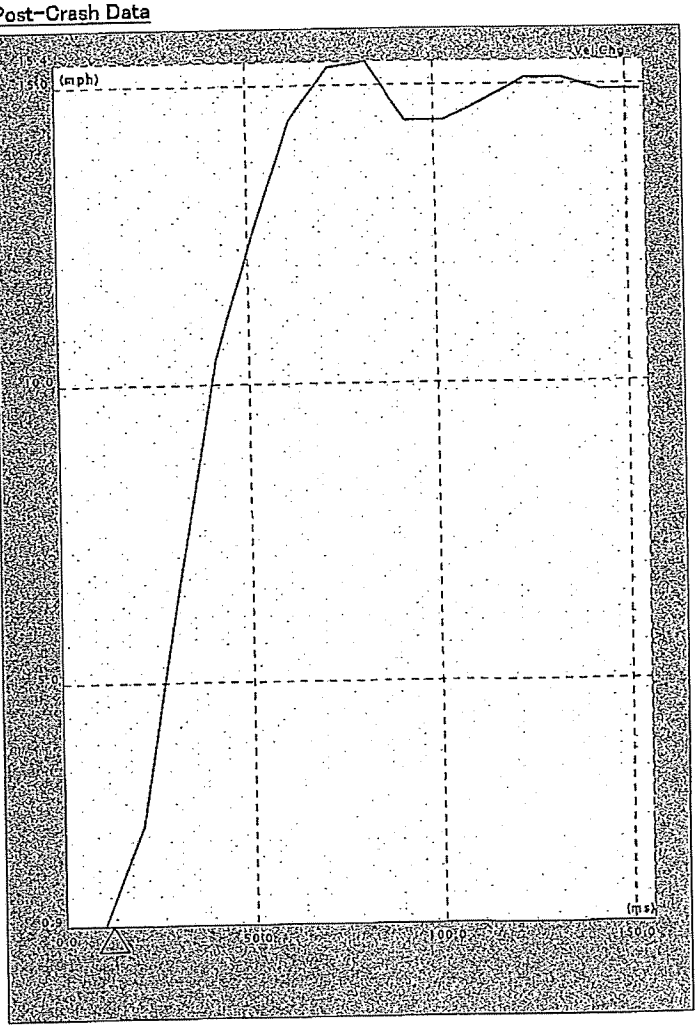
Individual Data

Data Name	Data
Time From Previous Event	758 ms
Time From Last PreCrash Data(N/A)	(N/A)
Pre-Crash Data Flag(N/A)	(N/A) (N/A) (N/A) (N/A) (N/A) (N/A)
Shift Position(N/A)	(N/A)
Seat Position Driver	RW
Belt Switch Status Driver	Belted
Belt Switch Status Passenger	Belted
Occupant Detection Passenger	AM50
PAB-Manual Cut OFF(N/A)	(N/A)
Ignition Cycles	2047 times
Lamp On Term	15 minutes
Diag Code	00 00 00 00 00 00 00 00 00 00 00 00
Event counter	2
Writing Flag	Finished Writing

Pre-Crash Data



Post-Crash Data



Pre-Crash Data

ms	Speed(N/A)	Engine(N/A)	Accelerator	Brake(N/A)	ms	Speed(N/A)	Engine(N/A)	Accelerator	Brake(N/A)
-5.0	0.0	0	OFF	OFF	-1.0	0.0	0	OFF	OFF
-4.0	0.0	0	OFF	OFF					
-3.0	0.0	0	OFF	OFF					
-2.0	0.0	0	OFF	OFF					
-1.0	0.0	0	OFF	OFF					

Post-Crash Data

ms	Vel.Chg	ms	Vel.Chg	ms	Vel.Chg
10.2	0.9	61.4	14.4	112.6	14.7
20.5	2.6	71.7	15.3	122.9	15.1
30.7	6.7	81.9	15.4	133.1	15.1
41.0	10.4	92.2	14.4	143.4	14.9
51.2	12.5	102.4	14.4	153.6	14.9

PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

Data Table

Data Name	Data
ECU Number	89170-07221
R/O Deployment Time(N/A)	(N/A)
R/O RA MAX Value within 2sec. from trigger(N/A)	(N/A)
R/O CSA-Manual Cut OFF(N/A)	(N/A)
NewPage	1 Page
Freeze Signal	Freeze
Deployment Time	12 ms
Deployment Stage Driver	Hi
Deployment Stage Passenger	Hi

PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

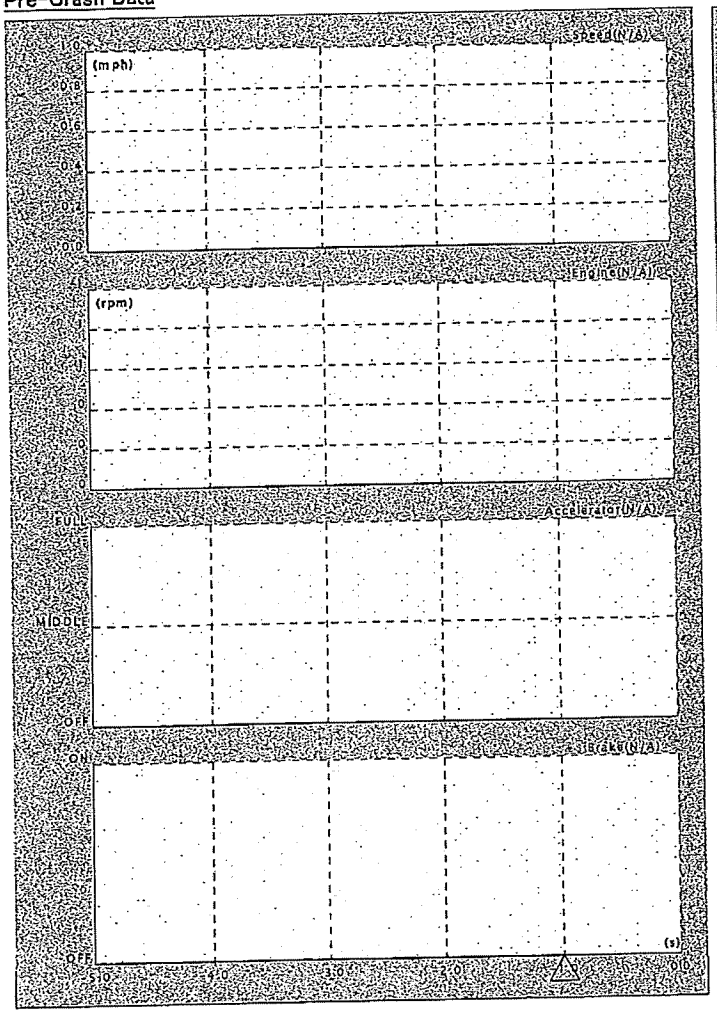
Graph Data

Next most recent	BANK0

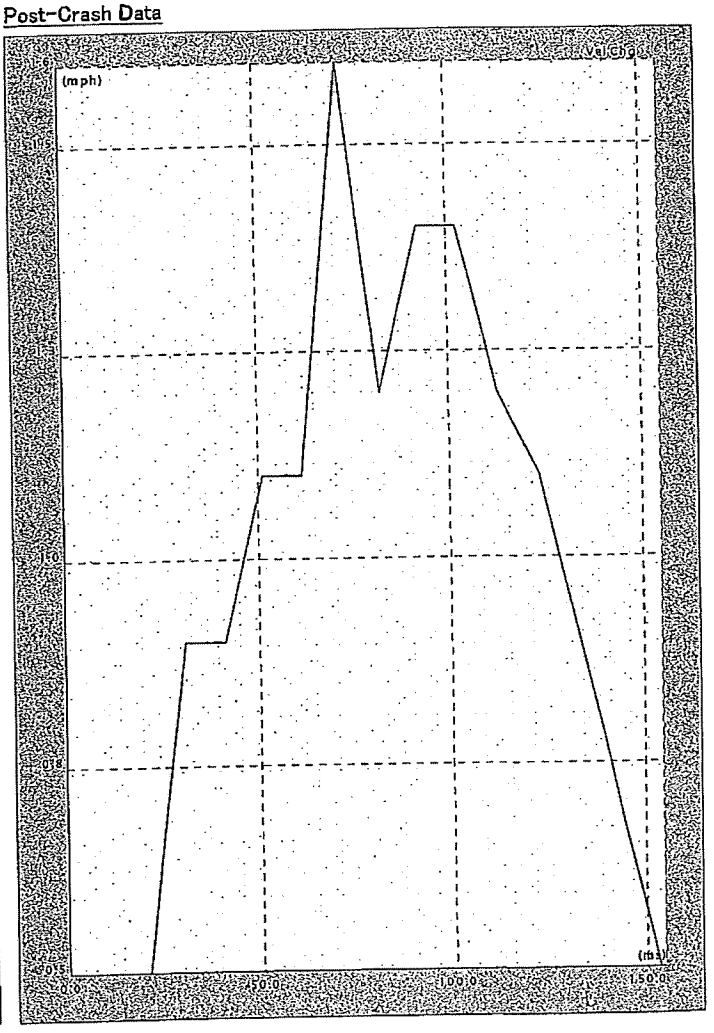
Individual Data

Data Name	Data
Time From Previous Event	5120 ms
Time From Last PreCrash Data(N/A)	(N/A)
Pre-Crash Data Flag(N/A)	(N/A) (N/A) (N/A) (N/A) (N/A) (N/A)
Shift Position(N/A)	(N/A)
Seat Position Driver	RW
Belt Switch Status Driver	Belted
Belt Switch Status Passenger	Belted
Occupant Detection Passenger	AM50
PAB-Manual Cut OFF(N/A)	(N/A)
Ignition Cycles	2047 times
Lamp On Term	15 minutes
Diag Code	00 00 00 00 00 00 00 00 00 00 00 00
Event counter	1
Writing Flag	Finished Writing

Pre-Crash Data



Post-Crash Data



Pre-Crash Data

s	Speed(N/A	Engine(N/A	Accelerat	Brake(N/A	s	Speed(N/A	Engine(N/A	Accelerat	Brake(N/A
-5.0	0.0	0	OFF	OFF	-1.0	0.0	0	OFF	OFF
-4.0	0.0	0	OFF	OFF					
-3.0	0.0	0	OFF	OFF					
-2.0	0.0	0	OFF	OFF					
-1.0	0.0	0	OFF	OFF					

Post-Crash Data

ms	Vel.Chg	ms	Vel.Chg	ms	Vel.Chg
10.2	0.5	61.4	1.1	112.6	1.2
20.5	0.5	71.7	1.6	122.9	1.1
30.7	0.9	81.9	1.2	133.1	0.9
41.0	0.9	92.2	1.4	143.4	0.7
51.2	1.1	102.4	1.4	153.6	0.5

PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

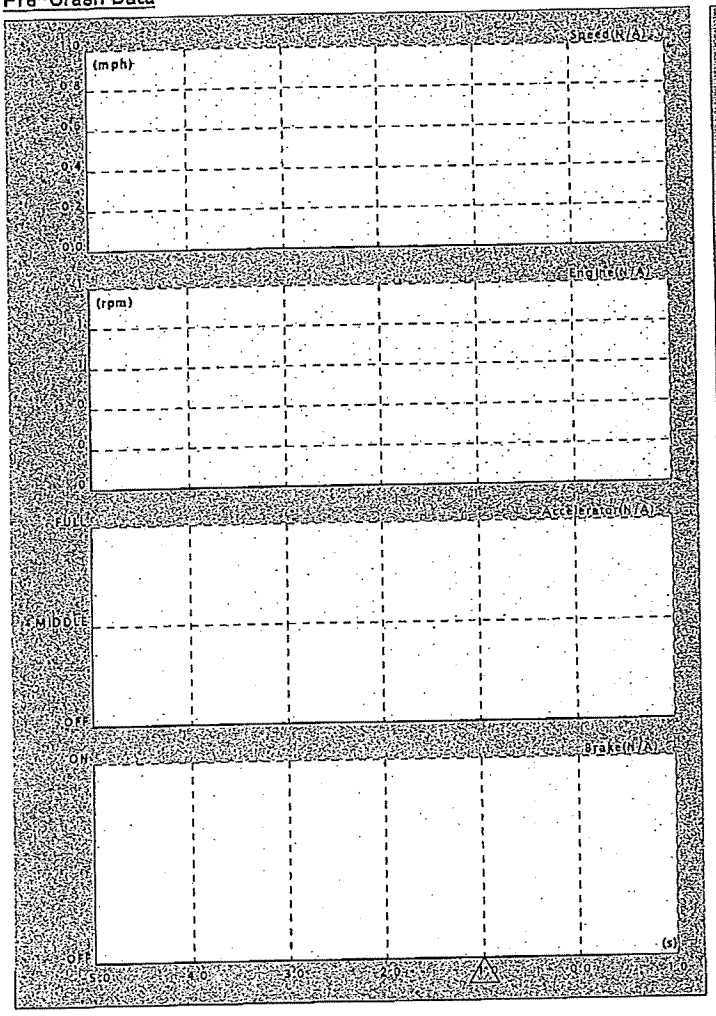
Graph Data

Past max Delta V: BANK2

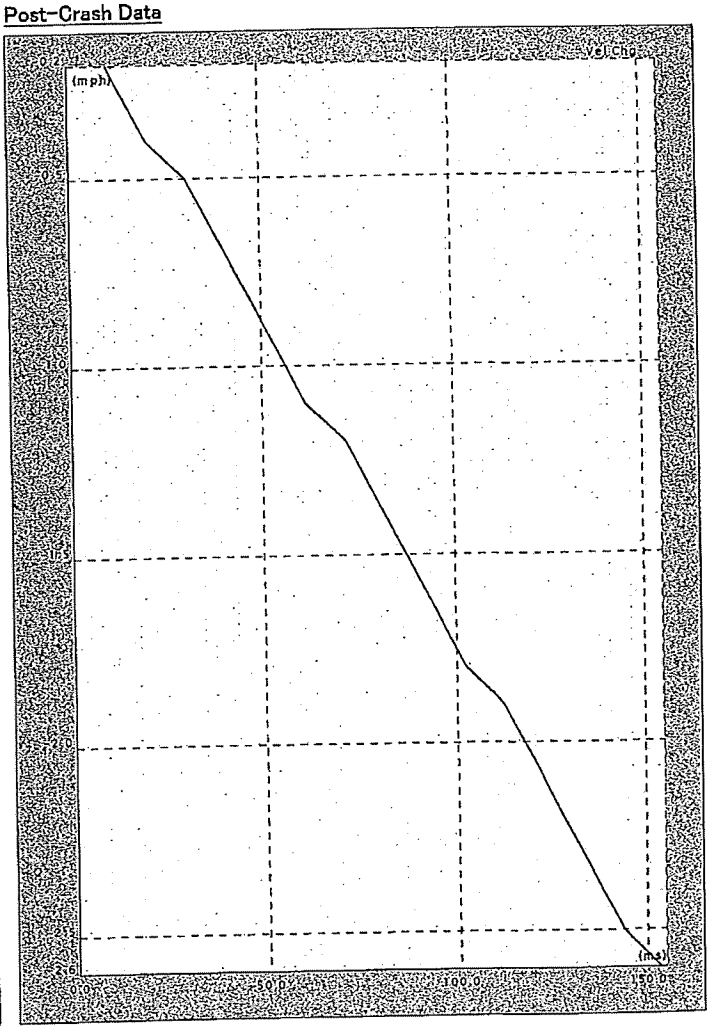
Individual Data

Data Name	Data
Time From Previous Event	5222 ms
Time From Last PreCrash Data(N/A)	(N/A)
Pre-Crash Data Flag(N/A)	(N/A) (N/A) (N/A) (N/A) (N/A) (N/A)
Shift Position(N/A)	(N/A)
Seat Position Driver	Unknown
Belt Switch Status Driver	Not Implemented
Belt Switch Status Passenger	Not Implemented
Occupant Detection Passenger	
PAB-Manual Cut OFF(N/A)	(N/A)
Ignition Cycles	32767 times
Lamp On Term	491505 minutes
Diag Code	FF FF FF FF FF FF FF FF FF FF FF FF
Event counter	0
Writing Flag	Not Recorded

Pre-Crash Data



Post-Crash Data



Pre-Crash Data

ms	Speed(N/A	Engine(N/A	Accelerato	Brake(N/A	s	Speed(N/A	Engine(N/A	Accelerato	Brake(N/A
-5.0	0.0	0	OFF	OFF	0.5	0.0	0	OFF	OFF
-4.0	0.0	0	OFF	OFF					
-3.0	0.0	0	OFF	OFF					
-2.0	0.0	0	OFF	OFF					
-1.0	0.0	0	OFF	OFF					

Post-Crash Data

ms	Vel.Chg	ms	Vel.Chg	ms	Vel.Chg
10.2	-0.2	81.4	-1.1	112.6	-1.9
20.5	-0.4	71.7	-1.2	122.9	-2.1
30.7	-0.5	81.9	-1.4	133.1	-2.3
41.0	-0.7	92.2	-1.6	143.4	-2.5
51.2	-0.9	102.4	-1.8	153.6	-2.6

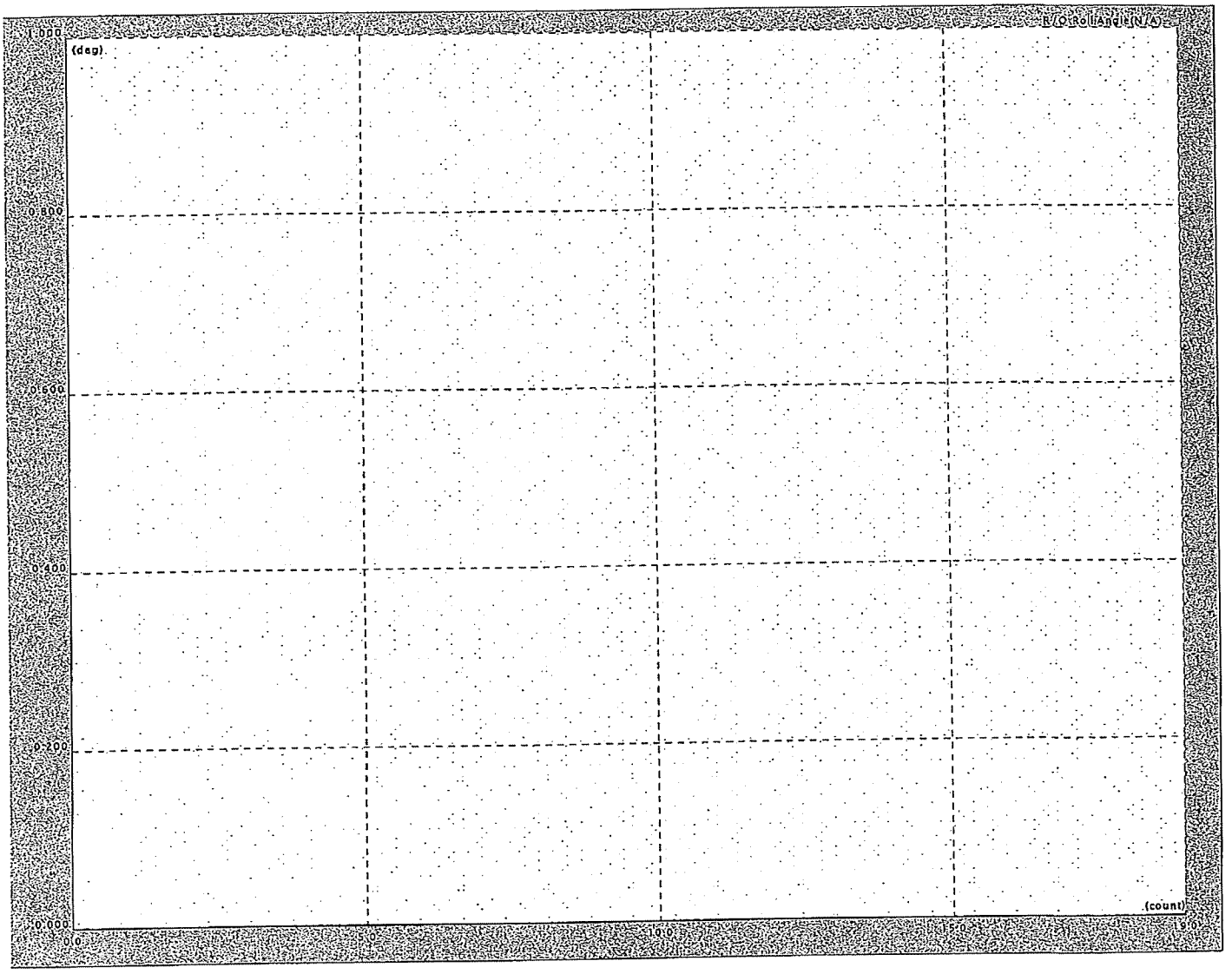
PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR'S	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

Graph Data

Graph Name	R/O Roll Angle(N/A)
Freez Signal	Freeze



R/O Roll Angle(N/A) GWave

count	R/O Roll Angle(N/A)	count	R/O Roll Angle(N/A)
0.0	0.0	19.0	0.0
1.0	0.0		
2.0	0.0		
3.0	0.0		
4.0	0.0		
5.0	0.0		
6.0	0.0		
7.0	0.0		
8.0	0.0		
9.0	0.0		
10.0	0.0		
11.0	0.0		
12.0	0.0		
13.0	0.0		
14.0	0.0		
15.0	0.0		
16.0	0.0		
17.0	0.0		
18.0	0.0		

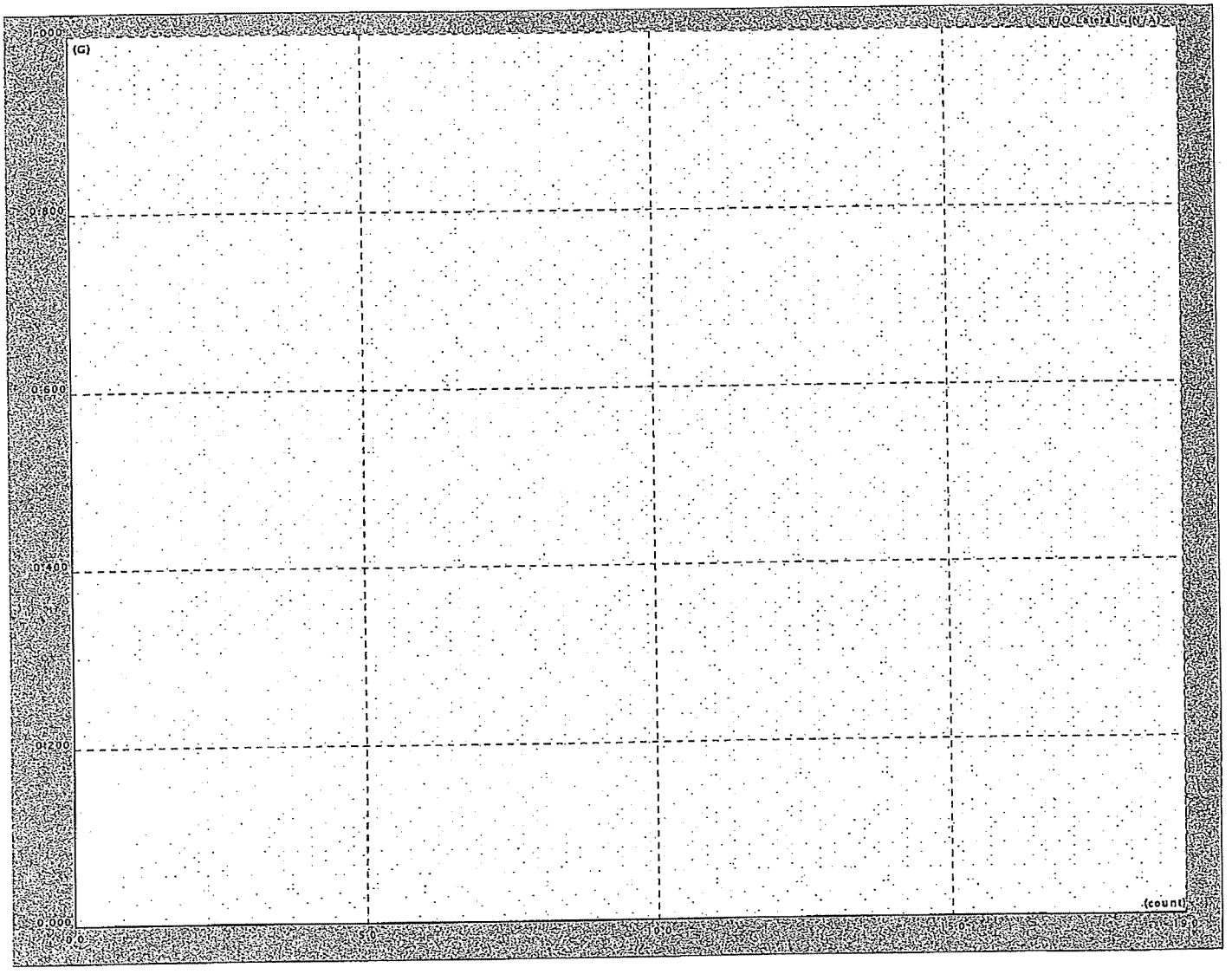
PROTOTYPE READOUT TOOL REPORT

Event Data

INVESTIGATION DATE	01/12/2010
INVESTIGATOR	TMS TAG ODI 001
ACCIDENT DATE	12/26/09
VEHICLE	AVALON TRW
MODEL YEAR	2009 312704748R
VIN NUMBER	4T1BK36B48U278056

Graph Data

Graph Name	R/O Lateral G(N/A)
Freeze Signal	Freeze



R/O Lateral G(N/A) GWave

count	R/O Lateral G(N/A)	count	R/O Lateral G(N/A)
0.0	0.0	19.0	0.0
1.0	0.0		
2.0	0.0		
3.0	0.0		
4.0	0.0		
5.0	0.0		
6.0	0.0		
7.0	0.0		
8.0	0.0		
9.0	0.0		
10.0	0.0		
11.0	0.0		
12.0	0.0		
13.0	0.0		
14.0	0.0		
15.0	0.0		
16.0	0.0		
17.0	0.0		
18.0	0.0		

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RECORDER=EDR
Investigation Date=01/12/2010
Investigator=TMS TAG ODI 001
Accident Date=12/26/09
Vehicle=AVALON TRW
Model Year=2009 312704748R
VIN Number=4T1BK36B48U278056
ECU No=07221
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05=02
06=03
20=80, 00, 00, 01
21=00, 01
40=c0, 00, e0, 01
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42=01
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53=a5
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e0=c0, 10, 00, 00
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e2=00, 5b, 1f, 11, 00
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90=ff, ff, ff, ff, ff, ff, ff, ff, ff, ff, ff, ff, ff, ff, aa, ff

Toyota SRS Airbag Event Data Recorder Readouts

The software and operational information contained in this prototype SRS Airbag Event Data Recorder ("EDR") Readout Tool and Readout Tool Charts plus related data are proprietary information of Toyota Motor Corporation ("TMC") and Toyota Motor Sales, U.S.A., Inc. ("TMS"). Use of this information or tool is restricted to authorized Toyota personnel and may not be transferred without the express authorization of TMC and TMS.

The prototype SRS Airbag EDR Readout Tool being used by TMS for this readout is designed to read certain Toyota and Lexus vehicle SRS airbag EDR memories. The Readout Tool is not a general service tool for SRS airbag system diagnosis or service and is not used by TMS for such purposes.

Note

There is one Toyota SRS Airbag EDR Readout Tool currently used by TMS in the United States and it is a prototype tool which has not been validated. At this time, TMS is aware that there are general limitations to the SRS Airbag EDR memory capabilities such as:

- if power to the SRS Airbag EDR is lost during a crash event, all or part of the crash may not be recorded.
- nondeployment events may be overwritten by subsequent impact events.
- it is possible that the use of this readout tool may alter certain service diagnostic memories in some instances.

In addition to the general limitations, there may also be specific memory capability limitations for some SRS Airbag EDR units and therefore the data should also be independently corroborated, e.g., through physical evidence, other research, etc.

The SRS Airbag EDR Readout Tool Chart data displays the investigator input data and all the data read out from the SRS Airbag EDR module. This data is used by the Readout Tool Chart program to generate the printout charts and this prototype programming may be revised as needed.

TMS will comply with reasonable requests from law enforcement or governmental entities to readout data from SRS Airbag EDRs or perform such readouts as otherwise required by law, e.g., by a court order. However, until the reliability of the SRS Airbag EDR readout tool has been established, it is TMS's policy to refuse other requests from outside entities or individuals to perform readouts of SRS Airbag EDR memory.

March 2007

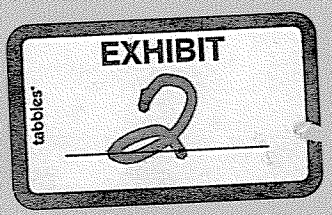
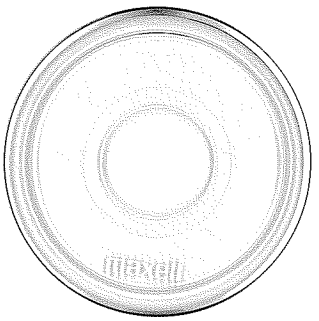


EXHIBIT
tabbies
2

Unintended Acceleration
Avalon *NISM*

CD 1 of 2



Southlake Police Department
Photographs
12-26-2009

TOY-RQ-05E-00010863

TOY-RQ-05E-00010864

AVALON
DXS424

AVALON
TEXAS
DXS 424

TOYOTA
AVALON
TEXAS
DXS•424

COROLLA
ALTIS
DXS 424

TOY-RQ-05E-00010869

TOY-RQ-05E-00010870

TEXAS
DEPARTMENT OF PUBLIC SAFETY
DRIVER LICENSE
CLASS: C DL: 02830994
DOB: 08-06-71 HT: 5-10
EXPIRES: 08-06-12 EYES: BRN
REST: A SEX: F
END:
AKION, WENDY FORTE
195 E ROUND GROVE RD 818
LEWISVILLE TX 75067

TOY-RQ-05E-00010873

TOY-RQ-05E-00010880

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TOY-RQ-05E-00010886

TOY-RQ-05E-00010891

BurneyLane
Lonesome DoveAv

30

TOY-RQ-05E-00010895

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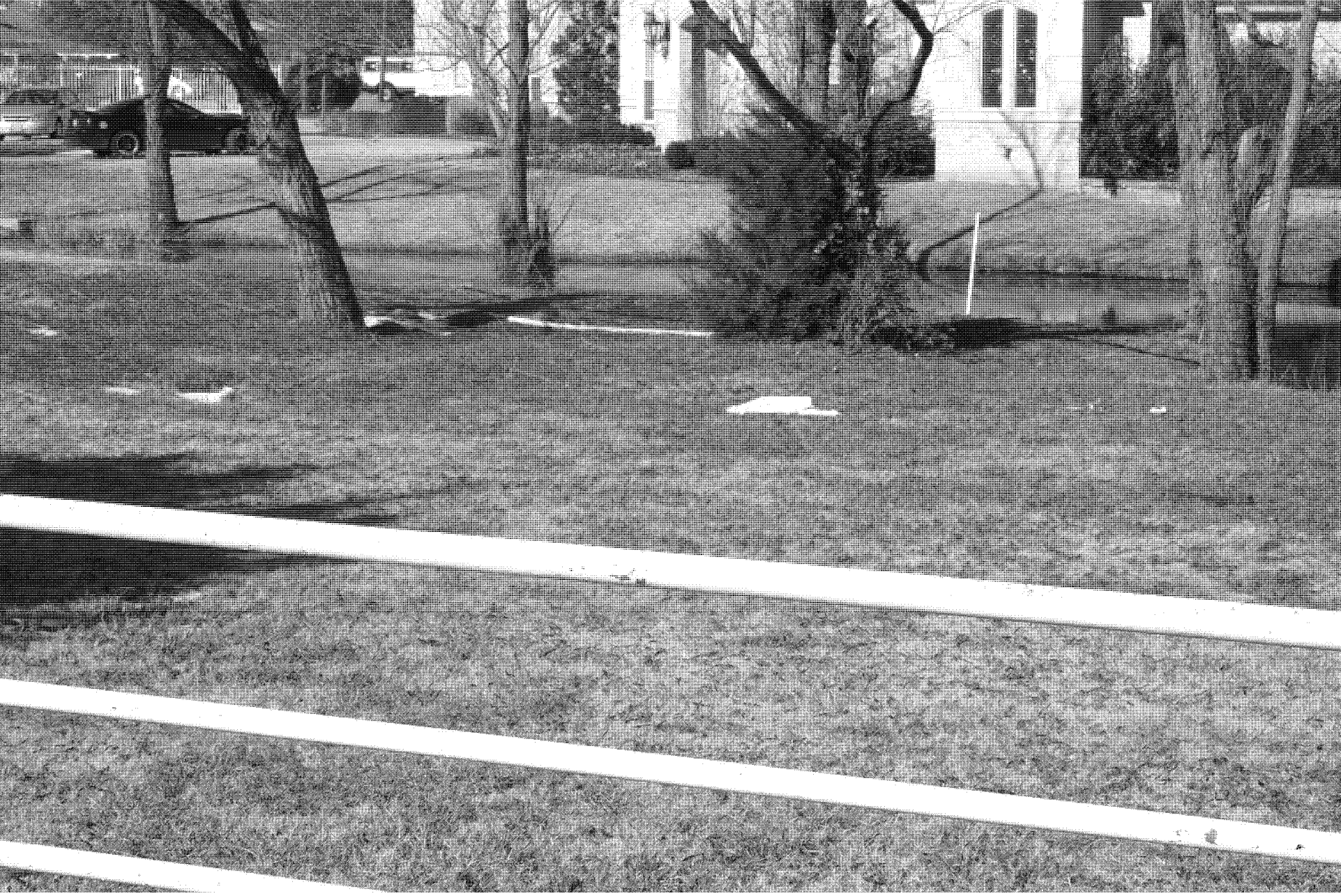
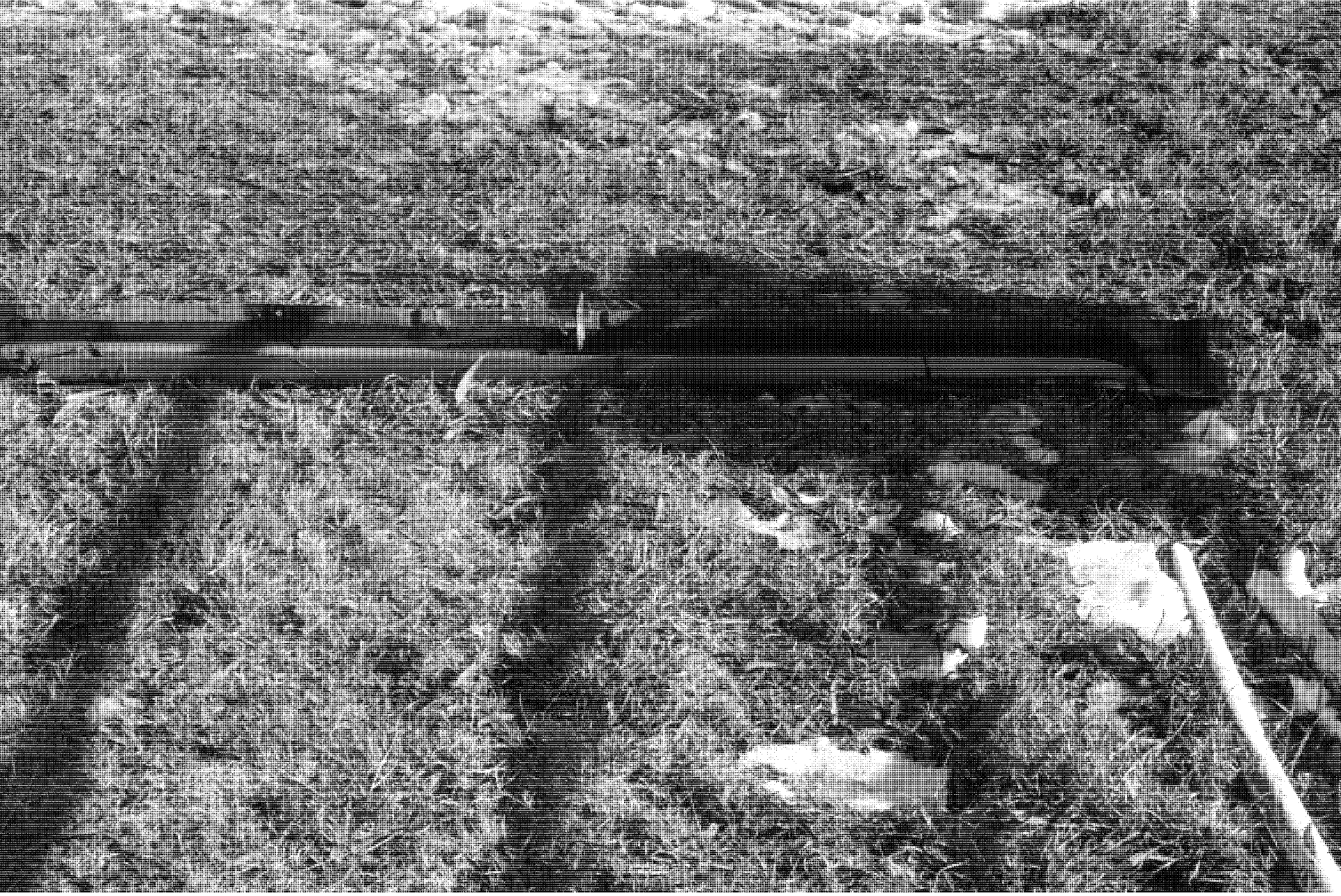
TOY-RQ-05E-00010899

TOY-RQ-05E-00010900



TOY-RQ-05E-00010902

TOY-RQ-05E-00010903



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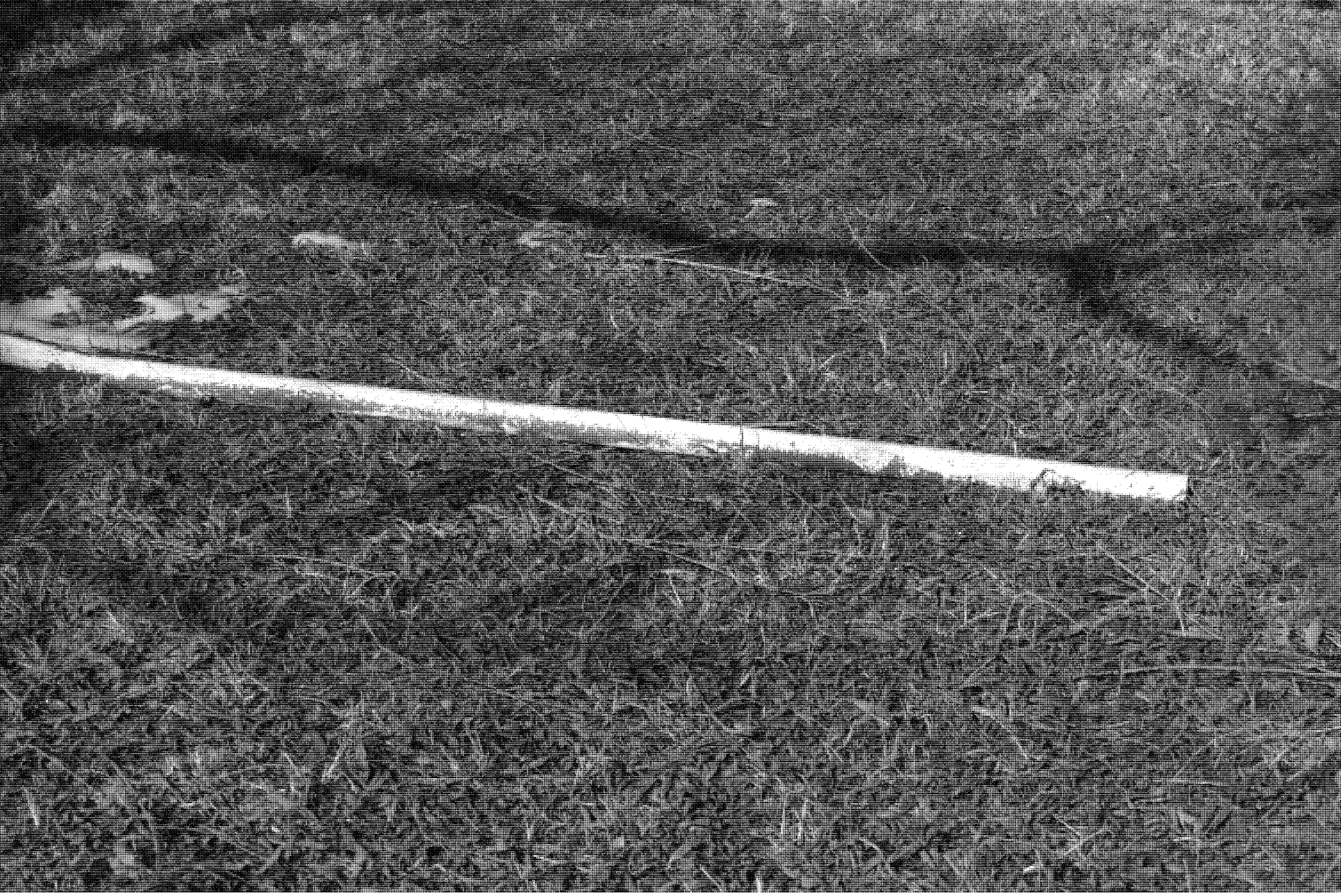

TOY-RQ-05E-00010913

TOY-RQ-05E-00010914

AVALON
DXS 424

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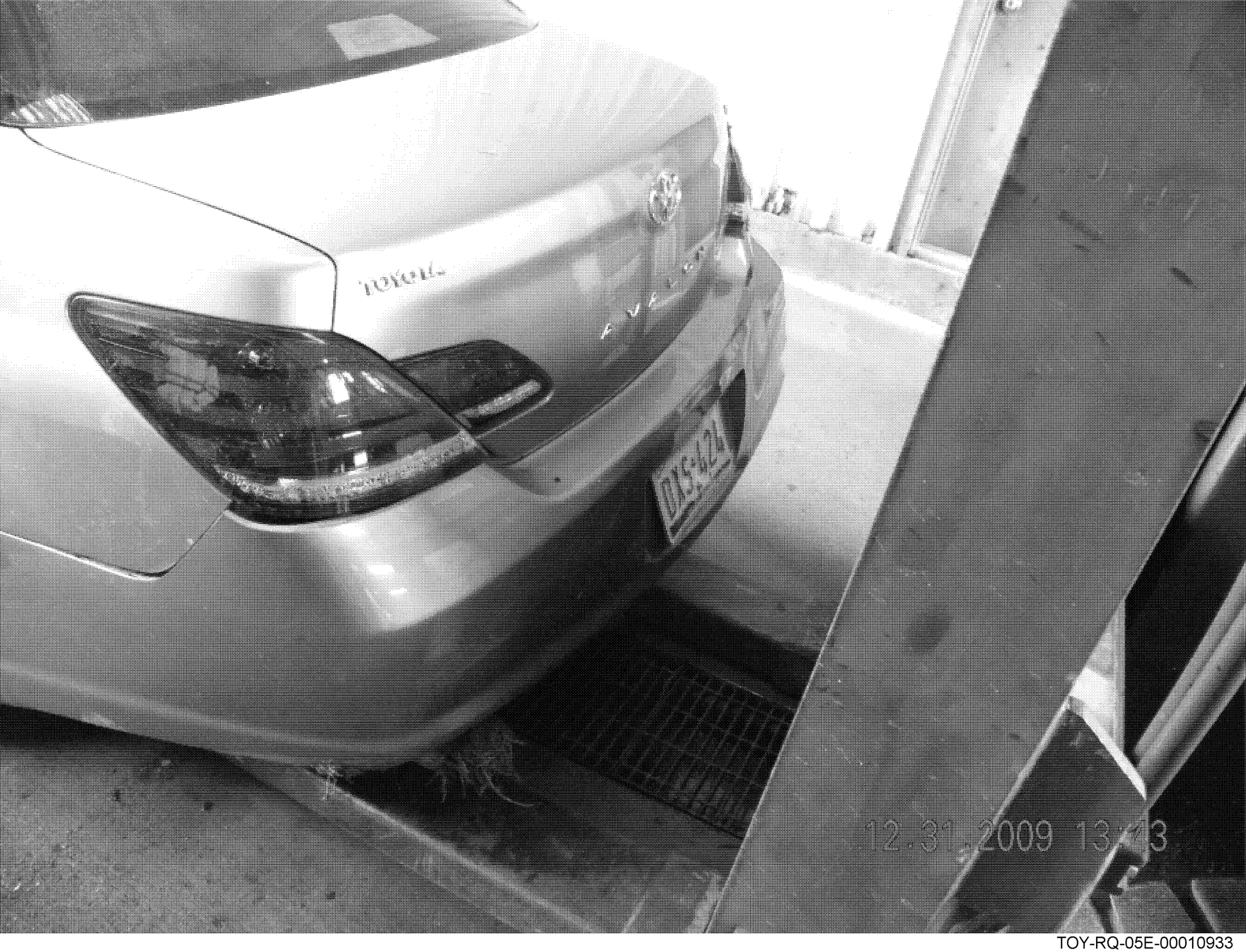
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TOY-RQ-05E-00010934

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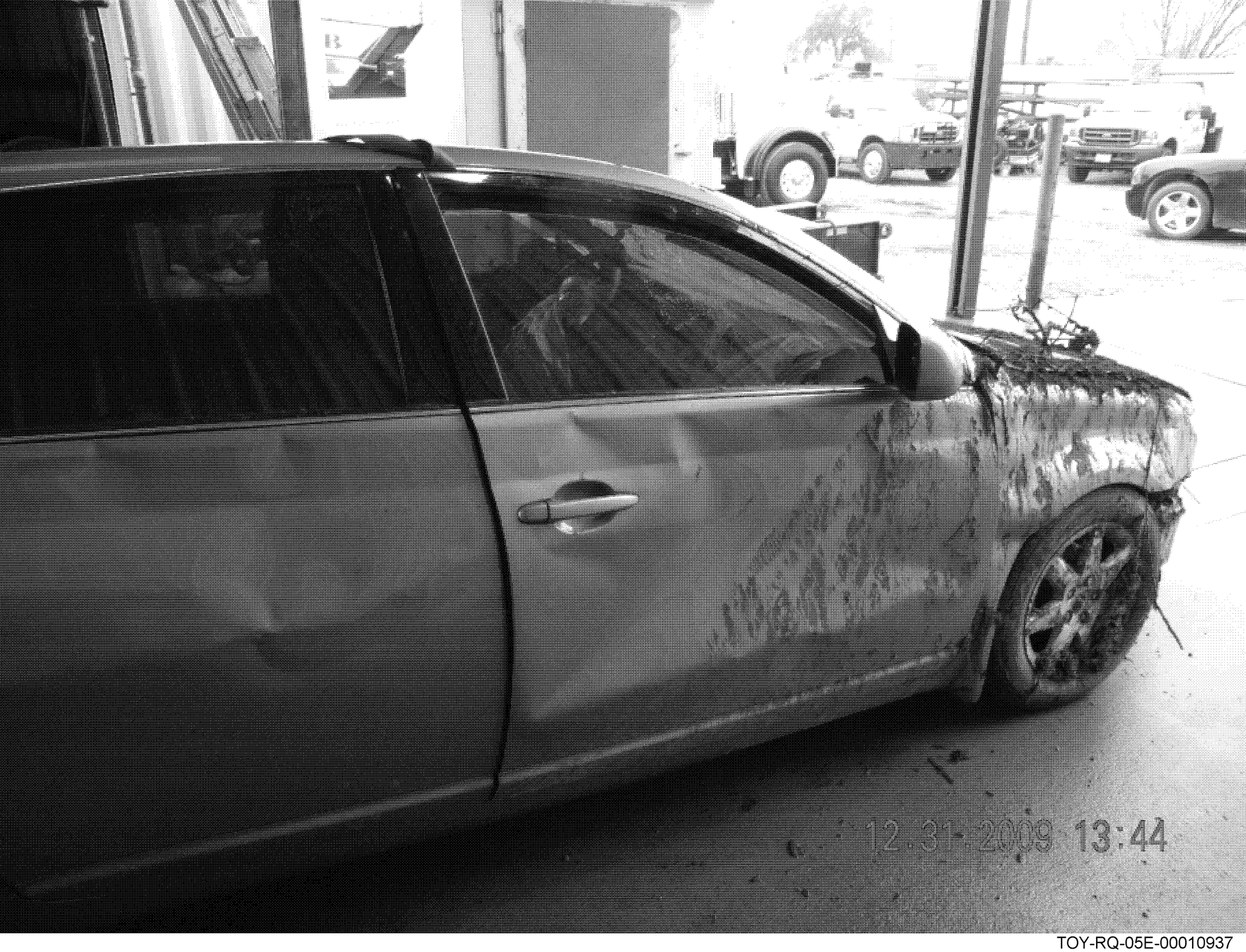
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12 31 2009 13:51

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TOY-RQ-05E-00010949

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TOY-RQ-05E-00010951

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TOY-RQ-05E-00010953

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12.31.2009

TOY-RQ-05E-00010964

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2 31 2009 14:38

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TOY-RQ-05E-00010984

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12/26/2009 12:31

MAY 26 2009 12:32

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12/26/2009 12:34

12/26/2009 12:34

12/25/2009 12:34

12/26/2009 12:34

12/26/2009 12:35

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12/26/2009 12:36

12/26/2009 12:36

12/26/2009 12:37

DXS-424
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12/26/2009 12:48

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12/26/2009 12:51

12/26/2009 12:52

12/26/2009 12:52

12/26/2009 12:52

12/26/2009 12:53

12/26/2009 12:53

12/26/2009 12:54

12/26/2009 12:54

12/26/2009 12:57

12/26/2009 12:57

12/26/2009 13:03

12/26/2009 13:05

12/26/2009 13:27

STOP
12/26/2009 13:27

STOP
12/26/2009 13:27

12/26/2009 13:28

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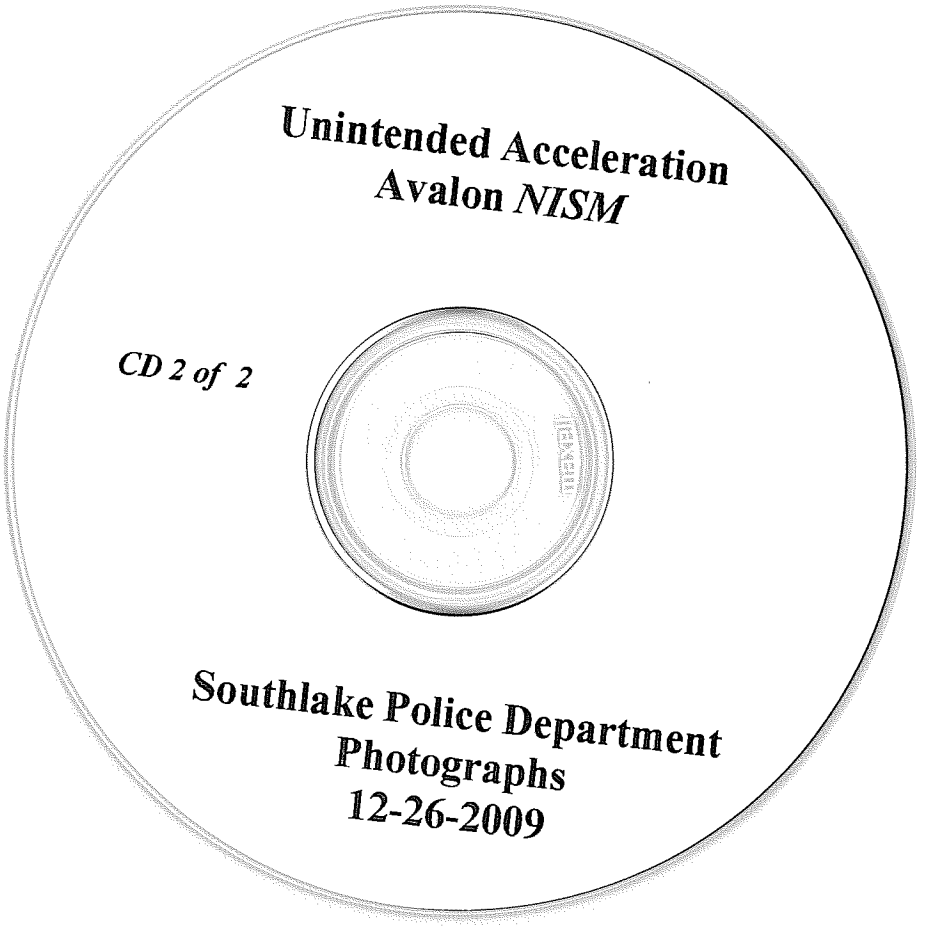
12/26/2009 13:30


Unintended Acceleration
Avalon NISM
CD 2 of 2
Southlake Police Department
Photographs
12-26-2009

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TOY-RQ-05E-00011047

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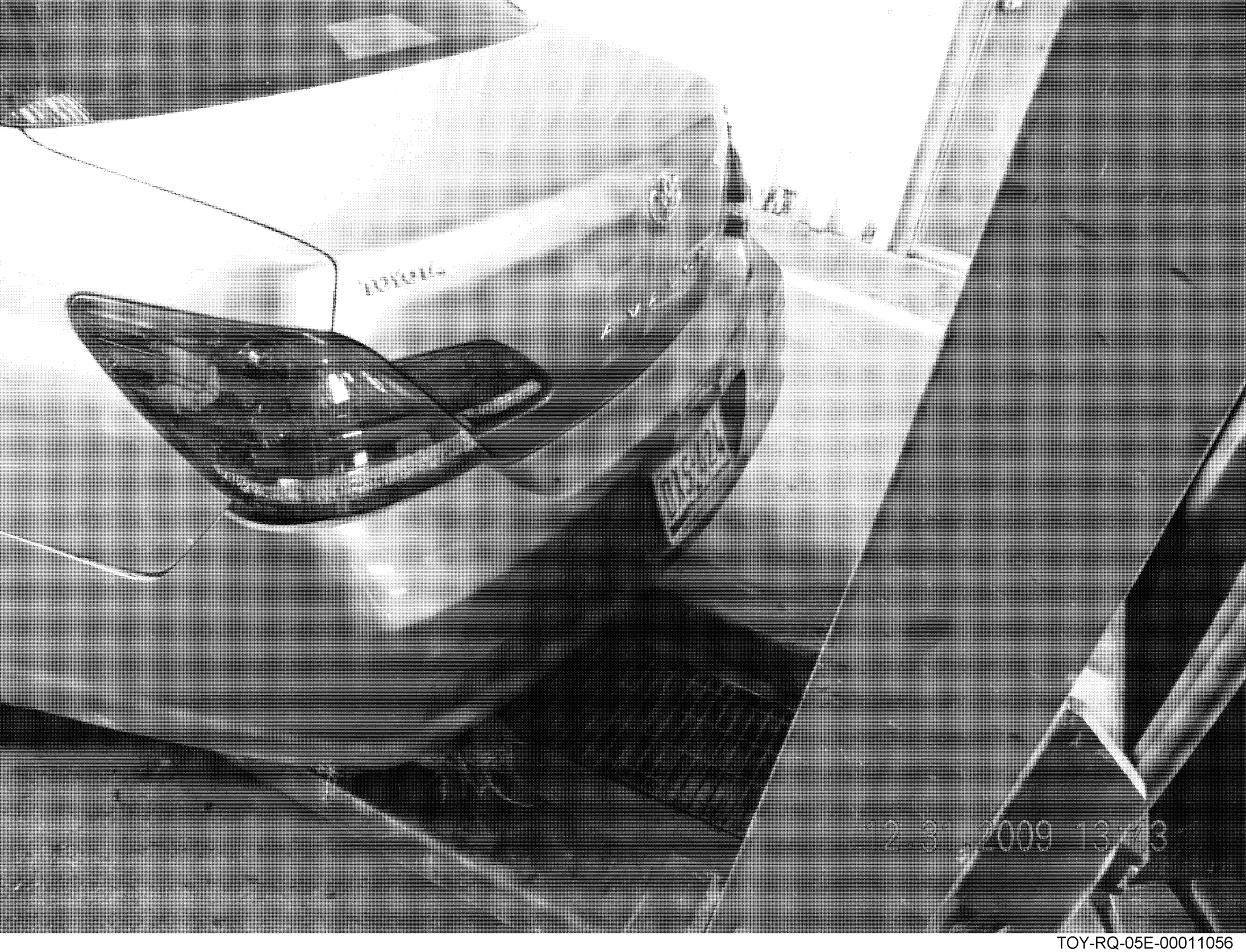
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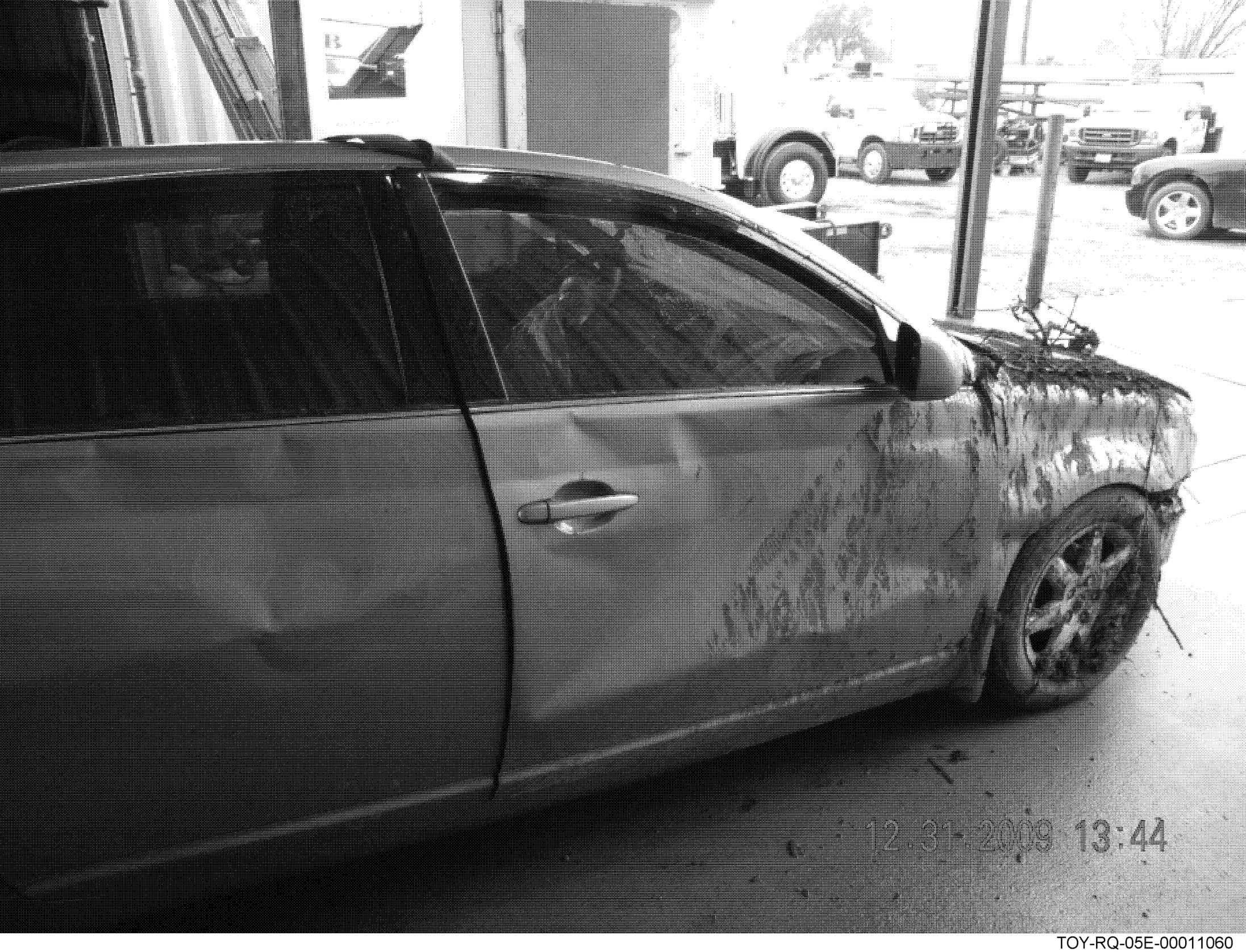
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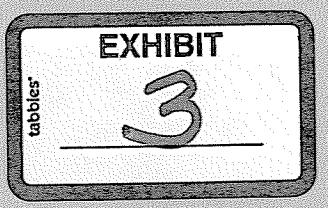
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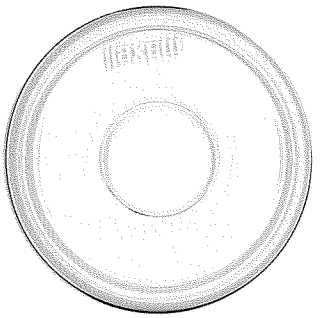

NEWSPAPER & TV ARTICLES
& VIDEOS

Wednesday, Dec. 30, 2009

Four Killed in Southlake Car Accident

Neighbors, Police Brave Frigid Water in Rescue Attempt

By Nicholas Sakelaris
Staff Writer

Several bystanders and two Southlake police officers braved frigid water to rescue a crash victim from a car Saturday morning.

Despite their efforts, none of the car's four occupants survived.

The car, a 2008 Toyota Avalon, careened through a metal fence, smashed into a tree and flipped upside down before landing in a pond near the intersection of Lonesome Dove Road and Burney Lane in north Southlake, said Lt. Ben Brown, of the Southlake Department of Public Safety. The wreck occurred at about 11:20 a.m. Dec. 26, according to Southlake police.

Neighbors heard the impact and came outside to offer assistance, as did a Grapevine couple who was driving by.

"I didn't think about cold water. There were people inside that car who needed to get out," said Michael Juliano, who was the first to jump in. "Everybody was just pitching in to do what they could."

Most of the car was upside down under the murky water, making it difficult to open the doors, Juliano said. They managed to get one car door open and free one of the passengers.

Two Southlake DPS officers arrived on the scene within minutes.

"They were there in the water. No hesitation. They were terrific," Juliano said.

The Grapevine Fire Department's dive team rescued the other three crash victims.

Two of the victims, Monty Hardy, 56 of Southlake, and Hadassah Vance, 35, of Euless, died about an hour after the crash at Baylor Regional Medical Center. The other two, Wendy Akion, 38, of Irving, and Sharon Ransom, 56, of Grapevine, died at the same hospital overnight.

Hardy, the only male in the group, was the driver and owner of the vehicle, Brown said.

The four were doing service work for their church according to Don Smith, a Jehovah's Witness contact person in North Texas.

"I think they were out making return visits," said Smith, who lives in Springtown. The four were members of the congregation of Kingdom Hall of Jehovah's Witness, 3408 Hall-Johnson Road in Grapevine, he said.

Capt. Michael Sims, coordinator of the GFD dive team, was on duty on Dec. 26. He said the team received a call at 11:29 a.m., and arrived at 11:46. He said they were in the water at 11:51 and had the last victim out at 12:05 p.m. Sims said none of the three victims were breathing, but noted that Southlake emergency medical personnel immediately began resuscitation efforts.

"It's standard procedure," Sims said. "Anytime someone is in cold water, there's a chance."

The cause of the accident is still being investigated, according to the Southlake police. There were no skid marks and the road had no signs of ice or snow, Brown said.

Toyota issued a recall on some vehicles in October, including the 2008 Avalon, which may be at risk for possible sudden acceleration as a result of the driver-side floor mat trapping the gas pedal.

"It's too early to tell what caused the accident and we will fully cooperate with the law enforcement investigation," said Brian Lyons, safety and quality communications manager for Toyota sales.

Police officials said they are preparing to request the on-board computer from the wrecked Avalon.

Other models in the recall include other Toyotas and Lexus vehicles. See www.nhtsa.dot.gov for more information on the recall.

Charles D. Young, Scott Price, Larry Roquemore and Bill Miller contributed to this story.

TOY-RQ-05E-00011170

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STAFF WRITER

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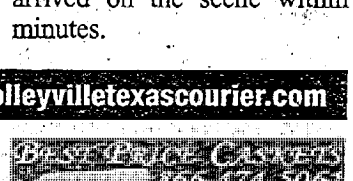

Faith & Worship Directory

ABUNDANT LIFE CHURCH
1520 W. Wall Street
Grapevine
817-329-0454
Sunday Schedule:
Worship: 10:15 am
Bible Study: 9:15 am
CARE Groups (1st & 3rd Sundays): 6:00 pm
Wednesday: Family Night Activities: 7:00 pm

GATEWAY CHURCH
we're all about people
Gateway Church
Southlake Campus
2121E Southlake Blvd.
Southlake, Texas 76092

Gateway Church NRH Campus
7501 Davis Blvd.
North Richland Hills, TX 76180
817-552-3623

GCISD

From 1A

ing was added at the stadium.

Last year, projects were completed at every campus in the district.

In February, the GCISD staff will move back into the administration building that is currently being renovated and expanded, with 70 percent of the project being paid for by the Texas Department of Transportation, which purchased right-of-way for the Texas 26 expansion.

Warner said the work has been done efficiently.

GCISD has now put together a 53-member bond steering committee that will make a recommendation in February about calling a bond election in May. GCISD officials said a

But the district has to give more than $28 million or about 26 percent of the tax revenue, to the state, which is required under the state's school finance plan.

The district had to take about $2.5 million out of reserves this past year, but they had expected it was going to be about $3 million, district officials said. They also said it is likely that they will have to dip into the reserves again in the coming year.

"We have been in a deficit budget the last two years," Waggoner said.

Despite hard times, GCISD has managed to expand its ca-

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BUSINESS DIRECTORY

ATTORNEY
TRAFFIC TICKETS DEFENDED
Southlake, Keller, Colleyville, Grapevine, Arlington, Fort Worth and elsewhere in Tarrant County.
No promises as to results.
Any fine or court costs are not included in fee for legal representation
JAMES R. MALLORY
Attorney at Law

TOY-RQ-05E-00011171

dallasnews
The Dallas Morning News

Comments 44 | Recommend 6

2 killed, 2 hurt after car plunges into pond in Southlake

10:15 PM CST on Saturday, December 26, 2009

By JON NIELSEN / The Dallas Morning News
jnielsen@dallasnews.com

SOUTHLAKE – Two people died and two others were critically injured when the Toyota sedan they were in crashed through a fence and flipped upside down into a frigid Southlake pond.

Witnesses reported that bystanders waded into the 6-foot-deep pond to try to save the victims.

MARK ROGERS/Special COntributor
About 11:20 a.m. Saturday, a Toyota Avalon ran a stop sign, crashed through a fence and bounced off a tree before landing upside down in a pond outside a Southlake home.
View larger More photos Photo store

The Tarrant County medical examiner's office identified the deceased man and woman as Monty Hardy, 56, of Southlake, and Hadassah Vance, 35, of Euless. They were pronounced dead about a minute apart just after 12:30 p.m. at Baylor Regional Medical Center in Grapevine.

Police have not explained how the victims knew each other, and relatives could not be reached for comment.

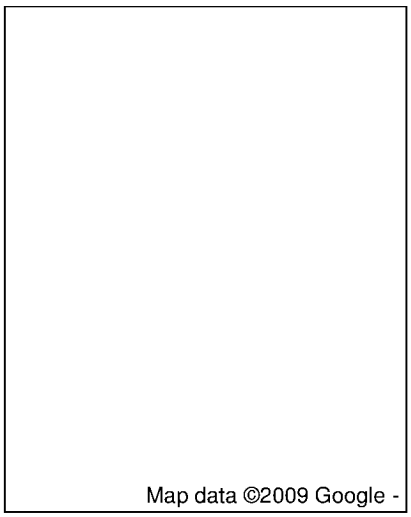
Just before 11:20 a.m. Saturday, the 2008 Toyota Avalon registered to Hardy ran through a stop sign at the intersection of Lonesome Dove Road and Burney Lane, then struck a fence and tree before landing in the pond on the grounds of a mansion.

Southlake officers who arrived three minutes after the accident was reported pulled one victim from the crash. That person was flown to a hospital by helicopter. The Grapevine Fire Department dive

TOY-RQ-05E-00011172

team helped pull out the others, who were transported by ambulance. Rescue crews attempted to resuscitate at least one of the car's occupants.

Officer Roderick Page said traffic investigators couldn't tell whether driver error or a vehicle malfunction could be to blame.



Site of the crash

"We want to cover all angles," he said. "We just don't know."

Investigators are trying to determine whether the crash was caused by a stuck accelerator, a problem that prompted Toyota to recall more than 4 million vehicles this year. Toyota is altering the shape of the accelerator and removing floor padding in several models, including the Avalon, to keep the pedal from becoming snagged on the floor mat.

A *Los Angeles Times* investigation, however, said problems with Toyota's electronic throttle may be responsible for many vehicles suddenly accelerating uncontrollably.

The problem garnered headlines in August, when an off-duty California highway patrol officer and three of his family members were killed in a Lexus ES 350 that suddenly accelerated to more than 100 mph and crashed near San Diego.

In Saturday's incident, the Avalon appeared to have left no skid marks on the road at the "T" intersection. Tire ruts marked the path through the fence and into the pond.

Staff writer Jason Trahan contributed to this report.

TOY-RQ-05E-00011173

dallasnews
The Dallas Morning News

Comments 0 | Recommend 0

Two more victims die from car's plunge into Southlake pond

12:00 AM CST on Monday, December 28, 2009

By STEVE THOMPSON / The Dallas Morning News
stevethompson@dallasnews.com / The Dallas Morning News
Scott Goldstein contributed to this report.

Two more victims of a fatal crash died Sunday morning, raising the death toll to four after their car plunged into a frigid Southlake pond Saturday.

About 11:20 a.m., a Toyota Avalon ran a stop sign, crashed through a fence and bounced off a tree before landing upside down in a pond outside a Southlake home.

Monty Hardy, 56, of Southlake and Hadassah Vance, 35, of Euless both died shortly after the crash. They were pronounced dead about a minute apart just after 12:30 p.m. Saturday at Baylor Regional Medical Center in Grapevine, according to the Tarrant County medical examiner's office.

Wendy Akion, 38, of Irving was pronounced dead at 12:50 a.m. Sunday at the same hospital. Sharon Ransom, 56, of Grapevine was pronounced dead at 4:15 a.m.

The car is registered to Hardy, whose cause of death was ruled as a drowning, the medical examiner's office said Sunday.

The Toyota careened through the stop sign of a "T" intersection of Lonesome Dove Road and Burney Lane. It appeared to have left no skid marks, leading to speculation that the crash was caused by a vehicle malfunction.

Police said the crash was still under investigation and would not comment on any possible cause.

Stuck accelerators have prompted Toyota to recall more than 4 million vehicles this year. Toyota is altering the shape of the accelerator and removing floor padding in several models, including the Avalon, to keep the pedal from becoming snagged on the floor mat.

Also, a *Los Angeles Times* investigation said problems with Toyota's electronic throttle may be responsible for many vehicles suddenly accelerating uncontrollably.

In a statement Sunday, Toyota Motor Sales USA said it is aware of the accident and is awaiting the results of the police investigation.

"Toyota cooperates fully with all investigating and regulatory agencies who request information and data about Toyota vehicles involved in accidents," the statement said. "As with any careful and

TOY-RQ-05E-00011174

comprehensive investigation, proceedings regarding this particular accident must be permitted to take their course without speculation as to the cause."

Staff writer Scott Goldstein contributed to this report.

TOY-RQ-05E-00011175

Comments 0 | Recommend 0

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TOY-RQ-05E-00011176

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Staff writer Scott Goldstein contributed to this report.

TOY-RQ-05E-00011177

Comments 0 | Recommend 0

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TOY-RQ-05E-00011178

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Staff writer Scott Goldstein contributed to this report.

TOY-RQ-05E-00011179

Wednesday, Dec. 30, 2009

Four Killed in Southlake Car Accident

Neighbors, Police Brave Frigid Water in Rescue Attempt

By Nicholas Sakelaris
Staff Writer

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Charles D. Young, Scott Price, Larry Roquemore and Bill Miller contributed to this story.

TOY-RQ-05E-00011180

The Southlake JOURNAL

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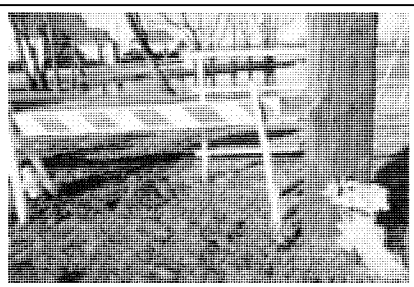


Brandon Wade for the Star-Telegram
Flowers and barricades fill the gap in a fence Monday afternoon after a car crashed and landed upside down in the icy waters of the pond Saturday morning. Four occupants died in the crash, which is being investigated by police. The car is on a safety recall list.

The car, a 2008 Toyota Avalon, careened through a metal fence, smashed into a tree and flipped upside down before landing in a pond near the intersection of Lonesome Dove Road and Burney Lane in north Southlake, said Lt. Ben Brown, of the Southlake Department of Public Safety. The wreck occurred at about 11:20 a.m. Dec. 26, according to Southlake police.

Neighbors heard the impact and came outside to offer assistance, as did a Grapevine couple who was driving by.

"I didn't think about cold water. There were people inside that car who needed to get out," said Michael Juliano, who was the first to jump in. "Everybody was just pitching in to do what they could."

Most of the car was upside down under the murky water, making it difficult to open the doors, Juliano said. They managed to get one car door open and free one of the passengers.

Two Southlake DPS officers arrived on the scene within minutes, too.

"They were there in the water. No hesitation. They were terrific," Juliano said.

The Grapevine Fire Department's dive team rescued the other three crash victims.

TOY-RQ-05E-00011181

Two of the victims, Monty Hardy, 56 of Southlake, and Hadassah Vance, 35, of Euless, died about an hour after the crash at Baylor Regional Medical Center. The other two, Wendy Akion, 38, of Irving, and Sharon Ransom, 56, of Grapevine, died at the same hospital overnight.

Hardy, the only male in the group, was the driver and owner of the vehicle, Brown said.

The four were doing service work for their church according to Don Smith, a Jehovah's Witness contact person in North Texas.

"I think they were out making return visits," said Smith, who lives in Springtown. The four were members of the congregation of Kingdom Hall of Jehovah's Witness, 3408 Hall-Johnson Road in Grapevine, Smith said.

Capt. Michael Sims, coordinator of the GFD dive team, was on duty on Dec. 26. He said the team received a call at 11:29 a.m., and arrived at 11:46. He said they were in the water at 11:51 and had the last victim out at 12:05 p.m. Sims said none of the three victims were breathing, but noted that Southlake emergency medical personnel immediately began resuscitation efforts.

"It's standard procedure," Sims said. "Anytime someone is in cold water, there's a chance."

The cause of the accident is still being investigated, according to the Southlake police. There were no skid marks and the road had no signs of ice or snow, Brown said.

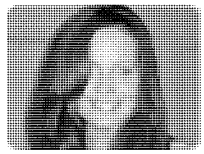
Toyota issued a recall on some vehicles in October, including the 2008 Avalon, which may be at risk for possible sudden acceleration as a result of the driver-side floor mat trapping the gas pedal.

"It's too early to tell what caused the accident and we will fully cooperate with the law enforcement investigation," said Brian Lyons, safety and quality communications manager for Toyota sales.

Police officials said they are preparing to request the on-board computer from the wrecked Avalon.

Models in the recall include other Toyota and Lexus vehicles. For more information, see www.nhtsa.dot.gov.

Charles D. Young, Scott Price, Larry Roquemore and Bill Miller contributed to this story.



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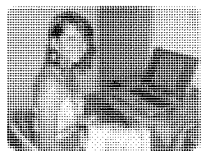

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TOY-RQ-05E-00011182

Star-Telegram

2 dead, 2 hospitalized after car flips into Southlake pond

Posted Saturday, Dec. 26, 2009

By MITCH MITCHELL
mitchmitchell@star-telegram.com

SOUTHLAKE — Two people are dead and two more are in the hospital in critical condition Saturday after their car smashed through a metal pipe fence and hit a tree before flipping over into a pond, trapping the passengeres inside, witnesses and Southlake officials said.

Monty Hardy, 56, of Southlake, and Hadassah Vance, 35, of Euless, were pronounced dead about 12:40 p.m. at Baylor Regional Medical Center at Grapevine, according to the Tarrant County Medical Examiner's Web site.

A cause of death had not been determined for either person.

The accident took place at about 11:20 a.m. when the car carrying the four people drove through the intersection of Lonesome Dove Road and Burney Lane and landed upside down in the pond, where the water is about six feet deep, the Southlake Department of Public Safety reported.

There weren't any skid marks on the roadway and ruts in the dirt showed the path of the car into the pond.

A woman who identified herself as the owner of the property where the wreck occurred said her son heard a loud noise and ran outside. He saw one woman standing in the street yelling and the small car overturned in the water.

"My husband jumped in and was able to free a woman passenger and then he went to the other side, but he could not get the door open," the woman said. "It was awful, heartbreaking. Not something that you'd expect on the day after Christmas."

The person freed by rescuers from the four-door vehicle was taken to an area hospital by helicopter ambulance.

The Grapevine Fire Department dive team was called in and they freed three other people from the vehicle. The other victims were taken to a hospital by ambulance, officials said.

Details on the accident, including a description of the vehicle and the names of injured passengers, were not being released as officials investigate the incident and notify family members, the release said.

Looking for comments?

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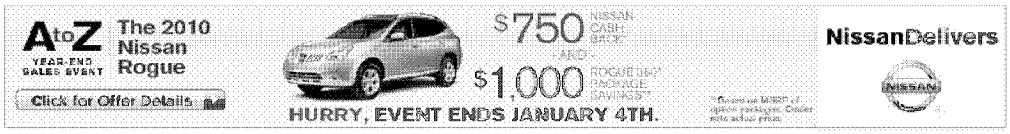

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2 are dead, 2 gravely injured after car lands in pond upside down

Posted Saturday, Dec. 26, 2009 Comments (4) Recommend (6) Print Share Buzz up! Reprints

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BY MITCH MITCHELL
mitchmitchell@star-telegram.com

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SOUTHLAKE — Two people are dead and two are in the hospital in critical condition Saturday after their car smashed through a metal pipe fence and hit a tree before flipping over into a pond in Southlake, trapping the people inside, witnesses and Southlake officials said.

Monty Hardy, 56, of Southlake and Hadassah Vance, 35, of Euless were pronounced dead at about 12:40 p.m. at Baylor Regional Medical Center at Grapevine, according to the Tarrant County medical examiner's Web site.

A cause of death had not been determined for either person.

The accident took place about 11:20 a.m. when the small, four-door car drove through the intersection at Lonesome Dove Road and Burney Lane and landed upside down in the pond, where the water is about 6 feet deep, the Southlake Department of Public Safety reported.

There weren't any skid marks on the roadway, and ruts in the dirt showed the path of the car into the pond.

A woman who identified herself as the owner of the property where the crash occurred said her son heard a loud noise and ran outside. He saw one woman standing in the street yelling and the car in the water.

"My husband jumped in and was able to free a woman passenger, and then he went to the other side, but he could not get the door open," the woman said. "It was awful, heartbreaking. Not something that you'd expect on the day after Christmas."

The person freed by the man was taken to an area hospital by helicopter ambulance.

The Grapevine Fire Department dive team freed the three other people. They were taken to a hospital by ambulance, officials said.

Details, including a description of the vehicle and the names of injured passengers, were being withheld as officials investigate and as they notify relatives, a release said.

MITCH MITCHELL, 817-390-7752

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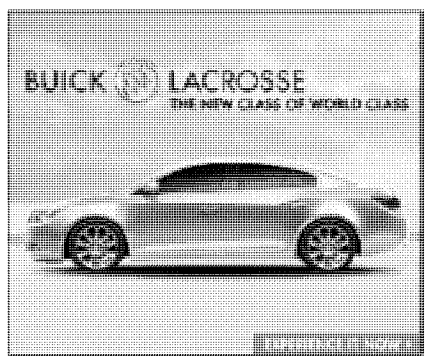

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Star-Telegram

TOY-RQ-05E-00011185

Star-Telegram

Death toll in Southlake wreck rises to four

Posted Sunday, Dec. 27, 2009

BY MIKE LEE
mikelee@star-telegram.com

Four people have now died after the car they were riding in Saturday crashed through a pipe fence and overturned in a pond in Southlake. The cause of the accident is still under investigation.

Wendy Akion, 38, of Irving, and Sharon Ransom, 56, of Grapevine, died overnight at a Grapevine hospital, according to the Tarrant County medical examiner's office.

The other two occupants of the car, identified as Monty Hardy, 56, of Southlake, and Vance Hadassah, 35, of Euless, were pronounced dead Saturday, authorities said.

The four were riding in a small car at about 11:20 a.m. Saturday when the vehicle went through a fence at the intersection of Lonesome Dove Road and Burney Lane, and flipped over in about six feet of water, police said.

A nearby resident freed one of the victims, but could not get anyone else out of the car, police and witnesses said. The Grapevine Fire Department's dive team retrieved the other three victims.

Officer Roderick Page, a spokesman for the Southlake Department of Public Safety, said investigators are still trying to piece together what happened.

"There's nothing at this point that leads us to believe alcohol was involved," he said.

Page said the car involved was a Toyota Avalon, one of the cars that was subject to a safety warning in the fall. The floormats can interfere with the accelerator pedal, causing the throttle to stick open, according to the National Highway Transportation Safety Administration.

Toyota began recalling Avalons, Camrys and other models and replacing the floormats and accelerator pedals. The company also plans to start installing overrides that disconnect the throttle when the brake pedal is depressed.

Page said it's too early to tell if the floormats contributed to the accident.

TOY-RQ-05E-00011186

Star-Telegram

Police still investigating accident that killed 4

Posted Sunday, Dec. 27, 2009

The Associated Press

SOUTHLAKE, Texas — --Police in a suburb of Dallas and Fort Worth say they are continuing to investigate a weekend car accident that killed four when the vehicle crashed through a fence and hit a tree before landing upside down in a pond.

Southlake police Officer Roderick Page said Monday that accident investigators could take up to 10 days to finish a report on the Saturday crash. The crash killed a 56-year-old man and woman, a 38-year-old woman and a 35-year-old woman.

The car was a 2008 Toyota Avalon, among the models recalled last month over concerns about gas pedals getting stuck on floor mats and causing sudden acceleration. Pages says he does not know if the owner had taken the car in for repairs or adjustments.

Looking for comments?

TOY-RQ-05E-00011187

Star-Telegram

In Southlake accident, all 4 occupants of car have died

Posted Monday, Dec. 28, 2009

BY MIKE LEE
mikelee@star-telegram.com

All four people traveling in a car that overturned in a Southlake pond Saturday have died.

Wendy Akion, 38, of Irving and Sharon Ransom, 56, of Grapevine died overnight at a Grapevine hospital, authorities said.

The other two occupants, identified as Monty Hardy, 56, of Southlake and Vance Hadassah, 35, of Euless, were pronounced dead Saturday, authorities said. The four were riding in a Toyota Avalon at about 11:20 a.m.

Saturday when the car went through a pipe fence at Lonesome Dove Road and Burney Lane, hit a tree and flipped over in about 6 feet of water, witnesses and police said.

Avalons are among the millions of Toyotas subject to a recall. The floor mats can interfere with the accelerator pedal, federal officials say.

Police said it's too early in the investigation to say what contributed to the accident.

Looking for comments?

TOY-RQ-05E-00011188

Star-Telegram

Southlake police hope to examine car's computer in fatal crash

Posted Tuesday, Dec. 29, 2009

BY BILL MILLER, NICHOLAS SAKELARIS AND SCOTT PRICE
wmiller@star-telegram.com

Police are hoping to examine the onboard computer from a 2008 Toyota Avalon to see if it contains information about why the car careened into a pond in Southlake, killing four people.

The wreck happened about 11:20 a.m. Saturday when the car smashed through a fence at Lonesome Dove Road and Burney Lane, hit a tree and flipped over in about six feet of water, police said. Officers could find no skid marks on the road, and they said alcohol and drugs were not a factor.

The crash killed a man and three women, all Jehovah's Witnesses who attended the same worship hall in Grapevine and were traveling to door-to-door ministries in the neighborhood.

The four were doing service work for their church, said Don Smith, a Jehovah's Witness contact person in North Texas.

"I think they were out making return visits," said Smith, who lives in Springtown.

The 2008 Avalon was among the models recalled last month over concerns about gas pedals getting stuck on floor mats and causing sudden acceleration.

Lt. Ben Brown, a Southlake police spokesman, said Tuesday that investigators will check to see if there was a problem with the floor mat, although that might be hard to do.

"Frankly, after the car being upside down and immersed in water, I don't know if everything will be in the same place as it was during the first event of the accident," Brown said. "So, they may not be able to tell if the floor mat contributed."

The computer, however, may give other clues, but police worry that they do not have the technology they need to access that system's data, Brown said.

"With it, we can capture certain data, especially pre-crash event data," Brown said. "Once (investigators) do that, they will know if there was acceleration, braking, and what the speed was prior to impact."

All four people in the car drowned, according to the Tarrant County medical examiner's office. All four were wearing seatbelts, which might have made it more difficult for them to get out, Brown said.

Two of the victims, Monty Hardy, 56, of Southlake, the driver, and Hadassah Vance, 35, of Euless, died at Baylor Regional Medical Center about an hour after the crash.

Vance is listed as a branch manager for First American Title Insurance. Hardy had a masonry business, according to public records.

Earlier media reports indicated that the car was registered to Hardy. Brown said Tuesday that he could not confirm that.

The other two, Wendy Akion, 38, of Irving, and Sharon Ransom, 56, of Grapevine, died at the same hospital overnight.

Police do not believe that a medical condition contributed to the crash, nor do they blame the weather. Christmas Eve snow had left icy patches on some area roads.

"The intersection wasn't covered with ice; it was clear," Brown said.

Brian Lyons, safety and quality communications manager for Toyota sales, said the company will fully cooperate with investigators. But, he added, "it's too early to tell what caused the accident."

Other models in the recall include other Toyotas and Lexus vehicles. See nhtsa.dot.gov for more information on the recall.

Several bystanders and two Southlake police officers braved frigid water as they tried to reach the four victims.

The Avalon slammed through the metal fence, smashed into a tree and flipped upside down before landing in a pond, reports said.

Neighbors heard the impact and came outside to offer assistance, as did a Grapevine couple who happened to be driving by.

"I didn't think about cold water. There were people inside that car who needed to get out," said Michael Juliano, who was the first to jump in. "Everybody was just pitching in to do what they could."

TOY-RQ-05E-00011189

Most of the car was upside down under the murky water, making it difficult to open the doors, Juliano said. Two Southlake Department of Public Safety officers arrived on the scene within minutes and were able to free one of the passengers, Brown said.

The Grapevine Fire Department's dive team rescued the other three crash victims.

Capt. Michael Sims, who is the coordinator of the Grapevine Fire Department Dive Team, was on duty Dec. 26. He reported that the Fire Department was called to help at 11:29 a.m., and arrived at 11:46 a.m.

He said they were in the water at 11:51 a.m. and had the last victim out at 12:05 p.m. Sims said none of the three victims were breathing, and said the Southlake emergency medical personnel immediately began resuscitation efforts.

"Anytime someone is in cold water, there's a chance," Sims said.

Juliano said he was very impressed by the quick responses from Southlake and Grapevine police and firefighters.

"They were there in the water. No hesitation. They were terrific," he said. "Nobody could really be ready for this type of situation."

Staff writers Charles D. Young and Larry Roquemore contributed to this report.

Looking for comments?

TOY-RQ-05E-00011190

Star-Telegram

Southlake police hope car's computer can yield clues to crash that killed 4

Posted Wednesday, Dec. 30, 2009

BY BILL MILLER AND NICHOLAS SAKELARIS
wmiller@star-telegram.com

SOUTHLAKE — Investigators hope to analyze data from the onboard computer of a wrecked 2008 Toyota Avalon to see whether they can learn why the car veered off a road, flipped and landed in a pond Saturday morning, killing all four people inside.

The Avalon was among the vehicle models recalled last month because of concerns about the gas pedal getting stuck on the floor mat, causing sudden acceleration.

Lt. Ben Brown, a Southlake police spokesman, said Tuesday that investigators will try to determine whether the floor mat was involved but that it might be difficult.

"Frankly, with the car being upside-down and immersed in water, I don't know if everything will be in the same place as it was during the first event of the accident," Brown said.

The computer, however, might yield clues.

"We can capture certain data," Brown said, including "acceleration, braking and what the speed was prior to impact."

Monty Hardy, 56, of Southlake, the driver, and Hadassah Vance, 35, of Euless, were pronounced dead at Baylor Regional Medical Center at Grapevine about an hour after the crash, which occurred about 11:20 a.m. Saturday.

Wendy Akion, 38, of Irving and Sharon Ransom, 56, of Grapevine, died at the same hospital overnight, authorities said.

They all attended Kingdom Hall of Jehovah's Witnesses, 3408 Hall-Johnson Road in Grapevine, and were doing service work for the church, said Don Smith, a spokesman for Jehovah's Witnesses in North Texas.

"I think they were out making return visits," said Smith, of Springtown.

All four drowned, according to the Tarrant County medical examiner's office.

Immediate rush to aid

The Avalon went out of control near Lonesome Dove Road and Burney Lane, slammed through a metal fence and turned over in about 6 feet of water in the pond in the 2800 block of Lonesome Dove, police have said.

No skid marks were on the road, investigators have said. Alcohol and drug use has been ruled out as a factor in the crash, as has the weather, despite the storm two days earlier, Brown said.

"The intersection wasn't covered with ice — it was clear," he said.

People in nearby houses rushed outside when they heard the noise. A Grapevine couple driving by also stopped to help.

"I didn't think about cold water. There were people inside that car who needed to get out," said property owner Michael Juliano, who jumped in the pond. "Everybody was just pitching in to do what they could."

Most of the car was upside-down under the murky water, making it difficult to open the doors, Juliano said. They managed to get one door open and to pull one person out, he said.

Two Southlake Department of Public Safety officers arrived within minutes, Juliano said. "They were there in the water. No hesitation. They were terrific," he said.

The Grapevine Fire Department's dive team arrived at 11:46 a.m. and had the last person out at 12:05 p.m., said Capt. Michael Sims, the team's coordinator.

Southlake emergency medical personnel immediately began working to resuscitate the last three pulled out, Sims said.

"Anytime someone is in cold water, there's a chance," he said.

A Toyota spokesman said the company will cooperate fully with investigators.

Staff writers Mitch Mitchell, Scott Price, Larry Roquemore and Charles D. Young contributed to this report.

TOY-RQ-05E-00011191

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TOY-RQ-05E-00011192

4 Die in Upside-down Car in Pond

Advertisement

Updated: Monday, 28 Dec 2009, 11:17 AM CST

Peter Daut
FOX 4 News

SOUTHLAKE, Texas - Members of the Southlake community are mourning four people **killed in a weekend car crash** . Two of the victims died Saturday and the remaining couple died Sunday.

All four people were pulled from a Toyota sedan that landed upside down in a pond at about 11:20 a.m. Saturday morning, near the intersection of Lonesome Dove Road and Burney Lane.

Investigators said the car drove through the intersection and a fence, before landing in the body of water, which is approximately 6 feet deep.

Southlake DPS officers and the Grapevine Fire Department braved the frigid water to free all four trapped victims.

The deceased have been identified as:

- Monty Hardy, 56, of Southlake
- Hadassah Vance, 35, of Euless
- Wendy Akion, 38, of Irving
- Sharon Ransom, 56, of Grapevine

It was not clear what caused the crashed but an investigation was ongoing. In particular, detectives were exploring the possibility that the vehicle's accelerator pedal was stuck.

Toyota **recently recalled millions of vehicles** because of that issue.

TOY-RQ-05E-00011193

the33tv.com /news/kdaf-south-lake-axdt-story,0,6514693.story

KDAF

Four Dead in Holiday Accident

Havonnah Johnson

The 33 News

December 26, 2009

Southlake- Four people were in a Sudan traveling on Lake and Burney when the car spun out of control, rammed through an iron fence then landed upside down in a lake.

The lake is behind a private residence. The homeowner heard the crash and dove in the six-foot lake in an effort to save lives. Police said 56-year old Monty Hardy and 35-year old Hadassah Vance died at Baylor Medical Saturday. The other two accident victims also died. Southlake homeowners believe speed caused the wreck. Police won't confirm the cause but are investigating.

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TOY-RQ-05E-00011194

WFAA.com
DALLAS/ FORT WORTH | WFAA-TV

Police still investigating crash that killed four

by WFAA-TV & THE ASSOCIATED PRESS

Posted on December 28, 2009 at 11:56 AM

Updated Monday, Dec 28 at 5:43 PM

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SOUTHLAKE, Texas - Police in Southlake say they are continuing to investigate a weekend car accident that killed four when the vehicle crashed through a fence and hit a tree before landing upside down in a pond.

Southlake police Officer Roderick Page said Monday that accident investigators could take up to 10 days to finish a report on the Saturday crash. All four killed in the crash were Jehovah's Witnesses riding together to promote their faith.

Monty Hardy, 56, of Southlake and Hadassah Vance, 35, of Euless, died at Baylor Regional Medical Center in Grapevine on Saturday.

Wendy Akion, 38, of Irving and Sharon Ransom, 56, of Grapevine, died early Sunday morning at the same hospital.

The car all four were inside at the time of the crash was a 2008 Toyota Avalon, which was among the models recalled last month over concerns about gas pedals getting stuck on floor mats and causing sudden acceleration. Page said he does not know if the owner had taken the car in for repairs or adjustments.

Toyota recalled four million cars.

Investigators said the driver - Hardy - drowned, which challenged any theory he might have suffered an illness behind the wheel.

"She will be missed, and it is a bitter loss," said Judah Vance, Hadassah's brother.

TOY-RQ-05E-00011195

Hadassah Vance was a single mother who worked at a title company. Family members described her as generous and hard working. She had recently bought her mother, Lue Jones, a car.

"Dad left us when they were teenagers," Jones said. "She said, 'Mom, you'll never have to work.' She kept that word as a teenager. She's a very giving person."

"If there was a core to this family, she was the core," said Benjamin Vance, Hadassah's brother. "So, the core is gone."

WFAA-TV's Jonathan Betz contributed to this report

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TOY-RQ-05E-00011196

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TAC NAME: DAVID CHILDS
DATE: 02/26/2008
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EMPLOYEE ID: 01M2448

EFFECTIVE DATE: 02/09/2008
EXPIRATION DATE: 1/2009
TRANSACTION ID: 05734139502092340
FORM 31 NO: A717385

OWNER NAME AND ADDRESS
MONTY M HARDY
1100 N SHADY OAKS DR
SOUTHLAKE, TX 76092

REGISTRATION CLASS: PASSENGER-LESS/EQL 6000
PLATE TYPE: PASSENGER PLT
ORGANIZATION:
STICKER TYPE: WS

VEHICLE IDENTIFICATION NO: 4T1BK36B48U278056 VEHICLE CLASSIFICATION: PASS
YR/MAKE: 2008/TOYT MODEL: UTS BODY STYLE: 4D UNIT NO:
EMPTY WT: 3600 CARRYING CAPACITY: 0 GROSS WT: 3600 TONNAGE: 0.00 TRAILER TYPE:
BODY VEHICLE IDENTIFICATION NO: TRAVEL TRLR LNG/WDTH: 0
PREV OWNER NAME: TOYOTA OF IRVING, INC PREV CITY/STATE: IRVING, TX

INVENTORY ITEM(S)	YR
PASSENGER PLT	
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WINDSHIELD STICKER	2009
VEHICLE RECORD NOTATIONS	
RELEASE OF PERSONAL INFO RESTRICTED	
ACTUAL MILEAGE	

FEES ASSESSED		
TITLE APPLICATION FEE	$	13.00
TERP FEE	$	20.00
SALES TAX FEE	$	1,974.25
WINDSHIELD STICKER	$	58.50
REG FEE-DPS	$	1.00
REFLECTORIZATION FEE	$	0.30
CNTY ROAD BRIDGE ADD-ON FEE	$	10.00
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TOTAL	$	2,078.05

ODOMETER READING: 36 BRAND: A
OWNERSHIP EVIDENCE: MANUFACTURER'S CERT. OF ORIGIN
1ST LIEN DATE: 02/09/2008
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2ND LIEN

3RD LIEN

SALES TAX CATEGORY: SALES/USE

Sales Tax Date:	02/09/2008	
Sales Price	$	31,586.00
Less Trade In Allowance	$	0.00
Taxable Amount	$	31,586.00
Sales Tax Paid	$	1,974.25
Less Other State Tax Paid	$	0.00
Tax Penalty	$	0.00
TOTAL TAX PAID	$	1,974.25

Batch No: 3413950201 Batch Count: 34

CERTIFICATE OF TITLE WILL BE MAILED TO 1st LIENHOLDER

ORIGINAL
VTR-500-RTS (REV. 7/2006) CHT157490

SPECIAL INSTRUCTIONS:

Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax

1. DATE OF RECEIPT: 2/9/2008	2.	3. EXPIRES LAST DAY OF: MONTH 01 YEAR 2009	12. TEXAS LICENSE PLATE NO.: DXS424	A717385
4. ☐ TRANSFER OF CURRENT REGISTRATION ☐ REGISTRATION FEE PAID-NO PLATES ISSUED ☒ REGISTRATION FEE PAID-NEW PLATES ISSUED			13. REG. CLASS: 25	14. TONNAGE	15. EMPTY WEIGHT: 3600
5.	6. PREVIOUS TEXAS LICENSE PLATE NO.		16. CARRYING CAPACITY	17. GROSS WEIGHT: 3600	18. DIESEL FEE
7. OWNER (NAME AND MAILING ADDRESS): MONTY M HARDY 1100 N SHADY OAKS DR SOUTHLAKE, TX 76092			19. YEAR: 2008	20. MAKE: TOYT	21. MODEL: AVA	22. BODY STYLE: 4D
			23. VEHICLE IDENTIFICATION NUMBER (VIN): 4T1BK36B48U278056			
			24. ODOMETER: 36	25. BRAND: A	26. SURRENDERED TITLE NUMBER: NONE	
8. 1st LIENHOLDER (NAME AND MAILING ADDRESS): TOYOTA MOTOR CREDIT CORP PO BOX 105386 ATLANTA,GA 30348 DATE OF LIEN 2/8/2008			27. ☐ $30.00 NEW RESIDENT ☐ $5.00 EVEN TRADE ☐ $10.00 GIFT ☐ $35.00 REBUILT SALVAGE ☐ 2.5% EMISSIONS FEE ☐ 2% EMISSIONS FEE ☐ EXEMPT		28. SALES PRICE: 31588.00	
			29. TRADE-IN: 0.00	30. REBATE: 0.00	31. TAXABLE VALUE: 31588.00	
			32. SALES TAX: 1974.25	33. PENALTY: 0.00	34. TOTAL REG. TRANS. FEE: 59.80	
9. 2nd LIENHOLDER (NAME AND MAILING ADDRESS): NONE DATE OF LIEN			35. TAX & PENALTY PAID: 1974.25		36. TITLE APPL. FEE: 33.00	
			37. MISCELLANEOUS FEES: 0.00		38. REG FEE - DPS: 1.00	
10. 3rd LIENHOLDER (NAME AND MAILING ADDRESS): NONE DATE OF LIEN			39. RESIDENT COUNTY: TARRANT		40. LOCAL FEES: 10.00	
			41. DEPUTY: S. PEREZ		42. TOTAL FEES: 2078.05	
11. SELLER (NAME AND MAILING ADDRESS): TOYOTA OF IRVING, LTD 1999 W. AIRPORT FRWY. IRVING, TX 75062			43. TAX ASSESSOR-COLLECTOR: DAVID CHILDS		44. PROCESSING CO: DALLAS	

FORM VTR-31-RTS (REV 07/2005) DHT #149517 TAX AND TITLE COPY 1

APPLICATION FOR TEXAS CERTIFICATE OF TITLE

→ SHADED AREAS ARE TO BE COMPLETED BY THE SELLER ← 10963 C23450

→ TYPE OR PRINT NEATLY IN INK ←

TAX OFFICE USE ONLY | *County Use Only*

Tax Collector _____ County _____

Date _____ Transaction Number 84436

1. Vehicle Identification Number	2. Year	3. Make	4. Body Style
4T1BK36B48U278056	2008	TOYOTA	SD

5. Model	6. Odometer Reading	7. Empty Weight	8. Carrying Capacity (lbs.)	9. Tonnage
AVALON	36 [X]	3600		

☐ SPV $ _____

☐ Appraisal Value $ _____

10. Trailer Type	11. Plate No.	12. Vehicle Unit No.
☐ Semi ☐ Full	DX5424	

13. Applicant's/Additional Applicant's Social Security Numbers (See * below) or Federal Tax ID Number

[redacted]

14. Applicant's/Owner's Name(s) MONTY M HARDY

Address 1100 N SHADY OAKS DR
City, State, Zip Code SOUTHLAKE TX 76092 TARRANT County Name

14a. Registrant's Name
(Renewal Notice Recipient)
Address
City, State, Zip Code _____ County Name

☐ Statement of Fact for Non-Disclosure, VTR-171, Attached.

14b. Vehicle Physical Location
City, State, Zip Code

15. Previous Owner's Name TOYOTA OF IRVING
Address 1999 W. AIRPORT FWY
City, State, Zip Code IRVING, TX 75062

15a. GDN – Dealer Use Only P10611

THIS MOTOR VEHICLE IS SUBJECT TO THE FOLLOWING FIRST LIEN

16. 1st Lien Date	1st Lienholder Name	16a. Additional Lien(s)?
02/09/2008	TOYOTA MOTOR CREDIT CORP Address: PO BOX 105386 City, State, Zip Code: ATLANTA GA 30348-5386	☐ YES (If additional liens are to be recorded, attach Form VTR-267.)

17. FOR CORRECTED TITLE, CHECK REASON(S) ☐ Change in Vehicle Description ☐ VIN ☐ Year ☐ Make ☐ Body Style ☐ Other ☐ No Change in Ownership ☐ Add Lien ☐ Remove Lien ☐ Odometer Brand ☐ Odometer Reading

18. ODOMETER DISCLOSURE – FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE UPON TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

I, TOYOTA OF IRVING, ** (Name of Seller/Agent) state that the odometer now reads 36 (no tenths).

THE MILEAGE SHOWN IS ☐ A – Actual Mileage ☐ N – Not Actual Mileage WARNING – ODOMETER DISCREPANCY ☐ X – Mileage Exceeds Mechanical Limits

** IF NO SELLER/AGENT, TITLE APPLICANT SHOULD CHECK ONE OF THE 3 BOXES ABOVE UNLESS NUMBER 6 INDICATES "EXEMPT."

MOTOR VEHICLE TAX STATEMENT

19. CHECK ONLY IF APPLICABLE
☐ I hold Motor Vehicle Retailer's (Rental) Permit No. _____ and will satisfy the minimum tax liability (V.A.T.S., Tax Code, §152.045 [c]).
☐ I am a Dealer or Lessor and qualify to take the Fair Market Value Deduction (V.A.T.S., Tax Code, §152.002 [c]).

20. DESCRIPTION OF VEHICLE TRADED IN (If any)	Year	Make	Vehicle Identification Number	20a. ADDITIONAL TRADE – INS? (Y/N)
				N

21. SALES AND USE TAX COMPUTATION

[X] (a) Sales Price ($ N/A rebate has been deducted)	$ 31588.00	☐ $90 New Resident Tax – (Previous State) _____
(b) Less Trade - In Amount, Describe In Item 20 Above	$ (N/A	☐ $5 Even Trade Tax
(c) For Dealers/Lessors/Rental ONLY – Fair Market Value Deduction, Describe In Item 20 Above	$ (N/A	☐ $10 Gift Tax
		☐ $35 Rebuilt Salvage Fee
(d) Taxable Amount (Item a. minus Item b./Item c.)	$ 31588.00	☐ 2.5% Emissions Fee (Diesel Vehicles 1996 and Older > 14,000 lbs) _____
(e) 6.25% Tax on Taxable Amount (Multiply Item d. by .0625)	$ 1974.25	☐ 1% Emissions Fee (Diesel Vehicles 1997 and Newer > 14,000 lbs) _____
(f) Late Tax Payment Penalty ☐ 5% or ☐ 10%	$ N/A	☐ Exemption claimed under the Motor Vehicle Sales and Use Tax Law because _____
(g) Tax Paid to _____ (STATE)	$ N/A	XX
(h) AMOUNT OF TAX AND PENALTY DUE (Item e. plus Item f. minus Item g.)	$ 1974.25	☐ $28 or $33 APPLICATION FEE FOR CERTIFICATE OF TITLE (Contact your County Tax Assessor-Collector for the correct fee.)

I HEREBY CERTIFY THAT ALL STATEMENTS IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

22. _____ Signature of SELLER, DONOR, OR TRADER — TOYOTA OF IRVING PRINTED NAME (Same as signature) — 02/09/2008 Date

23. M. M Hardy Signature of PURCHASER, DONEE, OR TRADER — MONTY M HARDY PRINTED NAME (Same as signature) — 02/09/2008 Date

RIGHTS OF SURVIVORSHIP OWNERSHIP AGREEMENT (MARRIED PERSONS)

WE, THE PERSONS WHOSE SIGNATURES APPEAR HEREIN, HEREBY AGREE THAT THE OWNERSHIP OF THE VEHICLE DESCRIBED ON THIS APPLICATION FOR TITLE, SHALL FROM THIS DAY FORWARD BE HELD JOINTLY, AND IN THE EVENT OF DEATH OF EITHER OF THE PERSONS NAMED IN THE AGREEMENT, THE OWNERSHIP OF THE VEHICLE SHALL VEST IN THE SURVIVOR.

NON-MARRIED PERSONS ARE REQUIRED TO EXECUTE A RIGHTS OF SURVIVORSHIP OWNERSHIP AGREEMENT FOR A MOTOR VEHICLE, FORM VTR-122.

_____ SIGNATURE _____ Date

_____ SIGNATURE _____ Date

WARNING: Transportation Code, §501.155, provides that falsifying information on title transfer documents is a third-degree felony offense punishable by not more than ten (10) years in prison or not more than one (1) year in a community correctional facility. In addition to imprisonment, a fine of up to $10,000 may also be imposed.

* NOTE: Transportation Code, §501.0275, REQUIRES that the applicant's social security number be provided when applying for a certificate of title. If the applicant does not have a social security number, Form VTR-171, Statement of Fact for Non-disclosure of a Social Security Number, must accompany this application. This information is requested for owner identification purposes.

Form-130-U (Rev. 5/2006)

CERTIFICATE OF ORIGIN FOR A VEHICLE

TOYOTA

DATE
2007-11-28

INVOICE NO.
073409

VEHICLE IDENTIFICATION NO.
4T1BK36B48U278056

YEAR
2008

MAKE
TOYOTA

BODY TYPE
4-DR XL SEDAN

SHIPPING WEIGHT
3490

H.P. (S.A.E.)
268

G.V.W.R.

NO. CYLS.
6

SERIES OR MODEL
AVALON

ENGINE NO.
2GR6322819

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

TODVT LIMITED PARTNERSHIP
DBA TOYOTA OF DALLAS
2610 FOREST LANE
DALLAS, TEXAS 75234

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

CERTIFIED FOR ALL 50 STATE EMISSIONS

GULF STATES TOYOTA INC.

BY: _____ Vice President-GST Planning
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

G003575081

HOUSTON, TEXAS
CITY - STATE

Each undersigned acknowledges to the best of his knowledge, information and belief, under penalty of law that the vehicle is new and has not been registered in this or any state at the time of delivery and the vehicle is not subject to any security interest other than those disclosed herein and warrants title to the vehicle.

FOR VALUE RECEIVED I TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO:

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 1

NAME OF PURCHASER(S) Toyota of Irving

ADDRESS 1999 W. Airport Frwy IRVING, TX 75062

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER Toyota of Dallas P43109 BY M. Aiman
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of TX
County of Dallas

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this 1 day of FEB 2008
Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 2

NAME OF PURCHASER(S) MONTY M HARDY

ADDRESS 1100 N. SHADY OAKS DR. SOUTHLAKE, TX 76092

I certify to the best of my knowledge that the odometer reading is 36 No Tenths

DEALER Toyota of Irving, Inc 71611 BY
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of TX
County of Dallas

Being duly sworn upon oath says that the statements set forth are true & correct. Subscribed and sworn to me before this 1 day of FEB 08
Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 3

NAME OF PURCHASER(S) _____

ADDRESS _____

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER _____ BY _____
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____
County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____
Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 4

NAME OF PURCHASER(S) _____

ADDRESS _____

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER _____ BY _____
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____
County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____
Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

ODOMETER DISCLOSURE FOR RETAIL SALE

Federal law requires you to state the odometer mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and or imprisonment.

I certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked. Odometer Reading _____ No Tenths ☐ The mileage stated is in excess of its mechanical limits ☐ The odometer reading is not the actual mileage.

WARNING ODOMETER DISCREPANCY

Signature(s) of Seller(s) _____ Date of Statement _____ Date of Sale _____

Printed Name(s) of Seller(s) _____ Dealer _____

Signature(s) of Purchaser(s) _____

Printed Name(s) of Purchaser(s) _____

Address of Purchaser(s) _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____
Notary Public

State of _____
County of _____

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

SURRENDERED

LIENHOLDER

1st _____

whose address is _____

2nd _____ in favor of _____

whose address is _____

G003575081

TOYOTA of IRVING

1999 W. Airport Freeway
Irving, Texas 75062
Telephone (972) 258-1200

CUSTOMER # 167132

DATE 02/09/08 REF. 141764

PURCHASER'S NAME MONTY M HARDY

STREET ADDRESS 1100 N SHADY OAKS DR

CITY SOUTHLAKE TX STATE ZIP 76092

RESIDENCE PHONE (817)488-8620 BUSINESS PHONE (817)488-8620

PLEASE ENTER MY ORDER FOR THE FOLLOWING
☒ NEW ☐ USED ☐ DEMO ☒ CAR ☐ TRUCK

YEAR	MAKE	MODEL	TYPE
2008	TOYOTA	~~CAMRY~~ AVALON	~~2BR~~ 4DR

COLOR	TRIM	SERIAL NO.
~~BLACK~~ BLUE	XL	~~4T1GE30F28U762940~~ 4T1BK36B45U272858

STOCK NO.	LIC. NO.	MILEAGE	CONTROL NO.
LOC		36	10963

SALESMAN

To Be Delivered On Or About 02/09/08 AM PM

CASH PRICE OF UNIT	31289.00
EQUIPMENT	
PREMIER GUARD	299.00

INSURANCE COVERAGE

	TYPE	AMOUNT	TERM	Premium Cost
	CREDIT LIFE			
	ACCIDENT-HEALTH			

PURCHASER IS NOT REQUIRED TO OBTAIN CREDIT LIFE INSURANCE COVERAGE. Purchaser hereby affirms that the charge for credit life insurance shown above has been disclosed in writing to him, prior to execution by the Purchaser of this statement, and that after such disclosure, Purchaser specifically affirms that he desires to obtain the insurance for which such charge is made.

Purchaser's Signature _____ Date _____

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. A DOCUMENTARY FEE MAY NOT EXCEED $50 FOR A MOTOR VEHICLE CONTRACT OR A REASONABLE AMOUNT AGREED TO BY THE PARTIES FOR A HEAVY COMMERCIAL VEHICLE CONTRACT THIS NOTICE IS REQUIRED BY LAW.
UN CARGO DOCUMENTAL NO ES UN CARGO OFICIAL. LA LEY NO EXIGE QUE SE IMPONGA UN CARGO DOCUMENTAL, PERO ÉSTE PODRÍA COBRARSE A LOS COMPRADORES POR EL MANEJO DE LA DOCUMENTACIÓN Y LA PRESTACIÓN DE SERVICIOS EN RELACIÓN CON EL CIERRE DE UNA VENTA. UN CARGO DOCUMENTAL NO PUEDE EXCEDER DE $50 PARA UN CONTRATO DE VEHÍCULO AUTOMOTOR O UNA CANTIDAD RAZONABLE ACORDADA POR LAS PARTES PARA UN CONTRATO DE VEHÍCULO COMERCIAL PESADO. ESTA NOTIFICACIÓN SE EXIGE POR LEY.

DESCRIPTION OF TRADE-IN

MAKE	YEAR	MODEL	STYLE

SERIAL #	LIC. #	VALIDATION #

TOTAL PRICE Including Accessories		31588.00
TRADE-IN ALLOWANCE	−	
TRADE DIFF. OR CASH PRICE	=	31588.00
SALES TAX	+	1974.25
LICENSE	+	60.80
TITLE. 33.00 SP. 25.50	+	58.50
DOCUMENTARY FEE	+	50.00
DEPUTY FEE	+	5.00
ROAD & BRIDGE TAX	+	10.00
DEALER'S INVENTORY TAX	+	64.66
	+	
TOTAL	=	33811.21
BALANCE DUE ON TRADE-IN:	+	
VERIFIED BY		
TOTAL	=	33811.21
INSURANCE	+	
EXT. SRVC. AGR. Toyota Aut	+	2055.65
GAP	+	207.37
UNPAID BALANCE OF CASH PRICE	=	36084.23
RECEIPT #	−	
RECEIPT #	−	10000.00
UNPAID BALANCE (AMT. FINANCED)	=	26084.23
FINANCE CHARGE	+	2715.77
TOTAL OF PAYMENTS	=	28800.00
DEFERRED PAYMENT PRICE	=	38800.00
ANNUAL PERCENTAGE RATE	%	4.90

PAYOFF NAME: GIVEN BY:
PHONE #: GOOD THROUGH:

I certify to the best of my knowledge that the title issued for the vehicle traded in reads as one of the following and this is acknowledged by my initials. I will be responsible for difference in market value if it does read different.
_____ ☐ The original certificate title does not bear the notation "Reconditioned" or "Flood Damage".
_____ ☐ The original certificate title does bear the notation "Reconditioned".
_____ ☐ The original certificate title does not bear the notation "Flood Damage".

DISCLAIMER OF WARRANTIES SEE SEC. 9 & 10 REVERSE SIDE.
IF THIS VEHICLE IS USED, THE INFORMATION YOU SEE ON THE WINDOW FORM (BUYER'S GUIDE), FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRACT PROVISIONS OF THE CONTRACT OF SALE.

LIEN
BANK, FIN. CO., CREDIT UNION: TOYOTA MOTOR CREDIT
PO BOX 105386
ATLANTA GA 30348-538
NAME OF OFFICER:
Amount of Draft: 26084.23
DRAFT
THRU:

Finance charges begin to accrue on 09 FEB 2008. The Total of Payments shall be repaid to TOYOTA MOTOR CREDIT CORP in 48 consecutive equal monthly installments of $ 500.00 each on the 15 day of each month commencing MAR 2008 plus one final installment of $ _____ due _____ 20____. If final monthly installment is more than twice the amount of an otherwise regularly scheduled equal payment, balloon payment in amount of _____ is due _____ 20____. Balloon payment shall be paid when due and may not be refinanced. If any installment is in default more than 10 days, default charges shall be payable in the amount of _____% of the delinquent installment of $ _____ whichever is less. Seller shall have a security interest in the property until the Total of Payments is paid in full. If this contract is prepaid, a refund credit computed in accordance with the rule of 78s will be made to Purchaser. In computing such refund credit, an acquisition charge in the amount of $ _____ will be made.

Purchaser agrees and assumes responsibility for any difference in payoff in excess of the amount shown for his trade-in and will pay such difference in cash on demand. If such difference is not so paid, buyer authorizes Dealer at Dealer's option, to increase the monthly payments and contract balance to cover the difference plus finance charges thereon. PURCHASER'S SIGNATURE _____

The Dealer's Inventory Tax charge is intended to reimburse the dealer for ad valorem taxes on its motor vehicle inventory. The charge, which is paid by the dealer to the county tax assessor-collector, is not a tax imposed on a consumer by the government, and is not required to be charged by the dealer to the consumer.

Purchaser agrees that this Order includes all of the terms and conditions on both the face and reverse side hereof, that this Order cancels and supersedes any prior

ADDITIONAL TERMS AND CONDITIONS

1. As used in this Order the terms (a) "Seller" shall mean the authorized Dealer to whom this Order is addressed and who shall become a party hereto by its acceptance hereof, (b) "Purchaser" shall mean the party executing this Order as such on the face hereof, and (c) "Manufacturer" shall mean the Corporation that manufactured the vehicle or chassis, it being understood by Purchaser and Seller that Seller is in no respect the agent of Manufacturer, that Seller and Purchaser are the sole parties to this Order and that reference to Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Seller and Manufacturer with respect to new motor vehicles.

2. Manufacturer has reserved the right to change the price to Dealer of new motor vehicles without notice. In the event the price to Dealer of new motor vehicles of the series and body type ordered hereunder is changed by Manufacturer prior to delivery of the new motor vehicle ordered hereunder to Purchaser, Dealer reserves the right to change the cash delivered price of such motor vehicle to Purchaser accordingly. If such cash delivered price is increased by Dealer, Purchaser may, if dissatisfied therewith, cancel this Order.

3. If the used motor vehicle which has been traded in as a part of the consideration for the motor vehicle ordered hereunder is not to be delivered to Dealer until delivery to Purchaser of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance therefor shown on the front of this Order, Purchaser may, if dissatisfied therewith, cancel this Order, provided, however, that such right to cancel is exercised prior to the delivery of the motor vehicle ordered hereunder to the Purchaser and surrender of the used motor vehicle to Dealer.

4. Purchaser agrees to deliver to Dealer satisfactory evidence of title to any used motor vehicle traded in as a part of the consideration for the motor vehicle ordered hereunder at the time of delivery of such used motor vehicle to Dealer. Purchaser warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.

5. Unless this Order shall have been cancelled by Purchaser under and in accordance with the provisions of paragraph 2 or 3 above, Dealer shall have the right, upon failure or refusal of Purchaser to accept delivery of the motor vehicle ordered hereunder and to comply with the terms of this Order, to retain as liquidated damages any cash deposit made by Purchaser, to the extent not prohibited by law, and in the event a used motor vehicle has been traded in as part of the consideration for the motor vehicle ordered hereunder, to sell such used motor vehicle and reimburse himself out of the proceeds of such sale for the expenses specified in paragraph 2 above and for such other expenses and losses as Dealer may incur or suffer as a result of such failure or refusal by Purchaser, to the extent not prohibited by law.

6. Manufacturer has reserved the right to change the design of any new motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Correspondingly, in the event of any such change by Manufacturer, Dealer shall have no obligation to Purchaser to make the same or any similar change in any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to delivery thereof to Purchaser.

7. Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer.

8. The price for the motor vehicle specified on the face of this Order includes reimbursement for Federal Excise taxes, but does not include sales taxes, use taxes or occupational taxes based on sales volume, (Federal, State, or Local) unless expressly so stated. Purchaser assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefor.

9. If a charge for Creditor Life Insurance is included in this Order the provisions on Creditor Life Insurance in any retail instalment contract form subsequently executed between the parties hereto in conjunction with this Order shall be fully effective. If such insurance is unavailable or partly unavailable under the designated policy, the applicable portion of the charge for Creditor Life Insurance specified herein, and the finance charge thereon, may be deducted from the Total Time Balance and credited to the Purchaser. If such insurance does not become effective, notice thereof will be sent to the Purchaser by the Dealer and this Order and any retail instalment contract executed in conjunction therewith shall otherwise remain fully effective.

10. FACTORY WARRANTY: ANY WARRANTY ON ANY NEW VEHICLE OR USED VEHICLE STILL SUBJECT TO A MANUFACTURER'S WARRANTY IS THAT MADE BY THE MANUFACTURER ONLY. THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. USED VEHICLE WHETHER OR NOT SUBJECT TO MANUFACTURER'S WARRANTY: "THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE." SPANISH TRANSLATION: Guía papa compradors de vehículos usados. La Información que ve en el formulario de la ventanilla para este vehículos forma parte del presente contrato. La información del formulario de la ventanilla sin efecto toda disposción en contrario contenida en el contrato de venta.

12. PURCHASER SHALL NOT BE ENTITLED TO RECOVER FROM DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.

13. The Purchaser, before or at the time of delivery of the motor vehicle covered by this Order will execute such other forms of agreement or documents as may be required by the terms and conditions of payments indicated on the front of this Order.

NOTICE TO USED CAR BUYERS: As referenced in #10 above, The information you see on the window form for this vehicle is part of the contract. Signed

STATEMENT REGARDING CASH PROCEEDS

A Federal Trade Commission rule prohibits sellers and lessors of consumer goods and services from accepting from the consumer the proceeds of a purchase money loan unless certain required disclosures were included in the loan contract entered into between the consumer and the lender. To assist us in complying with this Federal rule, the following information is required:

( ) I hereby certify that none of the funds used in payment for the vehicle described on front were obtained as the result of a loan from a creditor.

Signature _____ Date _____

( ) Funds for full or partial payment for the vehicle described on front

NOTICE TO NEW MOTOR VEHICLE OWNERS

If you are unable to obtain the repair or correction of any defects in your new motor vehicle which are covered by the warranty on the vehicle, the Texas Motor Vehicle Commission may be able to assist you.

Section 3.04(h) of the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), provides as follows: "(h) The owner of a motor vehicle or the owner's designated agent may make a complaint concerning defects in a motor vehicle which are covered by the manufacturer's or distributor's warranty agreement applicable to the vehicle. Such complaint must be made in writing to the applicable dealer, manufacturer, or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the complaint. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act."

ODOMETER DISCLOSURE STATEMENT
FOR NON-LEASED VEHICLES

DEAL: 10963

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, TOYOTA OF IRVING (TRANSFEROR'S NAME - PRINT) state that the odometer now reads 36 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING — ODOMETER DISCREPANCY.

MAKE TOYOTA

MODEL ~~CAMRY~~ AVALON BODY TYPE ~~SED~~ 4DR

VEHICLE IDENTIFICATION NUMBER ~~4T1BE30FE007629[illegible]~~ 4T1BK36B48U278056

YEAR 2008 LICENSE NO.

TRANSFEROR'S NAME TOYOTA OF IRVING (PRINTED NAME)

TRANSFEROR'S ADDRESS 1999 W. AIRPORT FWY (STREET)
IRVING, TX (CITY) (STATE) 75062 (ZIP CODE)

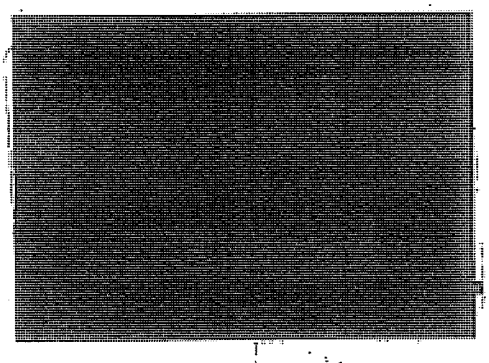
TRANSFEROR'S NAME (SIGNATURE)

DATE OF STATEMENT 02/09/2008

TRANSFEREE'S NAME MONTY M HARDY (PRINTED NAME)

TRANSFEREE'S ADDRESS 1100 N SHADY OAKS DR (STREET)
SOUTHLAKE TX 76092 (CITY) (STATE) (ZIP CODE)

TRANSFEREE'S NAME M M Hardy



Name and Address of Insured

MONTY HARDY
1100 N SHADY OAK
SOUTH LAKE TX 76092
MONTY HARDY
LINDA HARDY
PAMELA HARDY-EXCLUDE

Policy Number	Effective Date	Expiration Date
1184447890	12-05-07	06-05-08

Vehicle

Make/Model	Year	Vehicle Identification Number
TOYOTA	2002	4T1BF28B42U210441
KIA	2003	KNADC125936238337

Insurance Company 1 800 422-4272
METROPOLITAN DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY

Agent
TIPTON INSURANCE 1 817 267-9506
CLAIMS 1 800 854-6011

MPL 1044-042

This policy provides at least the minimum amounts of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act for the specified vehicle and named insured and may provide coverage for other persons and other vehicles as provided by the insurance policy.

Printed in U.S.A. 089

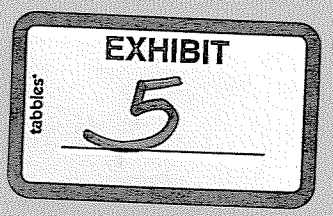
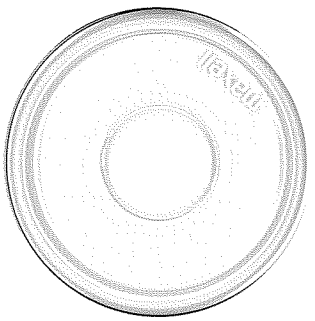


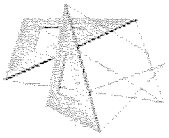
EXHIBIT
5
tabbies

UNINTENDED ACCELERATION
AVALON NISM

CD



911 CALLS--AUDIO



Tanya Herbert/T00/TMMNA@TMMNA

03/02/2010 10:00 AM

To Dorothy Sutton/TMS/Toyota@Toyota, Shari Goldsworthy/TMS/Toyota@Toyota, Diane Williamson/T70/TMMNA@TMMNA, Cathy M

cc

bcc

Subject Fw: Urgent! C T received Process (Log # 516235136) in Kentucky for Toyota Motor Engineering & Manufacturing North America, Inc., KY

Just served this 30 minutes ago.

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Early, Roxanne & Edward Ransom.pdf

****

The company has a new spam filtering system which occasionally blocks incoming e-mails. If I do not acknowledge your e-mail within a reasonable timeframe, please phone me at the number below.

Tanya D. Herbert
Toyota Motor Engineering & Manufacturing North America, Inc.
Legal Division
Phone: (859) 746-4131
Fax: (859) 746-4190
Cell: (859) 802-2130
E-Mail: tanya.herbert@tema.toyota.com

----- Forwarded by Tanya Herbert/T00/TMMNA on 03/02/2010 12:57 PM -----

phyllis.farmer@wolterskluwer.com

03/02/2010 12:31 PM

To tanya.herbert@tema.toyota.com

cc

Subject Urgent! C T received Process (Log # 516235136) in Kentucky for Toyota Motor Engineering & Manufacturing North America, Inc., KY

CT Corporation: Service of Process Instant Notification

Click Here to access this service of process in real-time at www.CTAdvantage.com

Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY, 41018-

PROCESS SERVED IN: Kentucky

FOR: Toyota Motor Engineering & Manufacturing North America, Inc. (Domestic State: KY)

NOTICE OF LEGAL PROCESS RECEIVED BY CT AS STATUTORY AGENT OF THE ABOVE COMPANY

TITLE OF ACTION: Roxanne Early and Edward Ransom, individually and as Legal Heirs to Estate of Sharon Ransom, Pltfs. vs. Toyota Motor Corporation, et al. including Toyota Motor Engineering & Manufacturing North America, Inc., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: USDC, TX,
Case # 3:10-cv-00332-L

NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Wrongful death from sudden acceleration; 2008 Toyota Avalon (VIN 4T1BK36B48U278056
PROCESS SERVED ON:	C T Corporation System, Louisville, KY
DATE/METHOD OF SERVICE:	By Certified Mail on 03/02/2010 postmarked on 02/27/2010
APPEARANCE OR ANSWER DUE:	Within 21 Days
ATTORNEY(S)/SENDER(S):	E. Todd Tracy The Tracy Firm 5473 Blair Road, Ste. 200 Dallas, TX, 75231 214-324-9000
ACTIONS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799444417870 Image SOP Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com

Access this Service of Process in real-time at
http://www.ctadvantage.com/WebApps/App/SOP/SOPUpdateVerifiedEmail.aspx?WorksheetId=516235136

Information displayed on this notice 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.

CT Corporation

7C47A9AA72DC49B89AA9AF79BAEEB3D4.PDF

PL ✓

NEW CASE MATTER

TO: ATM

FR: D. Sutton

RE: Early, Roxanne / Ransom, Edward

REFERRED TO COUNSEL ON: _____

ANSWER DUE ON: 3-23-10

INITIALS: _____

"Kelli Spencer"
<kspencer@hdbdk.com>
02/03/2010 02:10 PM

To "Don Marshall/TMS/Toyota" <Don_Marshall@Toyota.com>
cc <Jane_Crewe@toyota.com>, <Debbie_Ickes@Toyota.com>, "Kurt C Kern" <kkern@hdbdk.com>, "Suzanne H Swaner" <sswaner@hdbdk.com>
bcc
Subject Unintended Acceleration - Avalon NISM

* PGP Signed: 02/03/2010 at 02:10:21 PM, Decrypted

Don: Attached please find the summary of the accident investigation file from the Southlake Police Department. All attachments will be forwarded separately.

Please let me know if you have any questions.

Kelli Spencer *Legal Assistant* | **Hartline Dacus Barger Dreyer & Kern LLP**
6688 N. Central Expressway, Suite 1000 | Dallas, TX 75206
214-346-3779 | 214-267-4279 (fax)
kspencer@hdbdk.com | **www.hdbdk.com**

* Kelli Spencer <kspencer@hdbdk.com>
* 0x9C3E2F3E

marshal-01.kds 2-3-10.pdf

SERVICE HISTORY Help — OPEN IN NEW WINDOW

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	11/19/2009	22,679	TEXAS TOYOTA OF GRAPEVINE-(42268)		0610955	$59.95
Condition 1						Pay Type: CUSTOMER PAY
Op Code Desc: PERFORM 5000 MILE INTERVAL SERVI						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	07/03/2009	17,019	TOYOTA OF IRVING, INC.-(42057)		0562808	$339.88
Condition 1						Pay Type: CUSTOMER PAY
Op Code Desc: 15000 MILE SERVICE 15000 MILE SERVICE ~|~01 ~|~17019 OIL AND FILTER, TIRE ROTATION AND BALANCE, CLEAN AND ADJUST REAR BRAKES, PERFORM TRANSMISSION SERVICE, PERFORM BATTERY SERVICE, REPLACE ENGINE AIR FILTER, FLUSH ENGINE, FLUSH FUEL INJECTION SYSTEM, MAJOR LUBE OF CHASSIS AND KEY COMPONENTS, LOCKS, LATCHES, WEATHER STRIPES, FLUSH COOLING SYSTEM.						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	01/14/2009	11,314	TOYOTA OF IRVING, INC.-(42057)		0546214	$52.56
Condition 1						Pay Type: CUSTOMER PAY
Op Code Desc: MAINTENANCE ITEM QK EXPRESS OIL & FILTER CHANGE W/27 PT INSPECTION ~|~ ~|~						SSC No. ---- Agreement ----
Condition 2						Pay Type: CUSTOMER PAY
Op Code Desc: MAINTENANCE ITEM QK TIRE ROTATION ~|~ ~|~						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	08/27/2008	5,633	TOYOTA OF IRVING, INC.-(42057)		0532455	$49.95
Condition 1						Pay Type: CUSTOMER PAY
Op Code Desc: MAINTENANCE ITEM QK EXPRESS OIL & FILTER CHANGE W/27 PT INSPECTION ~|~ ~|~						SSC No. ---- Agreement ----
Condition 2						Pay Type: CUSTOMER PAY
Op Code Desc: MAINTENANCE ITEM QK TIRE ROTATION ~|~ ~|~						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	07/02/2008	3,700	TOYOTA OF IRVING, INC.-(42057)		0526256	$89.95
Condition 1						Pay Type: CUSTOMER PAY
Op Code Desc: MAINTENANCE ITEM COOLANT FLUSH ~|~ ~|~3700 COMPLTED						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	02/11/2008	42	TOYOTA OF IRVING, INC.-(42057)		0510774	$40.00
Condition 1						Pay Type: INTERNAL (DEALER) PAY
Op Code Desc: CLEAN FOR DELIVERY CLEAN FOR DELIVERY ~|~ ~|~						SSC No. ---- Agreement ----

R.O. Open	R.O. Close	R.O. Mileage	Servicing Dealer	Service Advisor	R.O. No.	R.O. Total
----	02/11/2008	10	TOYOTA OF IRVING, INC.-(42057)		0510740	$40.00
Condition 1						Pay Type: INTERNAL (DEALER) PAY
Op Code Desc: DEALER TRADE DEALER TRADE ~|~ ~|~						SSC No. ---- Agreement ----

EARLY, ROXANNE CORRESPONDENCE

TOY-RQ-05E-00011214

EARLY, ROXANNE PLEADINGS

TOY-RQ-05E-00011215

EARLY, ROXANNE DSC TO TOYOTA

TOY-RQ-05E-00011216

EARLY, ROXANNE DSC TO OTHERS

TOY-RQ-05E-00011217

EARLY, ROXANNE ATTY NOTES

TOY-RQ-05E-00011218

EARLY, ROXANNE LITIGATION HOLD

TOY-RQ-05E-00011219

EARLY, ROXANNE EXPERT DEPOS

TOY-RQ-05E-00011220

EARLY, ROXANNE OTHER DEPOS

TOY-RQ-05E-00011221

EARLY, ROXANNE MEDICAL RPTS

EARLY, ROXANNE PL REPORTS

TOY-RQ-05E-00011223

FILE START

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
10 FEB -3 PM 3:06
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself all others similarly situated,

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. 1:10-cv-0142 SEB-TAB

JURY TRIAL DEMANDED

CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiff Judith M. Enderle, on behalf of herself and all others similarly situated, by counsel, for her complaint against Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively "Toyota"), on information and belief states as follows:

1. This class action brings claims on behalf of Indiana residents who are owners of vehicles affected by Toyota's recent recall of approximately 5.3 million vehicles due to defects in their accelerator systems, which can suddenly, unexpectedly, and dangerously cause the vehicles to accelerate. The Plaintiff seeks damages from Toyota resulting from this serious safety defect that renders the vehicles unfit for their intended and expected purpose.

PARTIES

2. Plaintiff Judith Enderle is a citizen of and resides in Hamilton County, Indiana.

3. In July 2006, Plaintiff purchased a 2006 Toyota Avalon from Butler Toyota in Indianapolis, which was subject to a recall by Toyota in January 2010 for defects in the vehicle's acceleration system.

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.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d), because there are at least 100 Class Members in the proposed Class, the combined claims of proposed Class Members exceed $5,000,000 exclusive of interest and costs, and at least one Class Member is a citizen of a state other than Defendants' state of citizenship.

8. Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendants conduct substantial business in this District, have sufficient minimum contacts with this District, and otherwise purposely avail themselves of the markets in this District, through the promotion, sale, and marketing of their services in this District.

BACKGROUND

9. 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-00011226

10. 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.

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

12. 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.

13. 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.

14. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator systems.

15. The affected models are certain 2009-2010 RAV4's, certain 2009-2010 Corollas; 2009-2010 Matrixes; 2005-2010 Avalons; Certain 2007-2010 Camrys; 2007-2010 Tundras; and 2008-2010 Sequoias. ("Subject Vehicles").

CLASS ALLEGATIONS

16. The Plaintiff brings this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all members of the following proposed Plaintiff Class (throughout this Complaint, denoted as the "Class"):

> All persons or entities in the State of Indiana who own a Toyota vehicle which was subject to recall by Toyota for defects in the vehicle's accelerator system.

TOY-RQ-05E-00011227

17. Excluded from the class are the Defendants and their parents, subsidiaries, and affiliates.

18. This action seeks recovery only for economic losses suffered by members of the Class and expressly is not intended to request any recovery for personal injury.

19. The Class is so numerous that the individual joinder of all members is impracticable. Although an exact number is unknown, Plaintiff believes there are thousands of Class members within the State of Indiana.

20. There are questions of law and fact common to all members of the Class and capable of class-wide proof, and these common questions predominate over any questions affecting individual class members.

21. The Plaintiff's claims are typical of the claims of the Class. The Plaintiff is a member of the Class, has been injured by the same common course of wrongful conduct by the Defendants that has damaged the other members of the Class, and brings claims based upon the same legal theories as the other members of the Class.

22. The Plaintiff will fairly, fully and adequately protect the interests of the Class, and has retained competent counsel experienced in prosecuting complex class action litigation. The Plaintiff has no interests that conflict with, or are adverse to, those of the Class.

23. The questions of law and fact common to all members of the Class predominate over any questions affecting only individual members, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

24. Absent a class action, there is a substantial risk that the Defendants would retain the benefits of their wrongdoing. Individual litigation would also increase the delay and expense to all parties and to the court system by causing repetitive proceedings, motion practice and

discovery in several different courts. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court to all Class members.

25. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

COUNT I
BEACH OF IMPLIED WARRANTY

26. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

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

28. The Subject Vehicles carried with them a warranty of merchantability implied by law, the terms of which are dependent upon the usage of the trade related to the product. Plaintiff alleges that such implied warranties here include warranties that the vehicles are safe and non-defective for their intended use in design and manufacture.

29. None of the above-referenced warranties have been effectively disclaimed by Toyota.

30. Toyota breached this warranty in that the Subject Vehicles contain safety-related defects with respect to their accelerator systems.

31. 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.

TOY-RQ-05E-00011229

32. 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 systems of the Subject Vehicles were fit for their intended use.

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

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

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

36. 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 systems are defective and have otherwise failed to function as represented and intended.

37. 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, emotional distress, economic losses and consequential damages, and is therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
BREACH OF EXPRESS WARRANTY

38. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

39. Toyota expressly warranted that the vehicles were suitable for their intended purpose.

40. Toyota breached this warranty by the failure of the Subject Vehicles' accelerator systems to function in a proper and safe manner.

41. Toyota breached its express warranties when the Subject Vehicles were sold to Plaintiff, in that the accelerator systems are defective and have otherwise failed to function as represented and intended.

42. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Class have sustained and will continue to sustain the loss of use of their vehicles, emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT III
UNJUST ENRICHMENT

43. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

44. Toyota received a measurable benefit from the purchase of the Subject Vehicles by the Plaintiff and other Class members.

45. At the time that Plaintiff and the Class purchased the Subject Vehicles, Toyota knew that the vehicles suffered from a defect in their accelerator systems that rendered them unsafe.

46. Under the circumstances set forth above, Toyota's retention of the benefit of the purchase of the Subject Vehicles by the Plaintiff and other Class members would be unjust.

47. In equity and good conscience, Toyota should not be permitted to retain the

benefit of the Plaintiff's and Class members' purchases of the Subject Vehicles.

COUNT IV
CONSTRUCTIVE FRAUD

48. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

49. At the time of selling the Subject Vehicles to the Plaintiff and other Class members, Toyota was in a unique position of knowledge concerning the design, operation, and proper functionality of the Subject Vehicles' accelerator systems, which knowledge was not possessed by the Plaintiff or other Class members, and thereby held a position of superiority over the Plaintiff and other Class members.

50. Toyota professed through its repeated claims of the superior safety and quality of its vehicles that it had knowledge of the truth of these representations.

51. Toyota's representations to the Plaintiff and other Class members were unqualified statements made to induce the Plaintiff and other Class members to make a purchase, and the Plaintiff and other Class members relied upon the statements when purchasing the Subject Vehicles from Toyota.

52. Toyota took unconscionable advantage of their dominant position of knowledge with regard to the Plaintiff and other Class members and engaged in constructive fraud in its relationship with the Plaintiff and other Class members.

53. As a proximate result of Toyota's constructive fraud, the Plaintiff and other Class members have been damaged.

54. Toyota's constructive fraud warrants the imposition of punitive damages in an amount sufficient to deter such conduct in the future.

TOY-RQ-05E-00011232

COUNT V
NEGLIGENCE

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

56. 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 systems in the Subject Vehicles.

57. Toyota breached its duty of reasonable care to Plaintiff by designing the accelerator systems of the Subject Vehicles in such a manner that they were prone to malfunctioning and causing the Subject Vehicles to unexpectedly and uncontrollably accelerate.

58. Toyota breached its duty of reasonable care to Plaintiff by manufacturing and/or assembling the accelerator systems of the Subject Vehicles in such a manner that they were prone to malfunctioning and causing the Subject Vehicles to unexpectedly and uncontrollably accelerate.

59. Toyota breached its duty of reasonable care to Plaintiff by failing to recall the Subject Vehicles at the earliest possible date, and in eventually blaming the defect on a much less dangerous supposed "floor mat" defect. In fact, Toyota only initiated a recall after pressured to do so by the United State government.

60. Toyota breached its duty of reasonable care to Plaintiff by failing to exercise due care under the circumstances.

61. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and the Class have sustained and will continue to sustain the loss of use of their vehicles, emotional distress, economic losses, consequential damages and other

damages.

COUNT VI
PRODUCTS LIABILITY

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

63. 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.

64. 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.

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

66. The defects in the accelerator systems 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.

67. 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.

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

TOY-RQ-05E-00011234

69. 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.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following relief:

1. An Order certifying the Class as described herein, and naming Plaintiff as the Class representative and her counsel as Class counsel;

2. An award of compensatory damages according to proof;

3. An award of equitable relief as requested and according to proof;

4. An award of 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;

5. Restitution and disgorgement of profits;

6. An award of all costs incurred by Plaintiff in pursuing this action;

7. An award of reasonable attorneys' fees;

8. An award of any and all other damages suffered by Plaintiff and members of the Class; and

9. Any other relief the Court deems reasonable.

TOY-RQ-05E-00011235

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

DATED: February 3, 2010

Respectfully submitted,

COHEN & MALAD, LLP

Irwin B. Levin
Richard E. Shevitz
Eric S. Pavlack
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
ilevin@cohenandmalad.com

TOY-RQ-05E-00011236

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
10 FEB -3 PM 3:06
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself all others similarly situated,

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. 1:10-cv-0142 SEB-TAB

JURY TRIAL DEMANDED

CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiff Judith M. Enderle, on behalf of herself and all others similarly situated, by counsel, for her complaint against Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively "Toyota"), on information and belief states as follows:

1. This class action brings claims on behalf of Indiana residents who are owners of vehicles affected by Toyota's recent recall of approximately 5.3 million vehicles due to defects in their accelerator systems, which can suddenly, unexpectedly, and dangerously cause the vehicles to accelerate. The Plaintiff seeks damages from Toyota resulting from this serious safety defect that renders the vehicles unfit for their intended and expected purpose.

PARTIES

2. Plaintiff Judith Enderle is a citizen of and resides in Hamilton County, Indiana.

3. In July 2006, Plaintiff purchased a 2006 Toyota Avalon from Butler Toyota in Indianapolis, which was subject to a recall by Toyota in January 2010 for defects in the vehicle's acceleration system.

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.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d), because there are at least 100 Class Members in the proposed Class, the combined claims of proposed Class Members exceed $5,000,000 exclusive of interest and costs, and at least one Class Member is a citizen of a state other than Defendants' state of citizenship.

8. Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendants conduct substantial business in this District, have sufficient minimum contacts with this District, and otherwise purposely avail themselves of the markets in this District, through the promotion, sale, and marketing of their services in this District.

BACKGROUND

9. 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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10. 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.

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

12. 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.

13. 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.

14. To date, Toyota has recalled approximately 5.3 million vehicles for problems with accelerator systems.

15. The affected models are certain 2009-2010 RAV4's, certain 2009-2010 Corollas; 2009-2010 Matrixes; 2005-2010 Avalons; Certain 2007-2010 Camrys; 2007-2010 Tundras; and 2008-2010 Sequoias. ("Subject Vehicles").

CLASS ALLEGATIONS

16. The Plaintiff brings this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all members of the following proposed Plaintiff Class (throughout this Complaint, denoted as the "Class"):

> All persons or entities in the State of Indiana who own a Toyota vehicle which was subject to recall by Toyota for defects in the vehicle's accelerator system.

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17. Excluded from the class are the Defendants and their parents, subsidiaries, and affiliates.

18. This action seeks recovery only for economic losses suffered by members of the Class and expressly is not intended to request any recovery for personal injury.

19. The Class is so numerous that the individual joinder of all members is impracticable. Although an exact number is unknown, Plaintiff believes there are thousands of Class members within the State of Indiana.

20. There are questions of law and fact common to all members of the Class and capable of class-wide proof, and these common questions predominate over any questions affecting individual class members.

21. The Plaintiff's claims are typical of the claims of the Class. The Plaintiff is a member of the Class, has been injured by the same common course of wrongful conduct by the Defendants that has damaged the other members of the Class, and brings claims based upon the same legal theories as the other members of the Class.

22. The Plaintiff will fairly, fully and adequately protect the interests of the Class, and has retained competent counsel experienced in prosecuting complex class action litigation. The Plaintiff has no interests that conflict with, or are adverse to, those of the Class.

23. The questions of law and fact common to all members of the Class predominate over any questions affecting only individual members, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

24. Absent a class action, there is a substantial risk that the Defendants would retain the benefits of their wrongdoing. Individual litigation would also increase the delay and expense to all parties and to the court system by causing repetitive proceedings, motion practice and

discovery in several different courts. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court to all Class members.

25. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

COUNT I
BEACH OF IMPLIED WARRANTY

26. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

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

28. The Subject Vehicles carried with them a warranty of merchantability implied by law, the terms of which are dependent upon the usage of the trade related to the product. Plaintiff alleges that such implied warranties here include warranties that the vehicles are safe and non-defective for their intended use in design and manufacture.

29. None of the above-referenced warranties have been effectively disclaimed by Toyota.

30. Toyota breached this warranty in that the Subject Vehicles contain safety-related defects with respect to their accelerator systems.

31. 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.

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32. 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 systems of the Subject Vehicles were fit for their intended use.

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

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

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

36. 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 systems are defective and have otherwise failed to function as represented and intended.

37. 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, emotional distress, economic losses and consequential damages, and is therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II
BREACH OF EXPRESS WARRANTY

38. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

39. Toyota expressly warranted that the vehicles were suitable for their intended purpose.

40. Toyota breached this warranty by the failure of the Subject Vehicles' accelerator systems to function in a proper and safe manner.

41. Toyota breached its express warranties when the Subject Vehicles were sold to Plaintiff, in that the accelerator systems are defective and have otherwise failed to function as represented and intended.

42. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Class have sustained and will continue to sustain the loss of use of their vehicles, emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT III
UNJUST ENRICHMENT

43. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

44. Toyota received a measurable benefit from the purchase of the Subject Vehicles by the Plaintiff and other Class members.

45. At the time that Plaintiff and the Class purchased the Subject Vehicles, Toyota knew that the vehicles suffered from a defect in their accelerator systems that rendered them unsafe.

46. Under the circumstances set forth above, Toyota's retention of the benefit of the purchase of the Subject Vehicles by the Plaintiff and other Class members would be unjust.

47. In equity and good conscience, Toyota should not be permitted to retain the

benefit of the Plaintiff's and Class members' purchases of the Subject Vehicles.

COUNT IV
CONSTRUCTIVE FRAUD

48. Plaintiff repeats and realleges the allegations of the prior paragraphs as if set forth at length herein.

49. At the time of selling the Subject Vehicles to the Plaintiff and other Class members, Toyota was in a unique position of knowledge concerning the design, operation, and proper functionality of the Subject Vehicles' accelerator systems, which knowledge was not possessed by the Plaintiff or other Class members, and thereby held a position of superiority over the Plaintiff and other Class members.

50. Toyota professed through its repeated claims of the superior safety and quality of its vehicles that it had knowledge of the truth of these representations.

51. Toyota's representations to the Plaintiff and other Class members were unqualified statements made to induce the Plaintiff and other Class members to make a purchase, and the Plaintiff and other Class members relied upon the statements when purchasing the Subject Vehicles from Toyota.

52. Toyota took unconscionable advantage of their dominant position of knowledge with regard to the Plaintiff and other Class members and engaged in constructive fraud in its relationship with the Plaintiff and other Class members.

53. As a proximate result of Toyota's constructive fraud, the Plaintiff and other Class members have been damaged.

54. Toyota's constructive fraud warrants the imposition of punitive damages in an amount sufficient to deter such conduct in the future.

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COUNT V
NEGLIGENCE

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

56. 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 systems in the Subject Vehicles.

57. Toyota breached its duty of reasonable care to Plaintiff by designing the accelerator systems of the Subject Vehicles in such a manner that they were prone to malfunctioning and causing the Subject Vehicles to unexpectedly and uncontrollably accelerate.

58. Toyota breached its duty of reasonable care to Plaintiff by manufacturing and/or assembling the accelerator systems of the Subject Vehicles in such a manner that they were prone to malfunctioning and causing the Subject Vehicles to unexpectedly and uncontrollably accelerate.

59. Toyota breached its duty of reasonable care to Plaintiff by failing to recall the Subject Vehicles at the earliest possible date, and in eventually blaming the defect on a much less dangerous supposed "floor mat" defect. In fact, Toyota only initiated a recall after pressured to do so by the United State government.

60. Toyota breached its duty of reasonable care to Plaintiff by failing to exercise due care under the circumstances.

61. As a direct and proximate result of Toyota's negligence as set forth in the preceding paragraphs, Plaintiff and the Class have sustained and will continue to sustain the loss of use of their vehicles, emotional distress, economic losses, consequential damages and other

damages.

COUNT VI
PRODUCTS LIABILITY

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

63. 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.

64. 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.

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

66. The defects in the accelerator systems 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.

67. 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.

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

TOY-RQ-05E-00011246

69. 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.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following relief:

1. An Order certifying the Class as described herein, and naming Plaintiff as the Class representative and her counsel as Class counsel;

2. An award of compensatory damages according to proof;

3. An award of equitable relief as requested and according to proof;

4. An award of 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;

5. Restitution and disgorgement of profits;

6. An award of all costs incurred by Plaintiff in pursuing this action;

7. An award of reasonable attorneys' fees;

8. An award of any and all other damages suffered by Plaintiff and members of the Class; and

9. Any other relief the Court deems reasonable.

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

DATED: February 3, 2010

Respectfully submitted,

COHEN & MALAD, LLP

Irwin B. Levin
Richard E. Shevitz
Eric S. Pavlack
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
ilevin@cohenandmalad.com

TOY-RQ-05E-00011248

44 (Rev. 3/99)

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.)

10 FEB -3 PM 3:07

SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS
CLERK

I. (a) PLAINTIFFS

Judith M. Enderle, On Behalf of Herself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff: Hamilton County, IN
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales U.S.A., Inc.

County of Residence of First Listed Defendant: Los Angeles County, CA
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Eric S. Pavlack (#21773-49)
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204 / (317) 636-6481

Attorneys (If Known)

1:10-cv-0142 SEB-TAB

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 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
- ☐ 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

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

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

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.
- ☐ 730 & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

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/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

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

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 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

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) | ☐ 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 and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

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

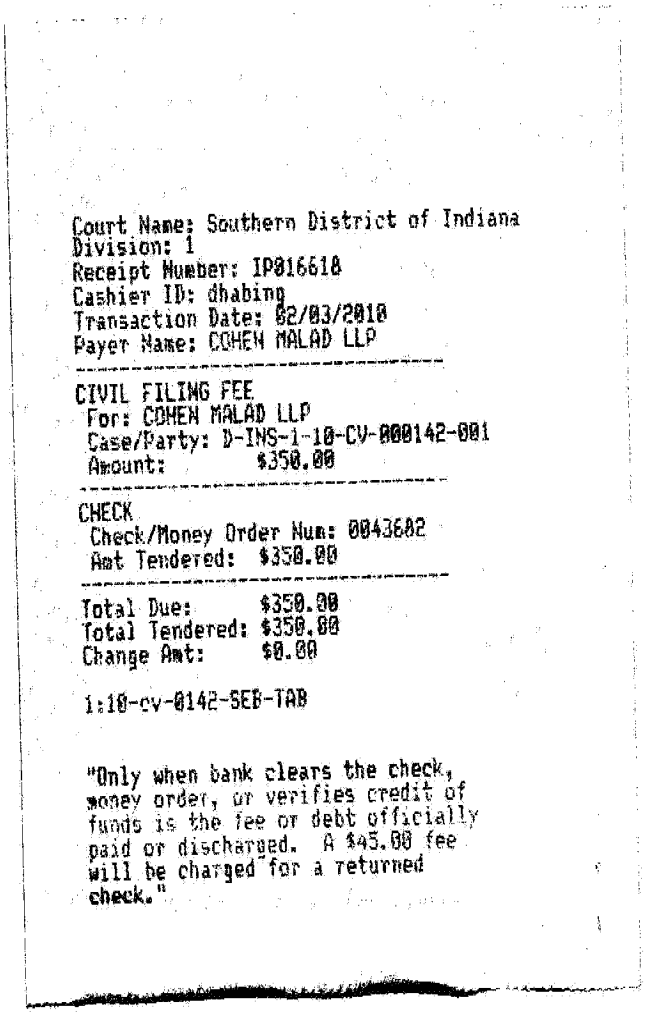
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE | DOCKET NUMBER 1:

DATE February 3, 2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE



Court Name: Southern District of Indiana
Division: 1
Receipt Number: IP016610
Cashier ID: dhabing
Transaction Date: 02/03/2010
Payer Name: COHEN MALAD LLP

CIVIL FILING FEE
For: COHEN MALAD LLP
Case/Party: D-INS-1-10-CV-000142-001
Amount: $350.00

CHECK
Check/Money Order Num: 0043602
Amt Tendered: $350.00

Total Due: $350.00
Total Tendered: $350.00
Change Amt: $0.00

1:10-cv-0142-SEB-TAB

"Only when bank clears the check, money order, or verifies credit of funds is the fee or debt officially paid or discharged. A $45.00 fee will be charged for a returned check."

AO 398 (Rev. 12/93)

FILED
U.S. DISTRICT COURT
10 FEB -3 PM 3:13
SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS
CLERK

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: (A) Toyota Motor North America, Inc. c/o CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017

as (B) Resident Agent of (C) Toyota Motor North America, Inc.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Indianapolis Division, Southern District of Indiana and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 3rd day of February, 2010.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—District
E—Docket number of action
F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Toyota Motor North America, Inc. , acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. ,
(CAPTION OF ACTION)

which is case number in the United States District Court
(DOCKET NUMBER)

for the Indianapolis Division, Southern District of Indiana .

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 3, 2010 ,
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

(DATE) (SIGNATURE)

Printed/Typed Name:

As (TITLE) of Toyota Motor North America, Inc. (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AO 398 (Rev. 12/93)

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
10 FEB -3 PM 3:11
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: (A) Toyota Motor Sales, U.S.A., Inc. c/o CT Corporation System, 251 East Ohio Street, Suite 1100, Indianapolis, IN 46204

as (B) Resident Agent of (C) Toyota Motor Sales U.S.A., Inc.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Indianapolis Division, Southern District of Indiana and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 3rd day of February, 2010.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—District
E—Docket number of action
F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Toyota Motor Sales U.S.A., Inc. , acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. ,
(CAPTION OF ACTION)

which is case number in the United States District Court
(DOCKET NUMBER)

for the Indianapolis Division, Southern District of Indiana .

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 3, 2010 ,
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

(DATE) (SIGNATURE)

Printed/Typed Name:

As (TITLE) of Toyota Motor Sales U.S.A., Inc. (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AO 398 (Rev. 12/93)

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
10 FEB -3 PM 3:10
LAURA A. BRIGGS
CLERK

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

1:10-cv-0142 SEB-TAB

TO: (A) Toyota Motor Engineering & Manufacturing North America, Inc. c/o CT Corporation System, 251 East Ohio Street, Suite 1100, Indianapolis, IN 46204

as (B) Resident Agent of (C) Toyota Motor Engineering & Manufacturing North America, Inc.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Indianapolis Division, Southern District of Indiana and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 3rd day of February, 2010.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—District
E—Docket number of action
F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Toyota Motor Engineering & Manufacturing North America, Inc. (DEFENDANT NAME), acknowledge receipt of your request that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. (CAPTION OF ACTION),

which is case number (DOCKET NUMBER) in the United States District Court for the Indianapolis Division, Southern District of Indiana.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 3, 2010 (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

_____ (DATE)

_____ (SIGNATURE)

Printed/Typed Name: _____

As (TITLE) of Toyota Motor Engineering & Manufacturing North America, Inc. (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AO 85 (Rev. 01/09-Modified by INSD 02/09) Notice, Consent, and Reference of a Civil Action to a Magistrate Judge

UNITED STATES DISTRICT COURT

for the

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant) 1 : 10 -cv- 0142 SEB -TAB

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names	*Signatures of parties or attorneys*	*Dates*

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

_____
District Judge's signature

_____
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

Comes now attorney Irwin B. Levin of the law firm COHEN & MALAD, LLP, and respectfully enters his appearance as counsel for the Plaintiff, Judith M. Enderle, in the above-captioned cause.

DATED: February 8, 2010

Respectfully submitted,

COHEN & MALAD, LLP

/s/ *Irwin B. Levin*
Irwin B. Levin, #8786-49
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
ilevin@cohenandmalad.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to the following parties of record, via First Class United States Mail, postage prepaid, this 8th day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor North America, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

/s/ Irwin B. Levin

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

Comes now attorney Richard E. Shevitz of the law firm COHEN & MALAD, LLP, and respectfully enters his appearance as counsel for the Plaintiff, Judith M. Enderle, in the above-captioned cause.

DATED: February 8, 2010

Respectfully submitted,

COHEN & MALAD, LLP

/s/ *Richard E. Shevitz*
Richard E. Shevitz, #12007-49
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
rshevitz@cohenandmalad.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to the following parties of record, via First Class United States Mail, postage prepaid, this 8th day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor North America, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

/s/ Richard E. Shevitz

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

Comes now attorney Eric S. Pavlack of the law firm COHEN & MALAD, LLP, and respectfully enters his appearance as counsel for the Plaintiff, Judith M. Enderle, in the above-captioned cause.

DATED: February 8, 2010

Respectfully submitted,

COHEN & MALAD, LLP

/s/ *Eric S. Pavlack*
Eric S. Pavlack, #21773-49
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
epavlack@cohenandmalad.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to the following parties of record, via First Class United States Mail, postage prepaid, this 8th day of February, 2010:

Toyota Motor Sales, U.S.A., Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

Toyota Motor North America, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

/s/ Eric S. Pavlack

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself and all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

Karoline E. Jackson, of Barnes & Thornburg, enters her appearance on behalf of Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.

Respectfully submitted,

/s/ Karoline E. Jackson

Karoline E. Jackson
Barnes & Thornburg LLP
11 South Meridian St.
Indianapolis, IN 46204
kjackson@btlaw.com
Telephone: (317) 236-1313
Facsimile: (317) 231-7433

CERTIFICATE OF SERVICE

A copy of the foregoing has been served electronically upon all counsel of record by the United States District Court's electronic filing system on the date of filing, February 22nd, 2010.

/s/ Karoline E. Jackson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself and all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

T. Joseph Wendt, of Barnes & Thornburg, enters his appearance on behalf of Defendants, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.

Respectfully submitted,

/s/ T. Joseph Wendt

T. Joseph Wendt
Barnes & Thornburg LLP
11 South Meridian St.
Indianapolis, IN 46204
jwendt@btlaw.com
Telephone: (317) 236-1313
Facsimile: (317) 231-7433

CERTIFICATE OF SERVICE

A copy of the foregoing has been served electronically upon all counsel of record by the United States District Court's electronic filing system on the date of filing, February 22nd, 2010.

/s/ T.JosephWendt

INDS01 JWENDT 1185120v1

TOY-RQ-05E-00011270

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JUDITH M. ENDERLE, on behalf of herself and all others similarly situated, 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. 1:10-cv-0142 SEB-TAB

APPEARANCE

To: The Clerk of court and all parties of record:

I am authorized to practice in this court, and I appear in this case as counsel for:

Toyota Motor North America, Inc.,
Toyota Motor Engineering & Manufacturing North America, Inc., and
Toyota Motor Sales, U.S.A., Inc.

Date: February 22, 2010

/s/ *Michael Rosiello*
Michael Rosiello (6203-49)
Barnes & Thornburg LLP
11 South Meridian St.
Indianapolis, IN 46204
mike.rosiello@btlaw.com
Telephone: (317) 236-1313
Facsimile: (317) 231-7433

CERTIFICATE OF SERVICE

A copy of the foregoing has been served electronically upon all counsel of record by the United States District Court's electronic filing system on the date of filing, February 22nd, 2010.

/s/ Michael Rosiello

INDS02 MRR 1096560v1

TOY-RQ-05E-00011272

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Toyota Motor Engineering & Manufacturing North America, Inc. (DEFENDANT NAME), acknowledge receipt of your request that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. (CAPTION OF ACTION),

which is case number (DOCKET NUMBER) in the United States District Court for the Indianapolis Division, Southern District of Indiana.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 3, 2010 (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

Feb 22, 2010 (DATE) /Michael Rosiello/ (SIGNATURE)

Printed/Typed Name: Michael Rosiello

As Counsel for (TITLE) of Toyota Motor Engineering & Manufacturing North America, Inc. (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

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A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

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(DEFENDANT NAME)

that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. ,
(CAPTION OF ACTION)

which is case number in the United States District Court
(DOCKET NUMBER)

for the Indianapolis Division, Southern District of Indiana .

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

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(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

Feb. 22, 2010 / Michael Rosiello
(DATE) (SIGNATURE)

Printed/Typed Name: Michael Rosiello

As Counsel for of Toyota Motor North America, Inc.
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

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AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

1 : 10 -cv- 0142 SEB -TAB

TO: Eric S. Pavlack, Cohen & Malad, LLP
One Indiana Square, Ste. 1400, Indianapolis, IN 46204
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Toyota Motor Sales U.S.A., Inc. , acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Judith M. Enderle, on behalf of herself and all others similarly situated v. Toyota Motor North America, Inc., et al. ,
(CAPTION OF ACTION)

which is case number in the United States District Court
(DOCKET NUMBER)

for the Indianapolis Division, Southern District of Indiana .

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(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

Feb. 22, 2010 /Michael Rosiello
(DATE) (SIGNATURE)

Printed/Typed Name: Michael Rosiello

As Counsel for of Toyota Motor Sales U.S.A., Inc.
(TITLE) (CORPORATE DEFENDANT)

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U.S. District Court
Southern District of Indiana (Indianapolis)
CIVIL DOCKET FOR CASE #: 1:10-cv-00142-SEB-TAB

ENDERLE v. TOYOTA MOTOR NORTH AMERICA, INC. et al
Assigned to: Judge Sarah Evans Barker
Referred to: Magistrate Judge Tim A. Baker
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/03/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

JUDITH M. ENDERLE
on behalf of herself all others similarly situated

represented by **Eric S. Pavlack**
COHEN & MALAD LLP
One Indiana Square
Suite 1400
Indianapolis, IN 46204
(317) 636-6481
Fax: (317) 636-2593
Email: epavlack@cohenandmalad.com
ATTORNEY TO BE NOTICED

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
ATTORNEY TO BE NOTICED

Richard E. Shevitz
COHEN & MALAD LLP
One Indiana Square
Suite 1400
Indianapolis, IN 46204
(317) 636-6481
Fax: (317) 636-2593
Email: rshevitz@cohenandmalad.com
ATTORNEY TO BE NOTICED

V.

Defendant

TOYOTA MOTOR NORTH AMERICA, INC.

represented by **Karoline E. Jackson**
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204

(317) 231-7492
Fax: (317) 231-7433
Email: kjackson@btlaw.com
ATTORNEY TO BE NOTICED

Michael Rosiello
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
(317) 231-7270
Fax: (317) 231-7433
Email: mike.rosiello@btlaw.com
ATTORNEY TO BE NOTICED

T. Joseph Wendt
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
(317) 236-1313
Fax: (317) 231-7433
Email: jwendt@btlaw.com
ATTORNEY TO BE NOTICED

Defendant

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.	represented by	**Karoline E. Jackson** (See above for address) *ATTORNEY TO BE NOTICED* **Michael Rosiello** (See above for address) *ATTORNEY TO BE NOTICED* **T. Joseph Wendt** (See above for address) *ATTORNEY TO BE NOTICED*

Defendant

TOYOTA MOTOR SALES, U.S.A., INC.	represented by	**Karoline E. Jackson** (See above for address) *ATTORNEY TO BE NOTICED* **Michael Rosiello** (See above for address) *ATTORNEY TO BE NOTICED* **T. Joseph Wendt** (See above for address) *ATTORNEY TO BE NOTICED*

TOY-RQ-05E-00011280

Date Filed	#	Docket Text
02/03/2010	1	COMPLAINT against TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC. with Jury Demand, filed by JUDITH M. ENDERLE.(JD) (Entered: 02/04/2010)
02/03/2010	2	CIVIL COVER SHEET, filed by Plaintiff JUDITH M. ENDERLE. (JD) (Entered: 02/04/2010)
02/03/2010	3	RECEIPT #IP016618 in the amount of $ 350.00 (JD) (Entered: 02/04/2010)
02/03/2010	4	NOTICE of Lawsuit & Request for Waiver of Service for Summons Supplied by JUDITH M. ENDERLE (JD) (Entered: 02/04/2010)
02/03/2010	5	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (JD) (Entered: 02/04/2010)
02/08/2010	6	NOTICE of Appearance by Irwin B. Levin on behalf of Plaintiff JUDITH M. ENDERLE. (Levin, Irwin) (Entered: 02/08/2010)
02/08/2010	7	NOTICE of Appearance by Richard E. Shevitz on behalf of Plaintiff JUDITH M. ENDERLE. (Shevitz, Richard) (Entered: 02/08/2010)
02/08/2010	8	NOTICE of Appearance by Eric S. Pavlack on behalf of Plaintiff JUDITH M. ENDERLE. (Pavlack, Eric) (Entered: 02/08/2010)
02/22/2010	9	NOTICE of Appearance by Karoline E. Jackson on behalf of Defendants TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. (Jackson, Karoline) (Entered: 02/22/2010)
02/22/2010	10	NOTICE of Appearance by T. Joseph Wendt on behalf of Defendants TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. (Wendt, T.) (Entered: 02/22/2010)
02/22/2010	11	NOTICE of Appearance by Michael Rosiello on behalf of Defendants TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. (Rosiello, Michael) (Entered: 02/22/2010)
02/22/2010	12	WAIVER OF SERVICE Returned Executed, filed by TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. waiver sent on 2/3/2010. (Rosiello, Michael) (Entered: 02/22/2010)
02/22/2010	13	WAIVER OF SERVICE Returned Executed, filed by TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. TOYOTA MOTOR NORTH AMERICA, INC. waiver sent on 2/3/2010. (Rosiello, Michael) (Entered: 02/22/2010)

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02/22/2010	14	WAIVER OF SERVICE Returned Executed, filed by TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC.. TOYOTA MOTOR SALES, U.S.A., INC. waiver sent on 2/3/2010. (Rosiello, Michael) (Entered: 02/22/2010)

Case #: 1:10-cv-00142-SEB-TAB

TOY-RQ-05E-00011282

FILE START

2/11 2010
11:04 a

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Additional Parties Attachment form is attached (see page 2 of 2)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Additional Parties Attachment form is attached (see page 1 of 2)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible] Deputy
[illegible]

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

Thename and address of the court is:
(El nombre y dirección de la corte es): Superior Court, State of California
Stanley Mosk Courthouse
111 N. Hill Street, Los Angeles CA 90012

CASE NUMBER: *(Número del Caso):* BC431686

Thename, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Geragos & Tamar G. Arminak, 644 S. Figueroa St., Los Angeles CA 90017

DATE: *(Fecha)* [illegible] Clerk, by *(Secretario)* AMBER LaFLEUR-CLAYTON, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☑ on behalf of *(specify)*: Toyota Motor Sales U.S.A. Inc.
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

SHORT TITLE:	CASE NUMBER:
MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☑ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

WALTER McKINNEY and FRANKIE McKINNEY,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

American LegalNet, Inc.
www.FormsWorkflow.com

SHORT TITLE: MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	CASE NUMBER:

INSTRUCTIONS FOR USE

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List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

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

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

American LegalNet, Inc.
www.FormsWorkflow.com

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Attorneys on behalf of Plaintiffs and the Class

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible], Deputy
ARI CARLEUR-CLAYTON

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, Plaintiffs 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.	BC431686 CASE NO. **CLASS ACTION COMPLAINT** **DEMAND FOR JURY TRIAL**

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their

counsel, as follows:

OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acceleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

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4. Following the September 2009 recall, Defendants continued to receive reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has been granted jurisdiction over the subject matter of this litigation by the legislature. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants.

9. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

10. Defendant TOYOTA MOTOR ENGINEERING &

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MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

11. Defendant Toyota Motor Corporation ("TMC"), at all times mentioned, was and is a foreign corporation maintaining its corporate headquarters in Toyota City, Aichi Prefecture, Japan. Defendant 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 U.S.T. §361 (U.S. Treaties & other International Agreements), by serving the citation upon the Office of the Ministry of Foreign Affairs of Japan, which shall then serve the agent or officers of TMC 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. TMC has sufficient contacts with this State to give this Court jurisdiction.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated

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attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

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16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects

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leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the 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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure,

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NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop

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replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

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30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable.

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The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their

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failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the Class, against all Defendants,

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repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

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56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the

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brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

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66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that

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the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

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SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants'

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dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

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a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 10, 2010

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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 10, 2010

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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ATTORNEY FOR (Name): Plaintiffs and Class

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OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
ALEXANDRIA GRAYTON

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: Stanley Mosk Courthouse
MAILING ADDRESS: 111 N. Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Central District

CASE NAME:
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CIVIL CASE COVER SHEET

☑ **Unlimited** (Amount demanded exceeds $25,000) ☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: BC431686

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☑ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☑ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☑ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify)*:
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: February 10, 2010
TAMAR G. ARMINAK (SBN 238677)
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

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SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☑ YES CLASS ACTION? ☑ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10 ☐ HOURS/ ☑ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check **one** Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	☑ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	☐ A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.

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SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	BC431686

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.) Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
	☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
	☐ A6109 Labor Commissioner Appeals	10.
Contract Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	☐ A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
	☐ A6031 Tortious Interference	1., 2., 3., 5.
	☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2.
Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
	☐ A6032 Quiet Title	2., 6.
	☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

TOY-RQ-05E-00011311

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8.
		☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
		☐ A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
		☐ A6160 Abstract of Judgment	2., 6.
		☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
		☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
		☐ A6123 Workplace Harassment	2., 3., 9.
		☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		☐ A6190 Election Contest	2.
		☐ A6110 Petition for Change of Name	2., 7.
		☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		☐ A6100 Other Civil Petition	2., 9.

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☑1. ☐2. ☐3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			ADDRESS:
CITY: Los Angeles	STATE: CA	ZIP CODE: 90012	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the COUNTY courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: February 10, 2010

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE

Case Number BC431686

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form

ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534
Hon. J. Stephen Czuleger	3	224
Hon. Luis A. Lavin	13	630
Hon. Terry A. Green	14	300
Hon. Richard Fruin	15	307
Hon. Rita Miller	16	306
Hon. Richard E. Rico	17	309
Hon. Helen I. Bendix	18	308
Hon. Rex Heeseman	19	311
Hon. Kevin C. Brazile	20	310
Hon. Zaven V. Sinanian	23	315
Hon. Robert L. Hess	24	314
Hon. Mary Ann Murphy	25	317
Hon. James R. Dunn	26	316
Hon. Yvette M. Palazuelos	28	318
Hon. John A. Kronstadt	30	400
Hon. Alan S. Rosenfield	31	407
Hon. Mary H. Strobel	32	406
Hon. Charles F. Palmer	33	409
Hon. Amy D. Hogue	34	408
Hon. Gregory Alarcon	36	410
Hon. Joanne O'Donnell	37	413
Hon. Maureen Duffy-Lewis	38	412
Hon. Michael C. Solner	39	415
Hon. Michelle R. Rosenblatt	40	414
Hon. Ronald M. Sohigian	41	417

ASSIGNED JUDGE	DEPT	ROOM
Hon. Holly E. Kendig	42	416
Hon. Mel Red Recana	45	529
Hon. Debre Katz Weintraub	47	507
Hon. Elizabeth Allen White	48	506
Hon. Conrad Aragon	49	509
Hon. John Shepard Wiley Jr.	50	508
Hon. Abraham Khan	51	511
Hon. Susan Bryant-Deason	52	510
Hon. John P. Shook	53	513
Hon. Ernest M. Hiroshige	54	512
Hon. Malcolm H. Mackey	55	515
Hon. Jane L. Johnson	56	514
Hon. Ralph W. Dau	57	517
Hon. Rolf M. Treu	58	516
Hon. David L. Minning	61	632
Hon. Michael L. Stern	62	600
Hon. Kenneth R. Freeman	64	601
Hon. Mark Mooney	68	617
Hon. Edward A. Ferns	69	621
Hon. Soussan G. Bruguera	71	729
Hon. Ruth Ann Kwan	72	731
Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730
Hon. Carl J. West*	**311**	**CCW**
Other		

***Class Actions**

All class actions are initially assigned to Judge Carl J. West in Department 311 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk

TOY-RQ-05E-00011314

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at **www.lasuperiorcourt.org** (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (**Civil only**).

What Is ADR:
Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

Mediation:
In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate
Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate
Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:
In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate
Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate
If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:
In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate
Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate
Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:
Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

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LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

Party Select Panel	The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged $150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
Random Select Panel	The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select Panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
Private Neutral	The market rate for private neutrals can range from $300-$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM	CITY	PHONE	FAX
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program
A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office

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2/23/10
11:00 AM

GERAGOS & GERAGOS
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Attorneys on behalf of Plaintiffs and the California Class

ORIGINAL FILED

FEB 22 2010

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, ELEN EDILYAN,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the California Class,

Plaintiffs

vs.

A.M.

TOYOTA MOTOR SALES U.S.A., INC., a California corporation; ~~TOYOTA~~ MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; and DOES 1-10: Inclusive.

Defendants.

CASE NO. BC 431686

CALIFORNIA CLASS ACTION COMPLAINT

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their counsel, as follows:

TOY-RQ-05E-00011318

OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acccleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

4. Following the September 2009 recall, Defendants continued to receive

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reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction. This case does not revolve around a federal question and the parties are not diverse.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants. Plaintiffs bring this lawsuit on behalf of themselves and all other residents of the State of California as a California class action.

9. Plaintiff Elen Edilyan is a resident of the State of California, County of Los Angeles. Plaintiff is the owner of a 2008 Toyota Camry LE, a vehicle manufactured and sold by defendants.

10. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial

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revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

11. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

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15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and

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advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the recall of 3.8 million Toyota and Lexus vehicles inaccurately stated

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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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure, NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

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23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles

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it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems

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with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who reside in the State of California only, who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles. The Class is limited only to California residents.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable. The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other

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Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

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40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

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46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

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51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

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57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to

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adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator

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sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the California Class, against all

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Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants' dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state

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consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

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CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 22, 2010

Tamar Arminak /sk
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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the California Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 22, 2010

/s/ Tamar Arminak

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SUMMONS
(CITACION JUDICIAL)

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OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible] Deputy
[illegible]

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Additional Parties Attachment form is attached (see page 2 of 2)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Additional Parties Attachment form is attached (see page 1 of 2)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

CASE NUMBER: *(Número del Caso):* BC431686

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, State of California
Stanley Mosk Courthouse
111 N. Hill Street, Los Angeles CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Geragos & Tamar G. Arminak, 644 S. Figueroa St., Los Angeles CA 90017

DATE: *(Fecha)* [illegible] Clerk, by *(Secretario)* AMBER LaFLEUR-CLAYTON, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☑ on behalf of *(specify)*: Toyota Motor Sales U.S.A. Inc.
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

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TOY-RQ-05E-00011340

SHORT TITLE: MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☑ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

WALTER McKINNEY and FRANKIE McKINNEY,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

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SHORT TITLE:	CASE NUMBER:
MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
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List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

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

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

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Attorneys on behalf of Plaintiffs and the Class

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OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible], Deputy
ARI CARLEUR-CLAYTON

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, Plaintiffs 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.	BC431686 CASE NO. **CLASS ACTION COMPLAINT** **DEMAND FOR JURY TRIAL**

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their

counsel, as follows:

OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acceleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

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4. Following the September 2009 recall, Defendants continued to receive reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has been granted jurisdiction over the subject matter of this litigation by the legislature. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants.

9. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

10. Defendant TOYOTA MOTOR ENGINEERING &

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MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

11. Defendant Toyota Motor Corporation ("TMC"), at all times mentioned, was and is a foreign corporation maintaining its corporate headquarters in Toyota City, Aichi Prefecture, Japan. Defendant 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 U.S.T. §361 (U.S. Treaties & other International Agreements), by serving the citation upon the Office of the Ministry of Foreign Affairs of Japan, which shall then serve the agent or officers of TMC 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. TMC has sufficient contacts with this State to give this Court jurisdiction.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated

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attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

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16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects

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leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the 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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure,

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NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop

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replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

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30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable.

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The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their

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failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the Class, against all Defendants,

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repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

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56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the

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brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

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66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that

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the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

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SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants'

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dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

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a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 10, 2010

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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 10, 2010

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CM-010

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FOR COURT USE ONLY

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Los Angeles Superior Court
FEB 10 2010
John A. Clarke, Executive Officer/Clerk
By [signature], Deputy
A. ELLEFLEUR-CLAYTON

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: Stanley Mosk Courthouse
MAILING ADDRESS: 111 N. Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Central District

CASE NAME:
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CASE NUMBER: BC431686

JUDGE:

DEPT:

CIVIL CASE COVER SHEET

[✓] **Unlimited** (Amount demanded exceeds $25,000)
[ ] **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] **Counter** [ ] **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
[✓] Auto (22)
[ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
[ ] Asbestos (04)
[ ] Product liability (24)
[ ] Medical malpractice (45)
[ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
[ ] Business tort/unfair business practice (07)
[ ] Civil rights (08)
[ ] Defamation (13)
[ ] Fraud (16)
[ ] Intellectual property (19)
[ ] Professional negligence (25)
[ ] Other non-PI/PD/WD tort (35)

Employment
[ ] Wrongful termination (36)
[ ] Other employment (15)

Contract
[ ] Breach of contract/warranty (06)
[ ] Rule 3.740 collections (09)
[ ] Other collections (09)
[ ] Insurance coverage (18)
[ ] Other contract (37)

Real Property
[ ] Eminent domain/Inverse condemnation (14)
[ ] Wrongful eviction (33)
[ ] Other real property (26)

Unlawful Detainer
[ ] Commercial (31)
[ ] Residential (32)
[ ] Drugs (38)

Judicial Review
[ ] Asset forfeiture (05)
[ ] Petition re: arbitration award (11)
[ ] Writ of mandate (02)
[ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
[ ] Antitrust/Trade regulation (03)
[ ] Construction defect (10)
[ ] Mass tort (40)
[ ] Securities litigation (28)
[ ] Environmental/Toxic tort (30)
[ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
[ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
[ ] RICO (27)
[ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
[ ] Partnership and corporate governance (21)
[ ] Other petition *(not specified above)* (43)

2. This case [✓] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [✓] Large number of separately represented parties
   b. [✓] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [✓] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [✓] monetary b. [✓] nonmonetary; declaratory or injunctive relief c. [✓] punitive
4. Number of causes of action *(specify)*:
5. This case [✓] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: February 10, 2010
TAMAR G. ARMINAK (SBN 238677)
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☑ YES CLASS ACTION? ☑ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10 ☐ HOURS/ ☑ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check **one** Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	☑ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	☐ A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.

TOY-RQ-05E-00011366

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	BC431686

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.) — Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
	☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment — Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
	☐ A6109 Labor Commissioner Appeals	10.
Contract — Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	☐ A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
	☐ A6031 Tortious Interference	1., 2., 3., 5.
	☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property — Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2.
Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
	☐ A6032 Quiet Title	2., 6.
	☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer — Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review — Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

TOY-RQ-05E-00011367

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8.
		☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
		☐ A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
		☐ A6160 Abstract of Judgment	2., 6.
		☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
		☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
		☐ A6123 Workplace Harassment	2., 3., 9.
		☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		☐ A6190 Election Contest	2.
		☐ A6110 Petition for Change of Name	2., 7.
		☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		☐ A6100 Other Civil Petition	2., 9.

TOY-RQ-05E-00011368

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☑1. ☐2. ☐3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			ADDRESS:
CITY: Los Angeles	STATE: CA	ZIP CODE: 90012	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the COUNTY courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: February 10, 2010

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE

Case Number BC431686

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form

	ASSIGNED JUDGE	DEPT	ROOM
	Hon. Elihu M. Berle	1	534
	Hon. J. Stephen Czuleger	3	224
	Hon. Luis A. Lavin	13	630
	Hon. Terry A. Green	14	300
	Hon. Richard Fruin	15	307
	Hon. Rita Miller	16	306
	Hon. Richard E. Rico	17	309
	Hon. Helen I. Bendix	18	308
	Hon. Rex Heeseman	19	311
	Hon. Kevin C. Brazile	20	310
	Hon. Zaven V. Sinanian	23	315
	Hon. Robert L. Hess	24	314
	Hon. Mary Ann Murphy	25	317
	Hon. James R. Dunn	26	316
	Hon. Yvette M. Palazuelos	28	318
	Hon. John A. Kronstadt	30	400
	Hon. Alan S. Rosenfield	31	407
	Hon. Mary H. Strobel	32	406
	Hon. Charles F. Palmer	33	409
	Hon. Amy D. Hogue	34	408
	Hon. Gregory Alarcon	36	410
	Hon. Joanne O'Donnell	37	413
	Hon. Maureen Duffy-Lewis	38	412
	Hon. Michael C. Solner	39	415
	Hon. Michelle R. Rosenblatt	40	414
	Hon. Ronald M. Sohigian	41	417

	ASSIGNED JUDGE	DEPT	ROOM
	Hon. Holly E. Kendig	42	416
	Hon. Mel Red Recana	45	529
	Hon. Debre Katz Weintraub	47	507
	Hon. Elizabeth Allen White	48	506
	Hon. Conrad Aragon	49	509
	Hon. John Shepard Wiley Jr.	50	508
	Hon. Abraham Khan	51	511
	Hon. Susan Bryant-Deason	52	510
	Hon. John P. Shook	53	513
	Hon. Ernest M. Hiroshige	54	512
	Hon. Malcolm H. Mackey	55	515
	Hon. Jane L. Johnson	56	514
	Hon. Ralph W. Dau	57	517
	Hon. Rolf M. Treu	58	516
	Hon. David L. Minning	61	632
	Hon. Michael L. Stern	62	600
	Hon. Kenneth R. Freeman	64	601
	Hon. Mark Mooney	68	617
	Hon. Edward A. Ferns	69	621
	Hon. Soussan G. Bruguera	71	729
	Hon. Ruth Ann Kwan	72	731
	Hon. Teresa Sanchez-Gordon	74	735
	Hon. William F. Fahey	~~78~~	730
	Hon. Carl J. West*	**311**	**CCW**
	Other		

***Class Actions**

All class actions are initially assigned to Judge Carl J. West in Department 311 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk

TOY-RQ-05E-00011370

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

TOY-RQ-05E-00011371

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at **www.lasuperiorcourt.org** (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (**Civil only**).

What Is ADR:
Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

Mediation:
In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate
Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate
Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:
In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate
Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate
If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:
In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate
Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate
Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:
Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

TOY-RQ-05E-00011372

LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

Party Select Panel — The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged $150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.

Random Select Panel — The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select Panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.

Private Neutral — The market rate for private neutrals can range from $300-$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM	CITY	PHONE	FAX
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program
A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office

TOY-RQ-05E-00011373

CT Corporation

Service of Process Transmittal

02/11/2010
CT Log Number 516146803

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in California**

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:	Walter McKinney and Frankie McKinney, Pltfs. vs. Toyota Motor Sales U.S.A., Inc., etc., et al., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Summons, Complaint, Demand for Jury Trial, Attachment(s), Cover Sheet, Cover Sheet Addendum, Notice
COURT/AGENCY:	Los Angeles County, Superior Court, Hill Street, CA Case # BC431686
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Class Action - Breach of Warranties - Defective Electronic Throttle Control System with Intelligence or Electronic Throttle Control System in multiple models of automobiles manufacutred by defendants -
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 02/11/2010 at 11:04
APPEARANCE OR ANSWER DUE:	Within 30 days after service
ATTORNEY(S) / SENDER(S):	Mark Geragos Geragos & Geragos 644 South Figueroa Street Los Angeles, CA 90017-3411 213-625-3900
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791256379060 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:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

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.

2/11 2010
11:04 a

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible] Deputy
[illegible]

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Additional Parties Attachment form is attached (see page 2 of 2)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Additional Parties Attachment form is attached (see page 1 of 2)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

CASE NUMBER: *(Número del Caso):* BC431686

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, State of California
Stanley Mosk Courthouse
111 N. Hill Street, Los Angeles CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Geragos & Tamar G. Arminak, 644 S. Figueroa St., Los Angeles CA 90017

DATE: *(Fecha)* [illegible] Clerk, by *(Secretario)* AMBER LaFLEUR-CLAYTON, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☑ on behalf of *(specify)*: Toyota Motor Sales U.S.A. Inc.
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

American LegalNet, Inc.
www.FormsWorkflow.com

TOY-RQ-05E-00011375

SHORT TITLE: MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☑ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

WALTER McKINNEY and FRANKIE McKINNEY,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

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SHORT TITLE:	CASE NUMBER:
MCKINNEY v. TOYOTA MOTOR SALES U.S.A., INC., et al.	

INSTRUCTIONS FOR USE

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List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

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

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

American LegalNet, Inc.
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Attorneys on behalf of Plaintiffs and the Class

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible], Deputy
ARI CARLEUR-CLAYTON

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, Plaintiffs 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.	BC431686 CASE NO. **CLASS ACTION COMPLAINT** **DEMAND FOR JURY TRIAL**

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their

counsel, as follows:

OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acceleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

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4. Following the September 2009 recall, Defendants continued to receive reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has been granted jurisdiction over the subject matter of this litigation by the legislature. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants.

9. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

10. Defendant TOYOTA MOTOR ENGINEERING &

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MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

11. Defendant Toyota Motor Corporation ("TMC"), at all times mentioned, was and is a foreign corporation maintaining its corporate headquarters in Toyota City, Aichi Prefecture, Japan. Defendant 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 U.S.T. §361 (U.S. Treaties & other International Agreements), by serving the citation upon the Office of the Ministry of Foreign Affairs of Japan, which shall then serve the agent or officers of TMC 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. TMC has sufficient contacts with this State to give this Court jurisdiction.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated

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attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

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16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects

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leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the 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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure,

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NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop

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replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

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30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable.

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The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their

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failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the Class, against all Defendants,

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repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

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56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the

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brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

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66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that

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the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

/

/

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SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants'

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dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

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a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 10, 2010

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/S/
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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 10, 2010

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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ATTORNEY FOR (Name): Plaintiffs and Class

FOR COURT USE ONLY

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
KEFCHEUR-BOYTON

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: Stanley Mosk Courthouse
MAILING ADDRESS: 111 N. Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Central District

CASE NAME:
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CIVIL CASE COVER SHEET	Complex Case Designation	CASE NUMBER:
☑ Unlimited (Amount demanded exceeds $25,000) ☐ Limited (Amount demanded is $25,000 or less)	☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	BC431686
		JUDGE:
		DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☑ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☑ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☑ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify)*:
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: February 10, 2010
TAMAR G. ARMINAK (SBN 238677)
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

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SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☑ YES CLASS ACTION? ☑ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10 ☐ HOURS/ ☑ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check **one** Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	☑ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	☐ A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.

TOY-RQ-05E-00011401

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	BC431686

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.) — Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
	☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment — Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
	☐ A6109 Labor Commissioner Appeals	10.
Contract — Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	☐ A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
	☐ A6031 Tortious Interference	1., 2., 3., 5.
	☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property — Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2.
Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
	☐ A6032 Quiet Title	2., 6.
	☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer — Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review — Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

TOY-RQ-05E-00011402

SHORT TITLE:	CASE NUMBER
McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8.
		☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
		☐ A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
		☐ A6160 Abstract of Judgment	2., 6.
		☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
		☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
		☐ A6123 Workplace Harassment	2., 3., 9.
		☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		☐ A6190 Election Contest	2.
		☐ A6110 Petition for Change of Name	2., 7.
		☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		☐ A6100 Other Civil Petition	2., 9.

TOY-RQ-05E-00011403

SHORT TITLE: McKINNEY v. TOYOTA MOTOR SALES U.S.A., INC.	CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☑1. ☐2. ☐3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			ADDRESS:
CITY: Los Angeles	STATE: CA	ZIP CODE: 90012	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the COUNTY courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: February 10, 2010

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE

Case Number BC431686

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form

ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534
Hon. J. Stephen Czuleger	3	224
Hon. Luis A. Lavin	13	630
Hon. Terry A. Green	14	300
Hon. Richard Fruin	15	307
Hon. Rita Miller	16	306
Hon. Richard E. Rico	17	309
Hon. Helen I. Bendix	18	308
Hon. Rex Heeseman	19	311
Hon. Kevin C. Brazile	20	310
Hon. Zaven V. Sinanian	23	315
Hon. Robert L. Hess	24	314
Hon. Mary Ann Murphy	25	317
Hon. James R. Dunn	26	316
Hon. Yvette M. Palazuelos	28	318
Hon. John A. Kronstadt	30	400
Hon. Alan S. Rosenfield	31	407
Hon. Mary H. Strobel	32	406
Hon. Charles F. Palmer	33	409
Hon. Amy D. Hogue	34	408
Hon. Gregory Alarcon	36	410
Hon. Joanne O'Donnell	37	413
Hon. Maureen Duffy-Lewis	38	412
Hon. Michael C. Solner	39	415
Hon. Michelle R. Rosenblatt	40	414
Hon. Ronald M. Sohigian	41	417

ASSIGNED JUDGE	DEPT	ROOM
Hon. Holly E. Kendig	42	416
Hon. Mel Red Recana	45	529
Hon. Debre Katz Weintraub	47	507
Hon. Elizabeth Allen White	48	506
Hon. Conrad Aragon	49	509
Hon. John Shepard Wiley Jr.	50	508
Hon. Abraham Khan	51	511
Hon. Susan Bryant-Deason	52	510
Hon. John P. Shook	53	513
Hon. Ernest M. Hiroshige	54	512
Hon. Malcolm H. Mackey	55	515
Hon. Jane L. Johnson	56	514
Hon. Ralph W. Dau	57	517
Hon. Rolf M. Treu	58	516
Hon. David L. Minning	61	632
Hon. Michael L. Stern	62	600
Hon. Kenneth R. Freeman	64	601
Hon. Mark Mooney	68	617
Hon. Edward A. Ferns	69	621
Hon. Soussan G. Bruguera	71	729
Hon. Ruth Ann Kwan	72	731
Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730
Hon. Carl J. West*	**311**	**CCW**
Other		

***Class Actions**

All class actions are initially assigned to Judge Carl J. West in Department 311 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk

TOY-RQ-05E-00011405

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at **www.lasuperiorcourt.org** (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (**Civil only**).

What Is ADR:
Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

Mediation:
In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate
Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate
Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:
In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate
Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate
If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:
In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate
Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate
Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:
Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

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LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

Party Select Panel	The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged $150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
Random Select Panel	The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select Panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
Private Neutral	The market rate for private neutrals can range from $300-$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM	CITY	PHONE	FAX
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program
A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office

TOY-RQ-05E-00011408

2/23/10
11:00 AM

GERAGOS & GERAGOS
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Fax: 212-689-8156

Attorneys on behalf of Plaintiffs and the California Class

ORIGINAL FILED

FEB 22 2010

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, ELEN EDILYAN,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the California Class,

Plaintiffs

vs.

A.M.

TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; and DOES 1-10: Inclusive.

Defendants.

CASE NO. BC 431686

CALIFORNIA CLASS ACTION COMPLAINT

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their counsel, as follows:

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OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acccleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

4. Following the September 2009 recall, Defendants continued to receive

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reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction. This case does not revolve around a federal question and the parties are not diverse.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants. Plaintiffs bring this lawsuit on behalf of themselves and all other residents of the State of California as a California class action.

9. Plaintiff Elen Edilyan is a resident of the State of California, County of Los Angeles. Plaintiff is the owner of a 2008 Toyota Camry LE, a vehicle manufactured and sold by defendants.

10. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial

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revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

11. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

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15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and

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advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the recall of 3.8 million Toyota and Lexus vehicles inaccurately stated

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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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure, NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

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23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles

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it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems

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with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who reside in the State of California only, who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles. The Class is limited only to California residents.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable. The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other

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Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

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40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

TOY-RQ-05E-00011420

46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

TOY-RQ-05E-00011421

51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

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57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to

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adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator

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sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the California Class, against all

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Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants' dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state

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consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

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TOY-RQ-05E-00011428

CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 22, 2010

Tamar Arminak /sk
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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the California Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 22, 2010

/s/
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TOY-RQ-05E-00011430

CT Corporation

Service of Process Transmittal

02/23/2010
CT Log Number 516202026

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in California**

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:	Walter McKinney, et al., on behalf of themselves and all others simlarly situated as well as on behalf of the California Class, Pltfs. vs. Toyota Motor Sales U.S.A., Inc., etc., et al., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Complaint, Demand for Jury Trial
COURT/AGENCY:	Los Angeles County, Superior Court, Hill Street, CA Case # BC431686
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Class Action - Manufacturing defect - Defects relating to electronic throttle controls unintentionally accelerating and sticking in many of defendant's vehicles - Failure to include safet override controls and to provide material facts
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 02/23/2010 at 11:00
APPEARANCE OR ANSWER DUE:	None Specified
ATTORNEY(S) / SENDER(S):	Mark Geragos Geragos & Geragos 644 South Figueroa Street Los Angeles, CA 90017-3411 213-625-3900
REMARKS:	Please note that Summons was not received with documents at time of service.
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791520981214 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:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

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.

CT Corporation

Service of Process Transmittal

02/23/2010
CT Log Number516202026

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in California**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Summons, Complaint, Demand for Jury Trial, Attachment(s), Cover Sheet, Cover Sheet Addendum, Notice	By Process Server on 02/11/2010 at 11:04	Dorothy Sutton, Administrative Assistant Toyota Motor Sales, U.S.A., Inc.	516146803

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.

2/23/10
11:00 AM

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Attorneys on behalf of Plaintiffs and the California Class

ORIGINAL FILED

FEB 22 2010

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

WALTER McKINNEY and FRANKIE McKINNEY, ELEN EDILYAN,

On Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the California Class,

Plaintiffs

vs.

A.M.

TOYOTA MOTOR SALES U.S.A., INC., a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; and DOES 1-10: Inclusive.

Defendants.

CASE NO. BC 431686

CALIFORNIA CLASS ACTION COMPLAINT

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

For their Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., and Toyota Motor Corporation, Plaintiffs, Walter McKinney and Frankie McKinney state, based upon personal knowledge, information and belief, and the investigation of their counsel, as follows:

TOY-RQ-05E-00011433

OVERVIEW & BACKGROUND

1. Plaintiffs bring this litigation seeking a relief for Defendants' failure to properly and timely remedy the defective throttle control system, Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple models of automobiles manufactured by the Defendants. The defective accelerators on the Defendants' automobiles cause serious safety concerns and in at least one case, the death of a person has been attributed to the inability to stop a vehicle manufactured by the Defendants. The defect causes the accelerator in the Defendants' vehicles to stick, making it difficult if not impossible to stop the vehicle.

2. In September 2007, Defendants began a series of recalls designed to delay what Defendants knew would be a very expensive defect to remedy in many of their vehicles equipped with electronic throttle controls or so called drive-by-wire accelerator controls. Defendants initially sought to conceal the true nature of the defect in their electronic throttle controls by claiming that their vehicles' sudden acccleration problems were caused by floor mats. Defendants recalled certain all-weather floor mats in some of their vehicles. However, it quickly became clear that the recall of the accessory floor mat did not solve the sudden acceleration problems in their vehicles.

3. On September 29, 2009 Defendants Launched a Safety Recall on eight Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions involving the floor mats that could cause the accelerator to get stuck under certain conditions. Multiple years of each of the eight models were included in the September 2009 recall. Defendant's reports to NHTSA and the public were false and misleading as Defendants were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles. Defendants and the NHTSA recommended removing floor mats on the driver's side of these eight models.

4. Following the September 2009 recall, Defendants continued to receive

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reports of sudden acceleration in the Defendants' vehicles. Defendants continued to falsely claim that the incidents were caused by floor mats, the configuration of accelerator pedals and difficulty shutting off models with keyless ignition.

5. Recently, Defendants acknowledged that additional models were defective and announced the recall of additional models and suspension of the sale of many of the Defendants' vehicles until the defects could be remedied.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because the Defendant is a resident of this jurisdiction and has conducted sufficient business within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

7. Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction. This case does not revolve around a federal question and the parties are not diverse.

PARTIES

8. Plaintiffs Walter McKinney and Frankie McKinney are residents of Childress County, Childress, Texas. Plaintiffs are the owners of a vehicle manufactured and sold by the Defendants. Plaintiffs bring this lawsuit on behalf of themselves and all other residents of the State of California as a California class action.

9. Plaintiff Elen Edilyan is a resident of the State of California, County of Los Angeles. Plaintiff is the owner of a 2008 Toyota Camry LE, a vehicle manufactured and sold by defendants.

10. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Defendant TMS engages in the sale of automobiles in this State derives substantial

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revenue from sales within this State and has sufficient contacts with this State to give this Court jurisdiction.

11. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC (hereinafter "TEMA") is a manufacturing, research and development company owned by Toyota Motor Company with its corporate headquarters in Erlanger, Kentucky. Defendant TEMA handles the manufacturing concerns for Toyota in North America and derives substantial revenue from the sale of vehicles sold in this State.

FACTS

12. Since the Defendants made the switch to their "drive by wire" electronic throttle control system, or ETC system, complaints of unintended acceleration and sticking of the throttle in the Defendants' vehicles have increased. When the ETC 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. Many if not all of the newer vehicles have no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

13. Defendants have attributed the increased incidents of unintended acceleration or sticking of the throttle to improper floor mats or improperly designed accelerator pedals. Plaintiffs and Class Members have endured numerous ill-fated attempts to remedy the unintended acceleration and throttle sticking in the Defendants' vehicles.

14. In September 2007, Defendants began a series of recalls that have failed to address the real problem with the Defendants' "drive by wire" throttle control. Defendants recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of accelerator sticking problems. The recall of the accessory floor mat did not solve the unintended acceleration or throttle sticking in the Defendants' vehicles.

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15. On September 29, 2009 the NHTSA issued a warning to owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." The NHTSA "strongly encouraged" owners to take out the driver's side floor mats and not to replace the mat. NHTSA also warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." That same day, the Defendants launched a safety recall on eight specific Toyota and Lexus Vehicles. In conjunction with the recall the National Highway Traffic Safety Administration (NHTSA) alerted Lexus and Toyota owners about conditions that could cause the accelerator to stick under certain conditions. Multiple years of each of the eight models have the defective accelerators. The models recalled by the Defendants in September 2009 included:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES 350
- 2006-2010 Lexus IS 250; and
- 2006-2010 Lexus IS 350.

16. These reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

17. Upon information and belief these reports to NHTSA and the public were false and misleading as Toyota and Lexus were aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

18. Based upon representations made by Toyota, the NHTSA strongly recommended taking out removable floor mats on the driver's side in certain models and

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advised owners not to replace them with any other mat, either from Toyota or any other brand. According to U.S. Transportation Secretary Ray LaHood "[t]his is an urgent matter," and "[f]or everyone's sake, we strongly urge owners of these vehicles to remove mats or other obstacles that could lead to unintended acceleration."

19. NHTSA reported "that there continued to be reports of accelerator pedal clearance issues which provide the potential for an accelerator pedal to get stuck in the full open position. A stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death." NHTSA said that, "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." However the safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. From September 2009, Defendants continued to receive reports of vehicles accelerating rapidly after release of the accelerator pedal. Although continuing to receive complaints of sudden and unexpected acceleration in various vehicles, many of which were not included in the recall, Defendants continued to falsely claim that the incidents" appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying defects leading to the reports of sudden and unexpected acceleration.

21. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles. NHTSA further reported that," [it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles. NHTSA found that a press release put out by Toyota earlier that week about the recall of 3.8 million Toyota and Lexus vehicles inaccurately stated

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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." The statement issued by NHTSA to correct Toyota's misleading press release provided, "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." NHTSA further reported that,"[it] constantly monitors consumer complaints and other data. This comprehensive recall focuses on pedal entrapment by floor mats, but NHTSA will fully investigate any possible defect trends in these vehicles.

22. NHTSA also provided an accurate timeline of events to clarify the false statements issued by the Defendants:

TIMELINE OF EVENTS

- On September 29, 2009, NHTSA issued a Consumer Alert warning owners of Toyota and Lexus vehicles about "conditions that could cause the accelerator to get stuck open." As an interim measure, NHTSA "strongly encouraged" owners of specific models to take out the removable driver's side floor mats and not to replace them any other type of mat. NHTSA warned consumers "a stuck accelerator may result in very high vehicle speeds and a crash, which could cause serious injury or death."

- On the same day, Toyota issued a voluntary recall of 3.8 million vehicles to address problems caused when removable floor mats push the accelerator pedal to the floor.

- NHTSA officials are meeting with Toyota to hear their action plan for redesigning the vehicles and correcting this very serious defect. "

TOY-RQ-05E-00011439

23. In early October 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix a sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants incorrectly assured consumers that the only models involved in the recall were:

- 2007 to 2010 Toyota Camry;
- 2005 to 2010 Toyota Avalon;
- 2004 to 2009 Toyota Prius;
- 2005-2010 Toyota Tacoma;
- 2007-2010 Toyota Tundra;
- 2007-2010 Lexus ES 350;
- 2006-2010 Lexus IS 250; and
- 2006 to 2010 Lexus IS 350.

24. To avoid having to address the real problem with the "drive by wire" throttle control, Defendants claimed they would reconfigure the accelerator pedal, and in some cases the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference, particularly with regard to inappropriate or improperly attached floor mats. Furthermore, Defendants claimed they would develop replacement pedals for these vehicles, which would become available for some models in April 2010. Defendants stated that they will provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

25. Although it had knowledge of continued reports of accelerator problems in other vehicles Defendants stated that they will only genuine Toyota or Lexus accessory all-weather floor mats with newly-designed replacement driver- and front-passenger side all-weather mats limited to those vehicles identified in their recall and not other vehicles

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it sold.

26. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an "extra measure of confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals are simultaneously applied.

27. Defendants advised that they intended to notify vehicle owners on a rolling basis, starting with owners of the ES 350, Camry, and Avalon vehicles. While awaiting Defendants' notification, NHTSA urges owners to remove all removable drivers' side floor mats and not replace them until their vehicles have received the remedies being provided by Toyota.

28. Defendants claimed that they would begin making the necessary fixes to the recalled vehicles beginning early in 2010, perhaps in January. Initially, Toyota dealers were instructed on how to reshape existing accelerator pedals. Later, replacement accelerator pedals will be available for installation on vehicles not yet remedied or, if the owner so chooses, even to replace the modified pedals.

29. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a wide spread defect in many if not all of its product line thereby leaving purchasers of its vehicles at risk for sudden and unexpected acceleration.

30. On or about February 27, 2009 Plaintiffs purchased a 2009 Toyota Rav4, VIN JTMZF33V69D005708, ("the subject vehicle") which was made in Japan by the Defendants.

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

32. While publicly blaming floor mats for their SUA problem, tellingly, Defendants have recently indicated that they are considering software changes to the on-board computer systems as a solution to the sudden and unintended acceleration problems

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with their vehicles. The considered software change would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case on behalf of themselves and a class defined as follows:

> **All persons who reside in the State of California only, who own a Toyota or Lexus vehicle with Electronic Throttle Control System with Intelligence ("ETCS-i") or Electronic Throttle Control System ("ETCS"), excluding Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to which this case is assigned.**

34. The Class as defined above is easily identifiable. Class Members can be easily identified using records maintained by the Defendants and Class Members' own vehicles. The Class is limited only to California residents.

35. The Class definition includes a well-defined time period. The Class period is limited by the time period during which the Defendants manufactured vehicles with the ETC (Class Period). The applicable limitations periods are either longer than the practice has been in existence and/or tolled due to the Defendants' fraudulent concealment of the misconduct complained of herein.

36. The Class defined above is too numerous to make joinder practicable. The precise number of Class Members is unknown to the Plaintiffs but it is clear that there are too many for joinder to be practicable. The number of vehicles containing the ETC easily exceeds one million. Indeed, the Defendants have already recalled in excess of 5 million vehicles due to the unintended acceleration problems.

37. The Plaintiffs are Members of the Class they seek to represent and their claims are typical of the claims of the other Class Members. The Plaintiffs are the owners of a vehicle with the ETC manufactured by the Defendants. The Defendants' misconduct complained of herein applies equally to the Plaintiffs and Class Members. Like all other

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Class Members the Plaintiffs were sold a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members alike.

38. The Plaintiffs are adequate representatives of the Class and have hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiffs nor Plaintiffs' counsel have any interests that conflict with those of the Class.

39. Common questions of law and fact predominate over the questions affecting only individual Class Members. Individual questions are virtually non-existent and to the extent that individual questions exist, such questions are non-material and have little or no impact on the outcome of this litigation. Some of the common questions of fact and law include:

a. Whether the Defendants' vehicles containing the ETC are defectively manufactured and/or designed;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles containing the ETC;

c. Whether the Defendants fraudulently concealed the true nature of the defect in their vehicles with the ETC;

d. Whether the Defendants engaged in deceptive conduct by misrepresenting to consumers that the defect was due to floor mats or faulty pedals;

e. Whether the Defendants breached express warranties through their failure to properly remedy the defective design of their vehicles;

f. Whether the defective design of the Defendants' vehicles rendered them unfit for their intended use;

g. Whether the Defendants breached implied warranties of merchantability and fitness for a particular purpose; and

h. Whether the Plaintiffs and Class Members are entitled to damages and/or injunctive relief.

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40. The class action procedural device is the superior method of resolving the claims asserted in this case. Joinder and other procedural methods are impracticable as a means of resolving the claims asserted in this litigation. This Court is an appropriate forum for the resolution of the claims asserted herein. Many of the acts complained of herein occurred in the geographical jurisdiction of this Court and involved residents within the geographical jurisdiction of this Court.

41. Absent certification of this case as a class action, many of the acts complained of herein will likely be without redress. The high cost of litigation compared to the low amount of likely recovery by an individual Class Member make it unlikely that individual cases will be filed.

42. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the entire Class on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from continuing to sell vehicles with the defective ETC.

43. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

FRAUDULENT CONCEALMENT

44. Throughout the Class Period, the Defendants affirmatively concealed the fact that the ETC was defective. The Defendants also omitted material information concerning the nature of the defect in the ETC and misrepresented that the defect was caused by floor mats and/or a faulty pedal design during the entire Class Period.

45. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. The Defendants omitted to inform Class Members that the true defect was in the ETC itself and the failure of the Defendants to include safety override controls.

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46. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiffs and Class Members and material facts were omitted from information provided to the public.

47. The Defendants had a duty to inform the Plaintiffs and Class Members of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles.

48. The running of the statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the ETC was defectively designed and that the Defendants failed to provide safety controls capable of overriding the ETC when it malfunctioned resulting in unintended acceleration of Class Members' vehicles. The Plaintiffs and Class Members had no knowledge of the Defendants' scheme and unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

49. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

50. Defendants breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendant impliedly warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendant breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their vehicles after it became apparent they were defective.

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51. At all times Plaintiffs and the Class relied on the representations made by Defendant that their vehicles are reliable and of a quality that rendered them suitable for their intended use. Plaintiffs and Class Members also relied on the fact that Defendant would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

52. Defendant has breached its implied warranties to Plaintiffs and the Class in that the defective design of their vehicles renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

53. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class Members have suffered and will continue to suffer losses.

SECOND CAUSE OF ACTION

UNIFORM MISREPRESENTATION/FRAUD

54. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

55. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making the uniform, written, material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats or faulty pedal designs.

56. Class Members foresee-ably and permissibly relied upon the Defendant's uniform written misrepresentations. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles. Had Plaintiffs or Class Members known that the Defendants' vehicles were defectively designed, Class Members would have chosen another vehicle. Plaintiffs and Class Members could have reduced the likelihood of incurring charges or other problems by purchasing another model of vehicle.

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57. The Plaintiffs and Class Members reasonably relied upon the Defendant's uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably relied upon the Defendant's misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats and pedals.

58. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

59. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

60. Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

61. Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its throttle control system such that their vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the brake was pressed and/or to design mechanical throttle control systems as a safety check for their electronic throttle control system.

62. Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn the Plaintiffs and Class Members that their vehicles were prone to unintended acceleration and/or difficult to disengage the throttle once the accelerator pedal had been pushed down by the driver. Defendants also failed to

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adequately warn the Plaintiffs and Class Members concerning the methods of disengaging the accelerator pedal manually – by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn the Plaintiffs and Class Members when they failed to recall all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

63. As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and will continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FOURTH CAUSE OF ACTION

PRODUCTS LIABILITY

64. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

65. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned by the Plaintiffs and Class Members would be sold to and operated by purchasers and/or eventual owners of Defendants' vehicles, including the Plaintiffs and Class Members. Defendants also knew that these vehicles would reach the Plaintiffs and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

66. The defects in the Defendants' acceleration equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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67. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

68. The Plaintiffs and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiffs and Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

69. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

70. As a result of the conduct of the Defendants and likely future conduct of the Defendants, the Plaintiffs and Class Members are entitled to injunctive relief on behalf of the Class. Defendants should be enjoined from making any further misrepresentations concerning the cause of the unintended acceleration and/or pedal sticking complaints. Defendants should be ordered to take all steps necessary to fully investigate the source of the problem, including significant testing of the ECT systems and full disclosure of the results of those tests. The Defendants should be ordered to provide alternative transportation to Class Members and no cost to the Class or Plaintiffs while repairs that the Defendants claim will remedy unintended acceleration and pedal sticking are performed on the Class Members' vehicles.

71. Plaintiffs and Class Member have a substantial likelihood of success on the merits and Plaintiffs and the Class risk irreparable, immeasurable harm should the injunctive relief not be granted. The facts in the public record already demonstrate that the Defendants have not been forthcoming with the Plaintiffs and Class Members. Moreover, the Defendants' have failed to remedy the problem with the accelerator

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sticking and/or unintended acceleration despite making several attempts and yet continue to tread the same path in an attempt to remedy the defect.

72. Defendants will incur little if any harm as a result of the requested injunctive relief. Indeed the requested injunctive relief may save the Defendants money in the long run.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

73. Plaintiffs on behalf of themselves and the California Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

74. Defendants obtained monies from the marketing, labeling and/or sale of its vehicles.

75. When considered under the totality of the circumstances, as described above, defendants have been unjustly enriched to the detriment of Plaintiffs and the members of the Class by the retention of consumer's purchase monies received directly or indirectly by Defendants.

76. This enrichment was conferred on defendants by consumers as a direct result of the failures, omissions and deceptive and fraudulent conduct of defendants.

77. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances.

78. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiffs and the members of the Class in amounts to be determined.

SEVENTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICE ACT

California Business and Professions Code § 17200 *et seq.*

79. Plaintiffs on behalf of themselves and the California Class, against all

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Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

80. For the reasons discussed below, Defendants have engaged in unfair competition and prohibited activities. Unfair competition shall mean and include any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by California Business and Professions Code § 17200 *et seq.*, and especially because Defendants made "false or misleading advertising" claims that:

a. purport to be based on factual, objective, or clinical evidence;

b. compare the product's effectiveness or safety to that of other brands or products: or

c. purport to be based on any fact.

81. Defendants' conduct in withholding defect information from Toyota drivers and consumers, covering up the actual cause of the accelerator defect once it became known to them, and allowing defective vehicles to flood the stream of commerce knowing they were defective caused substantial harm to Plaintiffs and the other Class members. Plaintiffs have suffered lost use of their vehicles, fear of collisions while driving their vehicles, loss of value of their vehicles, as well as a general loss of confidence in the representation and warranties of Defendants as a result of Defendants' deceptive conduct.

82. Defendants further profited from these unfair business practices. By not revealing to California consumers that the vast majority of their vehicles being sold at California dealerships were defective, Defendants profited from sales of their defective vehicles during the time period they concealed or misrepresented the truth about the defect. Defendants sat idly by while consumers were buying and driving Defendants' dangerously defective vehicles because they did not want to disrupt their sales and profits in the state of California.

83. Pursuant to Cal. Bus. & Prof. Code §17200 *et seq.*, and other similar state

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consumer fraud and/or unfair and deceptive trade practices acts, defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacturing, marketing, labeling and sale of its vehicles.

84. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known because they were in a superior position to know. Alternatively, defendants made the statements with reckless disregard for their truth or falsity.

85. Defendants made false or misleading statements and omissions about the safety of its vehicles in its, advertising, promotional materials, and other marketing efforts.

86. The facts misrepresented or not fully disclosed were material.

87. Defendants made these misrepresentations and actively concealed this information with the intention that Plaintiffs, class members and the consuming public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

88. Defendants should have reasonably foreseen that Plaintiffs and persons similarly situated were likely to rely on the facts misrepresented or not disclosed.

89. Plaintiffs, class members reasonably relied on and were induced by defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles.

90. Plaintiffs and the members of the Class sustained losses as a direct and proximate result of defendant's misrepresentations or active concealment of information.

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CONCLUSION

WHEREFORE, Plaintiffs pray for the following relief from the Defendants, severally and jointly:

a. Compensatory damages;

b. Punitive damages;

c. Interest, costs and disbursements; and

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

All of which is respectfully submitted by,

February 22, 2010

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DEMAND FOR JURY TRIAL

On behalf of themselves and Members of the California Class defined above, the Plaintiffs hereby request trial by jury of all issues so triable.

All of which is respectfully submitted by,

February 22, 2010

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