FILE START

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTINA OCHS, on behalf of herself and all others similarly situated
2610 North Orchard, Unit A
Chicago, Illinois 60614

Plaintiff,

vs.

TOYOTA MOTOR CORPORATION
1, Toyota-cho, Toyota-city,
Aichi-ken, 471-8571, Japan

And

TOYOTA MOTOR SALES, U.S.A., INC.
Serve: Registered Agent
CT Corporation System
208 S. Lasalle Street, Suite 814
Chicago, Illinois 60604

Defendants.

Case No. _____
Division No. _____

CLASS ACTION COMPLAINT

Plaintiff Christina Ochs, individually and on behalf of all others similarly situated, states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Christina Ochs is, and was at all relevant times, a citizen and resident of Chicago, Cook County, Illinois. Plaintiff Ochs currently owns a 2008 Toyota Prius (VIN # JTDKB20U987723365) which she purchased from Grossinger in Cook County, Illinois in 2007.

2. Defendant Toyota Motor Corporation ("Toyota") is a Japanese company with its principal place of business in Japan. Defendant Toyota may be served at 1, Toyota-cho, Toyota-city, Aichi-ken, 471-8571, Japan.

3. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota USA") is a California corporation with its principal place of business in California. Defendant Toyota USA may be served through its registered agent CT Corporation System, 208 S. Lasalle Street, Suite 814, Chicago, Illinois 60604.

4. This Court has personal jurisdiction over the Toyota defendants pursuant to § 735 ILCS 5/2-209, including, but not limited to, subsections (1) and (2). Furthermore, Toyota USA is registered to do business in this State and maintains a registered agent for service of process in this State.

5. The Toyota defendants have substantial, systematic and continuous contact with this State such that the exercise of personal jurisdiction over these defendants is appropriate.

6. The Toyota defendants have purposefully availed themselves to the privilege of conducting business within the United States and this State and have the requisite minimum contacts with the United States and this State such that maintenance of this suit does not offend traditional notions of fair play and substantial justice and that the Toyota defendants should reasonably anticipate being haled into Court here.

7. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391 and 815 ILCS 505/10a(b) and in the Eastern Division pursuant to LR5.1.

8. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) because this is a class action and the amount in controversy exceeds the sum or value of $5,000,000.00, excluding interest and costs, and there is complete diversity between plaintiff and the defendants.

NATURE OF THE ACTION

ETCS-i and the Danger of Sudden Unintended Acceleration

9. Beginning in the late 1998 and continuing through the present, the Toyota defendants designed, manufactured, distributed and/or sold certain vehicles with an Electronic Throttle Control System with Intelligence ("ETCS-i").

10. ETCS-i is a system whereby the engine's throttle is controlled by electronic signals that are sent from a sensor that detects the position of the gas pedal to electronic control module that determines how much throttle opening is being requested and in turn sends electronic signals to a throttle control motor that opens the throttle plate.

11. Toyota and Lexus vehicles equipped with the ETSC-i system, as designed and implemented by the Toyota defendants, are defective and unsafe in that they are susceptible and prone to incidents of sudden unintended acceleration which render the vehicles uncontrollable.

12. Furthermore, Toyota and Lexus vehicles equipped with the ETSC-i system, as designed and implemented by the Toyota defendants, are defective and unsafe because the Toyota defendants failed to incorporate appropriate failsafe designs to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration. One such failsafe design found in other manufacturers' vehicles with an electronic throttle is a brake override system which will bring the engine of the vehicle to idle if both the brake and accelerator pedals are applied.

Defendants' Knowledge of Sudden Unintended Acceleration in Their Vehicles

13. In 2002, as the Toyota defendants began incorporating ETCS-i into a broader range of their vehicle lines, reports of sudden unintended accelerations of Toyota vehicles began to increase significantly.

14. As the number of reported incidents of sudden unintended acceleration in ETCS-i equipped vehicles continued to increase, the crash, injury and death toll as a result of these incidents was increasing at an alarming rate. In fact, over 2000 complaints of sudden unintended acceleration have been made by Toyota and Lexus owners to the Toyota defendants and government agencies since the introduction of ETCS-i in 1999, including over 800 crashes, over 300 injuries and numerous deaths.

15. These complaints have resulted in numerous investigations from the National Highway Transportation Safety Administration ("NHTSA") into Toyota vehicles including the following:

a. In 2004, NHTSA opened a defect investigation (PE04-21) into 2002-2003 Camrys and Lexus ES300s upon receiving numerous reports of unwanted acceleration from consumers.

b. In 2005, NHTSA opened a defect petition investigation (DP05002) into 2002-2005 Camrys and Lexus ES models for unwanted acceleration.

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e. In 2008, NHTSA opened a defect petition investigation (DP08001) into 2006-2007 Tacomas for unwanted acceleration.

f. In 2008, NHTSA opened a defect investigation (PE08-25) into Toyota Siennas for unwanted accelerations.

g. In 2009, NHTSA opened a defect investigation petition (DP09001) into 2007 Lexus ES350s for unwanted acceleration.

16. At all times relevant herein, the Toyota defendants had full knowledge that Toyota and Lexus vehicles equipped with ETCS-i were susceptible and prone to incidents of sudden unintended acceleration that posed a significant risk of injury and death to vehicle drivers and occupants, other motorists and pedestrians.

17. Despite this knowledge, the Toyota defendants continued to design, manufacture, advertise, distribute and sell Toyota and Lexus vehicles equipped with ETCS-i without disclosing the following material facts to consumers: (1) the number and substance of the sudden acceleration complaints they had received; (2) the number and substance of NHTSA investigations resulting from the large number of sudden acceleration complaints; (3) their failure to incorporate appropriate "on the shelf" failsafe designs into their ETCS-i equipped vehicles, such as a brake override system, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration; and (4) that the ETCS-i equipped vehicles were defective and/or susceptible or prone to incidents of sudden unintended acceleration.

18. As a result of the Toyota defendants' concealment, suppression and/or omission of the above-described material facts in connection with the marketing, advertising, distribution, sale or lease of their ETCS-i equipped vehicles, plaintiff has suffered actual damages, including, but not limited to (1) the amount of the difference in value between what plaintiff paid for her vehicle and what she would have paid at the time of purchase had the Toyota defendants fully disclosed the above-described material facts, defect and the dangers of sudden unintended

acceleration inherent the ETCS-i equipped vehicles and/or (2) the amount of diminution in resale value of her vehicle.

19. Had the Toyota defendants disclosed the above-described material facts in connection with the marketing, advertising, distribution, sale or lease of their ETCS-i equipped vehicles, plaintiff would not have purchased her vehicle or would not have purchased the vehicle for as much she paid or suffered any diminution in the resale value of her vehicle.

CLASS ACTION ALLEGATIONS

20. Pursuant to Rule 23, plaintiff brings this class action on behalf of herself and a class of similarly situated persons (hereinafter the "Class") defined as follows: All Illinois residents who presently own or lease a Toyota or Lexus vehicle equipped with ETCS-i that they purchased or leased at any time between the three years immediately preceding the filing of this Complaint and the date the Court certifies this suit as a class action (hereinafter the "Class Vehicles").

21. Excluded from the Class are: (a) the defendants, including any parent, subsidiary, affiliate or controlled person of the defendants; (b) defendants' officers, directors, agents or employees; (c) the judicial officers assigned to this litigation, as well as and members of their staffs and immediate families; (d) all persons claiming personal injury or wrongful death as a result of a sudden acceleration of a Toyota vehicle; and (e) to the extent the class certification order permits exclusion, all persons who timely submit timely and otherwise proper requests for exclusion from the Class.

22. The proposed Class meets all requirements for class certification. The Class satisfies the numerosity standards. The Class is believed to number in the thousands of persons

in the State of Illinois. As a result, joinder of all Class members in a single action is impracticable.

23. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from defendant's actions include, without limitation, the following:

a. Whether Toyota and Lexus vehicles equipped with ETCS-i are defective and/or dangerous when used as designed because they are susceptible or prone to incidents of sudden unintended acceleration;

b. Whether Toyota and Lexus vehicles equipped with ETCS-i are defective and/or dangerous when used as designed because they lack appropriate failsafe designs, such as a brake override, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration.

c. Whether the Toyota defendants knew during the time that they sold the Class Vehicles that such vehicles were defective and/or susceptible to sudden unintended acceleration;

d. Whether the Toyota defendants concealed, suppressed and/or omitted material facts from consumers, including, but not limited to: (1) the number and substance of the sudden acceleration complaints they had received for ETCS-i equipped vehicles; (2) the number and substance of NHTSA investigations resulting from the large number of sudden acceleration complaints; (3) their failure to incorporate appropriate "on the shelf" failsafe designs into their ETCS-i equipped vehicles, such as a brake override system, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration; and/or (4) that the Class Vehicles were defective and/or susceptible or prone to incidents of

sudden unintended acceleration, with intent that plaintiff rely on the concealment, suppression or omission thereof;

e. Whether defendants' conduct violated § 815 ILCS 505/2 of the Illinois Consumer Fraud and Deceptive Business Practices Act;

24. The questions set forth above predominate over any questions affecting only individual persons, and a Class Action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy.

25. A Class Action is the appropriate method for the fair and efficient adjudication of this controversy. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for defendants, and/or substantially impair or impede the ability of Class members to protect their interests.

26. The plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. The interests of the members of the Class will be fairly and adequately protected by the plaintiff and her undersigned counsel, who have substantial experience prosecuting class action and product liability litigation and will vigorously represent the Class in this litigation.

27. Plaintiff specifically excludes from this class action any damages, losses or other relief of any kind arising from the personal injuries suffered by those Class members caused by defects in the Class Vehicles. This class action seeks only the economic relief requested herein

to which the Class members are entitled under the Illinois Consumer Fraud and Deceptive Business Practices Act.

28. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impractical and undesirable for each member of the Class who suffered damage to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

29. Notice can be provided to the Class members by using techniques and forms of notice similar to those customarily used in other motor vehicle defect and complex class actions.

COUNT I
VIOLATION OF ILLINOIS CONSUMER FRAUD
AND DECEPTIVE BUSINESS PRACTICES ACT

30. Plaintiff incorporates by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

31. Plaintiff and members of the Class purchased and leased the Class Vehicles not for resale in the ordinary course of their trade or business, but for their use or that of a member of their household.

32. As described above, the Toyota defendants engaged in unfair or deceptive acts or practices in violation of § 815 ILCS 505/2 in connection with plaintiff and the Class members' purchases and leases of the Class Vehicles by their concealment, suppression and/or omission of material facts, including but not limited to (1) the number and substance of the sudden acceleration complaints they had received for ETCS-i equipped vehicles; (2) the number and substance of NHTSA investigations resulting from the large number of sudden acceleration

complaints; and (3) their failure to incorporate appropriate "on the shelf" failsafe designs into their ETCS-i equipped vehicles, such as a brake override system, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration; and/or (4) that the Class Vehicles were defective and/or susceptible or prone to incidents of sudden unintended acceleration.

33. The Toyota defendants intended that the plaintiff and the Class members rely on their unfair and/or deceptive concealment, suppression and/or omission of the materials facts described above.

34. The Toyota defendants' unfair and/or deceptive concealment, suppression and/or omission of the material facts described above occurred in the course of conduct involving trade or commerce.

35. As a result of plaintiff's purchase of a Class Vehicle and defendants' unlawful acts and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, plaintiff has suffered actual damages, including but not limited to: (1) the amount of the difference in value between what plaintiff paid for her vehicle and what she would have paid at the time of purchase had the Toyota defendants fully disclosed the above-described material facts, defect and/or dangers of sudden unintended acceleration inherent the ETCS-i equipped vehicles and/or (2) the amount of diminution in resale value of her vehicle.

36. Plaintiff and the Class members' damage was proximately caused by the unfair and/or deceptive concealment, suppression and/or omission of the materials facts in that had the Toyota defendants disclosed the above-described material facts, plaintiff would not have purchased her vehicle or would not have purchased the vehicle for as much she paid.

37. The Toyota defendants' above-described conduct was outrageous and performed with malice, evil motive or reckless indifference towards the rights of others such that an award of punitive damages is proper.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court enter an Order and/or Judgment against the defendants and in favor of the plaintiff and award the following relief:

A. Certifying the Class as requested herein;

B. Appointing The Kuhlman Law Firm, LLC as lead counsel for the Class;

C. Awarding Plaintiff and members of the proposed Class their actual damages which include, but are not limited to, the amount of the difference in value between what plaintiff paid for her vehicle and what she would have paid at the time of purchase had the Toyota defendants fully disclosed the above-described material facts, defect and the dangers of sudden unintended acceleration inherent the ETCS-i equipped vehicles and/or the amount of diminution in resale value of their Class Vehicles;

D. Awarding pre-judgment interest;

E. Awarding post-judgment interest;

F. Awarding attorneys' fees and costs;

G. Awarding punitive damages in an amount to be determined at trial; and

H. Providing such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE BRYANT LAW GROUP, LLC

By: /s/ Aaron J. Bryant

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Bradley D. Kuhlman (pro hac pending)
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brad@kuhlman-law.com
chad@kuhlman-law.com
Attorneys for Plaintiff

TOY-RQ-05E-00011467

CIVIL COVER SHEET

The 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 isrequired 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.)

(a) PLAINTIFFS
Christina Ochs

DEFENDANTS
Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.

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

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.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Aaron J. Bryant
Bryant Law Group, LLC
150 N. Michigan Ave., Suite 800

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 Jndgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (excl. vet.)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

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 Inj.

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

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 810 Selective Service
- ☐ 850 Security/Commodity/Exch.
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination 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
- ☐ 445 ADA—Employment
- ☐ 446 ADA — 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

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

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

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 (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

28 U.S.C. 1332(d) - Violation of Illinois Consumer Fraud and Deceptive Business Practices Act

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ OVER $5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

IX. This case
☐ is not a refiling of a previously dismissed action.
☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE
2-10-10

SIGNATURE OF ATTORNEY OF RECORD

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20. Pursuant to Rule 23, plaintiff brings this class action on behalf of herself and a class of similarly situated persons (hereinafter the "Class") defined as follows: All Illinois residents who presently own or lease a Toyota or Lexus vehicle equipped with ETCS-i that they purchased or leased at any time between the three years immediately preceding the filing of this Complaint and the date the Court certifies this suit as a class action (hereinafter the "Class Vehicles").

21. Excluded from the Class are: (a) the defendants, including any parent, subsidiary, affiliate or controlled person of the defendants; (b) defendants' officers, directors, agents or employees; (c) the judicial officers assigned to this litigation, as well as and members of their staffs and immediate families; (d) all persons claiming personal injury or wrongful death as a result of a sudden acceleration of a Toyota vehicle; and (e) to the extent the class certification order permits exclusion, all persons who timely submit timely and otherwise proper requests for exclusion from the Class.

22. The proposed Class meets all requirements for class certification. The Class satisfies the numerosity standards. The Class is believed to number in the thousands of persons

in the State of Illinois. As a result, joinder of all Class members in a single action is impracticable.

23. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from defendant's actions include, without limitation, the following:

a. Whether Toyota and Lexus vehicles equipped with ETCS-i are defective and/or dangerous when used as designed because they are susceptible or prone to incidents of sudden unintended acceleration;

b. Whether Toyota and Lexus vehicles equipped with ETCS-i are defective and/or dangerous when used as designed because they lack appropriate failsafe designs, such as a brake override, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration.

c. Whether the Toyota defendants knew during the time that they sold the Class Vehicles that such vehicles were defective and/or susceptible to sudden unintended acceleration;

d. Whether the Toyota defendants concealed, suppressed and/or omitted material facts from consumers, including, but not limited to: (1) the number and substance of the sudden acceleration complaints they had received for ETCS-i equipped vehicles; (2) the number and substance of NHTSA investigations resulting from the large number of sudden acceleration complaints; (3) their failure to incorporate appropriate "on the shelf" failsafe designs into their ETCS-i equipped vehicles, such as a brake override system, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration; and/or (4) that the Class Vehicles were defective and/or susceptible or prone to incidents of

sudden unintended acceleration, with intent that plaintiff rely on the concealment, suppression or omission thereof;

e. Whether defendants' conduct violated § 815 ILCS 505/2 of the Illinois Consumer Fraud and Deceptive Business Practices Act;

24. The questions set forth above predominate over any questions affecting only individual persons, and a Class Action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy.

25. A Class Action is the appropriate method for the fair and efficient adjudication of this controversy. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for defendants, and/or substantially impair or impede the ability of Class members to protect their interests.

26. The plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. The interests of the members of the Class will be fairly and adequately protected by the plaintiff and her undersigned counsel, who have substantial experience prosecuting class action and product liability litigation and will vigorously represent the Class in this litigation.

27. Plaintiff specifically excludes from this class action any damages, losses or other relief of any kind arising from the personal injuries suffered by those Class members caused by defects in the Class Vehicles. This class action seeks only the economic relief requested herein

to which the Class members are entitled under the Illinois Consumer Fraud and Deceptive Business Practices Act.

28. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impractical and undesirable for each member of the Class who suffered damage to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

29. Notice can be provided to the Class members by using techniques and forms of notice similar to those customarily used in other motor vehicle defect and complex class actions.

COUNT I
VIOLATION OF ILLINOIS CONSUMER FRAUD
AND DECEPTIVE BUSINESS PRACTICES ACT

30. Plaintiff incorporates by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

31. Plaintiff and members of the Class purchased and leased the Class Vehicles not for resale in the ordinary course of their trade or business, but for their use or that of a member of their household.

32. As described above, the Toyota defendants engaged in unfair or deceptive acts or practices in violation of § 815 ILCS 505/2 in connection with plaintiff and the Class members' purchases and leases of the Class Vehicles by their concealment, suppression and/or omission of material facts, including but not limited to (1) the number and substance of the sudden acceleration complaints they had received for ETCS-i equipped vehicles; (2) the number and substance of NHTSA investigations resulting from the large number of sudden acceleration

complaints; and (3) their failure to incorporate appropriate "on the shelf" failsafe designs into their ETCS-i equipped vehicles, such as a brake override system, to ensure that the driver could safely control his or her Toyota or Lexus vehicle in the event of a sudden unintended acceleration; and/or (4) that the Class Vehicles were defective and/or susceptible or prone to incidents of sudden unintended acceleration.

33. The Toyota defendants intended that the plaintiff and the Class members rely on their unfair and/or deceptive concealment, suppression and/or omission of the materials facts described above.

34. The Toyota defendants' unfair and/or deceptive concealment, suppression and/or omission of the material facts described above occurred in the course of conduct involving trade or commerce.

35. As a result of plaintiff's purchase of a Class Vehicle and defendants' unlawful acts and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, plaintiff has suffered actual damages, including but not limited to: (1) the amount of the difference in value between what plaintiff paid for her vehicle and what she would have paid at the time of purchase had the Toyota defendants fully disclosed the above-described material facts, defect and/or dangers of sudden unintended acceleration inherent the ETCS-i equipped vehicles and/or (2) the amount of diminution in resale value of her vehicle.

36. Plaintiff and the Class members' damage was proximately caused by the unfair and/or deceptive concealment, suppression and/or omission of the materials facts in that had the Toyota defendants disclosed the above-described material facts, plaintiff would not have purchased her vehicle or would not have purchased the vehicle for as much she paid.

37. The Toyota defendants' above-described conduct was outrageous and performed with malice, evil motive or reckless indifference towards the rights of others such that an award of punitive damages is proper.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court enter an Order and/or Judgment against the defendants and in favor of the plaintiff and award the following relief:

A. Certifying the Class as requested herein;

B. Appointing The Kuhlman Law Firm, LLC as lead counsel for the Class;

C. Awarding Plaintiff and members of the proposed Class their actual damages which include, but are not limited to, the amount of the difference in value between what plaintiff paid for her vehicle and what she would have paid at the time of purchase had the Toyota defendants fully disclosed the above-described material facts, defect and the dangers of sudden unintended acceleration inherent the ETCS-i equipped vehicles and/or the amount of diminution in resale value of their Class Vehicles;

D. Awarding pre-judgment interest;

E. Awarding post-judgment interest;

F. Awarding attorneys' fees and costs;

G. Awarding punitive damages in an amount to be determined at trial; and

H. Providing such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE BRYANT LAW GROUP, LLC

By: /s/ Aaron J. Bryant

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Attorneys for Plaintiff

TOY-RQ-05E-00011480

(Revised 06/08)

United States District Court Northern District of Illinois
MOTION FOR LEAVE TO APPEAR PRO HAC VICE

Case Title:	Christina Ochs	Plantiff(s)
	VS.	
	Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	Defendant(s)
Case Number: 1:10-cv-00918	Judge: Honorable David H. Coar	

I, Chad C. Lucas hereby apply to the Court

under Local Rule 83.14 for permission to appear and participate in the above-entitled action on behalf of

Christina Ochs by whom I have been retained.

I am a member in good standing and eligible to practice before the following courts:

Title of Court	Date Admitted
Missouri	9-19-2001
Kansas	4-26-2002
United States District Court for the Western District of Missouri	9-19-2001
United States District Court for the District of Kansas	2002

I have currently, or within the year preceding the date of this application, made pro hac vice applications to this Court in the following actions:

Case Number	Case Title	Date of Application (Granted or Denied)*
None	None	None

*If denied, please explain:
(Attach additional form if necessary)

Pursuant to Local Rule 83.15(a), applicants who do not have an office within the Northern District of Illinois must designate, at the time of filing their initial notice or pleading, a member of the bar of this Court having an office within this District upon who service of papers may be made.

Has the applicant designated local counsel? Yes ◉ No ○

If you have not designated local counsel, Local Rule 83.15(b) provides that the designation must be made within thirty (30) days.

Has the applicant ever been:

censured, suspended, disbarred, or witherwise disciplined by any court?	Yes ○	No ◉
or is the applicant currently the subject of an investigation of the applicant's professional conduct?	Yes ○	No ◉
transferred to inactive status, voluntarily withdrawn, or resigned from the bar of nay court?	Yes ○	No ◉
denied admission to the bar of any court?	Yes ○	No ◉
held in contempt of court?	Yes ○	No ◉

NOTE: If the answer to *any* of the above questions is yes, please attach a brief description of the incident(s) and the applicant's current status before any court, or any agency thereof, where disciplinary sanctions were imposed, or where an investigation or investigations of the applicant's conduct may have been instituted.

I have read the Rules of Professional Conduct for the Northern District of Illinois, effective November 12, 1991 (Local Rules 83.50 through 83.58), and the Standards for Professional Conduct within the Seventh Federal Judicial Circuit, effective December 15, 1992, and will faithfully adhere to them. I declare under penalty of perjury that the foregoing is true and correct.

Feb 11, 2010 — Date

S/ Chad C. Lucas — Electronic Signature of Applicant

Applicant's Name	Last Name: Lucas	First Name: Chad	Middle Name/Initial: C	
Applicant's Law Firm	The Kuhlman Law Firm, LLC			
Applicant's Address	Street Address: 1100 Main Street		Room/Suite Number: Suite 2550	
	City: Kansas City	State: MO	ZIP Code: 64105	Work Phone Number: 816-799-0330

(The pro hac vice admission fee is $100.00 for cases filed before February 1, 2001, and $50.00 for cases filed on or after that date, and shall be paid to the Clerk. No admission under Rule 83.14 is effective until such time as the fee has been paid.)

NOTE: Attorneys seeking to appear pro hac vice may wish to consider filing a petition for admission to the general bar of the Court. The fee for admission to the General Bar is $150.00 The fee for pro hac vice admission is $100.00 for cases filed before February 1, 2001, and $50.00 for cases filed on or after that date. Admission to the general bar permits an attorney to practice before this Court. Pro hac vice admission entitles an attorney to appear in a particular case only. Application for such admission must be made in each case; and the admission fee must be paid in each case.

United States District Court for the Northern District of Illinois

Revised 03/11/2008

Case Number: 10cv918 Assigned/Issued By: AEE

Judge Name: Designated Magistrate Judge:

FEE INFORMATION

Amount Due: ☐ $350.00 ☐ $39.00 ☐ $5.00

☐ IFP ☐ No Fee ☐ Other _____

☐ $455.00

Number of Service Copies _____ Date: _____

(For use by Fiscal Department Only)

Amount Paid: _____ Receipt #: _____

Date Payment Rec'd: _____ Fiscal Clerk: _____

ISSUANCES

☒ Summons ☐ Alias Summons

☐ Third Party Summons ☐ Lis Pendens

☐ Non Wage Garnishment Summons ☐ Abstract of Judgment

☐ Wage-Deduction Garnishment Summons _____

_____

(Victim, Against and $ Amount)

☐ Citation to Discover Assets

☐ Writ _____ ☐ Other _____

(Type of Writ) _____

(Type of issuance)

1 Original and _____ copies on 02/12/10 as to Toyota Motor Corporation

(Date)

_____

_____

COLE

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 4.0.3 (Chicago)
CIVIL DOCKET FOR CASE #: 1:10-cv-00918

Ochs v. Toyota Motor Corporation et al
Assigned to: Honorable David H. Coar
Demand: $9,999,000
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/10/2010
Jury Demand: None
Nature of Suit: 370 Personal Prop.: Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Christina Ochs
on behalf of herself and all others similarly situated

represented by **Aaron J. Bryant**
The Bryant Law Group
150 N. Michigan Ave.
Suite 800
Chicago, IL 60601
(312) 588-3384
Email: abryant@blgchicago.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

Defendant

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

Date Filed	#	Docket Text
02/10/2010	1	COMPLAINT filed by Christina Ochs; Filing fee $ 350, receipt number 0752-4517334. (Attachments: # 1 Civil Cover Sheet)(Bryant, Aaron) (Entered: 02/10/2010)
02/10/2010		CASE ASSIGNED to the Honorable David H. Coar. Designated as Magistrate Judge the Honorable Jeffrey Cole. (vcf,) (Entered: 02/10/2010)
02/11/2010	2	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 0752-4520650. (Lucas, Chad) (Entered: 02/11/2010)
02/12/2010	3	SUMMONS Issued as to Defendant Toyota Motor Corporation. (kj,) (Entered: 02/12/2010)

TOY-RQ-05E-00011484

FILE START

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NIMISHABAHEN PATEL, individually, and on behalf of all persons similarly situated, *Plaintiff,* -v- TOYOTA MOTOR NORTH AMERICA, INC., a foreign corporation, TOYOTA MOTOR SALES, U.S.A., INC., a foreign Corporation and GENERAL MOTORS, LLC., a foreign corporation *Defendants.*	CASE NO.:

COMPLAINT

NIMISHABAHEN PATEL (hereinafter "Plaintiff"), individually, and on behalf of all persons similarly situated (the "Proposed Class") hereby brings this action against TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC., and GENERAL MOTORS, LLC, (hereinafter "Defendants"), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all times material was, a resident of Glastonbury, Connecticut who purchased a 2010 Toyota Camry, manufactured, marketed and/or sold by the Defendants.

2. TOYOTA MOTOR NORTH AMERICA, INC., is, and at all times material was, a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

3. TOYOTA MOTOR SALES, U.S.A., INC., is, and at all times material was, a foreign corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

4. GENERAL MOTORS, LLC, is, and at all times material was, a foreign corporation with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28

U.S.C. § 1332(d).

6. Venue is proper in Connecticut under 28 U.S.C. § 1391 because Defendants TOYOTA MOTOR NORTH AMERICA, INC.'s, TOYOTA MOTOR SALES, U.S.A., INC.'s, and GENERAL MOTORS, LLC, operate active businesses in Connecticut, and its resident agents reside there.

GENERAL ALLEGATIONS

7. Defendant TOYOTA MOTOR NORTH AMERICA, INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

8. Defendant TOYOTA MOTOR SALES, U.S.A., INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: : 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

9. Defendant GENERAL MOTORS, LLC, manufactures markets and/or sells the following automotive vehicle in partnership with and manufactured by Defendants TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC.,: 2009-2010 Pontiac Vibe.

10. On January 21, 2010, Defendant's announced it would recall approximately 2.3 million vehicles to correct sticking accelerator pedals on specific Toyota Division models. Defendants said their accelerator pedals can become worn and difficult to operate or stick in a partly depressed position. Recent complaints also indicate that there are problems with the brakes in the Prius. A separate recall took place on September 29, 2009, with the NHTSA recall notice of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by incorrect or out of place accessory floor mats. Approximately 1.7 million Toyota Division vehicles are subject to both separate recall actions. *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

11. In 2009, Defendants reported that they sold 1,770,149 cars and trucks, for a net income of $4.33 billion, and a market share of 18.2 percent. In 2008, Defendants

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report that they sold 2,217,662 cars and trucks. See http://online.wsj.com/mdc/public/page2_3022-autosales.html.

12. In a recent press release regarding the safety recall of the 2.3 million vehicles affected by the sticking accelerator, Defendant's Vice President Irv Miller stated "our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may, mechanically stick in a partially depressed position or return slowly to the idle position." *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

13. The sticking accelerator condition can occur making the accelerator pedal harder to depress, slower to return or, in the worst case, stuck in a partially depressed position leading to injury and/or death. Purchasers of these vehicles concerned about potential defects have been advised not to drive the vehicles until repaired.

14. As a result, Connecticut and National purchasers of the Toyota automotive vehicles manufactured by the Defendants, listed in paragraphs 7-9, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased and non use of the vehicles. *See Borman v. Wheeler Real Estate, 2009 Conn.Super.LEXIS 1661 (Conn.Super.CT. June 22, 2009).*

15. It is clear that a car with a potential defective acceleration pedal is worth less than one with no concern over potential defective acceleration pedal. In other words, consumers did not get what they bargained for. It is also clear that non use of the vehicle pending fears of vehicle safety and successful repair is a loss of use and value to the purchaser.

16. The actual damages are the difference in the market value of the Toyota, Lexus, and GM vehicles in the condition in which it was delivered, namely defective, and the market value in the condition in which it was delivered according to the contract of the parties, as well as the loss of use of the vehicles for days, weeks, or months, pending successful repair.

17. Defendants had knowledge of a design defect regarding the accelerator pedal as early as 2007, but withheld publication of the data results for almost three years. Defendants made production changes in August of 2009 for models in Europe, and were aware of this problem in Europe as early as April and May of 2009. Yet, in the United States, Defendants did not respond to these same concerns and protection of American consumers, until after officials from the Federal Department of Transportation personally flew to Japan to remind Toyota, and

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wake them up about the seriousness of its obligations to the American purchasers. Federal officials in the press described Defendants as maybe "a little safety dead." Meanwhile, despite knowledge of this information and taking preventative steps in Europe, Defendants continued to manufacture, market and/or sell automotive vehicles affected with said defect until directly requested by Federal Department of Transportation officials.

18. In September 2007, Toyota 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 similar problems, thereby proving that Defendants had knowledge since at least 2007 of this safety problem affecting the previously listed automotive vehicles.

CLASS REPRESENTATION ALLEGATIONS

19. Plaintiff re-alleges paragraphs 1 through 18 and further states:

20. Plaintiff brings this action pursuant to Rule 23, Fed.R.Civ.P., on behalf of the Proposed Class, which is defined herein.

21. Membership in the Proposed Class is so numerous as to make it impractical to bring all of the Proposed Class members before the Court. The exact number and identity of the Proposed Class is unknown; however, Plaintiff knows that there are millions of persons in the Proposed Class. Plaintiff is a member of the Proposed Class.

22. There are numerous and substantial questions of law and fact common to the Proposed Class which control this litigation, and which predominate over any individual issues. Included within the common questions are:

22.1 whether Defendants had knowledge of the design defect prior to its issuance of the current safety recall affecting millions of vehicles;

22.2 whether Defendants concealed the design defect affecting the following models of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 209-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2101 Lexus IS250 and IS350; and 2009-2010 Pontiac Vibe;

22.3 whether Defendants misrepresented the safety of the automotive vehicles at issue;

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22.4 whether Defendants actions or omissions with regard to the select models of vehicles violate various state consumer protection statutes;

22.5 whether Defendants warranted the vehicles for a particular purpose for which they are unfit or ineffective;

22.6 whether Plaintiff and the Proposed Class conferred non-gratuitous benefits on Defendants in the absence of a contract;

22.7 whether Defendants retained such non-gratuitous benefits from Plaintiffs;

22.8 whether Defendants maintenance of such non-gratuitous benefits is unjust or inequitable;

22.9 whether Plaintiff and the Proposed Class are entitled to damages, restitution, equitable relief and other relief;

22.10 the amount and nature of such relief to be awarded to Plaintiff and the Proposed Class;

23. Plaintiff's claims are typical of the claims of the Proposed Class, and Plaintiff has no interest adverse to the interests of the members of the Proposed Class.

24. Plaintiff will fairly and adequately protect the interests of the Proposed Class and has retained counsel experienced and competent in the prosecution of class actions and complex litigation. Plaintiff is willing to appear at depositions, assist counsel in the prosecution of the action and subordinate his own interests for those of the Class. Plaintiff will give complete support to the vigorous prosecution of the entire Proposed Class' claims.

25. Adjudications with respect to individual members of the Proposed Class would, as a practical matter, be dispositive of the interests of other members of the Proposed Class who are not parties to the adjudication and may impair and impede their ability to protect their interests.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, the Proposed Class will continue to suffer damages and Defendants' violations of law will proceed without remedy.

27. As a result, Connecticut and National purchasers of Toyota automotive vehicles

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manufactured by the Defendants, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased.

27.1 Most individual members of the Proposed Class have little ability to prosecute an individual action, due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small, although significant, damages suffered by individual members of the Proposed Class.

27.2 This action will result in the orderly and expeditious administration of the Proposed Class members' claims, economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

COUNT I -- CONSUMER PROTECTION
(violations of state consumer protection statutes)

28. Plaintiff re-alleges paragraphs 1 through 27 and further states:

29. Plaintiff is a consumer who purchased an affected automotive vehicle from Defendants for personal purposes.

30. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, marketing and/or sale of the affected automotive vehicles to Plaintiff and the proposed class members.

31. Defendants violated this duty by misrepresenting the characteristics, uses, benefits, quality and usefulness of the affected automotive vehicles by concealing differences between vehicles built with the defective accelerator pedal as compared to those vehicles built with alternative accelerator pedals.

32. Plaintiff was directly and proximately injured by Defendants' conduct and would not have purchased Toyota automotive vehicles and/or paid as much for the vehicle had they known the true nature of the product; and would have had full use of the vehicles.

33. Defendants' concealment, misrepresentations and material omissions to Plaintiff are unfair and deceptive acts and practices under C.G.S. §42-110b, *et seq.* and other states' consumer protection laws.

34. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiff.

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35. As a proximate result of Defendants' misrepresentations and omissions, Plaintiff and the proposed class members have suffered ascertainable losses as a result of the diminished value of the Defendants' products, and non use of the vehicles, and are entitled to relief, in an amount to be determined at trial. Defendants' actions constitute unfair competition and/or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various additional state consumer protection statutes listed below:

35.1 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code § 8 19 1, et seq.;

35.2 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. Code § 40.50.471, et seq.;

35.3 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44 1522, et seq.;

35.4 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4 88 101, et seq.;

35.5 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus & Prof. Code § 17070, et seq.;

35.6 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6 1 105, et seq.;

35.7 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42 110b, et seq.;

35.8 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, et seq.;

35.9 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28 3901, et seq.;

35.10 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. § 10 1 392, et seq.;

35.11 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, et seq.;

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35.12 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48 601, et seq.;

35.13 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, et seq.;

35.14 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24 5 0.5.1, et seq.;

35.15 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.1b, et seq.;

35.16 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50 623, et seq.;

35.17 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, et seq.;

35.18 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, et seq.;

35.19 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, et seq.;

35.20 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13 101, et seq.;

35.21 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, et seq.;

35.22 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, et seq.;

35.23 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, et seq.;

35.24 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75 24 1, et seq.;

35.25 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, et seq.;

35.26 Defendants have engaged in unfair competition or unfair or deceptive acts

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or practices in violation of Mont. Code § 30 14 101, et seq.;

35.27 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59 1601, et seq.;

35.28 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, et seq.;

35.29 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358 A:1, et seq.;

35.30 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8 1, et seq.;

35.31 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57 12 1, et seq.;

35.32 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, et seq.;

35.33 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75 1.1, et seq.;

35.34 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51 15 01, et seq.;

35.35 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, et seq.;

35.36 Defendants have engaged in unfair competition or unfair or deceptive acts or practices or representations in violation of Okla. Stat. tit. 15 § 751, et seq.;

35.37 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, et seq.;

35.38 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201 1, et seq.;

35.39 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6 13.1 1, et seq.;

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35.40 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39 5 10, et seq.;

35.41 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws § 37 24 1, et seq.;

35.42 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47 18 101, et seq.;

35.43 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, et seq.;

35.44 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13.1, et seq.;

35.45 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245.1, et seq.;

35.46 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1 196, et seq.;

35.47 Defendants have engaged in unfair competition or unfair, deceptive acts or fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, et seq.;

35.48 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A 6 101, et seq.;

35.49 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, et seq.; and

35.50 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40 12 100, et seq.

36. Plaintiff and members of the proposed Class were injured by Defendants' conduct, which created artificial demand for Toyota automotive vehicles at a premium price, in other words, consumers did not get what they bargained for. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and the proposed class have suffered actual economic loss by paying for Toyota vehicles at a premium price, and non use of the vehicles pending successful repair. It is clear that a car with a potential defective acceleration pedals and brakes is worth less than one with no concern over potential defective acceleration pedals and brakes. In the absence of

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Defendants' conduct, Plaintiff would have purchased alternate brands of automotive vehicles available at significantly reduced cost, or would have had the full use of the vehicles without fear or concern for safety.

37. Plaintiff and the proposed class members are entitled to actual damages, estimated at $1,000,000,000,000, or more, attorneys fees and costs pursuant to *See e.g., C.G.S. §§42a-714 and 42a-715.*

COUNT II - - BREACH OF EXPRESS WARRANTY

38. Plaintiff re-alleges paragraphs 1 through 37 and further alleges:

39. Defendants expressly warranted that Toyota automotive vehicles were merchantable.

40. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

41. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

42. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendants' products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of her vehicle, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See*, *e.g.*, C.G.S.§42a-2-313.

COUNT III - - BREACH OF IMPLIED WARRANTY

43. Plaintiff re-alleges paragraphs 1 through 42 and further alleges:

44. Defendants impliedly warranted that Toyota automotive vehicles were merchantable and fit for use for particular purposes.

45. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

46. Defendants' automobiles were unfit for the particular purposes for which they were

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manufactured, marketed and/or sold.

47. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendant's products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of his vehicles, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See, e.g.*, C.G.S. § 42a-2-315.

COUNT IV – UNJUST ENRICHMENT

48. Plaintiff re-alleges paragraphs 1 through 47 and further states:

49. Count IV is pled in the alternative to all contract-based and negligence-based causes of action.

50. Defendants had knowledge of the safety defect of select automotive vehicles.

51. Defendants failed to disclose the design defect of Toyota automotive vehicles to Plaintiff and Members of the Class either at the time of purchase or anytime thereafter prior to the recent recall.

52. During the class period, Plaintiff and Class Members conferred upon Defendants, without knowledge of the safety condition affecting select models, payment for these vehicles, which are benefits that were clearly non-gratuitous.

53. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class Members despite their knowledge of the defects affected the select automotive vehicle models. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and the Class Members under these circumstances is unjust and inequitable.

54. Defendants' retention of the non-gratuitous benefits conferred by Plaintiff and the Class Members is unjust and inequitable, and Defendants should pay restitution in the manner established by the Court, in addition to any other equitable remedy the Court may choose to impose.

COUNT V -- PUNITIVE DAMAGES

55. Plaintiff re-alleges paragraphs 1 through 54 and further alleges:

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56. Plaintiff reserves the right to amend the complaint to add punitive damages upon obtaining record evidence to demonstrate that Defendants intentionally pursued the above-described course of conduct despite their actual knowledge of the wrongfulness and high probability that Plaintiff would incur substantial monetary damages in selecting Toyota over alternate brands of automotive vehicles.

57. Plaintiff reserves the right to amend the complaint to provide record evidence that Defendants' above-described conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of all individuals that purchased the automotive vehicles affected, including Plaintiff, and entitlement to punitive damages, pursuant to C.G.S.§52-240b and §52-572m.

COUNT VI – FEDERAL CONSUMER PROTECTION

58. Plaintiff re-alleges paragraphs 1 through 57 and further states:

59. Defendants have violated federal consumer protection statutes, including but not limited to 15 U.S.C.A. § 2304, *et seq.,* (Magnuson-Moss Warranty Act).

60. Defendants had knowledge of the safety defect of select automotive vehicles.

61. Defendants failed to remedy the defect or malfunction after a reasonable number of attempts by some members of the Plaintiff class to repair such defect.

62. Pursuant to 15 U.S.C.A. § 2304(a)(4), Defendants are required to replace the vehicle or return the purchase price of the vehicle if Defendants fail to remedy the defect or malfunction.

DEMAND FOR TRIAL BY JURY

63. Plaintiff demands trial by jury.

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Demand

The plaintiff (s) demand not less than $1,000,000,000,000 or more.

RESPECTFULLY SUBMITTED:

BY: _____

Shawn Council, Esquire
Shawn Council, LLC
745 Blue Hills Avenue
Bloomfield, CT 06002
Federal Juris No.: CT20650
Lawcouncil2000@yahoo.com
(860) 726-9474 (Tel.)
(866) 896-2105 (Fax)

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NIMISHABAHEN PATEL, individually, and on behalf of all persons similarly situated, *Plaintiff,* -v- TOYOTA MOTOR NORTH AMERICA, INC., a foreign corporation, TOYOTA MOTOR SALES, U.S.A., INC., a foreign Corporation and GENERAL MOTORS, LLC., a foreign corporation *Defendants.*	CASE NO.:

COMPLAINT

NIMISHABAHEN PATEL (hereinafter "Plaintiff"), individually, and on behalf of all persons similarly situated (the "Proposed Class") hereby brings this action against TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC., and GENERAL MOTORS, LLC, (hereinafter "Defendants"), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all times material was, a resident of Glastonbury, Connecticut who purchased a 2010 Toyota Camry, manufactured, marketed and/or sold by the Defendants.

2. TOYOTA MOTOR NORTH AMERICA, INC., is, and at all times material was, a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

3. TOYOTA MOTOR SALES, U.S.A., INC., is, and at all times material was, a foreign corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

4. GENERAL MOTORS, LLC, is, and at all times material was, a foreign corporation with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28

U.S.C. § 1332(d).

6. Venue is proper in Connecticut under 28 U.S.C. § 1391 because Defendants TOYOTA MOTOR NORTH AMERICA, INC.'s, TOYOTA MOTOR SALES, U.S.A., INC.'s, and GENERAL MOTORS, LLC, operate active businesses in Connecticut, and its resident agents reside there.

GENERAL ALLEGATIONS

7. Defendant TOYOTA MOTOR NORTH AMERICA, INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

8. Defendant TOYOTA MOTOR SALES, U.S.A., INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: : 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

9. Defendant GENERAL MOTORS, LLC, manufactures markets and/or sells the following automotive vehicle in partnership with and manufactured by Defendants TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC.,: 2009-2010 Pontiac Vibe.

10. On January 21, 2010, Defendant's announced it would recall approximately 2.3 million vehicles to correct sticking accelerator pedals on specific Toyota Division models. Defendants said their accelerator pedals can become worn and difficult to operate or stick in a partly depressed position. Recent complaints also indicate that there are problems with the brakes in the Prius. A separate recall took place on September 29, 2009, with the NHTSA recall notice of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by incorrect or out of place accessory floor mats. Approximately 1.7 million Toyota Division vehicles are subject to both separate recall actions. *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

11. In 2009, Defendants reported that they sold 1,770,149 cars and trucks, for a net income of $4.33 billion, and a market share of 18.2 percent. In 2008, Defendants

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report that they sold 2,217,662 cars and trucks. See http://online.wsj.com/mdc/public/page2_3022-autosales.html.

12. In a recent press release regarding the safety recall of the 2.3 million vehicles affected by the sticking accelerator, Defendant's Vice President Irv Miller stated "our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may, mechanically stick in a partially depressed position or return slowly to the idle position." *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

13. The sticking accelerator condition can occur making the accelerator pedal harder to depress, slower to return or, in the worst case, stuck in a partially depressed position leading to injury and/or death. Purchasers of these vehicles concerned about potential defects have been advised not to drive the vehicles until repaired.

14. As a result, Connecticut and National purchasers of the Toyota automotive vehicles manufactured by the Defendants, listed in paragraphs 7-9, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased and non use of the vehicles. *See Borman v. Wheeler Real Estate, 2009 Conn.Super.LEXIS 1661 (Conn.Super.CT. June 22, 2009).*

15. It is clear that a car with a potential defective acceleration pedal is worth less than one with no concern over potential defective acceleration pedal. In other words, consumers did not get what they bargained for. It is also clear that non use of the vehicle pending fears of vehicle safety and successful repair is a loss of use and value to the purchaser.

16. The actual damages are the difference in the market value of the Toyota, Lexus, and GM vehicles in the condition in which it was delivered, namely defective, and the market value in the condition in which it was delivered according to the contract of the parties, as well as the loss of use of the vehicles for days, weeks, or months, pending successful repair.

17. Defendants had knowledge of a design defect regarding the accelerator pedal as early as 2007, but withheld publication of the data results for almost three years. Defendants made production changes in August of 2009 for models in Europe, and were aware of this problem in Europe as early as April and May of 2009. Yet, in the United States, Defendants did not respond to these same concerns and protection of American consumers, until after officials from the Federal Department of Transportation personally flew to Japan to remind Toyota, and

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wake them up about the seriousness of its obligations to the American purchasers. Federal officials in the press described Defendants as maybe "a little safety dead." Meanwhile, despite knowledge of this information and taking preventative steps in Europe, Defendants continued to manufacture, market and/or sell automotive vehicles affected with said defect until directly requested by Federal Department of Transportation officials.

18. In September 2007, Toyota 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 similar problems, thereby proving that Defendants had knowledge since at least 2007 of this safety problem affecting the previously listed automotive vehicles.

CLASS REPRESENTATION ALLEGATIONS

19. Plaintiff re-alleges paragraphs 1 through 18 and further states:

20. Plaintiff brings this action pursuant to Rule 23, Fed.R.Civ.P., on behalf of the Proposed Class, which is defined herein.

21. Membership in the Proposed Class is so numerous as to make it impractical to bring all of the Proposed Class members before the Court. The exact number and identity of the Proposed Class is unknown; however, Plaintiff knows that there are millions of persons in the Proposed Class. Plaintiff is a member of the Proposed Class.

22. There are numerous and substantial questions of law and fact common to the Proposed Class which control this litigation, and which predominate over any individual issues. Included within the common questions are:

22.1 whether Defendants had knowledge of the design defect prior to its issuance of the current safety recall affecting millions of vehicles;

22.2 whether Defendants concealed the design defect affecting the following models of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 209-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2101 Lexus IS250 and IS350; and 2009-2010 Pontiac Vibe;

22.3 whether Defendants misrepresented the safety of the automotive vehicles at issue;

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22.4 whether Defendants actions or omissions with regard to the select models of vehicles violate various state consumer protection statutes;

22.5 whether Defendants warranted the vehicles for a particular purpose for which they are unfit or ineffective;

22.6 whether Plaintiff and the Proposed Class conferred non-gratuitous benefits on Defendants in the absence of a contract;

22.7 whether Defendants retained such non-gratuitous benefits from Plaintiffs;

22.8 whether Defendants maintenance of such non-gratuitous benefits is unjust or inequitable;

22.9 whether Plaintiff and the Proposed Class are entitled to damages, restitution, equitable relief and other relief;

22.10 the amount and nature of such relief to be awarded to Plaintiff and the Proposed Class;

23. Plaintiff's claims are typical of the claims of the Proposed Class, and Plaintiff has no interest adverse to the interests of the members of the Proposed Class.

24. Plaintiff will fairly and adequately protect the interests of the Proposed Class and has retained counsel experienced and competent in the prosecution of class actions and complex litigation. Plaintiff is willing to appear at depositions, assist counsel in the prosecution of the action and subordinate his own interests for those of the Class. Plaintiff will give complete support to the vigorous prosecution of the entire Proposed Class' claims.

25. Adjudications with respect to individual members of the Proposed Class would, as a practical matter, be dispositive of the interests of other members of the Proposed Class who are not parties to the adjudication and may impair and impede their ability to protect their interests.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, the Proposed Class will continue to suffer damages and Defendants' violations of law will proceed without remedy.

27. As a result, Connecticut and National purchasers of Toyota automotive vehicles

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manufactured by the Defendants, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased.

27.1 Most individual members of the Proposed Class have little ability to prosecute an individual action, due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small, although significant, damages suffered by individual members of the Proposed Class.

27.2 This action will result in the orderly and expeditious administration of the Proposed Class members' claims, economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

COUNT I -- CONSUMER PROTECTION
(violations of state consumer protection statutes)

28. Plaintiff re-alleges paragraphs 1 through 27 and further states:

29. Plaintiff is a consumer who purchased an affected automotive vehicle from Defendants for personal purposes.

30. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, marketing and/or sale of the affected automotive vehicles to Plaintiff and the proposed class members.

31. Defendants violated this duty by misrepresenting the characteristics, uses, benefits, quality and usefulness of the affected automotive vehicles by concealing differences between vehicles built with the defective accelerator pedal as compared to those vehicles built with alternative accelerator pedals.

32. Plaintiff was directly and proximately injured by Defendants' conduct and would not have purchased Toyota automotive vehicles and/or paid as much for the vehicle had they known the true nature of the product; and would have had full use of the vehicles.

33. Defendants' concealment, misrepresentations and material omissions to Plaintiff are unfair and deceptive acts and practices under C.G.S. §42-110b, *et seq.* and other states' consumer protection laws.

34. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiff.

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35. As a proximate result of Defendants' misrepresentations and omissions, Plaintiff and the proposed class members have suffered ascertainable losses as a result of the diminished value of the Defendants' products, and non use of the vehicles, and are entitled to relief, in an amount to be determined at trial. Defendants' actions constitute unfair competition and/or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various additional state consumer protection statutes listed below:

35.1 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code § 8 19 1, et seq.;

35.2 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. Code § 40.50.471, et seq.;

35.3 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44 1522, et seq.;

35.4 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4 88 101, et seq.;

35.5 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus & Prof. Code § 17070, et seq.;

35.6 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6 1 105, et seq.;

35.7 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42 110b, et seq.;

35.8 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, et seq.;

35.9 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28 3901, et seq.;

35.10 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. § 10 1 392, et seq.;

35.11 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, et seq.;

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35.12 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48 601, et seq.;

35.13 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, et seq.;

35.14 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24 5 0.5.1, et seq.;

35.15 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.1b, et seq.;

35.16 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50 623, et seq.;

35.17 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, et seq.;

35.18 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, et seq.;

35.19 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, et seq.;

35.20 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13 101, et seq.;

35.21 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, et seq.;

35.22 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, et seq.;

35.23 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, et seq.;

35.24 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75 24 1, et seq.;

35.25 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, et seq.;

35.26 Defendants have engaged in unfair competition or unfair or deceptive acts

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or practices in violation of Mont. Code § 30 14 101, et seq.;

35.27 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59 1601, et seq.;

35.28 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, et seq.;

35.29 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358 A:1, et seq.;

35.30 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8 1, et seq.;

35.31 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57 12 1, et seq.;

35.32 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, et seq.;

35.33 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75 1.1, et seq.;

35.34 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51 15 01, et seq.;

35.35 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, et seq.;

35.36 Defendants have engaged in unfair competition or unfair or deceptive acts or practices or representations in violation of Okla. Stat. tit. 15 § 751, et seq.;

35.37 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, et seq.;

35.38 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201 1, et seq.;

35.39 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6 13.1 1, et seq.;

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35.40 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39 5 10, et seq.;

35.41 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws § 37 24 1, et seq.;

35.42 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47 18 101, et seq.;

35.43 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, et seq.;

35.44 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13.1, et seq.;

35.45 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245.1, et seq.;

35.46 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1 196, et seq.;

35.47 Defendants have engaged in unfair competition or unfair, deceptive acts or fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, et seq.;

35.48 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A 6 101, et seq.;

35.49 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, et seq.; and

35.50 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40 12 100, et seq.

36. Plaintiff and members of the proposed Class were injured by Defendants' conduct, which created artificial demand for Toyota automotive vehicles at a premium price, in other words, consumers did not get what they bargained for. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and the proposed class have suffered actual economic loss by paying for Toyota vehicles at a premium price, and non use of the vehicles pending successful repair. It is clear that a car with a potential defective acceleration pedals and brakes is worth less than one with no concern over potential defective acceleration pedals and brakes. In the absence of

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Defendants' conduct, Plaintiff would have purchased alternate brands of automotive vehicles available at significantly reduced cost, or would have had the full use of the vehicles without fear or concern for safety.

37. Plaintiff and the proposed class members are entitled to actual damages, estimated at $1,000,000,000,000, or more, attorneys fees and costs pursuant to *See e.g., C.G.S. §§42a-714 and 42a-715.*

COUNT II - - BREACH OF EXPRESS WARRANTY

38. Plaintiff re-alleges paragraphs 1 through 37 and further alleges:

39. Defendants expressly warranted that Toyota automotive vehicles were merchantable.

40. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

41. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

42. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendants' products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of her vehicle, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See*, *e.g.*, C.G.S.§42a-2-313.

COUNT III - - BREACH OF IMPLIED WARRANTY

43. Plaintiff re-alleges paragraphs 1 through 42 and further alleges:

44. Defendants impliedly warranted that Toyota automotive vehicles were merchantable and fit for use for particular purposes.

45. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

46. Defendants' automobiles were unfit for the particular purposes for which they were

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manufactured, marketed and/or sold.

47. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendant's products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of his vehicles, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See, e.g.*, C.G.S. § 42a-2-315.

COUNT IV – UNJUST ENRICHMENT

48. Plaintiff re-alleges paragraphs 1 through 47 and further states:

49. Count IV is pled in the alternative to all contract-based and negligence-based causes of action.

50. Defendants had knowledge of the safety defect of select automotive vehicles.

51. Defendants failed to disclose the design defect of Toyota automotive vehicles to Plaintiff and Members of the Class either at the time of purchase or anytime thereafter prior to the recent recall.

52. During the class period, Plaintiff and Class Members conferred upon Defendants, without knowledge of the safety condition affecting select models, payment for these vehicles, which are benefits that were clearly non-gratuitous.

53. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class Members despite their knowledge of the defects affected the select automotive vehicle models. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and the Class Members under these circumstances is unjust and inequitable.

54. Defendants' retention of the non-gratuitous benefits conferred by Plaintiff and the Class Members is unjust and inequitable, and Defendants should pay restitution in the manner established by the Court, in addition to any other equitable remedy the Court may choose to impose.

COUNT V -- PUNITIVE DAMAGES

55. Plaintiff re-alleges paragraphs 1 through 54 and further alleges:

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56. Plaintiff reserves the right to amend the complaint to add punitive damages upon obtaining record evidence to demonstrate that Defendants intentionally pursued the above-described course of conduct despite their actual knowledge of the wrongfulness and high probability that Plaintiff would incur substantial monetary damages in selecting Toyota over alternate brands of automotive vehicles.

57. Plaintiff reserves the right to amend the complaint to provide record evidence that Defendants' above-described conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of all individuals that purchased the automotive vehicles affected, including Plaintiff, and entitlement to punitive damages, pursuant to C.G.S.§52-240b and §52-572m.

COUNT VI – FEDERAL CONSUMER PROTECTION

58. Plaintiff re-alleges paragraphs 1 through 57 and further states:

59. Defendants have violated federal consumer protection statutes, including but not limited to 15 U.S.C.A. § 2304, *et seq.,* (Magnuson-Moss Warranty Act).

60. Defendants had knowledge of the safety defect of select automotive vehicles.

61. Defendants failed to remedy the defect or malfunction after a reasonable number of attempts by some members of the Plaintiff class to repair such defect.

62. Pursuant to 15 U.S.C.A. § 2304(a)(4), Defendants are required to replace the vehicle or return the purchase price of the vehicle if Defendants fail to remedy the defect or malfunction.

DEMAND FOR TRIAL BY JURY

63. Plaintiff demands trial by jury.

Demand

The plaintiff (s) demand not less than $1,000,000,000,000 or more.

RESPECTFULLY SUBMITTED:

BY: _____

Shawn Council, Esquire
Shawn Council, LLC
745 Blue Hills Avenue
Bloomfield, CT 06002
Federal Juris No.: CT20650
Lawcouncil2000@yahoo.com
(860) 726-9474 (Tel.)
(866) 896-2105 (Fax)

TOY-RQ-05E-00011513

DEFENDANT'S RETURN

STATE OF CONNECTICUT:

: ss: HARTFORD FEBRUARY 12, 2010

COUNTY OF HARTFORD :

Civil Action No. 3:10CV00210

Then and by virtue hereof, and by direction of the Plaintiff's Attorney I deposited in the post office at Hartford, CT, postage, registered mail, return receipt requested, a verified true and attested copy of the original, **DEFENDANT RETURN, SUMMONS IN A CIVIL ACTION, COMPLAINT, and NOTICE TO COUNSEL AND PRO SE PARTIES.**

SECRETARY OF:
TOYOTA MOTOR NORTH AMERICA, INC.
19001 SOUTH WESTERN AVENUE
TORRANCE, CA 90501

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

(Pursuant to Sec. 33-929(b)(1) C.S.S.

ATTEST:

JEROME L. MARTIN
STATE MARSHAL
HARTFORD COUNTY

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

NIMISHABAHENN PATEL

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA

Defendant

Civil Action No. 3:10CV00210 SRU

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

TOYOTA MOTOR NORTH AMERICA, INC.
19001 SOUTH WESTERN AVENUE
TORRANCE, CA 90501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ROBERTA D. TABORA
CLERK OF COURT

Date: FEB 10 2010

Signature of Clerk or Deputy Clerk

A TRUE COPY

ATTEST:
JEROME L. MARTIN
STATE MARSHAL, HARTFORD COUNTY

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

NIMISHABAHEN PATEL, individually, and on behalf of all persons similarly situated,

Plaintiff,

-v-

TOYOTA MOTOR NORTH AMERICA, INC., a foreign corporation, TOYOTA MOTOR SALES, U.S.A., INC., a foreign Corporation and GENERAL MOTORS, LLC., a foreign corporation

Defendants.

CASE NO.:

310CV00210 SRU

COMPLAINT

NIMISHABAHEN PATEL (hereinafter "Plaintiff"), individually, and on behalf of all persons similarly situated (the "Proposed Class") hereby brings this action against TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC., and GENERAL MOTORS, LLC, (hereinafter "Defendants"), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all times material was, a resident of Glastonbury, Connecticut who purchased a 2010 Toyota Camry, manufactured, marketed and/or sold by the Defendants.

2. TOYOTA MOTOR NORTH AMERICA, INC., is, and at all times material was, a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

3. TOYOTA MOTOR SALES, U.S.A., INC., is, and at all times material was, a foreign corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.

4. GENERAL MOTORS, LLC, is, and at all times material was, a foreign corporation with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d).

6. Venue is proper in Connecticut under 28 U.S.C. § 1391 because Defendants TOYOTA MOTOR NORTH AMERICA, INC.'s, TOYOTA MOTOR SALES, U.S.A., INC.'s, and GENERAL MOTORS, LLC, operate active businesses in Connecticut, and its resident agents reside there.

GENERAL ALLEGATIONS

7. Defendant TOYOTA MOTOR NORTH AMERICA, INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

8. Defendant TOYOTA MOTOR SALES, U.S.A., INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: : 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe.

9. Defendant GENERAL MOTORS, LLC, manufactures markets and/or sells the following automotive vehicle in partnership with and manufactured by Defendants TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR SALES, U.S.A., INC.,: 2009-2010 Pontiac Vibe.

10. On January 21, 2010, Defendant's announced it would recall approximately 2.3 million vehicles to correct sticking accelerator pedals on specific Toyota Division models. Defendants said their accelerator pedals can become worn and difficult to operate or stick in a partly depressed position. Recent complaints also indicate that there are problems with the brakes in the Prius. A separate recall took place on September 29, 2009, with the NHTSA recall notice of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by incorrect or out of place accessory floor mats. Approximately 1.7 million Toyota Division vehicles are subject to both separate recall actions. *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

11. In 2009, Defendants reported that they sold 1,770,149 cars and trucks, for a net income of $4.33 billion, and a market share of 18.2 percent. In 2008, Defendants report that they sold 2,217,662 cars and trucks. See

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http://online.wsj.com/mdc/public/page2_3022-autosales.html.

12. In a recent press release regarding the safety recall of the 2.3 million vehicles affected by the sticking accelerator, Defendant's Vice President Irv Miller stated "our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may, mechanically stick in a partially depressed position or return slowly to the idle position." *See* http://pressroom.toyota.com/pr/tms/toyota/toyota-files-voluntary-safety-152979.aspx.

13. The sticking accelerator condition can occur making the accelerator pedal harder to depress, slower to return or, in the worst case, stuck in a partially depressed position leading to injury and/or death. Purchasers of these vehicles concerned about potential defects have been advised not to drive the vehicles until repaired.

14. As a result, Connecticut and National purchasers of the Toyota automotive vehicles manufactured by the Defendants, listed in paragraphs 7-9, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased and non use of the vehicles. *See Borman v. Wheeler Real Estate, 2009 Conn.Super.LEXIS 1661 (Conn.Super.CT. June 22, 2009).*

15. It is clear that a car with a potential defective acceleration pedal is worth less than one with no concern over potential defective acceleration pedal. In other words, consumers did not get what they bargained for. It is also clear that non use of the vehicle pending fears of vehicle safety and successful repair is a loss of use and value to the purchaser.

16. The actual damages are the difference in the market value of the Toyota, Lexus, and GM vehicles in the condition in which it was delivered, namely defective, and the market value in the condition in which it was delivered according to the contract of the parties, as well as the loss of use of the vehicles for days, weeks, or months, pending successful repair.

17. Defendants had knowledge of a design defect regarding the accelerator pedal as early as 2007, but withheld publication of the data results for almost three years. Defendants made production changes in August of 2009 for models in Europe, and were aware of this problem in Europe as early as April and May of 2009. Yet, in the United States, Defendants did not respond to these same concerns and protection of American consumers, until after officials from the Federal Department of Transportation personally flew to Japan to remind Toyota, and wake them up about the seriousness of its obligations to the American purchasers.

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Federal officials in the press described Defendants as maybe "a little safety dead." Meanwhile, despite knowledge of this information and taking preventative steps in Europe, Defendants continued to manufacture, market and/or sell automotive vehicles affected with said defect until directly requested by Federal Department of Transportation officials.

18. In September 2007, Toyota 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 similar problems, thereby proving that Defendants had knowledge since at least 2007 of this safety problem affecting the previously listed automotive vehicles.

CLASS REPRESENTATION ALLEGATIONS

19. Plaintiff re-alleges paragraphs 1 through 18 and further states:

20. Plaintiff brings this action pursuant to Rule 23, Fed.R.Civ.P., on behalf of the Proposed Class, which is defined herein.

21. Membership in the Proposed Class is so numerous as to make it impractical to bring all of the Proposed Class members before the Court. The exact number and identity of the Proposed Class is unknown; however, Plaintiff knows that there are millions of persons in the Proposed Class. Plaintiff is a member of the Proposed Class.

22. There are numerous and substantial questions of law and fact common to the Proposed Class which control this litigation, and which predominate over any individual issues. Included within the common questions are:

22.1 whether Defendants had knowledge of the design defect prior to its issuance of the current safety recall affecting millions of vehicles;

22.2 whether Defendants concealed the design defect affecting the following models of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 209-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2101 Lexus IS250 and IS350; and 2009-2010 Pontiac Vibe;

22.3 whether Defendants misrepresented the safety of the automotive vehicles at issue;

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22.4 whether Defendants actions or omissions with regard to the select models of vehicles violate various state consumer protection statutes;

22.5 whether Defendants warranted the vehicles for a particular purpose for which they are unfit or ineffective;

22.6 whether Plaintiff and the Proposed Class conferred non-gratuitous benefits on Defendants in the absence of a contract;

22.7 whether Defendants retained such non-gratuitous benefits from Plaintiffs;

22.8 whether Defendants maintenance of such non-gratuitous benefits is unjust or inequitable;

22.9 whether Plaintiff and the Proposed Class are entitled to damages, restitution, equitable relief and other relief;

22.10 the amount and nature of such relief to be awarded to Plaintiff and the Proposed Class;

23. Plaintiff's claims are typical of the claims of the Proposed Class, and Plaintiff has no interest adverse to the interests of the members of the Proposed Class.

24. Plaintiff will fairly and adequately protect the interests of the Proposed Class and has retained counsel experienced and competent in the prosecution of class actions and complex litigation. Plaintiff is willing to appear at depositions, assist counsel in the prosecution of the action and subordinate his own interests for those of the Class. Plaintiff will give complete support to the vigorous prosecution of the entire Proposed Class' claims.

25. Adjudications with respect to individual members of the Proposed Class would, as a practical matter, be dispositive of the interests of other members of the Proposed Class who are not parties to the adjudication and may impair and impede their ability to protect their interests.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, the Proposed Class will continue to suffer damages and Defendants' violations of law will proceed without remedy.

27. As a result, Connecticut and National purchasers of Toyota automotive vehicles manufactured by the Defendants, paid more than they would have for the product,

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and have been harmed as a result of the diminished value of the vehicles purchased.

27.1 Most individual members of the Proposed Class have little ability to prosecute an individual action, due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small, although significant, damages suffered by individual members of the Proposed Class.

27.2 This action will result in the orderly and expeditious administration of the Proposed Class members' claims, economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

COUNT I – CONSUMER PROTECTION
(violations of state consumer protection statutes)

28. Plaintiff re-alleges paragraphs 1 through 27 and further states:

29. Plaintiff is a consumer who purchased an affected automotive vehicle from Defendants for personal purposes.

30. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, marketing and/or sale of the affected automotive vehicles to Plaintiff and the proposed class members.

31. Defendants violated this duty by misrepresenting the characteristics, uses, benefits, quality and usefulness of the affected automotive vehicles by concealing differences between vehicles built with the defective accelerator pedal as compared to those vehicles built with alternative accelerator pedals.

32. Plaintiff was directly and proximately injured by Defendants' conduct and would not have purchased Toyota automotive vehicles and/or paid as much for the vehicle had they known the true nature of the product; and would have had full use of the vehicles.

33. Defendants' concealment, misrepresentations and material omissions to Plaintiff are unfair and deceptive acts and practices under C.G.S. §42-110b, *et seq.* and other states' consumer protection laws.

34. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiff.

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35. As a proximate result of Defendants' misrepresentations and omissions, Plaintiff and the proposed class members have suffered ascertainable losses as a result of the diminished value of the Defendants' products, and non use of the vehicles, and are entitled to relief, in an amount to be determined at trial. Defendants' actions constitute unfair competition and/or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various additional state consumer protection statutes listed below:

35.1 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code § 8 19 1, et seq.;

35.2 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. Code § 40.50.471, et seq.;

35.3 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44 1522, et seq.;

35.4 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4 88 101, et seq.;

35.5 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus & Prof. Code § 17070, et seq.;

35.6 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6 1 105, et seq.;

35.7 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42 110b, et seq.;

35.8 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, et seq.;

35.9 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28 3901, et seq.;

35.10 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. § 10 1 392, et seq.;

35.11 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, et seq.;

35.12 Defendants have engaged in unfair competition or unfair or deceptive acts

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or practices in violation of Idaho Code § 48 601, et seq.;

35.13 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, et seq.;

35.14 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24 5 0.5.1, et seq.;

35.15 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.1b, et seq.;

35.16 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50 623, et seq.;

35.17 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, et seq.;

35.18 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, et seq.;

35.19 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, et seq.;

35.20 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13 101, et seq.;

35.21 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, et seq.;

35.22 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, et seq.;

35.23 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, et seq.;

35.24 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75 24 1, et seq.;

35.25 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, et seq.;

35.26 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30 14 101, et seq.;

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35.27 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59 1601, et seq.;

35.28 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, et seq.;

35.29 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358 A:1, et seq.;

35.30 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8 1, et seq.;

35.31 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57 12 1, et seq.;

35.32 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, et seq.;

35.33 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75 1.1, et seq.;

35.34 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51 15 01, et seq.;

35.35 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, et seq.;

35.36 Defendants have engaged in unfair competition or unfair or deceptive acts or practices or representations in violation of Okla. Stat. tit. 15 § 751, et seq.;

35.37 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, et seq.;

35.38 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201 1, et seq.;

35.39 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6 13.1 1, et seq.;

35.40 Defendants have engaged in unfair competition or unfair or deceptive acts

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or practices in violation of S.C. Code Laws § 39 5 10, et seq.;

35.41 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws § 37 24 1, et seq.;

35.42 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47 18 101, et seq.;

35.43 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, et seq.;

35.44 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13.1, et seq.;

35.45 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245.1, et seq.;

35.46 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1 196, et seq.;

35.47 Defendants have engaged in unfair competition or unfair, deceptive acts or fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, et seq.;

35.48 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A 6 101, et seq.;

35.49 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, et seq.; and

35.50 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40 12 100, et seq.

36. Plaintiff and members of the proposed Class were injured by Defendants' conduct, which created artificial demand for Toyota automotive vehicles at a premium price, in other words, consumers did not get what they bargained for. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and the proposed class have suffered actual economic loss by paying for Toyota vehicles at a premium price, and non use of the vehicles pending successful repair. It is clear that a car with a potential defective acceleration pedals and brakes is worth less than one with no concern over potential defective acceleration pedals and brakes. In the absence of Defendants' conduct, Plaintiff would have purchased alternate brands of

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automotive vehicles available at significantly reduced cost, or would have had the full use of the vehicles without fear or concern for safety.

37. Plaintiff and the proposed class members are entitled to actual damages, estimated at $1,000,000,000,000, or more, attorneys fees and costs pursuant to *See e.g., C.G.S. §§42a-714 and 42a-715.*

COUNT II - - BREACH OF EXPRESS WARRANTY

38. Plaintiff re-alleges paragraphs 1 through 37 and further alleges:

39. Defendants expressly warranted that Toyota automotive vehicles were merchantable.

40. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

41. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

42. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendants' products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of her vehicle, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See, e.g.*, C.G.S.§42a-2-313.

COUNT III - - BREACH OF IMPLIED WARRANTY

43. Plaintiff re-alleges paragraphs 1 through 42 and further alleges:

44. Defendants impliedly warranted that Toyota automotive vehicles were merchantable and fit for use for particular purposes.

45. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

46. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

TOY-RQ-05E-00011527

47. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, Plaintiff class has been damaged, estimated at $1,000,000,000, or more, as a result of the diminished value of the Defendant's products, and non use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of his vehicles, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law. *See, e.g.*, C.G.S. § 42a-2-315.

COUNT IV – UNJUST ENRICHMENT

48. Plaintiff re-alleges paragraphs 1 through 47 and further states:

49. Count IV is pled in the alternative to all contract-based and negligence-based causes of action.

50. Defendants had knowledge of the safety defect of select automotive vehicles.

51. Defendants failed to disclose the design defect of Toyota automotive vehicles to Plaintiff and Members of the Class either at the time of purchase or anytime thereafter prior to the recent recall.

52. During the class period, Plaintiff and Class Members conferred upon Defendants, without knowledge of the safety condition affecting select models, payment for these vehicles, which are benefits that were clearly non-gratuitous.

53. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class Members despite their knowledge of the defects affected the select automotive vehicle models. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and the Class Members under these circumstances is unjust and inequitable.

54. Defendants' retention of the non-gratuitous benefits conferred by Plaintiff and the Class Members is unjust and inequitable, and Defendants should pay restitution in the manner established by the Court, in addition to any other equitable remedy the Court may choose to impose.

COUNT V -- PUNITIVE DAMAGES

55. Plaintiff re-alleges paragraphs 1 through 54 and further alleges:

TOY-RQ-05E-00011528

56. Plaintiff reserves the right to amend the complaint to add punitive damages upon obtaining record evidence to demonstrate that Defendants intentionally pursued the above-described course of conduct despite their actual knowledge of the wrongfulness and high probability that Plaintiff would incur substantial monetary damages in selecting Toyota over alternate brands of automotive vehicles.

57. Plaintiff reserves the right to amend the complaint to provide record evidence that Defendants' above-described conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of all individuals that purchased the automotive vehicles affected, including Plaintiff, and entitlement to punitive damages, pursuant to C.G.S.§52-240b and §52-572m.

COUNT VI – FEDERAL CONSUMER PROTECTION

58. Plaintiff re-alleges paragraphs 1 through 57 and further states:

59. Defendants have violated federal consumer protection statutes, including but not limited to 15 U.S.C.A. § 2304, *et seq.*, (Magnuson-Moss Warranty Act).

60. Defendants had knowledge of the safety defect of select automotive vehicles.

61. Defendants failed to remedy the defect or malfunction after a reasonable number of attempts by some members of the Plaintiff class to repair such defect.

62. Pursuant to 15 U.S.C.A. § 2304(a)(4), Defendants are required to replace the vehicle or return the purchase price of the vehicle if Defendants fail to remedy the defect or malfunction.

DEMAND FOR TRIAL BY JURY

63. Plaintiff demands trial by jury.

TOY-RQ-05E-00011529

Demand

The plaintiff (s) demand not less than $1,000,000,000,000 or more.

RESPECTFULLY SUBMITTED:

BY: _____

Shawn Council, Esquire
Shawn Council, LLC
745 Blue Hills Avenue
Bloomfield, CT 06002
Federal Juris No.: CT20650
Lawcouncil2000@yahoo.com
(860) 726-9474 (Tel.)
(866) 896-2105 (Fax)

A TRUE COPY
ATTEST:
JEROME L. MARTIN
STATE MARSHAL, HARTFORD COUNTY

TOY-RQ-05E-00011530

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO DISTRICT JUDGE STEFAN R. UNDERHILL WHO SITS IN BRIDGEPORT. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN BRIDGEPORT. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED " LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

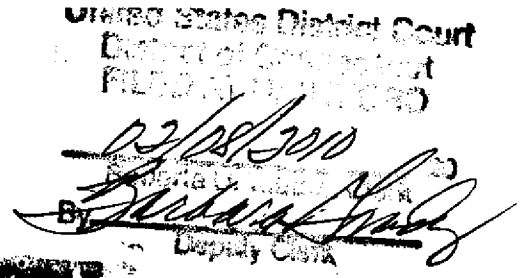
(OVER)

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

ROBERTA D. TABORA, CLERK

(Revised 10/1/07)



UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

3:10CV00210 SRU

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this is case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(f), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R.Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(f) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Roberta D. Tabora, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 10/15/07)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE REGARDING DESIGNATION OF CASE INTO ELECTRONIC FILING SYSTEM AND ELECTRONIC FILING OF PAPERS

Counsel are hereby notified that the procedures contained in the District's CM/ECF Policies and Procedures Manual as well as the attached Electronic Filing Order apply.

If counsel believe that this case should not be designated as an e-filed case, or if doing so would present an undue burden on counsel or the parties, you must advise the court of the same by filing a pleading seeking to be exempt. Any requests for an exemption to the mandatory policy must be filed ***within 10 days of appearing*** and will be considered for good cause hardship reasons only. **(Such a request may be filed non-electronically.)**

Attorneys are advised to participate in the training program offered by the Clerk's Office or to use the CM/ECF Tutorial on our website (www.ctd.uscourts.gov) to become familiar with the system. Counsel, if not already registered, are required to submit a registration request and obtain an electronic filing login and password from the Clerk's Office. The registration forms and electronic filing policies are available on the court's website at www.ctd.uscourts.gov/cmecf.

FOR THE COURT
ROBERTA D. TABORA, CLERK

rev. 10/1/07

United States District Court
District of Connecticut
FILED AT HARTFORD
02/09/2010
Roberta D. Tomasi, Clerk
By
Deputy Clerk

United States District Court
District of Connecticut

Civil Action No. 3:10CV00210 (SRU)

ELECTRONIC FILING ORDER

The Court orders that the parties shall file all documents in this case electronically. The following requirements are imposed:

1. Counsel must comply with all applicable Federal Rules of Civil Procedure, the District's Local Rules and the requirements set forth in the District's CM/ECF Policies and Procedures Manual, and any other rules and administrative procedures that implement the District's CM/ECF system.

2. Unless otherwise ordered, on the business day next following the day on which a document is filed electronically, counsel must provide Chambers with one paper copy of the following e-filed documents:

Civil Cases: All pleadings (including briefs and exhibits) supporting or opposing the following:

a. Applications for temporary restraining orders, preliminary injunctions or prejudgment remedies;
b. Dispositive motions (motions to dismiss or for summary judgment);
c. Requested jury instructions;
d. Compliance with Pretrial Orders;
e. Trial briefs, including proposed findings of fact and conclusions of law; and
f. **Any other filing requested by the court.**

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT

ROBERTA D. TABORA, CLERK

Revised 10/1/07

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL FOR CASES REMOVED FROM SUPERIOR COURT
STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. § 1441 shall, no later than five (7) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.

2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.

3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut. Also, if any party is a partnership, limited liability partnership or limited liability company or corporation, the citizenship of each partner, general partner, limited partner and member, and if any such partner, general partner, limited partner or member is itself a partnership, limited liability partnership or limited liability company or corporation, the citizenship of each member.

4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.

5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing *pro se*.

NOTICE TO COUNSEL RE LOCAL RULE 5(b)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(b) of the Local Rules of Civil Procedure for the District of Connecticut.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

ROBERTA D. TABORA,
CLERK OF COURT

Revised 12/1/09

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TIPS FOR SUCCESSFUL CM/ECF EFILING
8/8/07

* **Sign up for Attorney training classes! See www.ctd.uscourts.gov/cmecf for instructions on how to sign up today.**

* **You can not e-file on a case using your PACER login and password. To efile on a case, you must have (1) a PACER login and password and (2) an ECF login and password (you need both). To obtain an ECF login/password a ct bar number is needed and the registration form (available on our website) must be completed and faxed to 203-773-2424. After the completed form is received, an email will be sent to you with your ECF login/password.**

* **If a case is not an efiled case and you wish to efile, all counsel must agree and file a Stipulation requesting that the case be designated as electronically filed. Once the Judge approves the Stipulation, an Electronic Filing Order will be entered and all subsequent filings can be efiled.**

* **Do not efile on a case that has not been designated as an efiled case. If there is no EFILE flag, DO NOT EFILE ON THE CASE!**

* **Do not attempt to re-docket something that you think may have been done incorrectly. Call the Clerk's Office for assistance before attempting to make any corrections!**

* **When efiling a Memorandum in Support/Opposition/Reply/Affidavit/Exhibit relating to a Motion, you must link the memo/reply/affidavit/exhibit to the underlying motion.**

* **Make sure the PDF document does not exceed 5000 KB, is readable, the correct one to be filed and is right-side up if scanned.**

Affidavits

Affidavits may be efiled with the signature page scanned or with a /s/ on the signature line. If the affidavit is related to a motion, it must be linked to the motion.

Amended Complaints

If a new party is being added, please select the "Add/Create New Party" on the appropriate filers screen. New plaintiff(s) should be added on the filers screen with the heading "Select the Filer," new defendant(s) should be added on the filers screen with the heading, "Please select the party that this filing is **against**." Enter the name of the business or last name of the individual and click "search" to see if the name of the party is already in our system. If not, continue to create the new party following the Attorney CMECF Indexing instructions and the CMECF Approved Abbreviations both located on the forms page of the CMECF website. Make sure that you select the role of the party. Do not put any information in the other fields except for "Party Text" when necessary. The "Party Text" field is used as a descriptive text as explained in the Attorney CMECF Indexing instructions. Update the Jury Demand when prompted.

Appearances
You may not efile an appearance on behalf of another attorney. The attorney filing the appearance must be the attorney that is logged into CMECF. You must click on the box preceding your party name **and** leave the lead and notice boxes following your name tagged to create an association between you and the party(ies) that you are representing. See example below:

> DO NOT UNCHECK the Lead and Notice boxes to the right of the party name. If you uncheck these boxes you will not receive notification in this case.
>
> The following attorney/party associations do not exist for the above case(s).
> Please check the box on the left of the screen for associations which should be created.
> If the association should not be created, be sure the box is unchecked.
>
> *[√] Party Name* (pty:pla) represented by *Your name* (aty) *[√]* Lead *[√]* Notice

Attachments
You must name your attachment by either selecting something from the "Type" drop down menu or by entering something in the "Description" field. Whatever you select or enter from both of these options will appear in the docket text.

Discovery
Discovery is never to be efiled - See Local Rule 5(e).

Filers
If there is more than one party as a filer, hold the CTRL key while selecting the applicable parties.

Motions
Do **not** use this event if you are not asking for some relief from the court. If there is more than one relief requested in your motion, hold the CTRL key while selecting the applicable reliefs.

If you are efiling a motion asking permission to file something or to amend something already filed, you must attach the proposed document as an exhibit to your motion. Do not efile the proposed document until your motion has been granted - then efile the document you asked for permission to file.

Do not combine motions with responses to other documents. Motions and responses should be filed as separate documents.

Notice (other)
If you find you are frequently using this event, call the Clerk's Office for assistance in locating the correct event for your submission.

Notice of Manual Filing
The Notice of Manual Filing should be efiled using the event for the item you are filing in paper. Do not use the "Notice(Other)" event. For example, if you are filing exhibits manually, use the "Exhibit" event and attach the pdf of the Notice of Manual Filing. Mail the exhibits along with copies of the Notice of Electronic Filing and the Notice of Manual filing to the Clerks Office.

Returns of Service
Returns on executed summonses should be efiled using either the "Summons Executed" or "Summons Executed on USA". There is a separate event for "Waiver of Return of Service."

Sealed Documents
If you attempt to efile a sealed document, you will receive a message telling you that the document will not be sealed. DO NOT EFILE documents that are filed under seal or filed ex parte. You are required to submit the document in paper along with a PDF version on disk

FIRST • CLASS

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

MAIL™

JEROME L. MAI
STATE MARSHAL-HTFD CTY
P.O. BOX 2486
HARTFORD, CT 06146-2486

7006 2150 0004 9135 6977

UNITED STATES POSTAL SERVICE

1000

90501

U.
HAF
FE

First Class Mail

Route: HQ
Location: HQ11
HQ11
11/18/09 09:16
1 of 1
111817091605

HQ11

SECRETARY OF:
TOYOTA MOTOR NORTH AMERICA, IN
19001 SOUTH WESTERN AVENUE
TORRANCE, CA 90501

TOY-RQ-05E-00011540

United States District Court
District of Connecticut

Civil Action No. _____ (SRU)

ELECTRONIC FILING ORDER

The Court orders that the parties shall file all documents in this case electronically. The following requirements are imposed:

1. Counsel must comply with all applicable Federal Rules of Civil Procedure, the District's Local Rules and the requirements set forth in the District's CM/ECF Policies and Procedures Manual, and any other rules and administrative procedures that implement the District's CM/ECF system.

2. Unless otherwise ordered, on the business day next following the day on which a document is filed electronically, counsel must provide Chambers with one paper copy of the following e-filed documents:

Civil Cases: All pleadings (including briefs and exhibits) supporting or opposing the following:

a. Applications for temporary restraining orders, preliminary injunctions or prejudgment remedies;
b. Dispositive motions (motions to dismiss or for summary judgment);
c. Requested jury instructions;
d. Compliance with Pretrial Orders;
e. Trial briefs, including proposed findings of fact and conclusions of law; and
f. **Any other filing requested by the court**.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this is case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(f), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R.Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(f) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
_____
Roberta D. Tabora, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 10/15/07)

EFILE

U.S. District Court
United States District Court for the District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:10-cv-00210-SRU

Patel v. Toyota Motor North America Inc et al
Assigned to: Judge Stefan R. Underhill
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/09/2010
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Nimishabahen Patel
Ind &o/b/o all persons similarly situated

represented by **Shawn L. Council**
743-745 Blue Hills Ave.
Bloomfield, CT 06002
860-726-9474
Fax: 860-726-9477
Email: lawcouncil2000@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor North America Inc

Defendant

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

Defendant

General Motors LLC

Date Filed	#	Docket Text
02/09/2010	1	COMPLAINT against Toyota Motor North America Inc, Toyota Motor Sales U.S.A., Inc., General Motors LLC (Filing fee $350 receipt number H030145) filed by Nimishabahen Patel.(Grady, B.) (Entered: 02/11/2010)
02/09/2010	2	Order on Pretrial Deadlines: Motions to Dismiss due on 05/08/2010. Amended Pleadings due by 4/9/2010; Discovery due by 8/10/2010; Dispositive Motions due by 9/9/2010. Signed by Clelrk on 02/08/2010. (Grady, B.) Modified on 2/11/2010 to correct file date (Grady, B.). Modified on 2/11/2010 to correct signature (Grady, B.). (Entered: 02/11/2010)
02/09/2010	3	ELECTRONIC FILING ORDER - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER: Signed by Judge Stefan R. Underhill on 02/08/09. (Grady, B.) (Entered: 02/11/2010)
02/10/2010		Summons Issued as to Toyota Motor North America Inc, Toyota Motor Sales U.S.A., Inc., General Motors LLC. (Grady, B.) Modified on 2/11/2010 to correct file date (Grady, B.). (Entered: 02/11/2010)

FILE START

PRODUCT LIABILITY
SERVICE OF PROCESS FORM

TO: G. Webster Burns, Esq.
Toyota Motor Sales, U.S.A., Inc.
Legal Services - Mail Drop - A108
19001 S.Western Avenue
Torrance, CA 90501, USA
Phone: 310-468-4763

DATE: 2-22-10

FROM: Tanya D. Herbert

COMPANY: TEMA-Legal-Erlangen

RE: SERVICE OF PROCESS FOR: Nikia Pickney v TMS, et al.
(case name)

Enclosed are the originals (including service envelope) of the following documents served on /received by: TEMA-Legal-Erlangen
(name of company)

- [x] Summons/Citation Corporate
- [ ] Subpoena/Subpoena
- [x] Complaint/Petition Plaintiffs Original
- [ ] Amended Complaint/Petition
- [ ] OTHER: (i.e., Discovery, Notice of Deposition, Affidavit, Medical Records Authorization, etc.)

The documents were served on 2-22-10 by the following method:
(date)

- [ ] Personal Service/Hand Delivery
- [ ] Certified Mail
- [ ] U.S. Mail
- [x] Express Mail (FedEx, UPS, etc.)
- [ ] Fax
- [ ] OTHER

Copies to: **Diane Williamson, Legal - Ann Arbor** ✓
Plant Support Attorney CMJ ✓

CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516190018

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

RE: **Process Served in Michigan**

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:	Nikia Pickney, Pltf. vs. Toyota Motor Sales U.S.A., inc., et al. including Toyota Motor Engineering & Manufacturing North America, Inc., Dfts.
DOCUMENT(S) SERVED:	Citation, Original Petition
COURT/AGENCY:	133rd District Court, Harris County, TX Case # 201008816
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Defective brake override on a 2007 Toyota Camry, VIN: 4T1BE46K77U669780
ON WHOM PROCESS WAS SERVED:	The Corporation Company, Bingham Farms, MI
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/22/2010 postmarked on 02/17/2010
APPEARANCE OR ANSWER DUE:	By 10:00 a.m. on the Monday next following the expiration of 20 days
ATTORNEY(S) / SENDER(S):	S. Scott West The West Law Firm 1600 Highway 6 #450 Sugar Land, TX 77478 248-277-1500
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790204595355 Image SOP Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED:	The Corporation Company
PER:	Stephanie Hendrickson
ADDRESS:	30600 Telegraph Road Suite 2345 Bingham Farms, MI 48025-5720
TELEPHONE:	248-646-9033

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECEIPT NUMBER 2060 0.00
TRACKING NUMBER 72502467 ATY

CAUSE NUMBER 201008816

PLAINTIFF: PICKNEY, NIKIA
vs.
DEFENDANT: TOYOTA MOTOR SALES U S A

In The 133rd **Judicial District Court of Harris County, Texas**

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

TO: TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERCIA INC BY SERVING THROUGH ITS REGISTERED AGENT THE CORPORATION COMPANY

30600 TELEGRAPH ROAD BINGHAM FARMS MI 48025

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

This instrument was filed on the 10th day of February, 20 10, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 11th day of February, 20 10.

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: STANFIELD, BRIDGETTE KII/3JG/8627

Issued at request of:
WEST, S. SCOTT
1600 HIGHWAY 6 #450
SUGAR LAND, TX 77478
Tel: (281) 277-1500
Bar Number: 21206920

OFFICER/AUTHORIZED PERSON RETURN

WJ 3586

I received this citation on the 12th day of February, 2010, at 1:30 o'clock P.M., endorsed the date of delivery thereon, and executed it at _____ (street address), _____ (city),

in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock ___. M.,

by delivering to _____ (the defendant corporation named in citation), by delivering to its

_____ (registered agent, president, or vice-president), in person, whose name is _____,

a true copy of this citation, with a copy of the _____ (description of petition, e.g., "Plaintiffs Original") Petition attached,

and with accompanying copies of _____ (additional documents, if any, delivered with the petition).

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: $ _____

By: _____ (signature of officer)

Printed Name: _____

As Deputy for: _____ (printed name & title of sheriff or constable)

_____
Affiant Other Than Officer

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____
Notary Public

N.INT.CITC.P

CAUSE NO. 2010-08816

NIKIA PICKNEY	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., AND FRED HAAS MOTORS, LTD D/B/A FRED HAAS TOYOTA WORLD.	§	133 JUDICIAL DISTRICT

FILED
Loren Jackson
District Clerk
Time: FEB 10 2010
By Harris County, Texas
Deputy

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, **NIKIA PICKNEY**, and files this **ORIGINAL PETITION**, and would respectively show unto the Court the following:

I.

DISCOVERY LEVEL-II

Discovery and development of this case should occur pursuant to Rule 190.3, TEXAS RULES OF CIVIL PROCEDURE, commonly referred to as Level 2, as modified from time to time by Court Order or Agreement of counsel.

II.

PARTIES

Plaintiff, **NIKIA PICKNEY**, is a resident of Houston, Harris County, Texas.

Defendant, **TOYOTA MOTOR SALES U.S.A., INC. ("TOYOTA MOTOR SALES")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent CT Corporation Systems at 350 N. St. Paul Street, Dallas Texas 75201.

TOY-RQ-05E-00011548

Defendant, **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **TOYOTA MOTOR NORTH AMERICA, INC. ("TMNA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **FRED HAAS MOTORS, LTD. d/b/a FRED HAAS TOYOTA WORLD ("HAAS DEALERSHIP")**, is a Texas Limited Partnership conducting business in and throughout the State of Texas, and may be served through its registered agent Mr. Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas 77079.

III.

FACTS

TOYOTA MOTOR SALES, TEMA and **TMNA**, are collectively referred to as "**TOYOTA**," and are sued in their individual and collective capacities.

This case involves a **2007 Toyota Camry, VIN: 4T1BE46K77U669780**, which was designed, manufactured, tested, certified, marketed, distributed, advertised, sold and/or otherwise placed into the stream of commerce by **TOYOTA**, and also marketed, advertised, sold, and/or otherwise placed into the stream of commerce by and through **TOYOTA's** authorized agent/dealer/distributor, the **HAAS DEALERSHIP**. The subject vehicle is referred to as the "**DEFECTIVE CAMRY**."

TOY-RQ-05E-00011549

NIKIA PICKNEY was injured on June 21, 2009, in a collision that occurred when the **DEFECTIVE CAMRY** experienced **Sudden and Unwanted Acceleration ("SUA")**, which caused the vehicle to cross the median and strike another vehicle at or near the 12400 block of Main Street in Houston, Harris County, Texas.

NIKIA PICKNEY suffered a crushed pelvis that required fixation, left arm fractures that required rodding and pinning, multiple skull fractures that required plating, and is permanently blind.

IV.

STRICT LIABILITY—PRODUCT DEFECTS

At all relevant times **TOYOTA** was engaged in the business of designing, manufacturing, testing, certifying, distributing, advertising, marketing, and/or selling motor vehicles, including the **DEFECTIVE CAMRY**.

At all relevant times the **HAAS DEALERSHIP** was engaged in the business of distributing, advertising, marketing and/or selling motor vehicles.

TOYOTA and the **HAAS DEALERSHIP** placed the **DEFECTIVE CAMRY** into the stream of commerce.

TOYOTA and the **HASS DEALERSHIP** are liable and accountable for the collision in question and the resulting injuries and damages by reason of **design and marketing defects**, which rendered the **DEFECTIVE CAMRY** unreasonably dangerous.

More specifically, but not by way of limitation, the **design** of the **DEFECTIVE CAMRY** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

TOY-RQ-05E-00011550

By way of further specificity, but not by way of limitation, the **marketing** of the **DEFECTIVE CAMRY** was such that Defendants failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

The **defective design and defective marketing** of the **DEFECTIVE CAMRY** constituted a producing cause of the collision in question and/or the resulting injuries and damages.

V.

NEGLIGENCE AND GROSS NEGLIGENCE

TOYOTA and the **HAAS DEALERSHIP** were **negligent** in connection with the design, marketing, distribution, and sale of the **DEFECTIVE CAMRY**, and also with respect to the post-sale duties to advise, inform, warn, instruct, and/or recall the **DEFECTIVE CAMRY**.

More specifically, but not by way of limitation, **TOYOTA** failed to use ordinary care in the design of the **DEFECTIVE CAMRY** insofar as **TOYOTA** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

By way of further specificity, but not by way of limitation, **TOYOTA** and the **HAAS DEALERSHIP** were negligent in the marketing of the **DEFECTIVE CAMRY** inasmuch as they failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

TOYOTA's and the **HAAS DEALERSHIP's** negligence constituted a proximate cause of the collision in question.

TOY-RQ-05E-00011551

TOYOTA and its **HAAS DEALERSHIP** were **grossly negligent** in that the conduct complained of (a) involved an extreme degree of risk considering the probability oand magnitude of the potential harm to others when viewed objectively from the Defendants' perspective at the time of their conduct, and (b) the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others (such as **NIKIA PICKNEY**).

NIKIA PICKNEY's harm resulted from **TOYOTA's** and the **HASS DEALERSHIP's** gross negligence.

VI.

ACTUAL DAMAGES

NIKIA PICKNEY seeks compensation for all elements of damage allowed pursuant to Texas law, including but not limited to the reasonable value of medical care, both past and future; lost wages and earning capacity, both past and future; physical pain and mental anguish, both past and future; physical disfigurement, both past and future; and physical impairment, both past and future.

The damages sought are within the jurisdictional limits of this Court.

VII.

EXEMPLARY DAMAGES

Some conduct is so egregious that the law requires the imposition of **exemplary damages** against a Defendant, not for compensation to the victims, but rather to deter similar conduct by the Defendant and others similarly situated; this case involves such egregious conduct.

TOY-RQ-05E-00011552

NIKIA PICKNEY seeks an award of **exemplary damages** pursuant to Texas law, considering the nature of the wrong, character of the conduct, degree of culpability of the wrongdoer, situation and sensibilities of the parties concerned, extent to which the conduct offends the public's sense of justice and propriety, and the net worth of **TOYOTA** and the **HAAS DEALERSHIP**.

VIII.

JURY DEMAND

NIKIA PICKNEY respectfully demands a jury.

IX.

PRE-JUDGMENT AND POST JUDGMENT INTEREST

NIKIA PICKNEY seeks pre-judgment and post-judgment interest as allowed by law.

WHEREFORE, PREMISES CONSIDERED, **NIKIA PICKNEY** prays **TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC.**, and **FRED HAAS MOTORS, LTD. D/B/A FRED HAAS TOYOTA WORLD**, be Cited and required to Answer and appear herein, and that upon a trial of the merits, Judgment be entered against Defendants for actual damages, jointly and severally, exemplary damages, individually, and pre-judgment and post-judgment interest, and taxable costs, jointly and severally.

TOY-RQ-05E-00011553

Plaintiff further prays for any and all further relief, both general and special, at law or in equity, to which she may show herself justly entitled.

Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST

S. SCOTT WEST
SBN: 21206920
1600 HIGHWAY SIX, SUITE 450
SUGAR LAND, TEXAS 77478
TEL: (281) 277-1500
FAX: (281) 277-1505
scott@westfirm.com

ATTORNEYS FOR PLAINTIFF

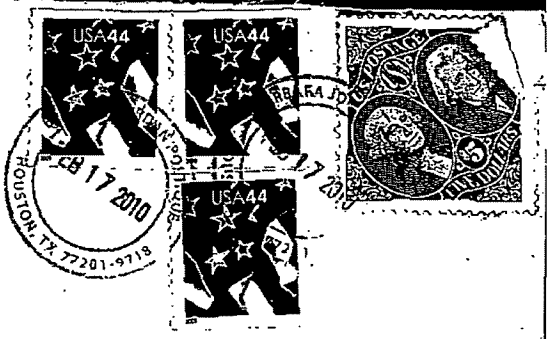
TOY-RQ-05E-00011554

Alliance Legal Service
P.O. Box 667160
Houston, Texas 77266

CERTIFIED MAIL™

7009 2820 0001 3214 5969

RETURN RECEIPT REQUESTED



Toyota Motor Enginiiering & Manufacturing North America
c/o The Corporation Company
30600 Telegraph Road
Bingham Farms, MI 48025

48025$4530

CT Corporation

Service of Process Transmittal

02/19/2010
CT Log Number 516183218

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RECEIVED
FEB 22 2010
LEGAL DEPARTMENT

RE: **Process Served in Texas**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

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

TITLE OF ACTION:	Nikia Pickney, Pltf. vs. Toyota Motor Sales U.S.A., Inc., et al., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Citation, Original Petition
COURT/AGENCY:	133rd Judicial District Court, Harris County, TX Case # 201008816
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Defective brake override on a 2007 Toyota Camry, VIN: 4T1BE46K77U669780
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/19/2010 postmarked: "Illegible"
APPEARANCE OR ANSWER DUE:	By 10:00 a.m. on the Monday next following the expiration of 20 days
ATTORNEY(S) / SENDER(S):	S. Scott West The West Law Firm 1600 Highway Six Suite 450 Sugarland, TX 77478 2812771500
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790696227344 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECEIPT NUMBER 2060 0.00
TRACKING NUMBER 72502455 ATY

CAUSE NUMBER 201008816

PLAINTIFF: PICKNEY, NIKIA
vs.
DEFENDANT: TOYOTA MOTOR SALES U S A

In The 133rd
Judicial District Court of
Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

RECEIVED
FEB 22 2010
LEGAL DEPARTMENT

TO: TOYOTA MOTOR SALES U S A INC BY SERVING THROUGH ITS REGISETRED AGENT
CT CORPORATION SYSTEMS

350 N ST PAUL STREET DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

This instrument was filed on the 10th day of February, 20 10, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 11th day of February, 20 10.

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: STANFIELD, BRIDGETTE KII/3JG/8627

Issued at request of:
WEST, S. SCOTT
1600 HIGHWAY 6 #450
SUGAR LAND, TX 77478
Tel: (281) 277-1500
Bar Number: 21206920

OFFICER/AUTHORIZED PERSON RETURN

WJ 3685

I received this citation on the 11th day of February, 2010, at 1:30 o'clock P.M., endorsed the date of delivery thereon, and executed it at _____ (street address), _____ (city),

in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock ___. M.,

by delivering to _____ (the defendant corporation named in citation), by delivering to its

_____ (registered agent, president, or vice-president), in person, whose name is _____,

a true copy of this citation, with a copy of the _____ (description of petition, e.g., "Plaintiffs Original") Petition attached,

and with accompanying copies of _____ (additional documents, if any, delivered with the petition).

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: $ _____

By: _____ (signature of officer)

Printed Name: _____

As Deputy for: _____ (printed name & title of sheriff or constable)

_____
Affiant Other Than Officer

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____
Notary Public

N.INT.CITC.P

2010-08816

CAUSE NO._____

NIKIA PICKNEY	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., AND FRED HAAS MOTORS, LTD D/B/A FRED HAAS TOYOTA WORLD.	§	133 JUDICIAL DISTRICT

FILED
Loren Jackson
District Clerk
Time: FEB 10 2010
By Harris County, Texas
Deputy

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, **NIKIA PICKNEY**, and files this **ORIGINAL PETITION**, and would respectively show unto the Court the following:

I.

DISCOVERY LEVEL-II

Discovery and development of this case should occur pursuant to Rule 190.3, TEXAS RULES OF CIVIL PROCEDURE, commonly referred to as Level 2, as modified from time to time by Court Order or Agreement of counsel.

II.

PARTIES

Plaintiff, **NIKIA PICKNEY**, is a resident of Houston, Harris County, Texas.

Defendant, **TOYOTA MOTOR SALES U.S.A., INC. ("TOYOTA MOTOR SALES")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent CT Corporation Systems at 350 N. St. Paul Street, Dallas Texas 75201.

RECEIVED
FEB 22 2010
LEGAL DEPARTMENT

TOY-RQ-05E-00011558

Defendant, **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **TOYOTA MOTOR NORTH AMERICA, INC. ("TMNA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **FRED HAAS MOTORS, LTD. d/b/a FRED HAAS TOYOTA WORLD ("HAAS DEALERSHIP")**, is a Texas Limited Partnership conducting business in and throughout the State of Texas, and may be served through its registered agent Mr. Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas 77079.

III.

FACTS

TOYOTA MOTOR SALES, **TEMA** and **TMNA**, are collectively referred to as "**TOYOTA**," and are sued in their individual and collective capacities.

This case involves a **2007 Toyota Camry, VIN: 4T1BE46K77U669780**, which was designed, manufactured, tested, certified, marketed, distributed, advertised, sold and/or otherwise placed into the stream of commerce by **TOYOTA**, and also marketed, advertised, sold, and/or otherwise placed into the stream of commerce by and through **TOYOTA's** authorized agent/dealer/distributor, the **HAAS DEALERSHIP**. The subject vehicle is referred to as the "**DEFECTIVE CAMRY**."

TOY-RQ-05E-00011559

NIKIA PICKNEY was injured on June 21, 2009, in a collision that occurred when the **DEFECTIVE CAMRY** experienced **Sudden and Unwanted Acceleration ("SUA")**, which caused the vehicle to cross the median and strike another vehicle at or near the 12400 block of Main Street in Houston, Harris County, Texas.

NIKIA PICKNEY suffered a crushed pelvis that required fixation, left arm fractures that required rodding and pinning, multiple skull fractures that required plating, and is permanently blind.

IV.

STRICT LIABILITY—PRODUCT DEFECTS

At all relevant times **TOYOTA** was engaged in the business of designing, manufacturing, testing, certifying, distributing, advertising, marketing, and/or selling motor vehicles, including the **DEFECTIVE CAMRY**.

At all relevant times the **HAAS DEALERSHIP** was engaged in the business of distributing, advertising, marketing and/or selling motor vehicles.

TOYOTA and the **HAAS DEALERSHIP** placed the **DEFECTIVE CAMRY** into the stream of commerce.

TOYOTA and the **HASS DEALERSHIP** are liable and accountable for the collision in question and the resulting injuries and damages by reason of **design and marketing defects**, which rendered the **DEFECTIVE CAMRY** unreasonably dangerous.

More specifically, but not by way of limitation, the **design** of the **DEFECTIVE CAMRY** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

TOY-RQ-05E-00011560

By way of further specificity, but not by way of limitation, the **marketing** of the **DEFECTIVE CAMRY** was such that Defendants failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

The **defective design and defective marketing** of the **DEFECTIVE CAMRY** constituted a producing cause of the collision in question and/or the resulting injuries and damages.

V.

NEGLIGENCE AND GROSS NEGLIGENCE

TOYOTA and the **HAAS DEALERSHIP** were **negligent** in connection with the design, marketing, distribution, and sale of the **DEFECTIVE CAMRY**, and also with respect to the post-sale duties to advise, inform, warn, instruct, and/or recall the **DEFECTIVE CAMRY**.

More specifically, but not by way of limitation, **TOYOTA** failed to use ordinary care in the design of the **DEFECTIVE CAMRY** insofar as **TOYOTA** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

By way of further specificity, but not by way of limitation, **TOYOTA** and the **HAAS DEALERSHIP** were negligent in the marketing of the **DEFECTIVE CAMRY** inasmuch as they failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

TOYOTA's and the **HAAS DEALERSHIP's** negligence constituted a proximate cause of the collision in question.

TOY-RQ-05E-00011561

TOYOTA and its **HAAS DEALERSHIP** were **grossly negligent** in that the conduct complained of (a) involved an extreme degree of risk considering the probability oand magnitude of the potential harm to others when viewed objectively from the Defendants' perspective at the time of their conduct, and (b) the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others (such as **NIKIA PICKNEY**).

NIKIA PICKNEY's harm resulted from **TOYOTA's** and the **HASS DEALERSHIP's** gross negligence.

VI.

ACTUAL DAMAGES

NIKIA PICKNEY seeks compensation for all elements of damage allowed pursuant to Texas law, including but not limited to the reasonable value of medical care, both past and future; lost wages and earning capacity, both past and future; physical pain and mental anguish, both past and future; physical disfigurement, both past and future; and physical impairment, both past and future.

The damages sought are within the jurisdictional limits of this Court.

VII.

EXEMPLARY DAMAGES

Some conduct is so egregious that the law requires the imposition of **exemplary damages** against a Defendant, not for compensation to the victims, but rather to deter similar conduct by the Defendant and others similarly situated; this case involves such egregious conduct.

TOY-RQ-05E-00011562

NIKIA PICKNEY seeks an award of **exemplary damages** pursuant to Texas law, considering the nature of the wrong, character of the conduct, degree of culpability of the wrongdoer, situation and sensibilities of the parties concerned, extent to which the conduct offends the public's sense of justice and propriety, and the net worth of **TOYOTA** and the **HAAS DEALERSHIP**.

VIII.

JURY DEMAND

NIKIA PICKNEY respectfully demands a jury.

IX.

PRE-JUDGMENT AND POST JUDGMENT INTEREST

NIKIA PICKNEY seeks pre-judgment and post-judgment interest as allowed by law.

WHEREFORE, PREMISES CONSIDERED, **NIKIA PICKNEY** prays **TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC.**, and **FRED HAAS MOTORS, LTD. D/B/A FRED HAAS TOYOTA WORLD,** be Cited and required to Answer and appear herein, and that upon a trial of the merits, Judgment be entered against Defendants for actual damages, jointly and severally, exemplary damages, individually, and pre-judgment and post-judgment interest, and taxable costs, jointly and severally.

TOY-RQ-05E-00011563

Plaintiff further prays for any and all further relief, both general and special, at law or in equity, to which she may show herself justly entitled.

Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST

S. SCOTT WEST
SBN: 21206920
1600 HIGHWAY SIX, SUITE 450
SUGAR LAND, TEXAS 77478
TEL: (281) 277-1500
FAX: (281) 277-1505
scott@westfirm.com

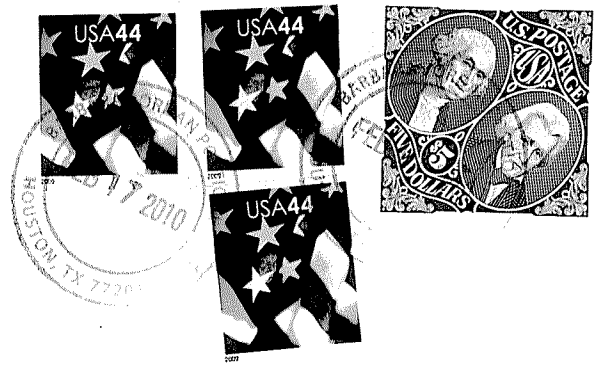
ATTORNEYS FOR PLAINTIFF

TOY-RQ-05E-00011564

Alliance Legal Service
P.O. Box 667160
Houston, Texas 77266

CERTIFIED MAIL™

7009 2820 0001 3214 5983



RETURN RECEIPT REQUESTED

Toyota Motor Sales, USA, Inc.
c/o CT Corporation System
350 North St. Paul Street
Dallas, Texas 75201

75201$42$4 C005

TOY-RQ-05E-00011565

CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516190097

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

RE: **Process Served in Michigan**

FOR: Toyota Motor North America, Inc. (Domestic State: CA)

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

TITLE OF ACTION:	Nikia Pickney vs. Toyota Motor Sales U.S.A., inc., et al. including Toyota Motor North America, Inc.
DOCUMENT(S) SERVED:	Citation, Original Petition
COURT/AGENCY:	133rd District Court, Harris County, TX Case # 201008816
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Defective brake override on a 2007 Toyota Camry, VIN: 4T1BE46K77U669780
ON WHOM PROCESS WAS SERVED:	The Corporation Company, Bingham Farms, MI
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/22/2010 postmarked on 02/17/2010
APPEARANCE OR ANSWER DUE:	By 10:00 a.m. on the Monday next following the expiration of 20 days
ATTORNEY(S) / SENDER(S):	S. Scott West The West Law Firm 1600 Highway 6 #450 Sugar Land, TX 77478 248-277-1500
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 792176265560 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:	The Corporation Company
PER:	Stephanie Hendrickson
ADDRESS:	30600 Telegraph Road Suite 2345 Bingham Farms, MI 48025-5720
TELEPHONE:	248-646-9033

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECEIPT NUMBER 2060 0.00
TRACKING NUMBER 72502475 ATY

CAUSE NUMBER 201008816

PLAINTIFF: PICKNEY, NIKIA
vs.
DEFENDANT: TOYOTA MOTOR SALES U S A

In The 133rd **Judicial District Court of Harris County, Texas**

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

TO: TOYOTA MOTOR NORTH AMERICA INC BY SERVING THROUGH ITS REGISTERED AGENT
THE CORPORATION COMPANY

30600 TELEGRAPH ROAD BINGHAM FARMS MI 48025

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

This instrument was filed on the 10th day of February, 20 10, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 11th day of February, 20 10.

Issued at request of:
WEST, S. SCOTT
1600 HIGHWAY 6 #450
SUGAR LAND, TX 77478
Tel: (281) 277-1500
Bar Number: 21206920

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: STANFIELD, BRIDGETTE KII/3JG/8627

OFFICER/AUTHORIZED PERSON RETURN

BG 3588

I received this citation on the 12th day of February, 2010, at 1:30 o'clock P.M., endorsed the date of delivery thereon, and executed it at _____ (street address), _____ (city),

in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock ___. M.,

by delivering to _____ (the defendant corporation named in citation), by delivering to its

_____ (registered agent, president, or vice-president), in person, whose name is _____,

a true copy of this citation, with a copy of the _____ (description of petition, e.g., "Plaintiffs Original") Petition attached,

and with accompanying copies of _____ (additional documents, if any, delivered with the petition).

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: $ _____

By: _____ (signature of officer)

Printed Name: _____

_____
Affiant Other Than Officer

As Deputy for: _____ (printed name & title of sheriff or constable)

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____
Notary Public

N.INT.CITC.P

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

CAUSE NO. 2010-08816

NIKIA PICKNEY	§	**IN THE DISTRICT COURT OF**
	§	
V.	§	**HARRIS COUNTY, TEXAS**
	§	
TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., AND FRED HAAS MOTORS, LTD D/B/A FRED HAAS TOYOTA WORLD.	§	133 **JUDICIAL DISTRICT**

FILED
Loren Jackson
District Clerk
Time:
FEB 10 2010
By
Harris County, Texas
Deputy

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, **NIKIA PICKNEY**, and files this **ORIGINAL PETITION**, and would respectively show unto the Court the following:

I.

DISCOVERY LEVEL-II

Discovery and development of this case should occur pursuant to Rule 190.3, TEXAS RULES OF CIVIL PROCEDURE, commonly referred to as Level 2, as modified from time to time by Court Order or Agreement of counsel.

II.

PARTIES

Plaintiff, **NIKIA PICKNEY**, is a resident of Houston, Harris County, Texas.

Defendant, **TOYOTA MOTOR SALES U.S.A., INC. ("TOYOTA MOTOR SALES")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent CT Corporation Systems at 350 N. St. Paul Street, Dallas Texas 75201.

RECEIVED
FEB 24 2010
LEGAL DEPARTMENT

TOY-RQ-05E-00011568

Defendant, **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **TOYOTA MOTOR NORTH AMERICA, INC. ("TMNA")**, is a business entity conducting business in and throughout the State of Texas, and may be served through its registered agent The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

Defendant, **FRED HAAS MOTORS, LTD. d/b/a FRED HAAS TOYOTA WORLD ("HAAS DEALERSHIP")**, is a Texas Limited Partnership conducting business in and throughout the State of Texas, and may be served through its registered agent Mr. Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas 77079.

III.

FACTS

TOYOTA MOTOR SALES, TEMA and **TMNA**, are collectively referred to as "**TOYOTA**," and are sued in their individual and collective capacities.

This case involves a **2007 Toyota Camry, VIN: 4T1BE46K77U669780**, which was designed, manufactured, tested, certified, marketed, distributed, advertised, sold and/or otherwise placed into the stream of commerce by **TOYOTA**, and also marketed, advertised, sold, and/or otherwise placed into the stream of commerce by and through **TOYOTA's** authorized agent/dealer/distributor, the **HAAS DEALERSHIP**. The subject vehicle is referred to as the "**DEFECTIVE CAMRY**."

TOY-RQ-05E-00011569

NIKIA PICKNEY was injured on June 21, 2009, in a collision that occurred when the **DEFECTIVE CAMRY** experienced **Sudden and Unwanted Acceleration ("SUA")**, which caused the vehicle to cross the median and strike another vehicle at or near the 12400 block of Main Street in Houston, Harris County, Texas.

NIKIA PICKNEY suffered a crushed pelvis that required fixation, left arm fractures that required rodding and pinning, multiple skull fractures that required plating, and is permanently blind.

IV.

STRICT LIABILITY—PRODUCT DEFECTS

At all relevant times **TOYOTA** was engaged in the business of designing, manufacturing, testing, certifying, distributing, advertising, marketing, and/or selling motor vehicles, including the **DEFECTIVE CAMRY.**

At all relevant times the **HAAS DEALERSHIP** was engaged in the business of distributing, advertising, marketing and/or selling motor vehicles.

TOYOTA and the **HAAS DEALERSHIP** placed the **DEFECTIVE CAMRY** into the stream of commerce.

TOYOTA and the **HASS DEALERSHIP** are liable and accountable for the collision in question and the resulting injuries and damages by reason of **design and marketing defects**, which rendered the **DEFECTIVE CAMRY** unreasonably dangerous.

More specifically, but not by way of limitation, the **design** of the **DEFECTIVE CAMRY** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

TOY-RQ-05E-00011570

By way of further specificity, but not by way of limitation, the **marketing** of the **DEFECTIVE CAMRY** was such that Defendants failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

The **defective design and defective marketing** of the **DEFECTIVE CAMRY** constituted a producing cause of the collision in question and/or the resulting injuries and damages.

V.

NEGLIGENCE AND GROSS NEGLIGENCE

TOYOTA and the **HAAS DEALERSHIP** were **negligent** in connection with the design, marketing, distribution, and sale of the **DEFECTIVE CAMRY**, and also with respect to the post-sale duties to advise, inform, warn, instruct, and/or recall the **DEFECTIVE CAMRY**.

More specifically, but not by way of limitation, **TOYOTA** failed to use ordinary care in the design of the **DEFECTIVE CAMRY** insofar as **TOYOTA** failed to incorporate a brake override and also because the design utilized an accelerator pedal that was subject to "sticking"—either mechanically, electrically or magnetically.

By way of further specificity, but not by way of limitation, **TOYOTA** and the **HAAS DEALERSHIP** were negligent in the marketing of the **DEFECTIVE CAMRY** inasmuch as they failed to adequately warn consumers (such as **NIKIA PICKNEY**) of the dangers associated with the vehicle, and further failed to adequately instruct on how to avoid those hazards.

TOYOTA's and the **HAAS DEALERSHIP's** negligence constituted a proximate cause of the collision in question.

TOY-RQ-05E-00011571

TOYOTA and its **HAAS DEALERSHIP** were **grossly negligent** in that the conduct complained of (a) involved an extreme degree of risk considering the probability oand magnitude of the potential harm to others when viewed objectively from the Defendants' perspective at the time of their conduct, and (b) the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others (such as **NIKIA PICKNEY**).

NIKIA PICKNEY's harm resulted from **TOYOTA's** and the **HASS DEALERSHIP's** gross negligence.

VI.

ACTUAL DAMAGES

NIKIA PICKNEY seeks compensation for all elements of damage allowed pursuant to Texas law, including but not limited to the reasonable value of medical care, both past and future; lost wages and earning capacity, both past and future; physical pain and mental anguish, both past and future; physical disfigurement, both past and future; and physical impairment, both past and future.

The damages sought are within the jurisdictional limits of this Court.

VII.

EXEMPLARY DAMAGES

Some conduct is so egregious that the law requires the imposition of **exemplary damages** against a Defendant, not for compensation to the victims, but rather to deter similar conduct by the Defendant and others similarly situated; this case involves such egregious conduct.

TOY-RQ-05E-00011572

NIKIA PICKNEY seeks an award of **exemplary damages** pursuant to Texas law, considering the nature of the wrong, character of the conduct, degree of culpability of the wrongdoer, situation and sensibilities of the parties concerned, extent to which the conduct offends the public's sense of justice and propriety, and the net worth of **TOYOTA** and the **HAAS DEALERSHIP**.

VIII.

JURY DEMAND

NIKIA PICKNEY respectfully demands a jury.

IX.

PRE-JUDGMENT AND POST JUDGMENT INTEREST

NIKIA PICKNEY seeks pre-judgment and post-judgment interest as allowed by law.

WHEREFORE, PREMISES CONSIDERED, **NIKIA PICKNEY** prays **TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC.**, and **FRED HAAS MOTORS, LTD. D/B/A FRED HAAS TOYOTA WORLD,** be Cited and required to Answer and appear herein, and that upon a trial of the merits, Judgment be entered against Defendants for actual damages, jointly and severally, exemplary damages, individually, and pre-judgment and post-judgment interest, and taxable costs, jointly and severally.

TOY-RQ-05E-00011573

Plaintiff further prays for any and all further relief, both general and special, at law or in equity, to which she may show herself justly entitled.

Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST

S. SCOTT WEST
SBN: 21206920
1600 HIGHWAY SIX, SUITE 450
SUGAR LAND, TEXAS 77478
TEL: (281) 277-1500
FAX: (281) 277-1505
scott@westfirm.com

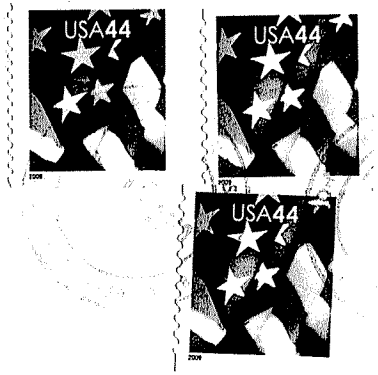
ATTORNEYS FOR PLAINTIFF

TOY-RQ-05E-00011574

Alliance Legal Service
P.O. Box 667160
Houston, Texas 77266

CERTIFIED MAIL™

7009 2820 0001 3214 5952



RECEIPT

Toyota Motor North American Inc.
c/o The Corporation Company
30600 Telegraph Road
Bingham Farms, MI 48025

4802554530 C004

TOY-RQ-05E-00011575

Alliance Legal Service
P.O. Box 667160
Houston, Texas 77266

CERTIFIED MAIL™

7009 2820 0001 3214 5952

RETURN RECEIPT REQUESTED

Toyota Motor North American Inc.
c/o The Corporation Company
30600 Telegraph Road
Bingham Farms, MI 48025

4802554530 C004

TOY-RQ-05E-00011576

CAUSE NO.2010-08816

NIKIA PICKNEY	§	**IN THE DISTRICT COURT OF**
	§	
V.	§	**HARRIS COUNTY, TEXAS**
	§	
TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., AND FRED HAAS MOTORS, LTD D/B/A FRED HAAS TOYOTA WORLD.	§	**133RD JUDICIAL DISTRICT**

PLAINTIFF'S RULE 194 REQUESTS FOR DISCLOSURE TO TOYOTA MOTOR SALES, U.S.A., INC. TOYOTA NORTH AMERICA, INC. AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

TO: Defendants, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA NORTH AMERICA, INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., by and through its attorney of record, Mr. J. Karl Viehman, *Hartline, Dacus, Barger, Dryer & Kern, L.L.P.*, 6688 N. Central Expressway, Suite 1000, Dallas, Texas 75206.

Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule 194, more specifically referenced and identified herein.

Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST
SBN: 21206920
1600 HIGHWAY SIX, SUITE 450
SUGAR LAND, TEXAS 77478
TEL: (281) 277-1500
FAX: (281) 277-1505
scott@westfirm.com

ATTORNEY FOR PLAINTIFF

TOY-RQ-05E-00011577

CERTIFICATE OF SERVICE

I hereby certify that the a true and correct copy of the foregoing was forwarded to all counsel of record pursuant to Rules 21 and 21a of the TEXAS RULES OF CIVIL PROCEDURE on this the ***15th*** day of ***March, 2010***.

Mr. J. Karl Viehman (***Toyota Entities***)
Hartline, Dacus, Barger, Dryer & Kern, L.L.P.
6688 N. Central Expressway, Suite 1000
Dallas, Texas 75206
Via Facsimile: (214) 369-2118

Mr. Robert L. Ramey (***Fred Haas Toyota World***)
Ramey, Chandler, McKinley & Zito, P.C.
750 Bering Drive, Suite 600
Houston, Texas 77057
Via Facsimile: (713) 266-1064

S. SCOTT WEST

RULE 194 REQUESTS FOR DISCLOSURE TO TOYOTA ENTITIES

Rule 194.2(a): The correct names of the parties to the lawsuit.

RESPONSE:

Rule 194.2(b): The name, address, and telephone number of any potential parties.

RESPONSE:

Rule 194.2(c): The legal theories and, in general, the factual bases of the responding party's defenses.

RESPONSE:

Rule 194.2(d): The amount and any method of calculating economic damages;

RESPONSE:

Rule 194.2(e): The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

Rule 194.2(f): For any testifying expert:

1. The expert's name, address, and telephone number;

2. The subject matter on which the expert will testify;

3. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

   If the expert is retained by, employed by, or otherwise subject to the control of the responding party:

   a. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

   b. The expert's current resume and bibliography;

RESPONSE:

Rule 194.2(g): Any discoverable indemnity and insuring agreements.

RESPONSE:

Rule 194.2(h): Any discoverable settlement agreements.

RESPONSE:

Rule 194.2(i): Any discoverable witness statements.

RESPONSE:

Rule 194.2(k): In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE:

Rule 194.2(l): The name, address, and telephone number of any person who may be designated as a responsible party.

RESPONSE:

CAUSE NO.2010-08816

NIKIA PICKNEY	§	**IN THE DISTRICT COURT OF**
	§	
V.	§	**HARRIS COUNTY, TEXAS**
	§	
TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR NORTH AMERICA, INC., AND FRED HAAS MOTORS, LTD D/B/A FRED HAAS TOYOTA WORLD.	§	**133RD JUDICIAL DISTRICT**

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO TOYOTA MOTOR SALES, U.S.A., INC. TOYOTA NORTH AMERICA, INC. AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

TO: Defendants, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA NORTH AMERICA, INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., by and through its attorney of record, Mr. J. Karl Viehman, *Hartline, Dacus, Barger, Dryer & Kern, L.L.P.*, 6688 N. Central Expressway, Suite 1000, Dallas, Texas 75206.

Pursuant to the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff serves this **Request for Production** upon you, the Responses to which shall be made separately and fully, and shall be served on the undersigned attorney of record within thirty (30) days upon service hereof.

You are further charged with the duty to supplement your Responses if you later obtain information upon which (1) you know that your Response to one or more of the Requests was incomplete or incorrect when made, or (2) you know that your Response to one or more of the Requests is no longer complete and the circumstances are such that a failure to amend the Response is in substance a knowing concealment.

TOY-RQ-05E-00011581

The following definitions and instructions apply to each of the Requests for Production set forth herein, are deemed incorporated, and supplement any particular definitions and Requests for information contained therein unless expressly stated to the contrary within any such Request.

"**TMC**" shall mean and include **TOYOTA MOTOR SALES USA, INC.**, and all its agents, representatives and employees (excluding lawyers and purely consulting experts hired for this litigation).

"**TMA**" shall mean and include **TOYOTA MOTOR NORTH AMERICA, INC.**

"**TMEA**" shall mean and include **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**

"**TTC**" shall mean and include **TOYOTA TECHNICAL CENTER.**

"**TOYOTA**" shall mean and include **TMC, TMA, TMEA, TTC,** and **all other related entities, divisions, subsidiaries, groups and affiliates** over which **TMC, TMA, TMEA, or TTC** have actual or constructive control, including entities that are or have been in privity with any or all of them.

"**COLLISION CAMRY**" and similar such references shall mean and refer to the 2007 **Toyota Camry** bearing **VIN: 4T1BE46K77U669780**, and which was involved in the **COLLISION IN QUESTION.**

"**COLLISION IN QUESTION,**" and similar such references shall mean and refer to the automobile collision that occurred on or about **June 21, 2009,** involving the vehicle driven by **NIKIA PICKNEY** and another (2007 Chevrolet Pickup Truck), which collision occurred in Houston, Harris County, Texas, at or near the 12400 block of Main Street, and which is more

specifically referenced in Houston Police Department "Crash Report," with Location #090385509-A, signed by HPD Officer E.E. Gonzalez (ID# 8389).

"**ECU**" shall mean and refer to an **Engine Control Unit.**

"**EDR**" shall mean and refer to an **Event Data Recorder**, which also may (or may not) be referred to as a "**BLACK BOX.**"

"**DTC**" shall mean and refer to **Diagnostic Trouble Codes.**

"Person" shall include any entity, including individuals, associations, companies, firms, partnerships, joint ventures, corporations, trusts, estates, agencies, departments, bureaus, and boards.

"Document" or "documents" refers to all writings, recordings, and photographs, including all originals and duplicates as defined in the TEXAS RULES OF CIVIL PROCEDURE and the TEXAS RULES OF EVIDENCE within the possession, control or custody of the Defendant or in the hands of any experts, agents, representatives, attorneys or consultants of Defendant, including, but not limited to, memoranda, correspondence, reports (including drafts, preliminary, intermediate, and final reports), studies, minutes, diaries, notes, transcripts, microfilm, tapes, input, output, and printouts, mechanical and electrical recordings, telephone and telegraphic communications, speeches and all other recorded information, whether recorded in writing, electrically or mechanically, and all things similar to any of the foregoing, however denominated by Defendant, and any and all other documents within the scope of the TEXAS RULES OF CIVIL PROCEDURE or the TEXAS RULES OF CIVIL EVIDENCE. "Documents" shall also refer to nonidentical copies of documents or copies of documents notwithstanding that the originals thereof are not in the possession, custody or control of Defendant and every copy of a document

which contains handwritten or other notations or which otherwise do not duplicate the original or any other copy, and all attachments to any document.

If you claim any document requested is privileged or not subject to discovery, for each such document state the date it was generated, who wrote it, who it was sent to, a brief description of the nature of the document, and the privilege asserted.

Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST
SBN: 21206920
1600 HIGHWAY SIX, SUITE 450
SUGAR LAND, TEXAS 77478
TEL: (281) 277-1500
FAX: (281) 277-1505
scott@westfirm.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that the a true and correct copy of the foregoing was forwarded to all counsel of record pursuant to Rules 21 and 21a of the TEXAS RULES OF CIVIL PROCEDURE on this the ***15th*** day of ***March, 2010***.

Mr. J. Karl Viehman (***Toyota Entities***)
Hartline, Dacus, Barger, Dryer & Kern, L.L.P.
6688 N. Central Expressway, Suite 1000
Dallas, Texas 75206
Via Facsimile: (214) 369-2118

Mr. Robert L. Ramey (***Fred Haas Toyota World***)
Ramey, Chandler, McKinley & Zito, P.C.
750 Bering Drive, Suite 600
Houston, Texas 77057
Via Facsimile: (713) 266-1064

S. SCOTT WEST

TOY-RQ-05E-00011584

NIKIA PICKNEY'S FIRST REQUEST FOR PRODUCTION TO TOYOTA (ALL)

REQUEST FOR PRODUCTION NO. 1:
Produce a true and correct copy of any and all **statements** in your actual or constructive possession, custody, control or access that you believe or contend were purportedly made by or on behalf of **NIKIA PICKNEY.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:
Produce a true and correct copy of any and all **medical records, reports, bills**, and other documentation pertaining to the medical condition of **NIKIA PICKNEY**, which were not received from counsel for Plaintiff.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:
Produce a true and correct copy of any and **all photographs, videotapes, drawings, sketches**, or other visual or other graphic representations of **NIKIA PICKNEY.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:
Produce a true and correct copy of any and **all photographs, videotapes, drawings, sketches**, or other visual or other graphic representations of the scene of the **COLLISION IN QUESTION**, or any area within five (5) miles of the scene.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:
Produce a true and correct copy of any and all **photographs, videotapes, drawings, sketches**, or other visual or other graphic representations of **COLLISION CAMRY.**

RESPONSE:

TOY-RQ-05E-00011585

REQUEST FOR PRODUCTION NO. 6:
Produce a true and correct copy of any and all **photographs, videotapes, drawings, sketches**, or other visual or other graphic representations of any vehicle involved in the **COLLISION IN QUESTION**.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:
Produce a true and correct copy of any and all **damage estimates, work orders, repair orders,** or other documentation of the condition of the **COLLISION CAMRY.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:
Produce a true and correct copy of any and all **damage estimates, work orders, repair orders,** or other documentation of the condition of any vehicle involved in the **COLLISION IN QUESTION.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:
Produce a true and correct copy of any and all **brochures and product literature** distributed, printed or circulated by **TMC** containing photographs, diagrams or descriptions of the 2007 **Toyota Camry.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:
Produce a true and correct copy of any and all **brochures and product literature** distributed, printed or circulated by **TMA** containing photographs, diagrams or descriptions of the 2007 **Toyota Camry.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:
Produce a true and correct copy of any and all **documents or writings prepared for accompaniment** with the **COLLISION CAMRY.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:
Produce a true and correct copy of any and all **documents or writings prepared for accompaniment** with the any 2005, 2006, 2007, 2008, 2009, 2010, or 2011 **Toyota Camry.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:
Produce a true and correct copy of any and all **schematic drawings, design drawings, internal design specifications, blue prints, or sketches** that depict the **THROTTLE CONTROL SYSTEM and/or its component parts (including the cruise control system)** of any 2005, 2006, 2007, 2008, 2009, 2010, or 2011 **Toyota Camry.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:
Produce a true and complete list of all **THROTTLE CONTROL SYSTEM components of the COLLISION CAMRY.**

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:
Produce a true and complete list of all **FUEL SYSTEM components of the COLLISION CAMRY.**

RESPONSE:

I

REQUEST FOR PRODUCTION NO. 16:
Produce a true and correct copy of any and all **sales and title/transfer documents**, including Invoices, Purchase Orders, Bills of Lading, Shipping Papers/Invoices, Titles, Powers of Attorney, or other documents that mention or reflect any sale or transfer of the **COLLISION CAMRY (whether prior to or after the COLLISION IN QUESTION).**

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:
Produce a true and correct copy of any and all **inspection, maintenance and repair documents** that mention or reflect those matters of or on the **COLLISION CAMRY (whether prior to or after the COLLISION IN QUESTION).**

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:
Produce a true and correct copy of any and all documents generated that evidence, mention or reflect any consumer complaints or claims (whether reported in writing, electronically, orally, or other), and any documents and records reflecting incidents (including Police Reports), which have occurred (or alleged to have occurred) involving 2002 – 2009 **Toyota Camry, Toyota Solara, Lexus ES300 and ES330** vehicles, which incidents claim or allege or reference **SUDDEN ACCELERATION, SUDDEN UNITENDED ACCELERATION, SUDDEN UNWANTED ACCELERATION, SUDDEN UNEXPECTED ACCELERATION, UNINTENDED ACCELERATION, UNWANTED ACCELERATION OR UNEXPECTED ACCELERATION.** (NOTE: Please include with your Response the search criteria used to identify these claims, as well as a list of all labor operations, labor operation descriptions, problem codes and problem code descriptions).

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:
For any such Complaint referred to in Request No. 18, above, wherein a crash is alleged to have occurred, produce your entire file discussing, mentioning and referring to such crash.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:
Produce a true and correct copy of any and all Warranty claims, extended warranty claims, and claims for "good will services" paid by **TOYOTA** pertaining to model year 2002 – 2009 Toyota Camry, Toyota Solara, Lexus ES300 and ES330 in which the throttle actuator, or any other compenent of the throttle control system was referenced, including but not limited to the 3546 warranty replacement documents produced by **TOYOTA** in response to the NHTSA inquiry related to DP 06-003. Include with this response the serach criteria used by **TOYOTA** to identify the claims, as well as a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:
Produce a true and correct copy of any and all legal complaints (whether formal Petitions, formal Complaints, or other) that have been filed against **TOYOTA** alleging personal injury, death or damage due to any alleged defective condition, defect in, or problems regarding the model year 2002 – 2009 **Toyota Camry, Toyota Solara, Lexus ES300 or ES330** vehicles, wherein it was alleged that the injury, death, damage, loss, or incident was associated with **sudden acceleration, unintended acceleration or unexpected acceleration** of the vehicle.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:
Produce a true and correct copy of any and all **recalls or service campaigns** applicable to model year 2002 – 2009 **Toyota Camry, Toyota Solara, Lexus ES300 or ES330** vehicles related to vehicle fuel and throttle control systems.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:
Produce a true and correct copy of any and all **service bulletins, engineering bulletins or any other notifications of problems/potential problems/reported problems** applicable to model year 2002 – 2009 **Toyota Camry, Toyota Solara, Lexus ES300 or ES330** vehicles that reference the throttle control system or any of its component parts, including but not limited to the **nine (9) service bulletins** produced to the NHTSA in response to DP04-003/PE04-021.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:
Produce a true and correct copy of all document retention or destruction policies and procedures in effect at any time during the calendar years 2003, 2004, 2005, 2006, 2007, 2008, 2009, or 2010.

PICKNEY, NIKIA PLEADINGS

TOY-RQ-05E-00011590

FILE START

GERAGOS & GERAGOS
A PROFESSIONAL CORPORATION
LAWYERS
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411
TELEPHONE (213)625-3900
FACSIMILE (213)625-1600

MARK GERAGOS SBN 108325
TAMAR G. ARMINAK SBN 238677

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 _____, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN,

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.

CASE NO. BC431688

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, NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN 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 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.

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 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. Plaintiff NELLIE YAZITCHYAN is a resident of the County of Los Angeles, Los Angeles, California. Plaintiff is the owner of a vehicle manufactured and sold by the Defendants.

9. Plaintiffs BERTAM SROURIAN and AZA SROURIAN are residents of the County of Los Angeles, California Plaintiffs are the owners of a vehicle manufactured and sold by the 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 revenue from sales within this State and has sufficient contacts with this State to give this

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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.

12. 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

13. 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.

14. Defendants have attributed the increased incidents of unintended

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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.

15. 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.

16. 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

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- 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 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

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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 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:

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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. "

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

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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 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

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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 December 2007, Plaintiff NELLIE YAZITCHYAN purchased a 2008 Toyota Tacoma, VIN 5EJU62N38Z518491, ("the subject vehicle") which was made in Japan by the Defendants.

31. On or about November 14, 2008, Plaintiffs BERTAM SROURIAN and AZA SROURIAN purchased a 2009 Toyota Camry, VIN 4TIBE46K39U880879, ("the subject vehicle") which was made in Japan by the Defendants.

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

33. 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

34. 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.**

35. 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.

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36. 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.

37. 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.

38. 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.

39. 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.

40. 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

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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.

41. 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.

42. 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.

43. 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.

44. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class

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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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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

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Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

50. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

51. 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.

52. 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.

53. 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.

54. 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

55. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

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56. 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.

57. 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.

58. 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.

59. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

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

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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 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

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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.

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

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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 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.

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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 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

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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 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 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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Los Angeles Superior Court

FEB 10 2010

John A. Clarke, Executive Officer/Clerk
By [illegible], Deputy

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:
YAZITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CASE NUMBER: BC431688

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

TOY-RQ-05E-00011614

SHORT TITLE:	CASE NUMBER
YARITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC.	BC431688

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-00011615

SHORT TITLE:	CASE NUMBER
YARITCHYAN 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
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-00011616

SHORT TITLE: YARITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC.	CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus ☐ A6152 Writ - Mandamus on Limited Court Case Matter ☐ A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment ☐ A6160 Abstract of Judgment ☐ A6107 Confession of Judgment (non-domestic relations) ☐ A6140 Administrative Agency Award (not unpaid taxes) ☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax ☐ A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only ☐ A6040 Injunctive Relief Only (not domestic/harassment) ☐ A6011 Other Commercial Complaint Case (non-tort/non-complex) ☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment ☐ A6123 Workplace Harassment ☐ A6124 Elder/Dependent Adult Abuse Case ☐ A6190 Election Contest ☐ A6110 Petition for Change of Name ☐ A6170 Petition for Relief from Late Claim Law ☐ A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

TOY-RQ-05E-00011617

SHORT TITLE:	CASE NUMBER
YARITCHYAN 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 BC431688
Case Number _____

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		ASSIGNED JUDGE	DEPT	ROOM	
	Hon. Elihu M. Berle	1	534		Hon. Holly E. Kendig	42	416	
	Hon. J. Stephen Czuleger	3	224		Hon. Mel Red Recana	45	529	
	Hon. Luis A. Lavin	13	630		Hon. Debre Katz Weintraub	47	507	
	Hon. Terry A. Green	14	300		Hon. Elizabeth Allen White	48	506	
	Hon. Richard Fruin	15	307		Hon. Conrad Aragon	49	509	
	Hon. Rita Miller	16	306		Hon. John Shepard Wiley Jr.	50	508	
	Hon. Richard E. Rico	17	309		Hon. Abraham Khan	51	511	
	Hon. Helen I. Bendix	18	308		Hon. Susan Bryant-Deason	52	510	
	Hon. Rex Heeseman	19	311		Hon. John P. Shook	53	513	
	Hon. Kevin C. Brazile	20	310		Hon. Ernest M. Hiroshige	54	512	
	Hon. Zaven V. Sinanian	23	315		Hon. Malcolm H. Mackey	55	515	
	Hon. Robert L. Hess	24	314		Hon. Jane L. Johnson	56	514	
	Hon. Mary Ann Murphy	25	317		Hon. Ralph W. Dau	57	517	
	Hon. James R. Dunn	26	316		Hon. Rolf M. Treu	58	516	
	Hon. Yvette M. Palazuelos	28	318		Hon. David L. Minning	61	632	
	Hon. John A. Kronstadt	30	400		Hon. Michael L. Stern	62	600	
	Hon. Alan S. Rosenfield	31	407		Hon. Kenneth R. Freeman	64	601	
	Hon. Mary H. Strobel	32	406		Hon. Mark Mooney	68	617	
	Hon. Charles F. Palmer	33	409		Hon. Edward A. Ferns	69	621	
	Hon. Amy D. Hogue	34	408		Hon. Soussan G. Bruguera	71	729	
	Hon. Gregory Alarcon	36	410		Hon. Ruth Ann Kwan	72	731	
	Hon. Joanne O'Donnell	37	413		Hon. Teresa Sanchez-Gordon	74	735	
	Hon. Maureen Duffy-Lewis	38	412		Hon. William F. Fahey	~~78~~	730	
	Hon. Michael C. Solner	39	415		**Hon. Carl J. West***	**311**	**CCW**	X
	Hon. Michelle R. Rosenblatt	40	414		Other			
	Hon. Ronald M. Sohigian	41	417					

***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-00011619

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.

TOY-RQ-05E-00011621

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

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TOY-RQ-05E-00011622

2/11 2010
11:03 am

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)
ORIGINAL FILED
Superior Court
FEB 10 2010
Officer/Clerk
Deputy

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.

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

CASE NUMBER:
(Número del Caso): BC431688

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):
AMBER LAFLEUR-CLAYTON
Mark Geragos & Tamar G. Arminak, 644 S. Figueroa St., Los Angeles CA 90017

DATE: *(Fecha)* JOHN A. CLARKE, 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]

FEB 10 2010

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):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

TOY-RQ-05E-00011623

SHORT TITLE: YAZITCHYAN 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

NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN,

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: YAZITCHYAN 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

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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GERAGOS & GERAGOS
A PROFESSIONAL CORPORATION
LAWYERS
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411
TELEPHONE (213)625-3900
FACSIMILE (213)625-1600

MARK GERAGOS SBN 108325
TAMAR G. ARMINAK SBN 238677

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 _____, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN,

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.

CASE NO. BC431688

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, NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN state, based upon personal knowledge, information and belief, and the investigation of their counsel, as follows:

TOY-RQ-05E-00011626

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.

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 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. Plaintiff NELLIE YAZITCHYAN is a resident of the County of Los Angeles, Los Angeles, California. Plaintiff is the owner of a vehicle manufactured and sold by the Defendants.

9. Plaintiffs BERTAM SROURIAN and AZA SROURIAN are residents of the County of Los Angeles, California Plaintiffs are the owners of a vehicle manufactured and sold by the 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 revenue from sales within this State and has sufficient contacts with this State to give this

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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.

12. 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

13. 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.

14. Defendants have attributed the increased incidents of unintended

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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.

15. 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.

16. 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

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- 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 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

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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 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:

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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. "

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

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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 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

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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 December 2007, Plaintiff NELLIE YAZITCHYAN purchased a 2008 Toyota Tacoma, VIN 5EJU62N38Z518491, ("the subject vehicle") which was made in Japan by the Defendants.

31. On or about November 14, 2008, Plaintiffs BERTAM SROURIAN and AZA SROURIAN purchased a 2009 Toyota Camry, VIN 4TIBE46K39U880879, ("the subject vehicle") which was made in Japan by the Defendants.

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

33. 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

34. 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.**

35. 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.

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36. 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.

37. 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.

38. 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.

39. 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.

40. 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

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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.

41. 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.

42. 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.

43. 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.

44. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class

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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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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

TOY-RQ-05E-00011638

Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

50. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

51. 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.

52. 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.

53. 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.

54. 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

55. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

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56. 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.

57. 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.

58. 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.

59. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

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

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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 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

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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.

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

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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 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.

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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 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

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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 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 10, 2010

MARK GERAGOS (SBN 108325)
TAMAR G. ARMINAK (SBN 238677)
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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):
Mark Geragos (SBN 108325) Tamar G. Arminak (SBN 238677)
GERAGOS & GERAGOS, APC
644 S. Figueroa Street
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TELEPHONE NO.: 213-625-3900 FAX NO.: 213-625-1600
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 [illegible], Deputy

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:
YAZITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CASE NUMBER: BC431688

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

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SHORT TITLE:	CASE NUMBER
YARITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC.	BC431688

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
YARITCHYAN 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
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.

SHORT TITLE:	CASE NUMBER
YARITCHYAN 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 ☐ A6152 Writ - Mandamus on Limited Court Case Matter ☐ A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment ☐ A6160 Abstract of Judgment ☐ A6107 Confession of Judgment (non-domestic relations) ☐ A6140 Administrative Agency Award (not unpaid taxes) ☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax ☐ A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only ☐ A6040 Injunctive Relief Only (not domestic/harassment) ☐ A6011 Other Commercial Complaint Case (non-tort/non-complex) ☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment ☐ A6123 Workplace Harassment ☐ A6124 Elder/Dependent Adult Abuse Case ☐ A6190 Election Contest ☐ A6110 Petition for Change of Name ☐ A6170 Petition for Relief from Late Claim Law ☐ A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

TOY-RQ-05E-00011651

SHORT TITLE: YARITCHYAN 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.

CT Corporation

Service of Process Transmittal

02/11/2010
CT Log Number 516146752

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:	Nellie Yazitchyan, et al., 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 # BC431688
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 11:03
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

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2/11 2010
11:03 am

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)

ORIGINAL FILED
Superior Court

FEB 10 2010

Executive Officer/Clerk
By _____ Deputy

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.

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

CASE NUMBER:
(Número del Caso): BC431688

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]

FEB 10 2010

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):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

TOY-RQ-05E-00011654

SHORT TITLE: YAZITCHYAN 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

NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN,

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.
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SHORT TITLE: YAZITCHYAN 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.
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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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MARK GERAGOS SBN 108325
TAMAR G. ARMINAK SBN 238677

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 _____, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN,

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.

CASE NO. BC431688

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, NELLIE YAZITCHYAN, BERTAM SROURIAN and AZA SROURIAN 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 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.

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 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. Plaintiff NELLIE YAZITCHYAN is a resident of the County of Los Angeles, Los Angeles, California. Plaintiff is the owner of a vehicle manufactured and sold by the Defendants.

9. Plaintiffs BERTAM SROURIAN and AZA SROURIAN are residents of the County of Los Angeles, California Plaintiffs are the owners of a vehicle manufactured and sold by the 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 revenue from sales within this State and has sufficient contacts with this State to give this

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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.

12. 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

13. 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.

14. Defendants have attributed the increased incidents of unintended

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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.

15. 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.

16. 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

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- 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 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

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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 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:

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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. "

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

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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 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

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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 December 2007, Plaintiff NELLIE YAZITCHYAN purchased a 2008 Toyota Tacoma, VIN 5EJU62N38Z518491, ("the subject vehicle") which was made in Japan by the Defendants.

31. On or about November 14, 2008, Plaintiffs BERTAM SROURIAN and AZA SROURIAN purchased a 2009 Toyota Camry, VIN 4TIBE46K39U880879, ("the subject vehicle") which was made in Japan by the Defendants.

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

33. 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

34. 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.**

35. 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.

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36. 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.

37. 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.

38. 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.

39. 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.

40. 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

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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.

41. 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.

42. 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.

43. 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.

44. Because the Plaintiffs seek injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class

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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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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

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Defendants' wrongdoing until shortly before the Complaint was filed.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTIES

50. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

51. 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.

52. 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.

53. 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.

54. 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

55. Plaintiffs on behalf of themselves and the Class, against all Defendants, repeat each and every allegation contained in the prior paragraphs of this complaint.

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56. 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.

57. 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.

58. 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.

59. Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

THIRD CAUSE OF ACTION

NEGLIGENCE

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

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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 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

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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.

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

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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 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.

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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 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

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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 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 10, 2010

MARK GERAGOS (SBN 108325)
TAMAR G. ARMINAK (SBN 238677)
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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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TOY-RQ-05E-00011678

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Mark Geragos (SBN 108325) Tamar G. Arminak (SBN 238677)
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TELEPHONE NO.: 213-625-3900 FAX NO.: 213-625-1600
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 [illegible], Deputy
[illegible]

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:
YAZITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC. et al.

CASE NUMBER: BC431688

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

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SHORT TITLE:	CASE NUMBER
YARITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC.	BC431688

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.

SHORT TITLE:	CASE NUMBER
YARITCHYAN 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
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.

SHORT TITLE: YARITCHYAN v. TOYOTA MOTOR SALES U.S.A., INC.	CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus ☐ A6152 Writ - Mandamus on Limited Court Case Matter ☐ A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment ☐ A6160 Abstract of Judgment ☐ A6107 Confession of Judgment (non-domestic relations) ☐ A6140 Administrative Agency Award (not unpaid taxes) ☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax ☐ A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only ☐ A6040 Injunctive Relief Only (not domestic/harassment) ☐ A6011 Other Commercial Complaint Case (non-tort/non-complex) ☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment ☐ A6123 Workplace Harassment ☐ A6124 Elder/Dependent Adult Abuse Case ☐ A6190 Election Contest ☐ A6110 Petition for Change of Name ☐ A6170 Petition for Relief from Late Claim Law ☐ A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

TOY-RQ-05E-00011682

SHORT TITLE: YARITCHYAN 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 BC431688
Case Number _____

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		ASSIGNED JUDGE	DEPT	ROOM	
	Hon. Elihu M. Berle	1	534		Hon. Holly E. Kendig	42	416	
	Hon. J. Stephen Czuleger	3	224		Hon. Mel Red Recana	45	529	
	Hon. Luis A. Lavin	13	630		Hon. Debre Katz Weintraub	47	507	
	Hon. Terry A. Green	14	300		Hon. Elizabeth Allen White	48	506	
	Hon. Richard Fruin	15	307		Hon. Conrad Aragon	49	509	
	Hon. Rita Miller	16	306		Hon. John Shepard Wiley Jr.	50	508	
	Hon. Richard E. Rico	17	309		Hon. Abraham Khan	51	511	
	Hon. Helen I. Bendix	18	308		Hon. Susan Bryant-Deason	52	510	
	Hon. Rex Heeseman	19	311		Hon. John P. Shook	53	513	
	Hon. Kevin C. Brazile	20	310		Hon. Ernest M. Hiroshige	54	512	
	Hon. Zaven V. Sinanian	23	315		Hon. Malcolm H. Mackey	55	515	
	Hon. Robert L. Hess	24	314		Hon. Jane L. Johnson	56	514	
	Hon. Mary Ann Murphy	25	317		Hon. Ralph W. Dau	57	517	
	Hon. James R. Dunn	26	316		Hon. Rolf M. Treu	58	516	
	Hon. Yvette M. Palazuelos	28	318		Hon. David L. Minning	61	632	
	Hon. John A. Kronstadt	30	400		Hon. Michael L. Stern	62	600	
	Hon. Alan S. Rosenfield	31	407		Hon. Kenneth R. Freeman	64	601	
	Hon. Mary H. Strobel	32	406		Hon. Mark Mooney	68	617	
	Hon. Charles F. Palmer	33	409		Hon. Edward A. Ferns	69	621	
	Hon. Amy D. Hogue	34	408		Hon. Soussan G. Bruguera	71	729	
	Hon. Gregory Alarcon	36	410		Hon. Ruth Ann Kwan	72	731	
	Hon. Joanne O'Donnell	37	413		Hon. Teresa Sanchez-Gordon	74	735	
	Hon. Maureen Duffy-Lewis	38	412		Hon. William F. Fahey	~~78~~	730	
	Hon. Michael C. Solner	39	415		**Hon. Carl J. West***	**311**	**CCW**	X
	Hon. Michelle R. Rosenblatt	40	414		Other			
	Hon. Ronald M. Sohigian	41	417					

***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-00011684

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.

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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-00011685

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

[CRC 3.221 Information about Alternative Dispute Resolution]

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The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (**Civil only**).

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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-00011686

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
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Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
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Partially Funded by the Los Angeles County Dispute Resolution Program
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TOY-RQ-05E-00011687

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE BC431688
Case Number _____

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		ASSIGNED JUDGE	DEPT	ROOM	
	Hon. Elihu M. Berle	1	534		Hon. Holly E. Kendig	42	416	
	Hon. J. Stephen Czuleger	3	224		Hon. Mel Red Recana	45	529	
	Hon. Luis A. Lavin	13	630		Hon. Debre Katz Weintraub	47	507	
	Hon. Terry A. Green	14	300		Hon. Elizabeth Allen White	48	506	
	Hon. Richard Fruin	15	307		Hon. Conrad Aragon	49	509	
	Hon. Rita Miller	16	306		Hon. John Shepard Wiley Jr.	50	508	
	Hon. Richard E. Rico	17	309		Hon. Abraham Khan	51	511	
	Hon. Helen I. Bendix	18	308		Hon. Susan Bryant-Deason	52	510	
	Hon. Rex Heeseman	19	311		Hon. John P. Shook	53	513	
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	Hon. Charles F. Palmer	33	409		Hon. Edward A. Ferns	69	621	
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	Hon. Gregory Alarcon	36	410		Hon. Ruth Ann Kwan	72	731	
	Hon. Joanne O'Donnell	37	413		Hon. Teresa Sanchez-Gordon	74	735	
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	Hon. Ronald M. Sohigian	41	417					

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Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk
By _____, Deputy Clerk

TOY-RQ-05E-00011688

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TOY-RQ-05E-00011689

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

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TOY-RQ-05E-00011690

LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

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- **Civil Harassment Mediation**
- **Small Claims Mediation**

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- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

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Private Neutral The market rate for private neutrals can range from $300-$1,000 per hour.

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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
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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

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TOY-RQ-05E-00011691

FILE START

IN THE CIRCUIT COURT FOR UNION COUNTY, TENNESSEE

MILLIE CHARLOTTIE HARTGROVE, as an individual and on behalf of all others similarly situated,	)	
Plaintiffs	)	
v.	)	CIVIL ACTION NO.: 2818
TOYOTA MOTOR CORPORATION, a foreign corporation, TOYOTA MOTOR SALES, USA, INC., a California corporation, and TOYOTA MOTOR NORTH AMERICA, INC., a California Corporation, and TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation,	)	
Defendants.	)	

FILED
FEB 11 2010
CIRCUIT COURT CLERK 1:35 p.m.

CLASS ACTION COMPLAINT FOR DAMAGES

COMES the Plaintiff, Millie Charlottie Hartgrove, individually and as representatives of all similarly situated individuals, and brings this Class Action Complaint against Defendants, Toyota Motor Corporation, Toyota Motor Sales, USA, Inc. Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc., (hereinafter collectively referred to as "Toyota"), and submit and allege the following:

I. INTRODUCTION

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

TOY-RQ-05E-00011693

II. PARTIES

1. Plaintiff Millie Charlottie Hartgrove is an individual consumer, who at all times material hereto, was and is a resident of Union County, Tennessee.

2. On June 16, 2009, Plaintiff Millie Hartgrove purchased a Toyota Camry, model year 2009, VIN: 4T1BE46KX9U285690, from Fox Toyota in Clinton, Tennessee. The vehicle is subject to Toyota's January 2010 recall.

3. Plaintiff Mille Hartgrove brings this action on her own behalf and on behalf of all the similarly situated persons who are defined as follows:

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

4. Defendant Toyota Motor Corporation is a Japanese Corporation having its principal place of business at 1 Toyota-Who, Toyota City, AIChE Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world. Toyota Motor Corporation can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

5. Defendant Toyota Motor Sales, USA, Inc. is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 South Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States and in the State of Tennessee. Toyota Motor Sales, USA, Inc. is registered to do business in the State of Tennessee and can be served through its registered agent CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501. Toyota Motor North America, Inc. can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018. Toyota Motor Engineering and Manufacturing North America, Inc., can be served through its registered agent CT Corporation System, 4169 Westport Road, Louisville, KY 40207.

8. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants. The Toyota Defendants combine money, skill, and property to effect jointly for a common purpose and operate as a joint enterprise or joint venture in regard to the design, manufacture and marketing of Toyota vehicles within Union County and the State of Tennessee.

III. JURISDICTION AND VENUE

9. This court has personal jurisdiction on the Defendants as a result of the Defendants transacting business in Union County and the State of Tennessee, contracting to supply services or goods in Union County and the State of Tennessee, and causing the tortuous injury by acts or omissions in Union County and the State of Tennessee. Defendants derive substantial revenue from goods used or consumed or services rendered in Union County and the State of Tennessee, and avail themselves of the markets in Union County and the State of Tennessee through the marketing, promotion, and distribution of their products and services in Union County and the State of Tennessee. Union County and the State of Tennessee have a substantial and paramount interest in preventing the practices alleged herein. Plaintiff is a citizen

of Union County, Tennessee and Defendants Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendants Toyota North America, Inc. and Toyota Motor Sales USA, Inc. are citizens of the State of California and defendant Toyota Motor Engineering and Manufacturing North America, Inc. is a Kentucky corporation.

10. Venue is proper in Union County, Tennessee. The cause of action stated herein by Plaintiff arose in this county. Specifically, Plaintiff resides in Union County and operates her Toyota vehicle in Union County and suffered the damages stated herein in Union County and a substantial part of the events or omissions giving rise to the claims alleged occurred in Union County, where defendants market their products and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. and Toyota North America, Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. are subject to the personal jurisdiction of the Court.

IV. FACTUAL ALLEGATIONS

11. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands, Toyota, Lexus and Scion.

12. Toyota Motor Sales, USA, Inc., is a subsidiary of the Toyota Motor Corporation and its North American holding company, Toyota of North America. Toyota Motor Sales, USA, Inc. distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation, Toyota North America, and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

13. Toyota has put numerous resources into promoting safety and convincing consumers

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its vehicles are safe. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, claims:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means. . ., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

14. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s.

15. As one of its duties, The National Highway Traffic Safety Administration ("NHTSA"), investigates consumer complaints of vehicles sold in the United States. For more than 10 years, the NHTSA received more complaints related to sudden acceleration for Toyota vehicles than for any other manufacturer. These complaints lead to an investigation into Toyota products by the NHTSA.

16. Toyota trivialized or dismissed owner complaints in its responses to the NHTSA, blaming events on driver error or other fact-specific circumstances. The NHTSA concluded that operator error was largely responsible for these sudden acceleration events. However, much of the data that formed the basis of the NHTSA results came directly from Toyota.

17. After customer complaints rose dramatically in 2007, Toyota conducted an investigation into the matter of sudden acceleration. After its internal investigation, Toyota ultimately released a statement indicating that floor mats obstructing the accelerator pedal were the

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cause of the problem. The company announced that the accelerator pedal mechanism itself were not a threat to the safe operation of the affected vehicles.

18. After mounting pressure from several highly publicized road fatalities, in September 2009, Toyota recalled approximately four million vehicles from model years as far back as at least 2005.

19. In spite of Toyota's insistence that the issue was, again, related to floor mats, the NHTSA voiced its belief there was an underlying problem with the accelerator pedals and criticized Toyota for making "inaccurate and misleading statements."

20. On January 21, 2010, Toyota reversed its position, admitted that there was in fact an accelerator defect and stated publicly, "Our investigation indicates that 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."

21. In addition to this mechanical defect, the plaintiffs allege that there is also a defect with the throttle control mechanism utilized in the recalled vehicles.

22. Toyota has recalled U.S. built cars and trucks. These models include but are not limited to the 2005-2010 Avalon, 2009-2010 RAV4, 2007-2010 Camry, 2008-2010 Sequoia, 2009-2010 Corolla, 2005-2010 Tacoma, 2008-2010 Highlander, 2007-2010 Tundra, 2009-2010 Matrix, 2009-2010 Venza, and the 2004-2009 Prius. At the time of filing, more Toyota and Lexus vehicles are expected to be recalled.

V. CLASS ALLEGATIONS

23. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

24. Under T.R.C.P. 23, plaintiff brings this action on behalf of herself and the Class

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comprised of all other consumers within the state who purchased the Recalled Vehicles during the relevant time period.

25. Questions of law and fact are common to all members of the Class as they relate to Toyota's practices and omissions which were applied uniformly to all members of the Class. Putative class members were and are similarly affected by having purchased the defective autos. Plaintiff seeks relief for her own benefit and for the benefit of the members of the putative Class.

26. Based on the annual sales of the defective autos in Tennessee, it is apparent that the number of affected consumers would be in the thousands, thereby making joinder unfeasible.

27. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota was unfair or deceptive in its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles, thus fraudulently inducing the Class members to purchase the vehicles.

(b) Whether Toyota breached express warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(c) Whether Toyota breached implied warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles; and

(e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Recalled Vehicles unjustly enriched Toyota at the expense of, and to the detriment of, plaintiff and other Class members.

28. Plaintiff's claims in this action are typical of the claims that would be sought by other

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Class members and arise from the same course of conduct by Toyota. The relief sought by these plaintiffs is common.

29. The interests of the Class members will be fairly represented by the plaintiff. Counsel in this matter is competent and experienced in both consumer protection and class action litigation.

30. Certification of this class action is appropriate under T.R.C.P. 23.02`. Questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. Given the clear predominance of claims, class litigation is superior to any other method available for the fair and efficient adjudication of these claims. The cost of litigation through individual lawsuits might exceed expected recovery. Further, certification is warranted given Toyota's actions with respect to class members, making is necessary for appropriate redress on behalf of all affected purchasers. Lastly, there is a substantial risk of inconsistent and conflicting adjudications given the large number of affected owners.

31. A class action allows all of these claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender.

VI. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

32. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

33. Toyota provided plaintiff and other members of the Class with written express warranties including, but not limited to, that the Recalled Vehicles were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for

everybody."

34. Toyota breached these express warranties which resulted in damages to plaintiff and other members of the Class, who overpaid for the Recalled Vehicles, as the Recalled Vehicles were not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury, and as such, the Recalled Vehicles were not safe to operate.

35. As a proximate result of the breach of warranties by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the Class as a direct and proximate cause of Toyota's breach of the express warranty have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VII. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

36. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

37. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Recalled Vehicles would be merchantable, including that

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the Recalled Vehicles would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Recalled Vehicle's promotions, marketing, advertising, packaging and labels. In doing so, plaintiff and other Class members relied on Toyota's representations that the Recalled Vehicles were safe to operate, and at or about that time, Toyota sold to plaintiff and other Class members the Recalled Vehicles. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Recalled Vehicles, Toyota warranted that the Recalled Vehicles were safe to operate. Plaintiff and other Class members bought the Recalled Vehicles from Toyota, relying on Toyota's representations that the Recalled Vehicles were safe to operate, however, these vehicles have contained a defective accelerator pedal mechanism causing sudden acceleration which could potentially result in death or serious bodily injury.

38. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

39. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class as a direct and proximate cause of Toyota's breach of the

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implied warranty of merchantability have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VIII. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

40. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

41. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota implied warranted by its promotion, marketing, advertising, packaging, and labeling of the Recalled Vehicles that they were safe to operate. Plaintiff and Class members bought the Recalled Vehicles from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the Recalled Vehicles were safe to operate. However, Toyota's Recalled Vehicles were not safe to operate as they contained a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury.

42. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive products that were safe to operate as they contained a defective accelerator pedal mechanism, potentially resulting in death or serious bodily injury, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

43. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted,

marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IX. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

44. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

45. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above, but delayed and failed to do so.

46. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

47. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

48. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the

Recalled Vehicles that they may result in potential death or serious bodily injury.

49. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

50. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

51. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and plaintiff and Class members are, therefore, entitled to recover punitive damages.

52. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

X. FIFTH CAUSE OF ACTION

(FRAUDULENT INDUCEMENT)

53. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

54. Toyota was aware of the dangers associated with the Recalled Vehicles, as set forth in detail above, but continued to publicly maintain to the affected consumers that its cars were safe and

without defect.

55. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

56. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

57. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the Recalled Vehicles, that they may result in potential death.

58. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

59. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

60. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, relied on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and

plaintiff and Class members are, therefore, entitled to recover punitive damages.

61. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XI. SIXTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

62. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

63. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Recalled Vehicles, described in detail above, Toyota was enriched, at the expense of plaintiff and the Class, through the payment of the purchase price for Toyota's Recalled Vehicles.

64. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from plaintiff and other members of the Class in light of the fact that the Recalled Vehicle were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to plaintiff and other members of the Class for the monies paid to Toyota for such Recalled Vehicles.

XII. SEVENTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

65. Plaintiff repeats and again alleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

66. Plaintiff's Agreement with the defendant includes not only express written provisions,

but also those terms and conditions, which although not formally expressed, are implied by the Law.

67. Such terms are as binding as the terms that are actually written into the agreement with plaintiff, and those who are similarly situated against the defendants.

68. Inherent in all contracts and agreements is a covenant that the parties will act in good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

69. The obligations of defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between defendants and the plaintiff, which imbalance allows defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

70. Through the actions and inactions of the defendants as outlined above, defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the plaintiff and others similarly situated.

71. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the class have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential

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damages. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XIII. EIGHTH CAUSE OF ACTION

(TENNESSEE PRODUCTS LIABILITY ACT)

72. Plaintiff incorporates each of the proceeding paragraphs as if fully set forth herein at length:

73. Alternative, the product in question (Toyota vehicles) have a defective condition or are unreasonably dangerous in construction, composition, or design as defined in T.C.A. § 29-28-101 et. seq. and the Tennessee Products Liability Act, and specifically in § 29-28-102. The product is unreasonably dangerous because it does not conform to an express warranty. It was unreasonably dangerous at the time the product left the control of the manufacturer. At all time material hereto Toyota 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. Toyota knew and expected these vehicles to be sold and operated by purchasers, including Plaintiff and class members in Union County and the State of Tennessee, and therefore they were the expected users of the product Toyota manufactured. The vehicles reached Plaintiff without substantial changes or condition from the time of manufacture by Toyota. The accelerator pedal defects in the vehicles could not have been contemplated by any reasonable person and therefore presented an unreasonably dangerous condition for expected users. Toyota should have reasonably foreseen that the dangerous condition existed i.e. the

defective accelerator pedals in that they would subject Plaintiff and class members to harm resulting from the defect. Plaintiff and class members have used the vehicles reasonably and as intended to the degree possible given the defective nature of the accelerator pedals, and have suffered damages through no fault of their own. As a direct and proximate result and cause of Toyota's design, manufacture, assembly, marketing, and sales of the vehicles Plaintiff and class members have sustained and will continue to sustain loss of use of their vehicle, severe emotional distress, economic losses, and consequential damages and are therefore entitled to compensatory relief according to proof, to equitable relief and any other relief available from this Court. To the extent that the Products Liability Act requires an amount to be stated, Plaintiffs request $50,000 for each of the Toyota vehicles sold to Plaintiff and all members of the class plus any other relief which the Court may order, including attorney fees.

PRAYER FOR RELIEF:

WHEREFORE, plaintiff prays for judgment as follows:

a) An Order from this Court certifying the class, pursuant to T.R.C.P. 23, certifying plaintiff as representative of the Class, and designating her counsel as counsel for the Class;

b) An award of compensatory damages, and other applicable damages in the amount of which is to be determined at trial;

c) An award of equitable relief;

d) For punitive or exemplary damages which may be allowed, consistent with the degree of reprehensibility of Toyota and commiserate with punishing and deterring Toyota and others from similar wrongdoing;

e) An award for all costs incurred by the Plaintiff in pursuing this action;

f) An award for reasonable attorney fees and all other equitable relief entitled;

g) An award for interest at the legal rate for the sums of compensatory damages;

h) For such further relief and damages suffered by Plaintiff and members of the class as this Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL FACTUAL ISSUES

Respectfully submitted,

Jeff Friedman *(Pro Hac Vice Motion pending)*
Attorney for Plaintiffs

L. Jeffrey Hagood
Attorney for Plaintiffs

Todd J. Moody
Attorney for Plaintiffs

Darryl W. Edmondson
Attorney for Plaintiffs

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PLEASE SERVE VIA CERTIFIED MAIL:

Toyota Motor Corporation
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Sales, USA, Inc.
CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, TN 37929

Toyota Motor North America, Inc.
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering and Manufacturing North America, Inc.
CT Corporation System
4169 Westport Road
Louisville, KY 40207

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Toyota Motor Sales, USA, Inc.
CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, TN 37929

IN THE CIRCUIT COURT FOR UNION COUNTY, TENNESSEE

MILLIE CHARLOTTIE HARTGROVE, as an individual and on behalf of all others similarly situated,	)	
Plaintiffs	)	
v.	)	CIVIL ACTION NO.: 2818
TOYOTA MOTOR CORPORATION, a foreign corporation, TOYOTA MOTOR SALES, USA, INC., a California corporation, and TOYOTA MOTOR NORTH AMERICA, INC., a California Corporation, and TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation,	)	
Defendants.	)	

FILED
FEB 11 2010
CIRCUIT COURT CLERK 1:35 p.m.

CLASS ACTION COMPLAINT FOR DAMAGES

COMES the Plaintiff, Millie Charlottie Hartgrove, individually and as representatives of all similarly situated individuals, and brings this Class Action Complaint against Defendants, Toyota Motor Corporation, Toyota Motor Sales, USA, Inc. Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc., (hereinafter collectively referred to as "Toyota"), and submit and allege the following:

I. INTRODUCTION

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

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II. PARTIES

1. Plaintiff Millie Charlottie Hartgrove is an individual consumer, who at all times material hereto, was and is a resident of Union County, Tennessee.

2. On June 16, 2009, Plaintiff Millie Hartgrove purchased a Toyota Camry, model year 2009, VIN: 4T1BE46KX9U285690, from Fox Toyota in Clinton, Tennessee. The vehicle is subject to Toyota's January 2010 recall.

3. Plaintiff Mille Hartgrove brings this action on her own behalf and on behalf of all the similarly situated persons who are defined as follows:

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

4. Defendant Toyota Motor Corporation is a Japanese Corporation having its principal place of business at 1 Toyota-Who, Toyota City, AIChE Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world. Toyota Motor Corporation can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

5. Defendant Toyota Motor Sales, USA, Inc. is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 South Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States and in the State of Tennessee. Toyota Motor Sales, USA, Inc. is registered to do business in the State of Tennessee and can be served through its registered agent CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929.

6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501. Toyota Motor North America, Inc. can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018. Toyota Motor Engineering and Manufacturing North America, Inc., can be served through its registered agent CT Corporation System, 4169 Westport Road, Louisville, KY 40207.

8. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants. The Toyota Defendants combine money, skill, and property to effect jointly for a common purpose and operate as a joint enterprise or joint venture in regard to the design, manufacture and marketing of Toyota vehicles within Union County and the State of Tennessee.

III. JURISDICTION AND VENUE

9. This court has personal jurisdiction on the Defendants as a result of the Defendants transacting business in Union County and the State of Tennessee, contracting to supply services or goods in Union County and the State of Tennessee, and causing the tortuous injury by acts or omissions in Union County and the State of Tennessee. Defendants derive substantial revenue from goods used or consumed or services rendered in Union County and the State of Tennessee, and avail themselves of the markets in Union County and the State of Tennessee through the marketing, promotion, and distribution of their products and services in Union County and the State of Tennessee. Union County and the State of Tennessee have a substantial and paramount interest in preventing the practices alleged herein. Plaintiff is a citizen

of Union County, Tennessee and Defendants Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendants Toyota North America, Inc. and Toyota Motor Sales USA, Inc. are citizens of the State of California and defendant Toyota Motor Engineering and Manufacturing North America, Inc. is a Kentucky corporation.

10. Venue is proper in Union County, Tennessee. The cause of action stated herein by Plaintiff arose in this county. Specifically, Plaintiff resides in Union County and operates her Toyota vehicle in Union County and suffered the damages stated herein in Union County and a substantial part of the events or omissions giving rise to the claims alleged occurred in Union County, where defendants market their products and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. and Toyota North America, Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. are subject to the personal jurisdiction of the Court.

IV. FACTUAL ALLEGATIONS

11. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands, Toyota, Lexus and Scion.

12. Toyota Motor Sales, USA, Inc., is a subsidiary of the Toyota Motor Corporation and its North American holding company, Toyota of North America. Toyota Motor Sales, USA, Inc. distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation, Toyota North America, and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

13. Toyota has put numerous resources into promoting safety and convincing consumers

its vehicles are safe. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, claims:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means. . ., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

14. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s.

15. As one of its duties, The National Highway Traffic Safety Administration ("NHTSA"), investigates consumer complaints of vehicles sold in the United States. For more than 10 years, the NHTSA received more complaints related to sudden acceleration for Toyota vehicles than for any other manufacturer. These complaints lead to an investigation into Toyota products by the NHTSA.

16. Toyota trivialized or dismissed owner complaints in its responses to the NHTSA, blaming events on driver error or other fact-specific circumstances. The NHTSA concluded that operator error was largely responsible for these sudden acceleration events. However, much of the data that formed the basis of the NHTSA results came directly from Toyota.

17. After customer complaints rose dramatically in 2007, Toyota conducted an investigation into the matter of sudden acceleration. After its internal investigation, Toyota ultimately released a statement indicating that floor mats obstructing the accelerator pedal were the

cause of the problem. The company announced that the accelerator pedal mechanism itself were not a threat to the safe operation of the affected vehicles.

18. After mounting pressure from several highly publicized road fatalities, in September 2009, Toyota recalled approximately four million vehicles from model years as far back as at least 2005.

19. In spite of Toyota's insistence that the issue was, again, related to floor mats, the NHTSA voiced its belief there was an underlying problem with the accelerator pedals and criticized Toyota for making "inaccurate and misleading statements."

20. On January 21, 2010, Toyota reversed its position, admitted that there was in fact an accelerator defect and stated publicly, "Our investigation indicates that 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."

21. In addition to this mechanical defect, the plaintiffs allege that there is also a defect with the throttle control mechanism utilized in the recalled vehicles.

22. Toyota has recalled U.S. built cars and trucks. These models include but are not limited to the 2005-2010 Avalon, 2009-2010 RAV4, 2007-2010 Camry, 2008-2010 Sequoia, 2009-2010 Corolla, 2005-2010 Tacoma, 2008-2010 Highlander, 2007-2010 Tundra, 2009-2010 Matrix, 2009-2010 Venza, and the 2004-2009 Prius. At the time of filing, more Toyota and Lexus vehicles are expected to be recalled.

V. CLASS ALLEGATIONS

23. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

24. Under T.R.C.P. 23, plaintiff brings this action on behalf of herself and the Class

comprised of all other consumers within the state who purchased the Recalled Vehicles during the relevant time period.

25. Questions of law and fact are common to all members of the Class as they relate to Toyota's practices and omissions which were applied uniformly to all members of the Class. Putative class members were and are similarly affected by having purchased the defective autos. Plaintiff seeks relief for her own benefit and for the benefit of the members of the putative Class.

26. Based on the annual sales of the defective autos in Tennessee, it is apparent that the number of affected consumers would be in the thousands, thereby making joinder unfeasible.

27. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota was unfair or deceptive in its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles, thus fraudulently inducing the Class members to purchase the vehicles.

(b) Whether Toyota breached express warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(c) Whether Toyota breached implied warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles; and

(e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Recalled Vehicles unjustly enriched Toyota at the expense of, and to the detriment of, plaintiff and other Class members.

28. Plaintiff's claims in this action are typical of the claims that would be sought by other

Class members and arise from the same course of conduct by Toyota. The relief sought by these plaintiffs is common.

29. The interests of the Class members will be fairly represented by the plaintiff. Counsel in this matter is competent and experienced in both consumer protection and class action litigation.

30. Certification of this class action is appropriate under T.R.C.P. 23.02`. Questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. Given the clear predominance of claims, class litigation is superior to any other method available for the fair and efficient adjudication of these claims. The cost of litigation through individual lawsuits might exceed expected recovery. Further, certification is warranted given Toyota's actions with respect to class members, making is necessary for appropriate redress on behalf of all affected purchasers. Lastly, there is a substantial risk of inconsistent and conflicting adjudications given the large number of affected owners.

31. A class action allows all of these claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender.

VI. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

32. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

33. Toyota provided plaintiff and other members of the Class with written express warranties including, but not limited to, that the Recalled Vehicles were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for

everybody."

34. Toyota breached these express warranties which resulted in damages to plaintiff and other members of the Class, who overpaid for the Recalled Vehicles, as the Recalled Vehicles were not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury, and as such, the Recalled Vehicles were not safe to operate.

35. As a proximate result of the breach of warranties by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the Class as a direct and proximate cause of Toyota's breach of the express warranty have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VII. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

36. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

37. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Recalled Vehicles would be merchantable, including that

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the Recalled Vehicles would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Recalled Vehicle's promotions, marketing, advertising, packaging and labels. In doing so, plaintiff and other Class members relied on Toyota's representations that the Recalled Vehicles were safe to operate, and at or about that time, Toyota sold to plaintiff and other Class members the Recalled Vehicles. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Recalled Vehicles, Toyota warranted that the Recalled Vehicles were safe to operate. Plaintiff and other Class members bought the Recalled Vehicles from Toyota, relying on Toyota's representations that the Recalled Vehicles were safe to operate, however, these vehicles have contained a defective accelerator pedal mechanism causing sudden acceleration which could potentially result in death or serious bodily injury.

38. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

39. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class as a direct and proximate cause of Toyota's breach of the

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implied warranty of merchantability have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VIII. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

40. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

41. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota implied warranted by its promotion, marketing, advertising, packaging, and labeling of the Recalled Vehicles that they were safe to operate. Plaintiff and Class members bought the Recalled Vehicles from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the Recalled Vehicles were safe to operate. However, Toyota's Recalled Vehicles were not safe to operate as they contained a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury.

42. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive products that were safe to operate as they contained a defective accelerator pedal mechanism, potentially resulting in death or serious bodily injury, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

43. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted,

marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IX. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

44. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

45. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above, but delayed and failed to do so.

46. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

47. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

48. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the

Recalled Vehicles that they may result in potential death or serious bodily injury.

49. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

50. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

51. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and plaintiff and Class members are, therefore, entitled to recover punitive damages.

52. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

X. FIFTH CAUSE OF ACTION

(FRAUDULENT INDUCEMENT)

53. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

54. Toyota was aware of the dangers associated with the Recalled Vehicles, as set forth in detail above, but continued to publicly maintain to the affected consumers that its cars were safe and

without defect.

55. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

56. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

57. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the Recalled Vehicles, that they may result in potential death.

58. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

59. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

60. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, relied on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and

plaintiff and Class members are, therefore, entitled to recover punitive damages.

61. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XI. SIXTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

62. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

63. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Recalled Vehicles, described in detail above, Toyota was enriched, at the expense of plaintiff and the Class, through the payment of the purchase price for Toyota's Recalled Vehicles.

64. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from plaintiff and other members of the Class in light of the fact that the Recalled Vehicle were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to plaintiff and other members of the Class for the monies paid to Toyota for such Recalled Vehicles.

XII. SEVENTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

65. Plaintiff repeats and again alleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

66. Plaintiff's Agreement with the defendant includes not only express written provisions,

but also those terms and conditions, which although not formally expressed, are implied by the Law.

67. Such terms are as binding as the terms that are actually written into the agreement with plaintiff, and those who are similarly situated against the defendants.

68. Inherent in all contracts and agreements is a covenant that the parties will act in good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

69. The obligations of defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between defendants and the plaintiff, which imbalance allows defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

70. Through the actions and inactions of the defendants as outlined above, defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the plaintiff and others similarly situated.

71. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the class have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential

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damages. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XIII. EIGHTH CAUSE OF ACTION

(TENNESSEE PRODUCTS LIABILITY ACT)

72. Plaintiff incorporates each of the proceeding paragraphs as if fully set forth herein at length:

73. Alternative, the product in question (Toyota vehicles) have a defective condition or are unreasonably dangerous in construction, composition, or design as defined in T.C.A. § 29-28-101 et. seq. and the Tennessee Products Liability Act, and specifically in § 29-28-102. The product is unreasonably dangerous because it does not conform to an express warranty. It was unreasonably dangerous at the time the product left the control of the manufacturer. At all time material hereto Toyota 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. Toyota knew and expected these vehicles to be sold and operated by purchasers, including Plaintiff and class members in Union County and the State of Tennessee, and therefore they were the expected users of the product Toyota manufactured. The vehicles reached Plaintiff without substantial changes or condition from the time of manufacture by Toyota. The accelerator pedal defects in the vehicles could not have been contemplated by any reasonable person and therefore presented an unreasonably dangerous condition for expected users. Toyota should have reasonably foreseen that the dangerous condition existed i.e. the

defective accelerator pedals in that they would subject Plaintiff and class members to harm resulting from the defect. Plaintiff and class members have used the vehicles reasonably and as intended to the degree possible given the defective nature of the accelerator pedals, and have suffered damages through no fault of their own. As a direct and proximate result and cause of Toyota's design, manufacture, assembly, marketing, and sales of the vehicles Plaintiff and class members have sustained and will continue to sustain loss of use of their vehicle, severe emotional distress, economic losses, and consequential damages and are therefore entitled to compensatory relief according to proof, to equitable relief and any other relief available from this Court. To the extent that the Products Liability Act requires an amount to be stated, Plaintiffs request $50,000 for each of the Toyota vehicles sold to Plaintiff and all members of the class plus any other relief which the Court may order, including attorney fees.

PRAYER FOR RELIEF:

WHEREFORE, plaintiff prays for judgment as follows:

a) An Order from this Court certifying the class, pursuant to T.R.C.P. 23, certifying plaintiff as representative of the Class, and designating her counsel as counsel for the Class;

b) An award of compensatory damages, and other applicable damages in the amount of which is to be determined at trial;

c) An award of equitable relief;

d) For punitive or exemplary damages which may be allowed, consistent with the degree of reprehensibility of Toyota and commiserate with punishing and deterring Toyota and others from similar wrongdoing;

e) An award for all costs incurred by the Plaintiff in pursuing this action;

f) An award for reasonable attorney fees and all other equitable relief entitled;

g) An award for interest at the legal rate for the sums of compensatory damages;

h) For such further relief and damages suffered by Plaintiff and members of the class as this Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL FACTUAL ISSUES

Respectfully submitted,

Jeff Friedman *(Pro Hac Vice Motion pending)*
Attorney for Plaintiffs

L. Jeffrey Hagood
Attorney for Plaintiffs

Todd J. Moody
Attorney for Plaintiffs

Darryl W. Edmondson
Attorney for Plaintiffs

OF COUNSEL:
FRIEDMAN, LEAK, DAZZIO, ZULANAS & BOWLING
3800 Colonnade Parkway, Suite 650
Post Office Box 43219
Birmingham, Alabama 35243-3219
Phone: (205) 278-7000
Fax: (205) 278-7001

OF COUNSEL:
HAGOOD, TARPY & COX, PLLC
Riverview Tower, Suite 2100
900 South Gay Street
Knoxville, TN 37902
Phone: (865) 525-7313
Fax: (865) 525-0858

TOY-RQ-05E-00011734

PLEASE SERVE VIA CERTIFIED MAIL:

Toyota Motor Corporation
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Sales, USA, Inc.
CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, TN 37929

Toyota Motor North America, Inc.
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering and Manufacturing North America, Inc.
CT Corporation System
4169 Westport Road
Louisville, KY 40207

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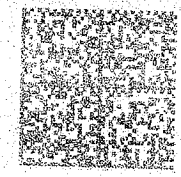

UNITED STATES POSTAGE

PITNEY BOWES

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0002543413 FEB 11 2010

MAILED FROM ZIPCODE 37902

HAGOOD, TARPY & COX, PLLC

ATTORNEYS AT LAW

RIVERVIEW TOWER

SUITE 2100

900 SOUTH GAY STREET

KNOXVILLE, TENNESSEE 37902

Toyota Motor Sales, USA, Inc.
CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, TN 37929

CT Corporation

Service of Process Transmittal
02/12/2010
CT Log Number 516151890

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Tennessee**

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:	Millie Charlottie Hartgrove and on behalf of all others similarly situated, Pltfs. vs. Toyota Motor Corporation, etc., et al. including Toyota Motor Sales, USA, Inc., etc., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Summons, Class Action Complaint
COURT/AGENCY:	Union County Circuit Court, TN Case # 2818
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Defective accelerator pedals on a Toyota Camry, VIN# 4T1BE46KX9U285690, which unepectedly become stuck in place and send the vehicle into a rapid, uncontrollable and unsafe acceleration of the vehicle
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Knoxville, TN
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/12/2010 postmarked on 02/11/2010
APPEARANCE OR ANSWER DUE:	Within 30 days after service of the summons, exclusive of the date of service
ATTORNEY(S) / SENDER(S):	Jeff Friedman Friedman, Leak, Dazzio, Zulanas & Bowling 3800 Colonnade Parkway Suite 650 Birmingham, AL 35243-3219 205-278-7000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790203743688 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
ADDRESS:	800 S. Gay Street Suite 0221 Knoxville, TN 37929-9710
TELEPHONE:	865-342-3522

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.

STATE OF TENNESSEE
THE CIRCUIT COURT
FOR UNION COUNTY

SUMMONS

Re: Millie Charlottie Hartgrove v. Toyota Motor Corporation, et. al., Union County Circuit Court, No. 2818

To: **Toyota Motor Sales, USA, Inc.**
c/o CT Corporation System, Registered Agent
800 South Gay Street, Suite 2021
Knoxville, TN 37929

VIA CERTIFIED MAIL
RETURN RECEIPT NO.
7008 0500 0001 7137 8409

You are hereby summoned and required to serve upon Jeff Friedman, Plaintiffs' attorney, whose address is 3800 Colonnade Parkway, Suite 650, Post Office Box 43219, Birmingham, Alabama 35243-3219 and Jeff Hagood and Todd J. Moody, Plaintiffs' attorney, whose address is 900 South Gay Street, Suite 2100, Knoxville, Tennessee 37902, a true copy of the answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. You will file the original with the Court. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Issued this 11 day of February, 2010.

Barbara J. Williams
Clerk

Deputy Clerk

FILED
FEB 11 2010
CIRCUIT COURT CLERK
1:55 p.m.

(This summons is issued pursuant to Rule 4 of the Tennessee Rules of Civil Procedure)

NOTICE

TO THE RESPONDENT(S):

Tennessee Law provides a four thousand dollar ($4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution of garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

Received this _____ day of _____, 2010 _____
Deputy Sheriff

RETURN ON SERVICE OF SUMMONS

I hereby certify and return that on the _____ day of _____, 2010, I served this summons together with the complaint as follows: _____

_____

I failed to serve this summons within 30 days after its issuance because _____

_____

_____
Sheriff-Deputy Sheriff

IN THE CIRCUIT COURT FOR UNION COUNTY, TENNESSEE

MILLIE CHARLOTTIE HARTGROVE, as an individual and on behalf of all others similarly situated,	)	
Plaintiffs	)	
v.	)	CIVIL ACTION NO.: 2818
TOYOTA MOTOR CORPORATION, a foreign corporation, TOYOTA MOTOR SALES, USA, INC., a California corporation, and TOYOTA MOTOR NORTH AMERICA, INC., a California Corporation, and TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation,	)	
Defendants.	)	

FILED
FEB 11 2010
CIRCUIT COURT CLERK 1:35 p.m.

CLASS ACTION COMPLAINT FOR DAMAGES

COMES the Plaintiff, Millie Charlottie Hartgrove, individually and as representatives of all similarly situated individuals, and brings this Class Action Complaint against Defendants, Toyota Motor Corporation, Toyota Motor Sales, USA, Inc. Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc., (hereinafter collectively referred to as "Toyota"), and submit and allege the following:

I. INTRODUCTION

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

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II. PARTIES

1. Plaintiff Millie Charlottie Hartgrove is an individual consumer, who at all times material hereto, was and is a resident of Union County, Tennessee.

2. On June 16, 2009, Plaintiff Millie Hartgrove purchased a Toyota Camry, model year 2009, VIN: 4T1BE46KX9U285690, from Fox Toyota in Clinton, Tennessee. The vehicle is subject to Toyota's January 2010 recall.

3. Plaintiff Mille Hartgrove brings this action on her own behalf and on behalf of all the similarly situated persons who are defined as follows:

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

4. Defendant Toyota Motor Corporation is a Japanese Corporation having its principal place of business at 1 Toyota-Who, Toyota City, AIChE Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world. Toyota Motor Corporation can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

5. Defendant Toyota Motor Sales, USA, Inc. is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 South Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States and in the State of Tennessee. Toyota Motor Sales, USA, Inc. is registered to do business in the State of Tennessee and can be served through its registered agent CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929.

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6. Defendant, Toyota Motor North America, Inc., is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501. Toyota Motor North America, Inc. can be served through its registered agent CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

7. Defendant, Toyota Motor Engineering and Manufacturing North America, Inc., is a Kentucky corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky 41018. Toyota Motor Engineering and Manufacturing North America, Inc., can be served through its registered agent CT Corporation System, 4169 Westport Road, Louisville, KY 40207.

8. At all times relevant hereto, each of the Defendants acted as the agent of each of the other Defendants. The Toyota Defendants combine money, skill, and property to effect jointly for a common purpose and operate as a joint enterprise or joint venture in regard to the design, manufacture and marketing of Toyota vehicles within Union County and the State of Tennessee.

III. JURISDICTION AND VENUE

9. This court has personal jurisdiction on the Defendants as a result of the Defendants transacting business in Union County and the State of Tennessee, contracting to supply services or goods in Union County and the State of Tennessee, and causing the tortuous injury by acts or omissions in Union County and the State of Tennessee. Defendants derive substantial revenue from goods used or consumed or services rendered in Union County and the State of Tennessee, and avail themselves of the markets in Union County and the State of Tennessee through the marketing, promotion, and distribution of their products and services in Union County and the State of Tennessee. Union County and the State of Tennessee have a substantial and paramount interest in preventing the practices alleged herein. Plaintiff is a citizen

of Union County, Tennessee and Defendants Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendants Toyota North America, Inc. and Toyota Motor Sales USA, Inc. are citizens of the State of California and defendant Toyota Motor Engineering and Manufacturing North America, Inc. is a Kentucky corporation.

10. Venue is proper in Union County, Tennessee. The cause of action stated herein by Plaintiff arose in this county. Specifically, Plaintiff resides in Union County and operates her Toyota vehicle in Union County and suffered the damages stated herein in Union County and a substantial part of the events or omissions giving rise to the claims alleged occurred in Union County, where defendants market their products and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. and Toyota North America, Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. are subject to the personal jurisdiction of the Court.

IV. FACTUAL ALLEGATIONS

11. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands, Toyota, Lexus and Scion.

12. Toyota Motor Sales, USA, Inc., is a subsidiary of the Toyota Motor Corporation and its North American holding company, Toyota of North America. Toyota Motor Sales, USA, Inc. distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation, Toyota North America, and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

13. Toyota has put numerous resources into promoting safety and convincing consumers

its vehicles are safe. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, claims:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means. . ., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

14. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s.

15. As one of its duties, The National Highway Traffic Safety Administration ("NHTSA"), investigates consumer complaints of vehicles sold in the United States. For more than 10 years, the NHTSA received more complaints related to sudden acceleration for Toyota vehicles than for any other manufacturer. These complaints lead to an investigation into Toyota products by the NHTSA.

16. Toyota trivialized or dismissed owner complaints in its responses to the NHTSA, blaming events on driver error or other fact-specific circumstances. The NHTSA concluded that operator error was largely responsible for these sudden acceleration events. However, much of the data that formed the basis of the NHTSA results came directly from Toyota.

17. After customer complaints rose dramatically in 2007, Toyota conducted an investigation into the matter of sudden acceleration. After its internal investigation, Toyota ultimately released a statement indicating that floor mats obstructing the accelerator pedal were the

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cause of the problem. The company announced that the accelerator pedal mechanism itself were not a threat to the safe operation of the affected vehicles.

18. After mounting pressure from several highly publicized road fatalities, in September 2009, Toyota recalled approximately four million vehicles from model years as far back as at least 2005.

19. In spite of Toyota's insistence that the issue was, again, related to floor mats, the NHTSA voiced its belief there was an underlying problem with the accelerator pedals and criticized Toyota for making "inaccurate and misleading statements."

20. On January 21, 2010, Toyota reversed its position, admitted that there was in fact an accelerator defect and stated publicly, "Our investigation indicates that 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."

21. In addition to this mechanical defect, the plaintiffs allege that there is also a defect with the throttle control mechanism utilized in the recalled vehicles.

22. Toyota has recalled U.S. built cars and trucks. These models include but are not limited to the 2005-2010 Avalon, 2009-2010 RAV4, 2007-2010 Camry, 2008-2010 Sequoia, 2009-2010 Corolla, 2005-2010 Tacoma, 2008-2010 Highlander, 2007-2010 Tundra, 2009-2010 Matrix, 2009-2010 Venza, and the 2004-2009 Prius. At the time of filing, more Toyota and Lexus vehicles are expected to be recalled.

V. CLASS ALLEGATIONS

23. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

24. Under T.R.C.P. 23, plaintiff brings this action on behalf of herself and the Class

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comprised of all other consumers within the state who purchased the Recalled Vehicles during the relevant time period.

25. Questions of law and fact are common to all members of the Class as they relate to Toyota's practices and omissions which were applied uniformly to all members of the Class. Putative class members were and are similarly affected by having purchased the defective autos. Plaintiff seeks relief for her own benefit and for the benefit of the members of the putative Class.

26. Based on the annual sales of the defective autos in Tennessee, it is apparent that the number of affected consumers would be in the thousands, thereby making joinder unfeasible.

27. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota was unfair or deceptive in its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles, thus fraudulently inducing the Class members to purchase the vehicles.

(b) Whether Toyota breached express warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(c) Whether Toyota breached implied warranties in its sale of the Recalled Vehicles, thereby causing harm to plaintiff and other Class members;

(d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Recalled Vehicles; and

(e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Recalled Vehicles unjustly enriched Toyota at the expense of, and to the detriment of, plaintiff and other Class members.

28. Plaintiff's claims in this action are typical of the claims that would be sought by other

Class members and arise from the same course of conduct by Toyota. The relief sought by these plaintiffs is common.

29. The interests of the Class members will be fairly represented by the plaintiff. Counsel in this matter is competent and experienced in both consumer protection and class action litigation.

30. Certification of this class action is appropriate under T.R.C.P. 23.02`. Questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. Given the clear predominance of claims, class litigation is superior to any other method available for the fair and efficient adjudication of these claims. The cost of litigation through individual lawsuits might exceed expected recovery. Further, certification is warranted given Toyota's actions with respect to class members, making is necessary for appropriate redress on behalf of all affected purchasers. Lastly, there is a substantial risk of inconsistent and conflicting adjudications given the large number of affected owners.

31. A class action allows all of these claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender.

VI. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

32. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

33. Toyota provided plaintiff and other members of the Class with written express warranties including, but not limited to, that the Recalled Vehicles were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for

everybody."

34. Toyota breached these express warranties which resulted in damages to plaintiff and other members of the Class, who overpaid for the Recalled Vehicles, as the Recalled Vehicles were not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury, and as such, the Recalled Vehicles were not safe to operate.

35. As a proximate result of the breach of warranties by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the Class as a direct and proximate cause of Toyota's breach of the express warranty have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VII. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

36. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

37. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Recalled Vehicles would be merchantable, including that

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the Recalled Vehicles would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Recalled Vehicle's promotions, marketing, advertising, packaging and labels. In doing so, plaintiff and other Class members relied on Toyota's representations that the Recalled Vehicles were safe to operate, and at or about that time, Toyota sold to plaintiff and other Class members the Recalled Vehicles. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Recalled Vehicles, Toyota warranted that the Recalled Vehicles were safe to operate. Plaintiff and other Class members bought the Recalled Vehicles from Toyota, relying on Toyota's representations that the Recalled Vehicles were safe to operate, however, these vehicles have contained a defective accelerator pedal mechanism causing sudden acceleration which could potentially result in death or serious bodily injury.

38. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

39. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class as a direct and proximate cause of Toyota's breach of the

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implied warranty of merchantability have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

VIII. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

40. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

41. Plaintiff and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota implied warranted by its promotion, marketing, advertising, packaging, and labeling of the Recalled Vehicles that they were safe to operate. Plaintiff and Class members bought the Recalled Vehicles from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the Recalled Vehicles were safe to operate. However, Toyota's Recalled Vehicles were not safe to operate as they contained a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death or serious bodily injury.

42. Toyota breached the warranty implied at the time of sale in that plaintiff and Class members did not receive products that were safe to operate as they contained a defective accelerator pedal mechanism, potentially resulting in death or serious bodily injury, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

43. As a proximate result of this breach of warranty by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted,

marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IX. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

44. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

45. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above, but delayed and failed to do so.

46. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

47. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

48. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the

Recalled Vehicles that they may result in potential death or serious bodily injury.

49. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

50. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

51. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and plaintiff and Class members are, therefore, entitled to recover punitive damages.

52. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

X. FIFTH CAUSE OF ACTION

(FRAUDULENT INDUCEMENT)

53. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

54. Toyota was aware of the dangers associated with the Recalled Vehicles, as set forth in detail above, but continued to publicly maintain to the affected consumers that its cars were safe and

without defect.

55. Toyota concealed these facts relating to the accelerator pedal mechanism of the Recalled Vehicles when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Recalled Vehicles Product, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the Product.

56. The concealment of the true facts from plaintiff and other members of the Class was done with the intent to induce plaintiff and class members to purchase the Recalled Vehicles.

57. The reliance by plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff and Class members would not have purchased the Recalled Vehicles had they known the true facts about the Recalled Vehicles, that they may result in potential death.

58. As a direct and proximate result of the fraud and deceit alleged, plaintiff and Class members were induced to purchase the Recalled Vehicles, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

59. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Recalled Vehicles as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Recalled Vehicles, in buying the Recalled Vehicles.

60. Plaintiff and other members of the Class, in purchasing and using the Recalled Vehicles, relied on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and

plaintiff and Class members are, therefore, entitled to recover punitive damages.

61. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XI. SIXTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

62. Plaintiff repeats and again alleges all preceding paragraphs, as if fully set forth herein.

63. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Recalled Vehicles, described in detail above, Toyota was enriched, at the expense of plaintiff and the Class, through the payment of the purchase price for Toyota's Recalled Vehicles.

64. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from plaintiff and other members of the Class in light of the fact that the Recalled Vehicle were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to plaintiff and other members of the Class for the monies paid to Toyota for such Recalled Vehicles.

XII. SEVENTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

65. Plaintiff repeats and again alleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

66. Plaintiff's Agreement with the defendant includes not only express written provisions,

but also those terms and conditions, which although not formally expressed, are implied by the Law.

67. Such terms are as binding as the terms that are actually written into the agreement with plaintiff, and those who are similarly situated against the defendants.

68. Inherent in all contracts and agreements is a covenant that the parties will act in good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

69. The obligations of defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between defendants and the plaintiff, which imbalance allows defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

70. Through the actions and inactions of the defendants as outlined above, defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the plaintiff and others similarly situated.

71. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiff and other members of the class have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential

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damages. Additionally, or in the alternative, plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

XIII. EIGHTH CAUSE OF ACTION

(TENNESSEE PRODUCTS LIABILITY ACT)

72. Plaintiff incorporates each of the proceeding paragraphs as if fully set forth herein at length:

73. Alternative, the product in question (Toyota vehicles) have a defective condition or are unreasonably dangerous in construction, composition, or design as defined in T.C.A. § 29-28-101 et. seq. and the Tennessee Products Liability Act, and specifically in § 29-28-102. The product is unreasonably dangerous because it does not conform to an express warranty. It was unreasonably dangerous at the time the product left the control of the manufacturer. At all time material hereto Toyota 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. Toyota knew and expected these vehicles to be sold and operated by purchasers, including Plaintiff and class members in Union County and the State of Tennessee, and therefore they were the expected users of the product Toyota manufactured. The vehicles reached Plaintiff without substantial changes or condition from the time of manufacture by Toyota. The accelerator pedal defects in the vehicles could not have been contemplated by any reasonable person and therefore presented an unreasonably dangerous condition for expected users. Toyota should have reasonably foreseen that the dangerous condition existed i.e. the

defective accelerator pedals in that they would subject Plaintiff and class members to harm resulting from the defect. Plaintiff and class members have used the vehicles reasonably and as intended to the degree possible given the defective nature of the accelerator pedals, and have suffered damages through no fault of their own. As a direct and proximate result and cause of Toyota's design, manufacture, assembly, marketing, and sales of the vehicles Plaintiff and class members have sustained and will continue to sustain loss of use of their vehicle, severe emotional distress, economic losses, and consequential damages and are therefore entitled to compensatory relief according to proof, to equitable relief and any other relief available from this Court. To the extent that the Products Liability Act requires an amount to be stated, Plaintiffs request $50,000 for each of the Toyota vehicles sold to Plaintiff and all members of the class plus any other relief which the Court may order, including attorney fees.

PRAYER FOR RELIEF:

WHEREFORE, plaintiff prays for judgment as follows:

a) An Order from this Court certifying the class, pursuant to T.R.C.P. 23, certifying plaintiff as representative of the Class, and designating her counsel as counsel for the Class;

b) An award of compensatory damages, and other applicable damages in the amount of which is to be determined at trial;

c) An award of equitable relief;

d) For punitive or exemplary damages which may be allowed, consistent with the degree of reprehensibility of Toyota and commiserate with punishing and deterring Toyota and others from similar wrongdoing;

e) An award for all costs incurred by the Plaintiff in pursuing this action;

f) An award for reasonable attorney fees and all other equitable relief entitled;

g) An award for interest at the legal rate for the sums of compensatory damages;

h) For such further relief and damages suffered by Plaintiff and members of the class as this Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL FACTUAL ISSUES

Respectfully submitted,

Jeff Friedman *(Pro Hac Vice Motion pending)*
Attorney for Plaintiffs

L. Jeffrey Hagood
Attorney for Plaintiffs

Todd J. Moody
Attorney for Plaintiffs

by T.J.M.

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Los Angeles, CA 90017

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CT Corporation System
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CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering and Manufacturing North America, Inc.
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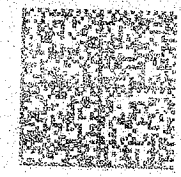

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FILED
10 FEB 11 PM 3:03
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LACEY LAUDICINA and **KEVIN FUNEZ,** individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION and **TOYOTA MOTOR SALES, USA, INC.,**

Defendants.

Case No. CV10-01030-CBM(PLAx)

CLASS ACTION

COMPLAINT FOR VIOLATION OF:

BY FAX

1) **UNLAWFUL BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
2) **UNFAIR BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
3) **FRAUDULENT BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
4) **UNTRUE, MISLEADING AND DECEPTIVE ADVERTISING (Cal. Bus. & Prof. Code §17500, *et seq.*);**
5) **CONSUMER LEGAL REMEDIES ACT (Cal. Civ. Code §1750, *et seq.*);**
6) **VIOLATION OF CAL. CIV. CODE §1709;**
7) **BREACH OF EXPRESS WARRANTY AND IMLPIED WARRANTIES;**

8) VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *et seq.*);
9) UNJUST ENRICHMENT AND DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs Lacey Laudicina and Kevin Funez (collectively "Plaintiffs"), by their attorneys, bring this action both, on their own behalf and on behalf of a class (the "Class") comprised of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P."), against Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. (collectively "Toyota"), and allege the following upon information and belief, except as to paragraphs pertaining to Plaintiffs' own actions, which are alleged upon personal knowledge:

I. PARTIES

1. On personal knowledge, Plaintiff Lacey Laudicina is an individual consumer, who at all times material hereto, was and is a resident of the Florida.

2. On personal knowledge, Plaintiff Kevin Funez is an individual consumer, who at all times material hereto, was and is a resident of Florida.

3. Defendant Toyota Motor Corporation is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world.

4. Defendant Toyota Motor Sales, USA, Inc. is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 S. Western Avenue, Torrance, California 90501. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

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II. JURISDICTION AND VENUE

5. This court has jurisdiction over this class action under 18 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act ("CAFA") explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a State different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs. Plaintiffs allege that the total claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs are each citizens of the State of Florida, whereas, as set forth above, Defendant Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendant Toyota Motor Sales, USA, Inc. is a citizen of the State of California. Furthermore, Plaintiffs allege that more than two-thirds of all of the members of the proposed Class in the aggregate are citizens of a State other than California, where this action is originally being filed, and that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged occurred in this district, and Defendants are subject to personal jurisdiction in this District.

III. FACTUAL ALLEGATIONS

7. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands Toyota, Lexus and Scion.

8. Toyota Motor Sales, USA, Inc., a subsidiary of the Toyota Motor Corporation, distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation and Toyota

Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

9. Toyota prides itself on the safety of its vehicles. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, clams:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means…, in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

10. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s. In a January 31, 2010 article in the Detroit Free Press entitled "Toyota Accused Of 'Not Being Frank' On Problem," Sean Kane, a safety researcher, indicated that he had found 19 deaths and 341 injuries stemming from 815 separate crashes involving Toyotas and sudden acceleration.

11. The National Highway Traffic Safety Administration ("NHTSA"), which helps investigate consumer complaints of automotives, has, over the years, received far more sudden acceleration complaints for Toyota vehicles than for any

other manufacturer. As a result of these complaints, NHTSA has launched more investigations into Toyota vehicles concerning this issue than all other automobile manufacturers combined. These investigations, relying on data provided by Toyota, had concluded that most of the accidents were caused by drivers accidentally hitting the accelerator pedal as opposed to the brakes.

12. Toyota has downplayed or dismissed owner complaints of sudden acceleration, blaming the underlying incidents on driver error or other situation-specific reasons.

13. In 2007, due to an overwhelming number of customer complaints, Toyota conducted an investigation and determined that the floor mats were the cause of the accelerator problems, as they had the tendency to obstruct the accelerator pedal. Toyota further announced that the accelerator pedals were in no way a safety threat.

14. On August 28, 2009, California Highway Patrol Officer Mark Saylor, while driving on the San Diego Freeway, could not slow down his 2009 Lexus ES 350 even after continuously applying the brakes, reaching speeds upwards of 130 miles per hour. While driving, he was on the phone with the police dispatcher and said: "We're in trouble.... There's no brakes." Moments later, Officer Saylor and the others on board (his wife, daughter, and his wife's brother) were dead.

15. A month after the Saylor tragedy, and after mounting pressure, Toyota recalled approximately four million vehicles from model years as far back as 2004 (the "September 2009 Recall").

16. Toyota, however, again claimed that the recall was due to improper installation of floor mats causing them to jam the accelerator pedal, and no defect with the accelerator existed. NHTSA believed there was an underlying problem with the accelerator pedals and it accused Toyota of making "inaccurate and misleading statements."

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17. Shortly after the September 2009 Recall, the Los Angeles Times conducted an investigation into Toyota's safety issues over the past several years. In a December 23, 2009 article entitled "Toyota Found To Keep Tight Lid On Potential Safety Problems," the paper reported, among other things:

- The automaker knew of a dangerous steering defect in its vehicles, including the 4Runner sport utility vehicle for years before issuing a recall in Japan in 2004. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
- Toyota has paid cash settlements to customers whose vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.
- Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.
- A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles' structural shortcomings from

becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

18. On January 21, 2010, Toyota finally admitted that the accelerators were not entirely free from defects, as Toyota had stated time and time again, announcing in a press release: "Our investigation indicates that 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."

19. Following the announcement, Toyota announced an additional recall of 2.3 million U.S. built cars and trucks (the "January 2010 Recall") (all Toyota vehicles recalled for the sudden acceleration problem referred to as "Recalled Vehicles"). These models included the 2009-2010 RAV4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra, and the 2008-2010 Sequoia.

20. On January 30, 2010, the January 2010 Recall was broadened to include Toyota vehicles sold overseas, including a recall of 1.8 million units in Europe. As of the date of this recall, the total number of Toyota vehicles recalled is upwards of 7 million units.

21. Plaintiff Lacey Laudicina is an owner of a 2007 Toyota Camry and Plaintiff Kevin Funez is an owner of a 2006 Toyota Avalon, both on the list of Recalled Vehicles, whose Toyota vehicles may no longer be safe to operate due to a potential sudden acceleration problem caused by a defective accelerator pedal, or other defective components including but not limited to an electronic failure.

IV. CLASS ALLEGATIONS

22. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

23. Pursuant to F.R.C.P. 23, Plaintiffs bring this action on behalf of themselves and the Class comprised of all consumers who purchased the Recalled Vehicles during the relevant time period. Toyota's acts, practices,

misrepresentations and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased the Recalled Vehicles for their intended and foreseeable purpose as promoted, marketed and advertised by Toyota, and the relief sought herein is for the benefit of Plaintiffs and members of the putative Class. Plaintiffs allege that the Class is so numerous that joinder of all members would be impractical.

24. Based on the annual sales of the Recalled Vehicles and the popularity of the Recalled Vehicles, it is apparent that the members of the putative Class would number at least in the many thousands, thereby making joinder impossible. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota's acts, practices, misrepresentations and omissions in connection with the promotion, marketing, advertising, distribution and sale of the Recalled Vehicles were unlawful, unfair or fraudulent in any respect, thereby violating California Business and Professions Code § 17200, *et seq.*, California Business and Professions Code § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*;

(b) Whether Toyota violated the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*;

(c) Whether Toyota violated the Cal. Civ. Code § 1709 in connection with the promotion, marketing, advertising and sale of the Recalled Vehicles;

(d) Whether Toyota breached express and implied warranties in its promotion, advertising, distribution and sale of the Recalled Vehicles, thereby causing harm to Plaintiffs and other Class members;

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(e) Whether Toyota's acts, practices, misrepresentations and omissions in connection with the promotion, marketing, advertising, and sale of the Recalled Vehicles unjustly enriched Toyota at the expense of, and to the detriment of, Plaintiffs and other Class members; and

(f) Whether Toyota's conduct as set forth above injured consumers and if so, the extent of the injury.

25. The claims asserted by Plaintiffs in this action are typical of the claims of other Class members as the claims arise from the same course of conduct by Toyota, and the relief sought is common.

26. Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and experienced in both consumer protection and class action litigation.

27. Certification of this class action is appropriate under F.R.C.P. 23(b) because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action remedy, it would be highly unlikely that the representative Plaintiffs or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate because Toyota acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number of consumers of the Recalled Vehicles, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

28. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a

single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Unlawful Business Acts and Practices; Business and Professions Code §17200, *et seq.*)

29. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

30. This cause of action is brought on behalf of Plaintiffs and members of the Class pursuant to Cal. Business and Professions Code §17200, *et seq.* as a result of Toyota's violation of the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* (the "CLRA"). Plaintiffs reserve the right to identify additional violations of laws as circumstances and further investigation warrant.

31. Toyota's business acts and practices were unlawful under the CLRA, which forbids deceptive advertising as detailed herein. As a result of the unlawful business acts practices described above, including, but not limited to, Toyota promises that its vehicles are safe to operate, Plaintiffs and other members of the Class, pursuant to Cal. Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

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SECOND CAUSE OF ACTION

(Unfair Business Acts and Practices; Business and Professions Code § 17200, *et seq.*)

32. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

33. Toyota's acts and practices, as described above, constitute unfair business acts and practices.

34. There is no benefit to consumers or competition by deceptively promoting, advertising, and labeling the Recalled Vehicles. Indeed, the harm to consumers and competition is substantial.

35. The gravity of the consequences of Toyota's conduct as described above outweighs any justification, motive or reason therefore, particularly considering the available legal alternatives that exist in the marketplace, and is immoral, unethical, unscrupulous, offends established public policy or is substantially injurious to Plaintiffs and other members of the Class.

36. Plaintiffs, and other members of the Class who purchased the Recalled Vehicles, suffered a financial loss by virtue of buying Recalled Vehicles that were promoted and advertised as being safe to operate, when in fact, the Recalled Vehicles are not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death. Plaintiffs and other members of the Class would not have purchased the Recalled Vehicles at the prices they did absent Toyota's unfair promotions, marketing, and advertising, and/or paid an excessive price for the unfairly promoted, marketed, and advertised Recalled Vehicles.

37. As a result of the unfair business acts and practices described above, Plaintiffs and other members of the Class, pursuant to Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota and such other orders and judgments as may be necessary to disgorge

Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles.

THIRD CAUSE OF ACTION

(Fraudulent Business Acts and Practices; Business and Professions Code §17200, *et seq.*)

38. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

39. Toyota's acts and practices, as described above, constitute fraudulent business practices under Cal. Business and Professions Code §17200, *et seq.*

40. As set forth in detail above, Toyota produced, manufactured, advertised, distributed and sold the Recalled Vehicles as being safe to operate.

41. Toyota's acts and practices were reasonably likely to deceive the customers because the Recalled Vehicles are not safe, as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

42. As a result of the business acts and practices described above, Plaintiffs and other members of the Class, pursuant to Cal. Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota, and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

FOURTH CAUSE OF ACTION

(Untrue, Misleading or Deceptive Advertising; Business and Professions Code § 17500, *et seq.*)

43. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

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44. Plaintiffs assert this cause of action for violations of Cal. Business and Professions Code §17500, *et seq.* for untrue, misleading or deceptive advertising against Toyota.

45. Toyota engaged in a scheme of offering the Recalled Vehicles for sale to Plaintiffs and other members of the Class by way of, *inter alia*, commercial marketing and advertising, the Internet, and other promotional materials. These materials misrepresented that Toyota's Recalled Vehicles are safe to operate when, in fact, the Recalled Vehicles are not safe, as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

46. Said advertisements and inducements come within the definition of advertising as contained in Cal. Business and Professions Code §17500, *et seq.* in that such promotional materials were intended as inducements to purchase the Recalled Vehicles and are statements disseminated by Toyota to Plaintiffs and other members of the Class and were intended to reach members of the Class. Toyota, in the exercise of reasonable care, should have known that these statements were misleading and deceptive.

47. In furtherance of said plan and scheme, Toyota prepared and distributed within the State of California, via commercial marketing and advertising, the Internet, and other promotional materials and statements that misleadingly and deceptively represented the nature of the Recalled Vehicles. Consumers, including Plaintiffs and other members of the Class, were among the intended targets of such misrepresentations. The above acts of Toyota, in disseminating said misleading and deceptive statements throughout the State of California to consumers, including Plaintiffs and members of the Class, were and are likely to deceive reasonable consumers, including Plaintiffs and other members of the Class, by misleading them as to the true nature of the Recalled Vehicles, in violation of Cal. Business and Professions Code §17500, *et seq.*

48. As a result of the above violations of Cal. Business and Professions Code §17500, *et seq.*, Plaintiffs and the Class, pursuant to Cal. Business and Professions Code §17535, are entitled to an order of this Court enjoining such future conduct on the part of Toyota, and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

FIFTH CAUSE OF ACTION

(Consumers Legal Remedies Act - Cal. Civ. Code §1750, *et seq.*)

49. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

50. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* (the "CLRA"). This cause of action is limited solely to injunctive relief. Plaintiffs have served, but Toyota has not yet responded to, a pre-litigation notice pursuant to Cal. Civ. Code §1782. Plaintiffs herein seek injunctive relief, but will amend this Class Action Complaint to seek damages and other relief in accordance with the CLRA if Toyota does not timely provide a full and complete response to their pre-litigation notice pursuant to Cal. Civ. Code §1782.

51. Toyota's actions, representations and conduct are subject to the CLRA, because they extend to transactions that have resulted in the sale or lease of goods to consumers.

52. Plaintiffs and other members of the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §1761(d). The Recalled Vehicles that Plaintiffs and other members of the Class purchased are "goods" within the meaning of Cal. Civ. Code §1761(a).

53. As set forth in detail above, Toyota produced, manufactured, advertised, and sold the Recalled Vehicles as being safe to operate. These

assertions were false, misleading and deceptive since the Recalled Vehicles are not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

54. Toyota's unfair methods of competition associated with the misleading advertising that its Recalled Vehicles are safe to operate deceived or was likely to deceive the purchasing public.

55. By misrepresenting that its Recalled Vehicles are safe to operate, Toyota violated Cal. Civ. Code §1770(a), as they represented that the Recalled Vehicles were of a particular standard, quality or grade when they were of another, advertised products with the intent not to sell them as advertised or supplied products that were not in accordance with previous representations. *See* Cal. Civ Code §§1770(a)(5), (7), (9), (14), and (16).

56. As a result of Toyota's acts of unfair competition or unfair or deceptive acts or practices detailed above, pursuant to Cal. Civ. Code §1780(a)(2), Toyota should be enjoined from continuing to employ the unlawful methods, acts and practices alleged herein to prevent any further harm to other members of the Class.

SIXTH CAUSE OF ACTION

(Violation of Cal. Civ. Code § 1709)

57. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

58. As set forth in detail above, Toyota produced, manufactured, advertised, distributed and sold the Recalled Vehicles as being safe to operate, when, in fact, they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

59. Toyota, through its advertising, marketing and other promotion of their Recalled Vehicles as being safe to operate, when they, in fact, were not, made

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uniform representations and omissions they were under a duty to disclose based on its other statements of material fact regarding its Recalled Vehicles.

60. Toyota engaged in such acts either knowing or reasonably or recklessly disregarding the fact such acts and omissions were, and are, in fact, false or misleading.

61. The aforementioned misrepresentations, false and/or deceptive acts and omissions involve material facts in that they were a substantial factor in the decisions made by Plaintiffs and other members of the Class whether to purchase the Recalled Vehicles. Specifically, Plaintiffs and the other members of the Class reasonably relied on misrepresentations including, but not limited to, the representations that Recalled Vehicles were safe to operate.

62. Plaintiffs and other members of Class would have acted differently had they not been misled in that they would not have paid the full amount of money that they did for the Recalled Vehicles, or purchased the Recalled Vehicles at all, had the full facts been disclosed.

63. Toyota had a duty to correct the misinformation it disseminated through its advertising, marketing and other promotion of its Recalled Vehicles based on its other statements of material fact detailed above. By not informing Plaintiffs and other members of the Class, Toyota breached this duty.

64. Toyota intended to induce Plaintiffs and other members of the Class to alter their position to their detriment, and they in fact did so, based on such statements.

65. Plaintiffs and members of the Class had a reasonable expectation that the Recalled Vehicles they were purchasing were accurately advertised and promoted and, as such, were safe to operate. Plaintiffs and other members of the Class were damaged by Toyota, as they justifiably and reasonably relied on Toyota's misrepresentations.

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66. As a result of Toyota's deceit, misrepresentations and/or omissions, Plaintiffs and other members of the Class have suffered damages in an amount equal to the amount they paid for Toyota's Recalled Vehicles or the inflated prices they paid. The exact amount of these damages will be proven at trial.

67. Based on the facts detailed above, Toyota acted with intent to deceive, or with reckless or negligent disregard of the rights of Plaintiffs and other members of the Class, thereby acting with oppression, fraud or malice. Plaintiffs and the Class members are therefore also entitled to punitive damages.

SEVENTH CAUSE OF ACTION

(Breach of Express and Implied Warranties)

68. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

69. Plaintiffs and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, and advertised as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Recalled Vehicles would be merchantable, including that the Recalled Vehicles would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Recalled Vehicle's promotions, marketing, and advertising. In doing so, Plaintiffs and other Class members relied on Toyota's representations that the Recalled Vehicles were safe to operate, and at or about that time, Toyota sold to Plaintiffs and other Class members the Recalled Vehicles. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, and advertising of the Recalled Vehicles, Toyota warranted that the Recalled Vehicles were safe to operate. Plaintiffs and Class members bought the Recalled Vehicles from Toyota, relying on Toyota's representations that the Recalled Vehicles were safe to operate, however, these vehicles may have contained a defective accelerator pedal mechanism causing sudden acceleration which could potentially result in death..

70. Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, or sold.

71. As a proximate result of this breach of warranty by Toyota, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed and advertised by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiffs and other members of the class are further harmed in having to spend money on attaining other transportation while the Recalled Vehicles are being fixed.

EIGHTH CAUSE OF ACTION

(Violation of Magnuson-Moss Warranty Act)

72. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

73. Plaintiffs and Class members are "consumers" within the meaning of the Magnuson-Moss Act.

74. Toyota is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Act.

75. The Recalled Vehicles are "consumer products" within the meaning of the Magnuson-Moss Act.

76. Toyota's written affirmations of fact, promises and/or descriptions, as alleged herein, are each a "written warranty" and/or there exists an implied warranty for the sale of such products within the meaning of the Magnuson-Moss Act.

77. For the reasons detailed above, Toyota breached its warranties as the Recalled Vehicles did not perform as represented by Toyota or were not fit for their intended use. Toyota's conduct thereby caused damages to Plaintiffs and members of the Class.

78. The amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interest and costs) computed on the basis of all claims to be determined in this suit.

79. Resorting to any informal dispute settlement procedure and/or affording Toyota a reasonable opportunity to cure its breach of written warranties is unnecessary and/or futile. At the time of sale, Toyota knew, reasonably should have known, or was reckless in not knowing of the design of the Recalled Vehicles was such that the vehicles may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death, but nevertheless failed to rectify the situation and/or disclose it to Plaintiffs and Class members. Any remedies available through any informal dispute settlement procedure would be inadequate under the circumstances. Accordingly, any requirement under the Magnuson-Moss Act or otherwise that Plaintiffs resort to any informal dispute settlement procedure and/or afford Toyota a reasonable opportunity to cure its breach of written warranties is excused and/or has been satisfied.

80. As a result of Toyota's breach of warranties, Plaintiffs and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiffs and Class members are entitled to recover damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as is deemed appropriate.

NINTH CAUSE OF ACTION

(Unjust Enrichment and Declaratory Relief)

81. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

82. As a result of Toyota's deceptive and misleading promotion, advertising, marketing, and sales of their Recalled Vehicles, described in detail above, Toyota has been enriched at the expense of Plaintiffs and other members of the Class through the payment of the purchase price for Toyota's Recalled Vehicles.

83. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from Plaintiffs and other members of the Class in light of the fact that their Recalled Vehicles were not what Toyota represented them to be in terms of having certain unique characteristics. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to Plaintiffs and other members of the Class for the monies paid by them for such Recalled Vehicles. The Court should also issue declaratory relief to declare the rights and responsibilities of the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Certification of the Class, certifying Plaintiffs as representatives of the Class, and designating their counsel as counsel for the Class;

2. A declaration that Toyota has committed the violations alleged herein;

3. For restitutionary disgorgement pursuant to, without limitation, California Business & Professions Code §§17200, *et seq.* and 17500, *et seq.* and principles of unjust enrichment;

4. For declaratory and injunctive relief pursuant to, without limitation, California Business & Professions Code §§17200, *et seq.* and 17500, *et seq.* and Code of Civil Procedure §1060;

5. For injunctive relief pursuant to California Civil Code §1750, *et seq.*;

6. For the violation of Civil Code §1709 only, an award of compensatory and exemplary damages, the amount of which is to be determined at trial;

7. For interest at the legal rate on the foregoing sums;

8. For fees and costs of suit incurred pursuant to, *inter alia*, Code of Civil Procedure §1021.5; and

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

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: February 11, 2010

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BY: _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LACEY LAUDICINA and **KEVIN FUNEZ,** individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION and **TOYOTA MOTOR SALES, USA, INC.,**

Defendants.

Case No. CV10-01030-CBM(PLAx)

CLASS ACTION

COMPLAINT FOR VIOLATION OF:

BY FAX

1) **UNLAWFUL BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
2) **UNFAIR BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
3) **FRAUDULENT BUSINESS ACTS & PRACTICES (Cal. Bus. & Prof. Code §17200, *et seq.*);**
4) **UNTRUE, MISLEADING AND DECEPTIVE ADVERTISING (Cal. Bus. & Prof. Code §17500, *et seq.*);**
5) **CONSUMER LEGAL REMEDIES ACT (Cal. Civ. Code §1750, *et seq.*);**
6) **VIOLATION OF CAL. CIV. CODE §1709;**
7) **BREACH OF EXPRESS WARRANTY AND IMLPIED WARRANTIES;**

8) VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *et seq.*);
9) UNJUST ENRICHMENT AND DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs Lacey Laudicina and Kevin Funez (collectively "Plaintiffs"), by their attorneys, bring this action both, on their own behalf and on behalf of a class (the "Class") comprised of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P."), against Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. (collectively "Toyota"), and allege the following upon information and belief, except as to paragraphs pertaining to Plaintiffs' own actions, which are alleged upon personal knowledge:

I. PARTIES

1. On personal knowledge, Plaintiff Lacey Laudicina is an individual consumer, who at all times material hereto, was and is a resident of the Florida.

2. On personal knowledge, Plaintiff Kevin Funez is an individual consumer, who at all times material hereto, was and is a resident of Florida.

3. Defendant Toyota Motor Corporation is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world.

4. Defendant Toyota Motor Sales, USA, Inc. is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 S. Western Avenue, Torrance, California 90501. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

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II. JURISDICTION AND VENUE

5. This court has jurisdiction over this class action under 18 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act ("CAFA") explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a State different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs. Plaintiffs allege that the total claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs are each citizens of the State of Florida, whereas, as set forth above, Defendant Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendant Toyota Motor Sales, USA, Inc. is a citizen of the State of California. Furthermore, Plaintiffs allege that more than two-thirds of all of the members of the proposed Class in the aggregate are citizens of a State other than California, where this action is originally being filed, and that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged occurred in this district, and Defendants are subject to personal jurisdiction in this District.

III. FACTUAL ALLEGATIONS

7. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands Toyota, Lexus and Scion.

8. Toyota Motor Sales, USA, Inc., a subsidiary of the Toyota Motor Corporation, distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation and Toyota

Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

9. Toyota prides itself on the safety of its vehicles. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, clams:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means…, in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

10. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s. In a January 31, 2010 article in the Detroit Free Press entitled "Toyota Accused Of 'Not Being Frank' On Problem," Sean Kane, a safety researcher, indicated that he had found 19 deaths and 341 injuries stemming from 815 separate crashes involving Toyotas and sudden acceleration.

11. The National Highway Traffic Safety Administration ("NHTSA"), which helps investigate consumer complaints of automotives, has, over the years, received far more sudden acceleration complaints for Toyota vehicles than for any

other manufacturer. As a result of these complaints, NHTSA has launched more investigations into Toyota vehicles concerning this issue than all other automobile manufacturers combined. These investigations, relying on data provided by Toyota, had concluded that most of the accidents were caused by drivers accidentally hitting the accelerator pedal as opposed to the brakes.

12. Toyota has downplayed or dismissed owner complaints of sudden acceleration, blaming the underlying incidents on driver error or other situation-specific reasons.

13. In 2007, due to an overwhelming number of customer complaints, Toyota conducted an investigation and determined that the floor mats were the cause of the accelerator problems, as they had the tendency to obstruct the accelerator pedal. Toyota further announced that the accelerator pedals were in no way a safety threat.

14. On August 28, 2009, California Highway Patrol Officer Mark Saylor, while driving on the San Diego Freeway, could not slow down his 2009 Lexus ES 350 even after continuously applying the brakes, reaching speeds upwards of 130 miles per hour. While driving, he was on the phone with the police dispatcher and said: "We're in trouble.... There's no brakes." Moments later, Officer Saylor and the others on board (his wife, daughter, and his wife's brother) were dead.

15. A month after the Saylor tragedy, and after mounting pressure, Toyota recalled approximately four million vehicles from model years as far back as 2004 (the "September 2009 Recall").

16. Toyota, however, again claimed that the recall was due to improper installation of floor mats causing them to jam the accelerator pedal, and no defect with the accelerator existed. NHTSA believed there was an underlying problem with the accelerator pedals and it accused Toyota of making "inaccurate and misleading statements."

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17. Shortly after the September 2009 Recall, the Los Angeles Times conducted an investigation into Toyota's safety issues over the past several years. In a December 23, 2009 article entitled "Toyota Found To Keep Tight Lid On Potential Safety Problems," the paper reported, among other things:

- The automaker knew of a dangerous steering defect in its vehicles, including the 4Runner sport utility vehicle for years before issuing a recall in Japan in 2004. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
- Toyota has paid cash settlements to customers whose vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.
- Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.
- A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles' structural shortcomings from

becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

18. On January 21, 2010, Toyota finally admitted that the accelerators were not entirely free from defects, as Toyota had stated time and time again, announcing in a press release: "Our investigation indicates that 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."

19. Following the announcement, Toyota announced an additional recall of 2.3 million U.S. built cars and trucks (the "January 2010 Recall") (all Toyota vehicles recalled for the sudden acceleration problem referred to as "Recalled Vehicles"). These models included the 2009-2010 RAV4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra, and the 2008-2010 Sequoia.

20. On January 30, 2010, the January 2010 Recall was broadened to include Toyota vehicles sold overseas, including a recall of 1.8 million units in Europe. As of the date of this recall, the total number of Toyota vehicles recalled is upwards of 7 million units.

21. Plaintiff Lacey Laudicina is an owner of a 2007 Toyota Camry and Plaintiff Kevin Funez is an owner of a 2006 Toyota Avalon, both on the list of Recalled Vehicles, whose Toyota vehicles may no longer be safe to operate due to a potential sudden acceleration problem caused by a defective accelerator pedal, or other defective components including but not limited to an electronic failure.

IV. CLASS ALLEGATIONS

22. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

23. Pursuant to F.R.C.P. 23, Plaintiffs bring this action on behalf of themselves and the Class comprised of all consumers who purchased the Recalled Vehicles during the relevant time period. Toyota's acts, practices,

misrepresentations and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased the Recalled Vehicles for their intended and foreseeable purpose as promoted, marketed and advertised by Toyota, and the relief sought herein is for the benefit of Plaintiffs and members of the putative Class. Plaintiffs allege that the Class is so numerous that joinder of all members would be impractical.

24. Based on the annual sales of the Recalled Vehicles and the popularity of the Recalled Vehicles, it is apparent that the members of the putative Class would number at least in the many thousands, thereby making joinder impossible. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

(a) Whether Toyota's acts, practices, misrepresentations and omissions in connection with the promotion, marketing, advertising, distribution and sale of the Recalled Vehicles were unlawful, unfair or fraudulent in any respect, thereby violating California Business and Professions Code § 17200, *et seq.*, California Business and Professions Code § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*;

(b) Whether Toyota violated the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*;

(c) Whether Toyota violated the Cal. Civ. Code § 1709 in connection with the promotion, marketing, advertising and sale of the Recalled Vehicles;

(d) Whether Toyota breached express and implied warranties in its promotion, advertising, distribution and sale of the Recalled Vehicles, thereby causing harm to Plaintiffs and other Class members;

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(e) Whether Toyota's acts, practices, misrepresentations and omissions in connection with the promotion, marketing, advertising, and sale of the Recalled Vehicles unjustly enriched Toyota at the expense of, and to the detriment of, Plaintiffs and other Class members; and

(f) Whether Toyota's conduct as set forth above injured consumers and if so, the extent of the injury.

25. The claims asserted by Plaintiffs in this action are typical of the claims of other Class members as the claims arise from the same course of conduct by Toyota, and the relief sought is common.

26. Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and experienced in both consumer protection and class action litigation.

27. Certification of this class action is appropriate under F.R.C.P. 23(b) because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action remedy, it would be highly unlikely that the representative Plaintiffs or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate because Toyota acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number of consumers of the Recalled Vehicles, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

28. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a

single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Unlawful Business Acts and Practices; Business and Professions Code §17200, *et seq.*)

29. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

30. This cause of action is brought on behalf of Plaintiffs and members of the Class pursuant to Cal. Business and Professions Code §17200, *et seq.* as a result of Toyota's violation of the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* (the "CLRA"). Plaintiffs reserve the right to identify additional violations of laws as circumstances and further investigation warrant.

31. Toyota's business acts and practices were unlawful under the CLRA, which forbids deceptive advertising as detailed herein. As a result of the unlawful business acts practices described above, including, but not limited to, Toyota promises that its vehicles are safe to operate, Plaintiffs and other members of the Class, pursuant to Cal. Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

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SECOND CAUSE OF ACTION

(Unfair Business Acts and Practices; Business and Professions Code § 17200, *et seq.*)

32. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

33. Toyota's acts and practices, as described above, constitute unfair business acts and practices.

34. There is no benefit to consumers or competition by deceptively promoting, advertising, and labeling the Recalled Vehicles. Indeed, the harm to consumers and competition is substantial.

35. The gravity of the consequences of Toyota's conduct as described above outweighs any justification, motive or reason therefore, particularly considering the available legal alternatives that exist in the marketplace, and is immoral, unethical, unscrupulous, offends established public policy or is substantially injurious to Plaintiffs and other members of the Class.

36. Plaintiffs, and other members of the Class who purchased the Recalled Vehicles, suffered a financial loss by virtue of buying Recalled Vehicles that were promoted and advertised as being safe to operate, when in fact, the Recalled Vehicles are not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death. Plaintiffs and other members of the Class would not have purchased the Recalled Vehicles at the prices they did absent Toyota's unfair promotions, marketing, and advertising, and/or paid an excessive price for the unfairly promoted, marketed, and advertised Recalled Vehicles.

37. As a result of the unfair business acts and practices described above, Plaintiffs and other members of the Class, pursuant to Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota and such other orders and judgments as may be necessary to disgorge

Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles.

THIRD CAUSE OF ACTION

(Fraudulent Business Acts and Practices; Business and Professions Code §17200, *et seq.*)

38. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

39. Toyota's acts and practices, as described above, constitute fraudulent business practices under Cal. Business and Professions Code §17200, *et seq.*

40. As set forth in detail above, Toyota produced, manufactured, advertised, distributed and sold the Recalled Vehicles as being safe to operate.

41. Toyota's acts and practices were reasonably likely to deceive the customers because the Recalled Vehicles are not safe, as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

42. As a result of the business acts and practices described above, Plaintiffs and other members of the Class, pursuant to Cal. Business and Professions Code §17203, are entitled to an order enjoining such future conduct on the part of Toyota, and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and to restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

FOURTH CAUSE OF ACTION

(Untrue, Misleading or Deceptive Advertising; Business and Professions Code § 17500, *et seq.*)

43. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

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44. Plaintiffs assert this cause of action for violations of Cal. Business and Professions Code §17500, *et seq.* for untrue, misleading or deceptive advertising against Toyota.

45. Toyota engaged in a scheme of offering the Recalled Vehicles for sale to Plaintiffs and other members of the Class by way of, *inter alia*, commercial marketing and advertising, the Internet, and other promotional materials. These materials misrepresented that Toyota's Recalled Vehicles are safe to operate when, in fact, the Recalled Vehicles are not safe, as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

46. Said advertisements and inducements come within the definition of advertising as contained in Cal. Business and Professions Code §17500, *et seq.* in that such promotional materials were intended as inducements to purchase the Recalled Vehicles and are statements disseminated by Toyota to Plaintiffs and other members of the Class and were intended to reach members of the Class. Toyota, in the exercise of reasonable care, should have known that these statements were misleading and deceptive.

47. In furtherance of said plan and scheme, Toyota prepared and distributed within the State of California, via commercial marketing and advertising, the Internet, and other promotional materials and statements that misleadingly and deceptively represented the nature of the Recalled Vehicles. Consumers, including Plaintiffs and other members of the Class, were among the intended targets of such misrepresentations. The above acts of Toyota, in disseminating said misleading and deceptive statements throughout the State of California to consumers, including Plaintiffs and members of the Class, were and are likely to deceive reasonable consumers, including Plaintiffs and other members of the Class, by misleading them as to the true nature of the Recalled Vehicles, in violation of Cal. Business and Professions Code §17500, *et seq.*

48. As a result of the above violations of Cal. Business and Professions Code §17500, *et seq.*, Plaintiffs and the Class, pursuant to Cal. Business and Professions Code §17535, are entitled to an order of this Court enjoining such future conduct on the part of Toyota, and such other orders and judgments as may be necessary to disgorge Toyota's ill-gotten gains and restore to any person in interest any money paid for the Recalled Vehicles as a result of the wrongful conduct of Toyota.

FIFTH CAUSE OF ACTION

(Consumers Legal Remedies Act - Cal. Civ. Code §1750, *et seq.*)

49. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

50. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* (the "CLRA"). This cause of action is limited solely to injunctive relief. Plaintiffs have served, but Toyota has not yet responded to, a pre-litigation notice pursuant to Cal. Civ. Code §1782. Plaintiffs herein seek injunctive relief, but will amend this Class Action Complaint to seek damages and other relief in accordance with the CLRA if Toyota does not timely provide a full and complete response to their pre-litigation notice pursuant to Cal. Civ. Code §1782.

51. Toyota's actions, representations and conduct are subject to the CLRA, because they extend to transactions that have resulted in the sale or lease of goods to consumers.

52. Plaintiffs and other members of the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §1761(d). The Recalled Vehicles that Plaintiffs and other members of the Class purchased are "goods" within the meaning of Cal. Civ. Code §1761(a).

53. As set forth in detail above, Toyota produced, manufactured, advertised, and sold the Recalled Vehicles as being safe to operate. These

assertions were false, misleading and deceptive since the Recalled Vehicles are not safe as they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

54. Toyota's unfair methods of competition associated with the misleading advertising that its Recalled Vehicles are safe to operate deceived or was likely to deceive the purchasing public.

55. By misrepresenting that its Recalled Vehicles are safe to operate, Toyota violated Cal. Civ. Code §1770(a), as they represented that the Recalled Vehicles were of a particular standard, quality or grade when they were of another, advertised products with the intent not to sell them as advertised or supplied products that were not in accordance with previous representations. *See* Cal. Civ Code §§1770(a)(5), (7), (9), (14), and (16).

56. As a result of Toyota's acts of unfair competition or unfair or deceptive acts or practices detailed above, pursuant to Cal. Civ. Code §1780(a)(2), Toyota should be enjoined from continuing to employ the unlawful methods, acts and practices alleged herein to prevent any further harm to other members of the Class.

SIXTH CAUSE OF ACTION

(Violation of Cal. Civ. Code § 1709)

57. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

58. As set forth in detail above, Toyota produced, manufactured, advertised, distributed and sold the Recalled Vehicles as being safe to operate, when, in fact, they may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death.

59. Toyota, through its advertising, marketing and other promotion of their Recalled Vehicles as being safe to operate, when they, in fact, were not, made

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uniform representations and omissions they were under a duty to disclose based on its other statements of material fact regarding its Recalled Vehicles.

60. Toyota engaged in such acts either knowing or reasonably or recklessly disregarding the fact such acts and omissions were, and are, in fact, false or misleading.

61. The aforementioned misrepresentations, false and/or deceptive acts and omissions involve material facts in that they were a substantial factor in the decisions made by Plaintiffs and other members of the Class whether to purchase the Recalled Vehicles. Specifically, Plaintiffs and the other members of the Class reasonably relied on misrepresentations including, but not limited to, the representations that Recalled Vehicles were safe to operate.

62. Plaintiffs and other members of Class would have acted differently had they not been misled in that they would not have paid the full amount of money that they did for the Recalled Vehicles, or purchased the Recalled Vehicles at all, had the full facts been disclosed.

63. Toyota had a duty to correct the misinformation it disseminated through its advertising, marketing and other promotion of its Recalled Vehicles based on its other statements of material fact detailed above. By not informing Plaintiffs and other members of the Class, Toyota breached this duty.

64. Toyota intended to induce Plaintiffs and other members of the Class to alter their position to their detriment, and they in fact did so, based on such statements.

65. Plaintiffs and members of the Class had a reasonable expectation that the Recalled Vehicles they were purchasing were accurately advertised and promoted and, as such, were safe to operate. Plaintiffs and other members of the Class were damaged by Toyota, as they justifiably and reasonably relied on Toyota's misrepresentations.

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66. As a result of Toyota's deceit, misrepresentations and/or omissions, Plaintiffs and other members of the Class have suffered damages in an amount equal to the amount they paid for Toyota's Recalled Vehicles or the inflated prices they paid. The exact amount of these damages will be proven at trial.

67. Based on the facts detailed above, Toyota acted with intent to deceive, or with reckless or negligent disregard of the rights of Plaintiffs and other members of the Class, thereby acting with oppression, fraud or malice. Plaintiffs and the Class members are therefore also entitled to punitive damages.

SEVENTH CAUSE OF ACTION

(Breach of Express and Implied Warranties)

68. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

69. Plaintiffs and other Class members purchased Toyota's Recalled Vehicles, which were promoted, marketed, and advertised as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Recalled Vehicles would be merchantable, including that the Recalled Vehicles would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Recalled Vehicle's promotions, marketing, and advertising. In doing so, Plaintiffs and other Class members relied on Toyota's representations that the Recalled Vehicles were safe to operate, and at or about that time, Toyota sold to Plaintiffs and other Class members the Recalled Vehicles. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, and advertising of the Recalled Vehicles, Toyota warranted that the Recalled Vehicles were safe to operate. Plaintiffs and Class members bought the Recalled Vehicles from Toyota, relying on Toyota's representations that the Recalled Vehicles were safe to operate, however, these vehicles may have contained a defective accelerator pedal mechanism causing sudden acceleration which could potentially result in death..

70. Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, or sold.

71. As a proximate result of this breach of warranty by Toyota, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed and advertised by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. Plaintiffs and other members of the class are further harmed in having to spend money on attaining other transportation while the Recalled Vehicles are being fixed.

EIGHTH CAUSE OF ACTION

(Violation of Magnuson-Moss Warranty Act)

72. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

73. Plaintiffs and Class members are "consumers" within the meaning of the Magnuson-Moss Act.

74. Toyota is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Act.

75. The Recalled Vehicles are "consumer products" within the meaning of the Magnuson-Moss Act.

76. Toyota's written affirmations of fact, promises and/or descriptions, as alleged herein, are each a "written warranty" and/or there exists an implied warranty for the sale of such products within the meaning of the Magnuson-Moss Act.

77. For the reasons detailed above, Toyota breached its warranties as the Recalled Vehicles did not perform as represented by Toyota or were not fit for their intended use. Toyota's conduct thereby caused damages to Plaintiffs and members of the Class.

78. The amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interest and costs) computed on the basis of all claims to be determined in this suit.

79. Resorting to any informal dispute settlement procedure and/or affording Toyota a reasonable opportunity to cure its breach of written warranties is unnecessary and/or futile. At the time of sale, Toyota knew, reasonably should have known, or was reckless in not knowing of the design of the Recalled Vehicles was such that the vehicles may contain a defective accelerator pedal mechanism causing sudden acceleration, potentially resulting in death, but nevertheless failed to rectify the situation and/or disclose it to Plaintiffs and Class members. Any remedies available through any informal dispute settlement procedure would be inadequate under the circumstances. Accordingly, any requirement under the Magnuson-Moss Act or otherwise that Plaintiffs resort to any informal dispute settlement procedure and/or afford Toyota a reasonable opportunity to cure its breach of written warranties is excused and/or has been satisfied.

80. As a result of Toyota's breach of warranties, Plaintiffs and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiffs and Class members are entitled to recover damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as is deemed appropriate.

NINTH CAUSE OF ACTION

(Unjust Enrichment and Declaratory Relief)

81. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

82. As a result of Toyota's deceptive and misleading promotion, advertising, marketing, and sales of their Recalled Vehicles, described in detail above, Toyota has been enriched at the expense of Plaintiffs and other members of the Class through the payment of the purchase price for Toyota's Recalled Vehicles.

83. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from Plaintiffs and other members of the Class in light of the fact that their Recalled Vehicles were not what Toyota represented them to be in terms of having certain unique characteristics. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to Plaintiffs and other members of the Class for the monies paid by them for such Recalled Vehicles. The Court should also issue declaratory relief to declare the rights and responsibilities of the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Certification of the Class, certifying Plaintiffs as representatives of the Class, and designating their counsel as counsel for the Class;

2. A declaration that Toyota has committed the violations alleged herein;

3. For restitutionary disgorgement pursuant to, without limitation, California Business & Professions Code §§17200, *et seq.* and 17500, *et seq.* and principles of unjust enrichment;

4. For declaratory and injunctive relief pursuant to, without limitation, California Business & Professions Code §§17200, *et seq.* and 17500, *et seq.* and Code of Civil Procedure §1060;

5. For injunctive relief pursuant to California Civil Code §1750, *et seq.*;

6. For the violation of Civil Code §1709 only, an award of compensatory and exemplary damages, the amount of which is to be determined at trial;

7. For interest at the legal rate on the foregoing sums;

8. For fees and costs of suit incurred pursuant to, *inter alia*, Code of Civil Procedure §1021.5; and

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

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: February 11, 2010

THE MAURIELLO LAW FIRM, APC

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TOY-RQ-05E-00011803

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FILED

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

BY:

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LACEY LAUDICINA and **KEVIN FUNEZ,** individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION and **TOYOTA MOTOR SALES, USA, INC.,**

Defendants.

Case No. CV10-01030-CBM(PLAx)

CLASS ACTION

AFFIDAVIT OF VENUE

BY FAX

I, THOMAS D. MAURIELLO, declare as follows:

1. I am one of the counsel for plaintiffs in this action and make this declaration to the best of my knowledge, information and belief of the facts stated herein.

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TOY-RQ-05E-00011804

2. At all times herein, defendant Toyota Motor Sales USA, Inc. was a corporation based in California, registered to do business in the State of California, and doing business in the County of Los Angeles, California.

3. The transactions which form the basis of this action, or a substantial portion thereof, occurred in this District.

4. Plaintiffs' Complaint filed in this matter contains a cause of action for violation of the Consumers Legal Remedies Act as against defendants Toyota Motor Corporation and Toyota Motor Sales USA, Inc.

5. Per the foregoing assertions, this cause of action has been properly commenced in the proper county or judicial district for trial.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed on the 11th day of February, 2010, at San Clemente, California.

Thomas D. Mauriello

TOY-RQ-05E-00011805

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

MAURIELLO LAW FIRM, APC
Thomas D. Mauriello (SBN 144811)
1181 Puerta Del Sol, Suite 120
San Clemente, California 92673
Telephone: (949) 542-3555
Fax: (949) 606-9690
Email: tomm@maurlaw.com

ATTORNEYS FOR: Plaintiffs

FILED

10 FEB 11 PM 3:04

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

BY:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LACEY LAUDICINA and KEVIN FUNEZ, individually and on behalf of all others similarly situated

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.

Defendant(s)

CASE NUMBER

CV 10-01030-CBM(PLAx)

CERTIFICATION AND NOTICE OF INTERESTED PARTIES (Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for Plaintiffs LACEY LAUDICINA and KEVIN FUNEZ (or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

PARTY (List the names of all such parties and identify their connection and interest.)	CONNECTION
LACEY LAUDICINA	Plaintiff
KEVIN FUNEZ	Plaintiff
TOYOTA MOTOR CORPORATION	Defendant
TOYOTA MOTOR SALES, USA, INC.	Defendant

2/11/10
Date

Thomas D Mauriello
Sign

BY FAX

Thomas D. Mauriello, Attorney for Plaintiffs
Attorney of record for or party appearing in pro per

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
LACEY LAUDICINA and KEVIN FUNEZ, individually and on behalf of all others similarly situated

DEFENDANTS
TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
MAURIELLO LAW FIRM, APC, Thomas D. Mauriello (SBN 144811),
1181 Puerta Del Sol, Suite 120 , San Clemente, California 92673
Telephone: (949) 542-3555, Fax: (949) 606-9690

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: $** Subject to proof at trial

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.)
28 U.S.C. Sec. 1332(d)(2)(class action where amount in controversy exceeds $5,000,000 and certain class members are citizens of different States than Defendants)

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

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 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 Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

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 Loan (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 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

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

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with 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

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

BY FAX

FOR OFFICE USE ONLY: Case Number: CV10-01030

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): See "Exhibit A" to Civil Cover Sheet, attached hereto

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
	LACEY LAUDICINA - State of Florida KEVIN FUNEZ - State of Florida

(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, USA, INC. - Los Angeles County	TOYOTA MOTOR CORPORATION - Foreign Country: 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 County	

*** 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 11, 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-00011808

EXHIBIT A TO CIVIL COVER SHEET

(ADDENDUM TO ITEM NO. VIII(b). "RELATED CASES")

	Name	Court	Case No.	Filed	NOS	Closed
1	TOYOTA MOTOR CORPORATION	cacdce	8:2010cv00105	01/22/2010	370	
	Joseph Hauter et al v. Toyota Motor Sales USA Inc et al					
2	TOYOTA MOTOR CORPORATION	cacdce	2:2010cv00706	02/01/2010	190	
	Adilia Aviles v. Toyota Motor Corporation et al					
3	TOYOTA MOTOR CORPORATION	cacdce	2:2010cv00849	02/04/2010	355	
	Ani Gazaryan et al v. Toyota Motor Sales U.S.A., Inc. et al					
4	TOYOTA MOTOR CORPORATION	cacdce	2:2010cv00947	02/08/2010	355	
	Elaine Byrnes v. Toyota Motor North America Inc. et al					
5	TOYOTA MOTOR CORPORATION	cacdce	2:2009cv08143	11/05/2009	355	
	Seong Bae Choi et al v. Toyota Motor Corporation et al					
6	TOYOTA MOTOR CORPORATION	cacdce	2:2009cv08478	11/18/2009	370	
	Eric Kmetz et al v. Toyota Motor Sales, U.S.A., Inc. et al					

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 Consuelo B. Marshall and the assigned discovery Magistrate Judge is Paul Abrams.

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

CV10- 1030 CBM (PLAx)

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.

TOY-RQ-05E-00011810

Name & Address:
MAURIELLO LAW FIRM, APC
Thomas D. Mauriello (CA Bar # 144811)
1181 Puerta Del Sol, Suite 120
San Clemente, CA 92673
Tel:949/542-3555 Fax: 949/606-9690

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LACEY LAUDICINA and KEVIN FUNEZ, individually and on behalf of all others similarly situated,

PLAINTIFF(S)

v.

TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.,

DEFENDANT(S).

CASE NUMBER

CV10-01030-CBM(PLAx)

SUMMONS

TO: DEFENDANT(S): TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.

A lawsuit has been filed against you.

Within 21 20 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, Thomas D. Mauriello, Esq., whose address is Mauriello Law Firm, A.P.C., 1181 Puerta Del Sol, Ste. 120, San Clemente, CA 92673. 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: 11 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)].

(PLAx), DISCOVERY, RELATED-P

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10-cv-01030-RGK-PLA

Lacey Laudicina et al v. Toyota Motor Corporation et al
Assigned to: Judge R. Gary Klausner
Referred to: Magistrate Judge Paul L. Abrams
Cause: 15:2301 Magnuson-Moss Warranty Act

Date Filed: 02/11/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Federal Question

Plaintiff

Lacey Laudicina
individually and on behalf of all others similarly situated

represented by **Alan M Mansfield**
The Consumer Law Group
9466 Black Mountain Road Suite 225
San Diego, CA 92126
619-308-5034
Fax: 888-341-5048
Email: alan@clgca.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian W Smith
Smith and Vanture LLP
1615 Forum Place Suite 4C
West Palm Beach, FL 33401
561-684-6330
Fax: 561-688-0630
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Patrick J Sheehan
Whatley Drake Kallas LLC
1540 Broadway 37th Floor
New York, NY 10036
212-447-7070
Fax: 212-447-7077
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Thomas D Mauriello
Mauriello Law Firm
1181 Puerta Del Sol Suite 120
San Clemente, CA 92673
949-542-3555

TOY-RQ-05E-00011812

Fax: 949-606-9690
Email: tomm@maurlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W Daniel Miles , III
Beasley Allen Crow Methvin Portis & Miles PC
272 Commerice Street
Montgomery, AL 36103
334-269-2343
Fax: 334-954-7555
Email: dee.miles@beasleyallen.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Kevin Funez
individually and on behalf of all others similarly situated

represented by

Alan M Mansfield
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian W Smith
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Patrick J Sheehan
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Thomas D Mauriello
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W Daniel Miles , III
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

TOY-RQ-05E-00011813

Defendant

Toyota Motor Sales, USA, Inc.

Date Filed	#	Docket Text
02/11/2010	1	COMPLAINT against Defendants Toyota Motor Corporation, Toyota Motor Sales, USA, Inc.(Filing fee $ 350: PAID.) Jury Demanded., filed by plaintiffs Lacey Laudicina, Kevin Funez.(ghap) (ds). (Additional attachment(s) added on 2/16/2010: # 1 Notice of Assignment, # 2 Summons, # 3 Civil Cover Sheet) (ds). (Entered: 02/12/2010)
02/11/2010		21 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendants Toyota Motor Corporation, Toyota Motor Sales, USA, Inc.(ghap) Modified on 2/16/2010 (ghap). (Entered: 02/12/2010)
02/11/2010	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Lacey Laudicina, Kevin Funez. (ghap) (ds). (Entered: 02/12/2010)
02/11/2010	3	AFFIDAVIT OF VENUE by affiant: Thomas D. Mauriello filed by Plaintiffs Lacey Laudicina, Kevin Funez. (ghap) (ds). (Entered: 02/12/2010)
02/11/2010	4	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Patrick J Sheehan for Plaintiffs Lacey Laudicina, Kevin Funez. Your Pro Hac Vice application has not been received by the court. Please return you completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U.S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (ghap) (Entered: 02/12/2010)
02/11/2010	5	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Brian W Smith for Plaintiffs Lacey Laudicina, Kevin Funez. Your Pro Hac Vice application has not been received by the court. Please return you completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U.S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (ghap) (Entered: 02/12/2010)
02/11/2010	6	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney W Daniel Miles, III for Plaintiffs Lacey Laudicina, Kevin Funez. Your Pro Hac Vice application has not been received by the court. Please return you completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U.S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (ghap) (Entered: 02/12/2010)
02/16/2010	7	ORDER RETURNING CASE FOR REASSIGNMENT by Judge Consuelo B. Marshall. ORDER case returned to the Clerk for random reassignment pursuant to General Order 08-05. Case randomly reassigned from Judge Consuelo B. Marshall to Judge R. Gary Klausner for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 10-01030 RGK(PLAx). (rn) (Entered: 02/16/2010)

TOY-RQ-05E-00011814

02/18/2010	8	STANDING ORDER REGARDING NEWLY ASSIGNED CASES by Judge R. Gary Klausner: READ THIS ORDER CAREFULLY. IT CONTROLS THIS CASE. This action has been assigned to the calendar of Judge R Gary Klausner. The Responsibility for the progress of litigation in the Federal Courts falls not only upon the attorneys in the action but upon the Court as well. To secure the just, speedy and inexpensive determination of every action, all counsel are hereby ordered to familiarize themselves with the Federal Rules of Civil Procedures (See document for further details). (shb) (Entered: 02/18/2010)

PACER Service Center

Transaction Receipt

02/22/2010 11:11:17

PACER Login:	wb0242	**Client Code:**	056707-383593
Description:	Docket Report	**Search Criteria:**	2:10-cv-01030-RGK-PLA End date: 2/22/2010
Billable Pages:	3	**Cost:**	0.24

TOY-RQ-05E-00011815

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-1030 AHM (FMOx)	Date	March 1, 2010
Title	LACEY LAUDICINA, et al. v. TOYOTA MOTOR CORPORATION, et al.		

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

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

Proceedings: (IN CHAMBERS)

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

Initials of Preparer : SMO

TOY-RQ-05E-00011816

Attorney Or Party Without Attorney (Name and Address)	Telephone:	FOR COURT USE ONLY
THOMAS D. MAURIELLO, ESQ. (144811) MAURIELLO LAW FIRM, APC 1181 Puerta Del Sol, Suite 120 San Clemente, CA 92673	(949) 542-3555	
Attorneys for: PLAINTIFFS	Ref. No. Or File No.: W2554183	
Insert name of court, judicial district and branch court, if any: UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA		
Plaintiff: LACEY LAUDICINA, etc., et al.		
Defendant: TOYOTA MOTOR CORPORATION, et al.		

PROOF OF SERVICE	Date:	Time:	Dept/Div:	Case Number: CV10-01030 CBM (PLAx)

I, B. Anderson , Under penalty of perjury, hereby declare that I am and was on the dates herein mentioned, over the age of eighteen, and not a party to the within action;

I served the: SUMMONS; COMPLAINT; CIVIL COVER SHEET; AFFIDAVIT OF VENUE; CERTIFICATION AND NOTICE OF INTERESTED PARTIES; NOTICEOF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY; NOTICE TO COUNSEL; CENTRAL DISTRICT OF CALIFORNIA CLERK'S OFFICE SERVICES FOR ATTORNEYS AND THE GENERAL PUBLIC; UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVILITY AND PROFESSIONALISM GUIDELINES

in this action by personally delivering to and leaving with the following defendant or person on the date set opposite their respective names, a true copy thereof:

Defendant	: TOYOTA MOTOR SALES, USA, INC.
By Serving	: MARGARET WILSON, Authorized Agent of CT CORPORATION SYSTEM, Agent for Service of Process
Address	: 818 W. Seventh Street , Los Angeles, California 90017
Date & Time	: Thursday, February 18, 2010 @ 2:15 p.m.
Witness fees were	: Not applicable.

Person serving:
B. Anderson
Wheels of Justice, Inc.
657 Mission Street, Suite 502
San Francisco, California 94105
Phone: (415) 546-6000

a. Fee for service:
d. Registered California Process Server
(1) Employee or independent contractor
(2) Registration No.: 6416
(3) County: Los Angeles
(4) Expires:

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

Date: February 18, 2010

Signature: B. Anderson

Printed on recycled paper

FILE START

Judge Hellerstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10 CV 1111

----------X

FRED SANDER Individually,
and on behalf of all others similarly situated,

Plaintiff,

-against-

TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA MOTOR NORTH AMERICA, INC.; and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC.,

Defendants.

----------X

RECEIVED
FEB 17 2010
U.S.D.C. S.D. N.Y.

Docket No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Fred Sander ("Plaintiff"), by and through his undersigned attorneys, the Law Offices of Robert M. Brill, LLC, and Becnel Law Firm, LLC., brings this action individually and on behalf of the Class identified below against defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and for his Complaint alleges, upon information and belief and based on the investigation to date of his counsel, as follows:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of himself and all citizens, residents, or domiciliaries of the State of New York who own and/or lease Toyota vehicles for model years 2005-2010, which were subject to various recalls in January of 2010, pursuant to Rule 23 of the Federal Rules of Civil

TOY-RQ-05E-00011819

injunctive relief, and attorneys' fees.

2. Plaintiff seeks to represent the following Class:

Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to the recall by Toyota in January 2010 for defects in the vehicle's gas pedal.

3. Defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. (hereinafter collectively referred to as "Defendants" and/or "Toyota"), designed, manufactured, marketed, assembled, inspected, sold and/or distributed the Toyota vehicles of model years 2005, 2006, 2007, 2008, 2009 and/or 2010, which were subject to recall in January, 2010.

4. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vice, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2006-2010 Toyota Camry (the "Subject Vehicles").

5. Upon information and belief, some 5.3 million vehicles have been recalled by the Defendants due to defects in accelerator pedals to date, which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable, and unsafe acceleration.

THE PARTIES

6. Plaintiff is a resident of the United State of America, residing in the State, City, and County of New York.

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7. Upon information and belief, 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.

8. Upon information and belief, 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.

9. Upon information and belief, 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.

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

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1332(d)(2) (diversity jurisdiction), in that (I) there is complete diversity (the plaintiff is a citizen of New York and defendants are domiciled in California and Kentucky, and, in all events, not New York, and, to the extent pertinent, maintain their principal places of business in California and Kentucky, and, in all events, not New York), ii) the amount in controversy exceeds $5,000,000.00, exclusive of interest and costs, and (iii) there are 100 or more members of the proposed Plaintiff Class.

12. Venue lies in this district, pursuant to 28 U.S.C. §1391(a), because plaintiff resides in this Judicial District, and a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this Judicial District. In addition, defendants do business and/or transact business in this

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Judicial District, and, therefore, are subject to personal jurisdiction in this Judicial District and reside here for venue purposes.

13. At all times relevant hereto, Defendants were engaged in the business of designing, manufacturing, assembling, inspecting, marketing, selling and/or distributing the Subject Vehicles.

14. At all times relevant hereto, Defendants placed the Subject Vehicles into the stream of interstate commerce.

15. As a direct and proximate result of Defendants placing the Subject Vehicles into the stream of interstate commerce, Plaintiff and the Plaintiff Class Members have suffered and continue to suffer damages, and will continue to suffer such damages indefinitely.

16. Upon information and belief, at all times relevant hereto, Defendants were present and doing business in the State of New York and throughout the United States.

17. At all times relevant, Defendants transacted, solicited, and conducted business in the State of New York and throughout the United States and derived substantial revenue from such business.

18. At all relevant times, Defendants expected or should have expected that their acts would have consequences within the State of New York, and this judicial district in particular.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

19. This action is brought by the Plaintiff as a class action on behalf of all citizens, residents or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold, and/or distributed by Defendants, which were or should have been subject to the

recall by Toyota in January 2010 for defects in the vehicle's gas pedal, and who have been subjected to Defendants' conduct outlined in this class action complaint.

20. Plaintiff, for himself and on behalf of the Plaintiff Class, described more fully below, seeks monetary and injunctive relief against Defendants to redress Defendants' unlawful conduct and to prevent this conduct from occurring in the future.

21. 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.

22. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2. million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

23. 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.

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

25. In or about August 2009, the National Highway Traffic Safety Administration ("NHTSA"), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

26. On September 29, 2009, 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

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the vehicle.

27. 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.

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

29. The affected models are the Subject Vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

30. On November 28, 2008, plaintiff purchased a Toyota Camry, model year 2006, VIN No.: 4T1BE32K36U702420 from DCH Toyota City, in Mamaroneck, New York.

31. Plaintiff is a member of the proposed Class herein.

CLASS DEFINITIONS

32. Plaintiff brings this action pursuant to F.R.C.P. 23 on behalf of himself and all others similarly situated including the Class as follows:

33. Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal or should have been included in the recall.

34. Excluded from the Class are:

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a.) Defendants' officers and directors;

b.) Any judge or judicial officer assigned to this matter and his or her immediate family; and

c.) Any legal representative, successor, or assign of any excluded person or entity.

35. Plaintiff is a member of the class as defined above.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class.

36. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common basis. The proposed Class is so numerous that joinder is impractical. This disposition of these claims through this Class Action will be more efficient and will benefit the parties and the Court. The identities of the individual members of the Plaintiff Class are ascertainable through, inter alia, sales receipts and/or corporate records. Further, the Plaintiff Class may be informed of the pendency of the class action by direct mail, internet, or other means.

Predominance of Common Questions of Law and Fact.

37. A well defined community of interest in the questions of law and fact common to the Toyota New York Class predominate over questions affecting only individual Plaintiff Class Members including, but not limited to:

d) Whether Defendants manufactured and/or marketed and sold defective vehicles;

e) Whether Defendants failed to give adequate and timely warning of the dangers of their vehicles;

f) Whether Defendants concealed adverse information from plaintiff and the plaintiff class

members regarding the Subject Vehicles;

g) Whether Defendants violated applicable New York State consumer protection laws;

h) Whether Plaintiff and the Plaintiff Class Members are entitled to recover compensatory, exemplary, punitive, and/or other damages as a result of Defendants' negligent and unlawful conduct;

I) What the proper mechanism is for assessing and awarding damages and administering relief to the Plaintiff Class Members, including the relief to reduce and threat of future harm, to the Plaintiff Class Members;

j) Whether Defendants' conduct in manufacturing, failing to warn, selling and/or promoting and/or marketing and/or distributing the Subject Vehicles fell below the duty of care owed by Defendants to Plaintiff and the Plaintiff Class Members;

k) Whether Defendants negligently, recklessly, or intentionally concealed information about the safety of the Subject Vehicles from the Plaintiff and the Plaintiff Class Members;

l) Whether Defendants are strictly liable in tort for selling a defective product;

m) Whether Defendants' conduct constitutes negligence;

n) Whether Defendants breached express warranties;

o) Whether Defendants breached implied warranties of merchantability;

p) Whether defendants acted to defraud, misrepresent, and deceive the Plaintiff and/or the Plaintiff Class Members;

q) Whether Plaintiff and the Plaintiff Class Members have sustained irreparable harm and whether they are entitled to equitable relief including restitution and/or refund and, if so, the nature and extent of such damages;

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r) Whether the Plaintiff and the Plaintiff Class Members are entitled to compensatory damages and, if so, the nature and extent of such damages;

s) Whether Defendants are liable for punitive damages and, if so, how much is necessary and appropriate to punish them for their conduct, deter others and fulfill the policies and purposes of punitive and/or exemplary damages; and

t) How any and all punitive and/or exemplary damages awarded to Plaintiff should be equitably allocated among the Plaintiff and the Plaintiff Class Members.

Typicality.

38. Having been a victim of Defendants' unlawful and negligent conduct, plaintiff is a member of the Toyota New York Class. Plaintiff purchased a 2006 Toyota Camry. All members of the Plaintiff Class have purchased and/or leased a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal. Plaintiff and members of the Toyota New York Class have similarly suffered harm arising from Defendants' violations of law and negligent conduct as alleged herein.

Adequacy of Representation.

39. Plaintiff will fairly and adequately represent and protect the interests of the class because (I) plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class; (ii) plaintiff and his counsel are aware of no conflicts of interest between plaintiff and absent class members or otherwise; and (iii) plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the

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prosecution of this litigation.

Superiority.

40. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (I) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinder of all class members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class; (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on many class members; and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise of the same circumstances and course of conduct. Additionally, notice of the pendency and/or resolution of this class action can be provided to the Plaintiff Class Members by direct mail, as upon information and belief, Defendants herein have kept detailed records as to their sale of the Subject Vehicles.

41. This action is also properly certified under the provisions of F.R.C.P. 23 because:

a.) the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistency of varying adjudications with respect to individual Plaintiff Class Members, thus establishing incompatible standards of conduct for Defendants; and

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b.) due to the nature of the relief sought, the prosecution of separate actions by the individual members of the Plaintiff Class would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other members of the Plaintiff Class not parties to such adjudications or would substantially impair or impede the ability of such members of the Plaintiff Class to protect their interests.

AS AND FOR A FIRST CAUSE OF ACTION

Negligence and Negligence *Per Se*

42. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 41, as if set forth fully at length herein.

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

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

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

46. Toyota breached its duty of reasonable care to Plaintiff and the Plaintiff Members by

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failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

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

48. Defendants' actions and/or inactions, as set forth herein, by virtue of violating statutes, ordinances and/or rules and/or regulations, constitute negligence per se.

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

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

AS AND FOR A SECOND CAUSE OF ACTION

Strict Liability

51. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 50, as if set forth fully at length herein.

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

53. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Subject Vehicles, including Plaintiff and the Plaintiff

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Class members; consequently, Plaintiff and the Plaintiff Class Members were expected users of the Subject Vehicles which Toyota manufactured.

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

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

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

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

58. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

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AS AND FOR A THIRD CAUSE OF ACTION

Breach of Express Warranty

59. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 58, as if set forth fully at length herein.

60. Defendants expressly warranted and represented to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and fit for their reasonably intended use.

61. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not fit for their reasonably intended use, and defective and cause injury to its consumers.

62. The Subject Vehicles do not confirm to these express warranties and representations because the Subject Vehicles are not safe and are, in fact, associated with numerous defects including, but not limited to, defects in the Subject Vehicles' gas pedal.

63. The Defendants herein breached the aforesaid express warranties, as the Subject Vehicles were negligently manufactured and/or designed.

64. As a direct and proximate result of the breach of said warranties and representations, Plaintiff and the Plaintiff Class Members suffered damages.

65. Plaintiff and the Plaintiff Class Members did rely on the express warranties of the Defendants herein.

66. Defendants knew or should have known that the aforesaid representations and warranties were false, misleading and untrue, in that the Subject Vehicles were not safe or fit for their reasonably intended use and, in fact, are associated with numerous defects, including, but not limited to, defects in the Subject Vehicles' gas pedal.

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67. As a direct and proximate cause of Toyota's breach of the aforesaid express warranties, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FOURTH CAUSE OF ACTION

Breach of Implied Warranty

68. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 67, as if set forth fully at length herein.

69. At all pertinent times, Defendants manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted, and sold the Subject Vehicles.

70. At the times Defendants marketed, sold, and distributed the Subject Vehicles for use by Plaintiff and the Plaintiff Class Members, Defendants knew of the use for which Defendants' Subject Vehicles were intended and impliedly warranted the product to be merchantable quality and fit for such use.

71. The Defendants impliedly represented and warranted to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and of merchantable quality and fit for the ordinary use for which said product was to be used.

72. Said representations and warrantied aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not merchantable quality,

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and defective and cause injury to its customers.

73. Plaintiff and the Plaintiff Class Members relied on said implied warranty of merchantability of fitness for a particular use and purpose.

74. Plaintiff and the Plaintiff Class Members reasonably relied upon the skill and judgment of Defendants as to whether the Subject Vehicles were of merchantable quality and safe and fit for their intended use.

75. The Subject Vehicles were placed into the stream of commerce by Defendants in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to, and did, reach users, handlers, and persons coming into contact with said product without substantial change in the condition in which they were sold.

76. The Defendants herein breached the aforesaid implied warranties, as the Subject Vehicles were not fit for their intended purposes and uses.

77. As a direct and proximate cause of Toyota's breach of the aforesaid implied warranties, Plaintiff and the Plaintiff Class Members have sustained and will continued to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FIFTH CAUSE OF ACTION

Unfair and Deceptive Trade Practice
In Violation of New York General Business Law §§349 and 350

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78. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 77, as if set forth fully at length herein.

79. Defendants engaged in consumer-oriented, commercial conduct by selling and advertising the Subject Vehicles.

80. Defendants misrepresented and omitted material information regarding the Subject Vehicles by failing to disclose known risks and defects.

81. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of the Subject Vehicles in violation of the New York General Business Law ("GBL") §349 and §350 and other similar statutes.

82. New York has enacted statutes to protect consumers from deceptive, fraudulent, and unconscionable trade and business practices. Defendants violated these statutes by knowingly and falsely representing that the Subject Vehicles were fit to be used for the purposes for which they were intended, when Defendants knew they were defective and dangerous, and by other acts alleged herein.

83. Defendants engaged in the deceptive acts and practices alleged herein in order to sell the Subject Vehicles to the public, including Plaintiff and Plaintiff Class members.

84. As a direct and proximate result of the Defendants' violations of GBL §349 and §350 and other similar statutes, Plaintiff and the Plaintiff Class members have suffered damages, for which they are entitled to compensatory damages, equitable and declaratory relief, punitive

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damages, costs, and reasonable attorneys' fees. Plaintiff and class members do not seek damages under the statutory provision allowing for a $50 minimum award.

AS AND FOR A SIXTH CAUSE OF ACTION

(Unjust Enrichment)

85. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶1 through 84, as if set forth fully at length herein.

86. Defendants have received benefits from Plaintiff and the members of the Plaintiff Class in the form of the prices Plaintiff and the members of the Plaintiff Class paid for the Subject Vehicles.

87. By failing to disclose to the Plaintiff and the members of the Plaintiff Class and the public in general that the Subject Vehicles are not safe for their intended purposes, the Defendants reaped millions of dollars in profits that they otherwise would not have obtained and caused Plaintiff and them members of the Plaintiff Class to expend money on the Subject Vehicles.

88. Defendants are aware of their receipt of those benefits.

Defendants received those benefits to the detriment of Plaintiff and each of the other members of the Plaintiff Class.

89. Under these circumstances, it would be inequitable and against good conscience for Defendants to retain those benefits.

90. As a direct and proximate result of the foregoing, Plaintiff and the Plaintiff Class members have suffered damages in an amount to be determined at trail and seek full disgorgement and restitution of Defendants' ill-gotten gains acquired as a result of the unlawful or wrongful

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conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment against the Defendants, jointly and severally, as follows:

I) an order, entered as soon as practicable, certifying the Plaintiff Class pursuant to Federal Rules of Civil Procedure Rule 23(a),(b)(2) and (b)(3), appointing FRED SANDER, as class representative and appointing LAW OFFICES OF ROBERT M. BRILL, LLC, and BECNEL LAW FIRM, LLC as counsel to the Plaintiff Class;

ii) equitable, injunctive and declaratory relief;

iii) damages for plaintiff and other class members in an amount to be determined at trial, but in an amount exceeding the jurisdictional limits;

iv) pre-judgment and post-judgment interest at the maximum rate allowable at law;

v) treble, exemplary, and/or punitive damages in an amount to be determined at trial;

vi) the costs and disbursements incurred by Plaintiff and the Plaintiff Class Members in connection with this action, including reasonable attorneys' fees;

vii) awarding all statutory damages; and

viii) granting such other relief as the Court deems just and proper under all applicable state and federal law.

Dated: New York, New York
February10, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

By: _____
Anita M. Jaskot, Esq. (AJ-6613)

TOY-RQ-05E-00011837

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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiff individually and on behalf of the Plaintiff Class Members, hereby demands a trial by jury as to all issues so triable.

Dated: New York, New York
February 9, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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Judge Hellerstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10 CV 1111

----------X

FRED SANDER Individually,
and on behalf of all others similarly situated,

Plaintiff,

-against-

TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA MOTOR NORTH AMERICA, INC.; and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC.,

Defendants.

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RECEIVED
FEB 17 2010
U.S.D.C. S.D. N.Y.

Docket No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Fred Sander ("Plaintiff"), by and through his undersigned attorneys, the Law Offices of Robert M. Brill, LLC, and Becnel Law Firm, LLC., brings this action individually and on behalf of the Class identified below against defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and for his Complaint alleges, upon information and belief and based on the investigation to date of his counsel, as follows:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of himself and all citizens, residents, or domiciliaries of the State of New York who own and/or lease Toyota vehicles for model years 2005-2010, which were subject to various recalls in January of 2010, pursuant to Rule 23 of the Federal Rules of Civil

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injunctive relief, and attorneys' fees.

2. Plaintiff seeks to represent the following Class:

Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to the recall by Toyota in January 2010 for defects in the vehicle's gas pedal.

3. Defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. (hereinafter collectively referred to as "Defendants" and/or "Toyota"), designed, manufactured, marketed, assembled, inspected, sold and/or distributed the Toyota vehicles of model years 2005, 2006, 2007, 2008, 2009 and/or 2010, which were subject to recall in January, 2010.

4. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vice, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2006-2010 Toyota Camry (the "Subject Vehicles").

5. Upon information and belief, some 5.3 million vehicles have been recalled by the Defendants due to defects in accelerator pedals to date, which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable, and unsafe acceleration.

THE PARTIES

6. Plaintiff is a resident of the United State of America, residing in the State, City, and County of New York.

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7. Upon information and belief, 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.

8. Upon information and belief, 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.

9. Upon information and belief, 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.

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

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1332(d)(2) (diversity jurisdiction), in that (I) there is complete diversity (the plaintiff is a citizen of New York and defendants are domiciled in California and Kentucky, and, in all events, not New York, and, to the extent pertinent, maintain their principal places of business in California and Kentucky, and, in all events, not New York), ii) the amount in controversy exceeds $5,000,000.00, exclusive of interest and costs, and (iii) there are 100 or more members of the proposed Plaintiff Class.

12. Venue lies in this district, pursuant to 28 U.S.C. §1391(a), because plaintiff resides in this Judicial District, and a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this Judicial District. In addition, defendants do business and/or transact business in this

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Judicial District, and, therefore, are subject to personal jurisdiction in this Judicial District and reside here for venue purposes.

13. At all times relevant hereto, Defendants were engaged in the business of designing, manufacturing, assembling, inspecting, marketing, selling and/or distributing the Subject Vehicles.

14. At all times relevant hereto, Defendants placed the Subject Vehicles into the stream of interstate commerce.

15. As a direct and proximate result of Defendants placing the Subject Vehicles into the stream of interstate commerce, Plaintiff and the Plaintiff Class Members have suffered and continue to suffer damages, and will continue to suffer such damages indefinitely.

16. Upon information and belief, at all times relevant hereto, Defendants were present and doing business in the State of New York and throughout the United States.

17. At all times relevant, Defendants transacted, solicited, and conducted business in the State of New York and throughout the United States and derived substantial revenue from such business.

18. At all relevant times, Defendants expected or should have expected that their acts would have consequences within the State of New York, and this judicial district in particular.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

19. This action is brought by the Plaintiff as a class action on behalf of all citizens, residents or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold, and/or distributed by Defendants, which were or should have been subject to the

recall by Toyota in January 2010 for defects in the vehicle's gas pedal, and who have been subjected to Defendants' conduct outlined in this class action complaint.

20. Plaintiff, for himself and on behalf of the Plaintiff Class, described more fully below, seeks monetary and injunctive relief against Defendants to redress Defendants' unlawful conduct and to prevent this conduct from occurring in the future.

21. 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.

22. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2. million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

23. 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.

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

25. In or about August 2009, the National Highway Traffic Safety Administration ("NHTSA"), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

26. On September 29, 2009, 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

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the vehicle.

27. 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.

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

29. The affected models are the Subject Vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

30. On November 28, 2008, plaintiff purchased a Toyota Camry, model year 2006, VIN No.: 4T1BE32K36U702420 from DCH Toyota City, in Mamaroneck, New York.

31. Plaintiff is a member of the proposed Class herein.

CLASS DEFINITIONS

32. Plaintiff brings this action pursuant to F.R.C.P. 23 on behalf of himself and all others similarly situated including the Class as follows:

33. Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal or should have been included in the recall.

34. Excluded from the Class are:

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a.) Defendants' officers and directors;

b.) Any judge or judicial officer assigned to this matter and his or her immediate family; and

c.) Any legal representative, successor, or assign of any excluded person or entity.

35. Plaintiff is a member of the class as defined above.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class.

36. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common basis. The proposed Class is so numerous that joinder is impractical. This disposition of these claims through this Class Action will be more efficient and will benefit the parties and the Court. The identities of the individual members of the Plaintiff Class are ascertainable through, inter alia, sales receipts and/or corporate records. Further, the Plaintiff Class may be informed of the pendency of the class action by direct mail, internet, or other means.

Predominance of Common Questions of Law and Fact.

37. A well defined community of interest in the questions of law and fact common to the Toyota New York Class predominate over questions affecting only individual Plaintiff Class Members including, but not limited to:

d) Whether Defendants manufactured and/or marketed and sold defective vehicles;

e) Whether Defendants failed to give adequate and timely warning of the dangers of their vehicles;

f) Whether Defendants concealed adverse information from plaintiff and the plaintiff class

members regarding the Subject Vehicles;

g) Whether Defendants violated applicable New York State consumer protection laws;

h) Whether Plaintiff and the Plaintiff Class Members are entitled to recover compensatory, exemplary, punitive, and/or other damages as a result of Defendants' negligent and unlawful conduct;

I) What the proper mechanism is for assessing and awarding damages and administering relief to the Plaintiff Class Members, including the relief to reduce and threat of future harm, to the Plaintiff Class Members;

j) Whether Defendants' conduct in manufacturing, failing to warn, selling and/or promoting and/or marketing and/or distributing the Subject Vehicles fell below the duty of care owed by Defendants to Plaintiff and the Plaintiff Class Members;

k) Whether Defendants negligently, recklessly, or intentionally concealed information about the safety of the Subject Vehicles from the Plaintiff and the Plaintiff Class Members;

l) Whether Defendants are strictly liable in tort for selling a defective product;

m) Whether Defendants' conduct constitutes negligence;

n) Whether Defendants breached express warranties;

o) Whether Defendants breached implied warranties of merchantability;

p) Whether defendants acted to defraud, misrepresent, and deceive the Plaintiff and/or the Plaintiff Class Members;

q) Whether Plaintiff and the Plaintiff Class Members have sustained irreparable harm and whether they are entitled to equitable relief including restitution and/or refund and, if so, the nature and extent of such damages;

r) Whether the Plaintiff and the Plaintiff Class Members are entitled to compensatory damages and, if so, the nature and extent of such damages;

s) Whether Defendants are liable for punitive damages and, if so, how much is necessary and appropriate to punish them for their conduct, deter others and fulfill the policies and purposes of punitive and/or exemplary damages; and

t) How any and all punitive and/or exemplary damages awarded to Plaintiff should be equitably allocated among the Plaintiff and the Plaintiff Class Members.

Typicality.

38. Having been a victim of Defendants' unlawful and negligent conduct, plaintiff is a member of the Toyota New York Class. Plaintiff purchased a 2006 Toyota Camry. All members of the Plaintiff Class have purchased and/or leased a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal. Plaintiff and members of the Toyota New York Class have similarly suffered harm arising from Defendants' violations of law and negligent conduct as alleged herein.

Adequacy of Representation.

39. Plaintiff will fairly and adequately represent and protect the interests of the class because (I) plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class; (ii) plaintiff and his counsel are aware of no conflicts of interest between plaintiff and absent class members or otherwise; and (iii) plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the

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prosecution of this litigation.

Superiority.

40. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (I) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinder of all class members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class; (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on many class members; and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise of the same circumstances and course of conduct. Additionally, notice of the pendency and/or resolution of this class action can be provided to the Plaintiff Class Members by direct mail, as upon information and belief, Defendants herein have kept detailed records as to their sale of the Subject Vehicles.

41. This action is also properly certified under the provisions of F.R.C.P. 23 because:

a.) the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistency of varying adjudications with respect to individual Plaintiff Class Members, thus establishing incompatible standards of conduct for Defendants; and

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b.) due to the nature of the relief sought, the prosecution of separate actions by the individual members of the Plaintiff Class would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other members of the Plaintiff Class not parties to such adjudications or would substantially impair or impede the ability of such members of the Plaintiff Class to protect their interests.

AS AND FOR A FIRST CAUSE OF ACTION

Negligence and Negligence *Per Se*

42. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 41, as if set forth fully at length herein.

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

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

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

46. Toyota breached its duty of reasonable care to Plaintiff and the Plaintiff Members by

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failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

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

48. Defendants' actions and/or inactions, as set forth herein, by virtue of violating statutes, ordinances and/or rules and/or regulations, constitute negligence per se.

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

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

AS AND FOR A SECOND CAUSE OF ACTION

Strict Liability

51. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 50, as if set forth fully at length herein.

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

53. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Subject Vehicles, including Plaintiff and the Plaintiff

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Class members; consequently, Plaintiff and the Plaintiff Class Members were expected users of the Subject Vehicles which Toyota manufactured.

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

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

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

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

58. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

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AS AND FOR A THIRD CAUSE OF ACTION

Breach of Express Warranty

59. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 58, as if set forth fully at length herein.

60. Defendants expressly warranted and represented to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and fit for their reasonably intended use.

61. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not fit for their reasonably intended use, and defective and cause injury to its consumers.

62. The Subject Vehicles do not confirm to these express warranties and representations because the Subject Vehicles are not safe and are, in fact, associated with numerous defects including, but not limited to, defects in the Subject Vehicles' gas pedal.

63. The Defendants herein breached the aforesaid express warranties, as the Subject Vehicles were negligently manufactured and/or designed.

64. As a direct and proximate result of the breach of said warranties and representations, Plaintiff and the Plaintiff Class Members suffered damages.

65. Plaintiff and the Plaintiff Class Members did rely on the express warranties of the Defendants herein.

66. Defendants knew or should have known that the aforesaid representations and warranties were false, misleading and untrue, in that the Subject Vehicles were not safe or fit for their reasonably intended use and, in fact, are associated with numerous defects, including, but not limited to, defects in the Subject Vehicles' gas pedal.

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67. As a direct and proximate cause of Toyota's breach of the aforesaid express warranties, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FOURTH CAUSE OF ACTION

Breach of Implied Warranty

68. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 67, as if set forth fully at length herein.

69. At all pertinent times, Defendants manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted, and sold the Subject Vehicles.

70. At the times Defendants marketed, sold, and distributed the Subject Vehicles for use by Plaintiff and the Plaintiff Class Members, Defendants knew of the use for which Defendants' Subject Vehicles were intended and impliedly warranted the product to be merchantable quality and fit for such use.

71. The Defendants impliedly represented and warranted to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and of merchantable quality and fit for the ordinary use for which said product was to be used.

72. Said representations and warrantied aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not merchantable quality,

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and defective and cause injury to its customers.

73. Plaintiff and the Plaintiff Class Members relied on said implied warranty of merchantability of fitness for a particular use and purpose.

74. Plaintiff and the Plaintiff Class Members reasonably relied upon the skill and judgment of Defendants as to whether the Subject Vehicles were of merchantable quality and safe and fit for their intended use.

75. The Subject Vehicles were placed into the stream of commerce by Defendants in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to, and did, reach users, handlers, and persons coming into contact with said product without substantial change in the condition in which they were sold.

76. The Defendants herein breached the aforesaid implied warranties, as the Subject Vehicles were not fit for their intended purposes and uses.

77. As a direct and proximate cause of Toyota's breach of the aforesaid implied warranties, Plaintiff and the Plaintiff Class Members have sustained and will continued to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FIFTH CAUSE OF ACTION

Unfair and Deceptive Trade Practice
In Violation of New York General Business Law §§349 and 350

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78. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 77, as if set forth fully at length herein.

79. Defendants engaged in consumer-oriented, commercial conduct by selling and advertising the Subject Vehicles.

80. Defendants misrepresented and omitted material information regarding the Subject Vehicles by failing to disclose known risks and defects.

81. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of the Subject Vehicles in violation of the New York General Business Law ("GBL") §349 and §350 and other similar statutes.

82. New York has enacted statutes to protect consumers from deceptive, fraudulent, and unconscionable trade and business practices. Defendants violated these statutes by knowingly and falsely representing that the Subject Vehicles were fit to be used for the purposes for which they were intended, when Defendants knew they were defective and dangerous, and by other acts alleged herein.

83. Defendants engaged in the deceptive acts and practices alleged herein in order to sell the Subject Vehicles to the public, including Plaintiff and Plaintiff Class members.

84. As a direct and proximate result of the Defendants' violations of GBL §349 and §350 and other similar statutes, Plaintiff and the Plaintiff Class members have suffered damages, for which they are entitled to compensatory damages, equitable and declaratory relief, punitive

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damages, costs, and reasonable attorneys' fees. Plaintiff and class members do not seek damages under the statutory provision allowing for a $50 minimum award.

AS AND FOR A SIXTH CAUSE OF ACTION

(Unjust Enrichment)

85. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶1 through 84, as if set forth fully at length herein.

86. Defendants have received benefits from Plaintiff and the members of the Plaintiff Class in the form of the prices Plaintiff and the members of the Plaintiff Class paid for the Subject Vehicles.

87. By failing to disclose to the Plaintiff and the members of the Plaintiff Class and the public in general that the Subject Vehicles are not safe for their intended purposes, the Defendants reaped millions of dollars in profits that they otherwise would not have obtained and caused Plaintiff and them members of the Plaintiff Class to expend money on the Subject Vehicles.

88. Defendants are aware of their receipt of those benefits.

Defendants received those benefits to the detriment of Plaintiff and each of the other members of the Plaintiff Class.

89. Under these circumstances, it would be inequitable and against good conscience for Defendants to retain those benefits.

90. As a direct and proximate result of the foregoing, Plaintiff and the Plaintiff Class members have suffered damages in an amount to be determined at trail and seek full disgorgement and restitution of Defendants' ill-gotten gains acquired as a result of the unlawful or wrongful

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conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment against the Defendants, jointly and severally, as follows:

I) an order, entered as soon as practicable, certifying the Plaintiff Class pursuant to Federal Rules of Civil Procedure Rule 23(a),(b)(2) and (b)(3), appointing FRED SANDER, as class representative and appointing LAW OFFICES OF ROBERT M. BRILL, LLC, and BECNEL LAW FIRM, LLC as counsel to the Plaintiff Class;

ii) equitable, injunctive and declaratory relief;

iii) damages for plaintiff and other class members in an amount to be determined at trial, but in an amount exceeding the jurisdictional limits;

iv) pre-judgment and post-judgment interest at the maximum rate allowable at law;

v) treble, exemplary, and/or punitive damages in an amount to be determined at trial;

vi) the costs and disbursements incurred by Plaintiff and the Plaintiff Class Members in connection with this action, including reasonable attorneys' fees;

vii) awarding all statutory damages; and

viii) granting such other relief as the Court deems just and proper under all applicable state and federal law.

Dated: New York, New York
February10, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

By: _____
Anita M. Jaskot, Esq. (AJ-6613)

TOY-RQ-05E-00011858

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BECNEL LAW FIRM, LLC
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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiff individually and on behalf of the Plaintiff Class Members, hereby demands a trial by jury as to all issues so triable.

Dated: New York, New York
February 9, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

By: _____
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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516188132

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in New York**

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:	Fred Sander, individually and on behalf of all others similarly situated, Pltfs. vs. Toyota Motor Sales, U.S.A., Inc., et al., Dfts.
DOCUMENT(S) SERVED:	Letter, Summons, Complaint, Demand
COURT/AGENCY:	Southern District of New York: United States District Court, NY Case # 10CV1111
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Class action - Concerning recall by Toyota in 1/2010 for defects in the vehicle's gas pedal
ON WHOM PROCESS WAS SERVED:	C T Corporation System, New York, NY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/22/2010 postmarked on 02/18/2010
APPEARANCE OR ANSWER DUE:	Within 21 days after service, not counting the day of receipt
ATTORNEY(S) / SENDER(S):	Anita Jaskot Law Offices of Robert M. Brill, LLC 880 Third Avenue, 13th Floor New York, NY 10022 (212) 935-7900
REMARKS:	Papers were served on the New York State Secretary of State on 2/16/10.
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799510960503 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:	Christopher Tilton
ADDRESS:	111 Eighth Avenue New York, NY 10011
TELEPHONE:	212-894-8940

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.

State of New York - Department of State
Division of Corporations

Party Served:
TOYOTA MOTOR SALES U.S.A., INC.

Plaintiff/Petitioner:
SANDER, FRED

C/O C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NY 10011

Dear Sir/Madam:
Enclosed herewith is a legal document which was served upon the Secretary of State on 02/16/2010 pursuant to SECTION 306 OF THE BUSINESS CORPORATION LAW. This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,
Division of Corporations

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Fred Sander individually and behalf of all others similarly situated,

Plaintiff

v.

Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Engineering etc.

Defendant

10 CV 1111

Civil Action No.

Judge Hellerstein

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc.
c/o 19001 South Western Avenue, Torrance, California 90501
Toyota Motor Engineering & Manufacturing North America, Inc.
25 Atlantic Avenue, Erlanger, Kentucky 41018

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Anita Jaskot, Esq.
Law Offices of Robert M. Brill, LLC
880 Third Avenue, 13th Floor,
New York, New York 10022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

J. MICHAEL MCMAHON

CLERK OF COURT

FEB 11 2010

Date: 02/10/2010

Catherine Lapsley

Signature of Clerk or Deputy Clerk

Judge Hellerstein 10 CV 1111

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

FRED SANDER Individually,
and on behalf of all others similarly situated,

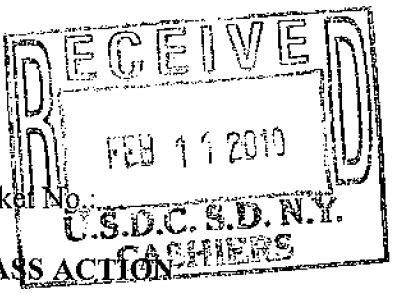
Plaintiff,

-against-

TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA MOTOR NORTH AMERICA, INC.; and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC.,

Defendants.

----------X



Docket No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Fred Sander ("Plaintiff"), by and through his undersigned attorneys, the Law Offices of Robert M. Brill, LLC, and Becnel Law Firm, LLC., brings this action individually and on behalf of the Class identified below against defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and for his Complaint alleges, upon information and belief and based on the investigation to date of his counsel, as follows:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of himself and all citizens, residents, or domiciliaries of the State of New York who own and/or lease Toyota vehicles for model years 2005-2010, which were subject to various recalls in January of 2010, pursuant to Rule 23 of the Federal Rules of Civil Procedures, and seeks to recover compensatory, equitable, and actual and punitive damages,

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injunctive relief, and attorneys' fees.

2. Plaintiff seeks to represent the following Class:

Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to the recall by Toyota in January 2010 for defects in the vehicle's gas pedal.

3. Defendants TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. (hereinafter collectively referred to as "Defendants" and/or "Toyota"), designed, manufactured, marketed, assembled, inspected, sold and/or distributed the Toyota vehicles of model years 2005, 2006, 2007, 2008, 2009 and/or 2010, which were subject to recall in January, 2010.

4. The affected models are the 2009 and 2010 Toyota RAV4, the 2009-2010 Toyota Corolla, the 2009-2010 Toyota Matrix, the 2009-2010 Pontiac Vice, the 2010 Toyota Highlander, the 2007-2010 Toyota Tundra, the 2008-2010 Toyota Sequoia, and the 2006-2010 Toyota Camry (the "Subject Vehicles").

5. Upon information and belief, some 5.3 million vehicles have been recalled by the Defendants due to defects in accelerator pedals to date, which can unexpectedly become stuck in place and send the vehicle into a rapid, uncontrollable, and unsafe acceleration.

THE PARTIES

6. Plaintiff is a resident of the United State of America, residing in the State, City, and County of New York.

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7. Upon information and belief, 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.

8. Upon information and belief, 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.

9. Upon information and belief, 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.

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

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1332(d)(2) (diversity jurisdiction), in that (I) there is complete diversity (the plaintiff is a citizen of New York and defendants are domiciled in California and Kentucky, and, in all events, not New York, and, to the extent pertinent, maintain their principal places of business in California and Kentucky, and, in all events, not New York), ii) the amount in controversy exceeds $5,000,000.00, exclusive of interest and costs, and (iii) there are 100 or more members of the proposed Plaintiff Class.

12. Venue lies in this district, pursuant to 28 U.S.C. §1391(a), because plaintiff resides in this Judicial District, and a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this Judicial District. In addition, defendants do business and/or transact business in this

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Judicial District, and, therefore, are subject to personal jurisdiction in this Judicial District and reside here for venue purposes.

13. At all times relevant hereto, Defendants were engaged in the business of designing, manufacturing, assembling, inspecting, marketing, selling and/or distributing the Subject Vehicles.

14. At all times relevant hereto, Defendants placed the Subject Vehicles into the stream of interstate commerce.

15. As a direct and proximate result of Defendants placing the Subject Vehicles into the stream of interstate commerce, Plaintiff and the Plaintiff Class Members have suffered and continue to suffer damages, and will continue to suffer such damages indefinitely.

16. Upon information and belief, at all times relevant hereto, Defendants were present and doing business in the State of New York and throughout the United States.

17. At all times relevant, Defendants transacted, solicited, and conducted business in the State of New York and throughout the United States and derived substantial revenue from such business.

18. At all relevant times, Defendants expected or should have expected that their acts would have consequences within the State of New York, and this judicial district in particular.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

19. This action is brought by the Plaintiff as a class action on behalf of all citizens, residents or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold, and/or distributed by Defendants, which were or should have been subject to the

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recall by Toyota in January 2010 for defects in the vehicle's gas pedal, and who have been subjected to Defendants' conduct outlined in this class action complaint.

20. Plaintiff, for himself and on behalf of the Plaintiff Class, described more fully below, seeks monetary and injunctive relief against Defendants to redress Defendants' unlawful conduct and to prevent this conduct from occurring in the future.

21. 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.

22. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2. million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

23. 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.

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

25. In or about August 2009, the National Highway Traffic Safety Administration ("NHTSA"), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

26. On September 29, 2009, 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

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the vehicle.

27. 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.

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

29. The affected models are the Subject Vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

30. On November 28, 2008, plaintiff purchased a Toyota Camry, model year 2006, VIN No.: 4T1BE32K36U702420 from DCH Toyota City, in Mamaroneck, New York.

31. Plaintiff is a member of the proposed Class herein.

CLASS DEFINITIONS

32. Plaintiff brings this action pursuant to F.R.C.P. 23 on behalf of himself and all others similarly situated including the Class as follows:

33. Toyota New York Class: All citizens, residents, or domiciliaries of the State of New York who own and/or lease a Toyota vehicle of model years 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal or should have been included in the recall.

34. Excluded from the Class are:

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a.) Defendants' officers and directors;

b.) Any judge or judicial officer assigned to this matter and his or her immediate family; and

c.) Any legal representative, successor, or assign of any excluded person or entity.

35. Plaintiff is a member of the class as defined above.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class.

36. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common basis. The proposed Class is so numerous that joinder is impractical. This disposition of these claims through this Class Action will be more efficient and will benefit the parties and the Court. The identities of the individual members of the Plaintiff Class are ascertainable through, inter alia, sales receipts and/or corporate records. Further, the Plaintiff Class may be informed of the pendency of the class action by direct mail, internet, or other means.

Predominance of Common Questions of Law and Fact.

37. A well defined community of interest in the questions of law and fact common to the Toyota New York Class predominate over questions affecting only individual Plaintiff Class Members including, but not limited to:

d) Whether Defendants manufactured and/or marketed and sold defective vehicles;

e) Whether Defendants failed to give adequate and timely warning of the dangers of their vehicles;

f) Whether Defendants concealed adverse information from plaintiff and the plaintiff class

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members regarding the Subject Vehicles;

g) Whether Defendants violated applicable New York State consumer protection laws;

h) Whether Plaintiff and the Plaintiff Class Members are entitled to recover compensatory, exemplary, punitive, and/or other damages as a result of Defendants' negligent and unlawful conduct;

I) What the proper mechanism is for assessing and awarding damages and administering relief to the Plaintiff Class Members, including the relief to reduce and threat of future harm, to the Plaintiff Class Members;

j) Whether Defendants' conduct in manufacturing, failing to warn, selling and/or promoting and/or marketing and/or distributing the Subject Vehicles fell below the duty of care owed by Defendants to Plaintiff and the Plaintiff Class Members;

k) Whether Defendants negligently, recklessly, or intentionally concealed information about the safety of the Subject Vehicles from the Plaintiff and the Plaintiff Class Members;

l) Whether Defendants are strictly liable in tort for selling a defective product;

m) Whether Defendants' conduct constitutes negligence;

n) Whether Defendants breached express warranties;

o) Whether Defendants breached implied warranties of merchantability;

p) Whether defendants acted to defraud, misrepresent, and deceive the Plaintiff and/or the Plaintiff Class Members;

q) Whether Plaintiff and the Plaintiff Class Members have sustained irreparable harm and whether they are entitled to equitable relief including restitution and/or refund and, if so, the nature and extent of such damages;

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r) Whether the Plaintiff and the Plaintiff Class Members are entitled to compensatory damages and, if so, the nature and extent of such damages;

s) Whether Defendants are liable for punitive damages and, if so, how much is necessary and appropriate to punish them for their conduct, deter others and fulfill the policies and purposes of punitive and/or exemplary damages; and

t) How any and all punitive and/or exemplary damages awarded to Plaintiff should be equitably allocated among the Plaintiff and the Plaintiff Class Members.

Typicality.

38. Having been a victim of Defendants' unlawful and negligent conduct, plaintiff is a member of the Toyota New York Class. Plaintiff purchased a 2006 Toyota Camry. All members of the Plaintiff Class have purchased and/or leased a Toyota vehicle of model year 2005, 2006, 2007, 2008, 2009, and/or 2010 designed, manufactured, marketed, assembled, inspected, sold and/or distributed by Defendants, which was or should have been subject to recall by Toyota in January 2010 for defects in the vehicle's gas pedal. Plaintiff and members of the Toyota New York Class have similarly suffered harm arising from Defendants' violations of law and negligent conduct as alleged herein.

Adequacy of Representation.

39. Plaintiff will fairly and adequately represent and protect the interests of the class because (I) plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class; (ii) plaintiff and his counsel are aware of no conflicts of interest between plaintiff and absent class members or otherwise; and (iii) plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the

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prosecution of this litigation.

Superiority.

40. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (I) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinder of all class members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class; (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on many class members; and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise of the same circumstances and course of conduct. Additionally, notice of the pendency and/or resolution of this class action can be provided to the Plaintiff Class Members by direct mail, as upon information and belief, Defendants herein have kept detailed records as to their sale of the Subject Vehicles.

41. This action is also properly certified under the provisions of F.R.C.P. 23 because:

a.) the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistency of varying adjudications with respect to individual Plaintiff Class Members, thus establishing incompatible standards of conduct for Defendants; and

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b.) due to the nature of the relief sought, the prosecution of separate actions by the individual members of the Plaintiff Class would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other members of the Plaintiff Class not parties to such adjudications or would substantially impair or impede the ability of such members of the Plaintiff Class to protect their interests.

AS AND FOR A FIRST CAUSE OF ACTION

Negligence and Negligence *Per Se*

42. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 41, as if set forth fully at length herein.

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

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

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

46. Toyota breached its duty of reasonable care to Plaintiff and the Plaintiff Members by

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failing to recall the Subject Vehicles at the earliest possible date and instead blaming the defect on a much less dangerous supposed "floor mat" defect.

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

48. Defendants' actions and/or inactions, as set forth herein, by virtue of violating statutes, ordinances and/or rules and/or regulations, constitute negligence per se.

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

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

AS AND FOR A SECOND CAUSE OF ACTION

Strict Liability

51. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 50, as if set forth fully at length herein.

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

53. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Subject Vehicles, including Plaintiff and the Plaintiff

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Class members; consequently, Plaintiff and the Plaintiff Class Members were expected users of the Subject Vehicles which Toyota manufactured.

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

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

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

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

58. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

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AS AND FOR A THIRD CAUSE OF ACTION

Breach of Express Warranty

59. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 58, as if set forth fully at length herein.

60. Defendants expressly warranted and represented to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and fit for their reasonably intended use.

61. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not fit for their reasonably intended use, and defective and cause injury to its consumers.

62. The Subject Vehicles do not confirm to these express warranties and representations because the Subject Vehicles are not safe and are, in fact, associated with numerous defects including, but not limited to, defects in the Subject Vehicles' gas pedal.

63. The Defendants herein breached the aforesaid express warranties, as the Subject Vehicles were negligently manufactured and/or designed.

64. As a direct and proximate result of the breach of said warranties and representations, Plaintiff and the Plaintiff Class Members suffered damages.

65. Plaintiff and the Plaintiff Class Members did rely on the express warranties of the Defendants herein.

66. Defendants knew or should have known that the aforesaid representations and warranties were false, misleading and untrue, in that the Subject Vehicles were not safe or fit for their reasonably intended use and, in fact, are associated with numerous defects, including, but not limited to, defects in the Subject Vehicles' gas pedal.

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67. As a direct and proximate cause of Toyota's breach of the aforesaid express warranties, Plaintiff and the Plaintiff Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FOURTH CAUSE OF ACTION

Breach of Implied Warranty

68. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 67, as if set forth fully at length herein.

69. At all pertinent times, Defendants manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted, and sold the Subject Vehicles.

70. At the times Defendants marketed, sold, and distributed the Subject Vehicles for use by Plaintiff and the Plaintiff Class Members, Defendants knew of the use for which Defendants' Subject Vehicles were intended and impliedly warranted the product to be merchantable quality and fit for such use.

71. The Defendants impliedly represented and warranted to Plaintiff and the Plaintiff Class Members that the Subject Vehicles were safe and of merchantable quality and fit for the ordinary use for which said product was to be used.

72. Said representations and warrantied aforementioned are false, misleading, and inaccurate in that the Subject Vehicles are unsafe, unreasonably dangerous, improper, not merchantable quality,

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and defective and cause injury to its customers.

73. Plaintiff and the Plaintiff Class Members relied on said implied warranty of merchantability of fitness for a particular use and purpose.

74. Plaintiff and the Plaintiff Class Members reasonably relied upon the skill and judgment of Defendants as to whether the Subject Vehicles were of merchantable quality and safe and fit for their intended use.

75. The Subject Vehicles were placed into the stream of commerce by Defendants in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to, and did, reach users, handlers, and persons coming into contact with said product without substantial change in the condition in which they were sold.

76. The Defendants herein breached the aforesaid implied warranties, as the Subject Vehicles were not fit for their intended purposes and uses.

77. As a direct and proximate cause of Toyota's breach of the aforesaid implied warranties, Plaintiff and the Plaintiff Class Members have sustained and will continued to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its reasonably intended use. Plaintiff and the Plaintiff Class Members are therefore entitled to equitable relief as described below.

AS AND FOR A FIFTH CAUSE OF ACTION

Unfair and Deceptive Trade Practice
In Violation of New York General Business Law §§349 and 350

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78. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶¶ 1 through 77, as if set forth fully at length herein.

79. Defendants engaged in consumer-oriented, commercial conduct by selling and advertising the Subject Vehicles.

80. Defendants misrepresented and omitted material information regarding the Subject Vehicles by failing to disclose known risks and defects.

81. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of the Subject Vehicles in violation of the New York General Business Law ("GBL") §349 and §350 and other similar statutes.

82. New York has enacted statutes to protect consumers from deceptive, fraudulent, and unconscionable trade and business practices. Defendants violated these statutes by knowingly and falsely representing that the Subject Vehicles were fit to be used for the purposes for which they were intended, when Defendants knew they were defective and dangerous, and by other acts alleged herein.

83. Defendants engaged in the deceptive acts and practices alleged herein in order to sell the Subject Vehicles to the public, including Plaintiff and Plaintiff Class members.

84. As a direct and proximate result of the Defendants' violations of GBL §349 and §350 and other similar statutes, Plaintiff and the Plaintiff Class members have suffered damages, for which they are entitled to compensatory damages, equitable and declaratory relief, punitive

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damages, costs, and reasonable attorneys' fees. Plaintiff and class members do not seek damages under the statutory provision allowing for a $50 minimum award.

AS AND FOR A SIXTH CAUSE OF ACTION

(Unjust Enrichment)

85. Plaintiff, on behalf of himself and all others similarly situated, repeats and realleges ¶1 through 84, as if set forth fully at length herein.

86. Defendants have received benefits from Plaintiff and the members of the Plaintiff Class in the form of the prices Plaintiff and the members of the Plaintiff Class paid for the Subject Vehicles.

87. By failing to disclose to the Plaintiff and the members of the Plaintiff Class and the public in general that the Subject Vehicles are not safe for their intended purposes, the Defendants reaped millions of dollars in profits that they otherwise would not have obtained and caused Plaintiff and them members of the Plaintiff Class to expend money on the Subject Vehicles.

88. Defendants are aware of their receipt of those benefits.

Defendants received those benefits to the detriment of Plaintiff and each of the other members of the Plaintiff Class.

89. Under these circumstances, it would be inequitable and against good conscience for Defendants to retain those benefits.

90. As a direct and proximate result of the foregoing, Plaintiff and the Plaintiff Class members have suffered damages in an amount to be determined at trail and seek full disgorgement and restitution of Defendants' ill-gotten gains acquired as a result of the unlawful or wrongful

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conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment against the Defendants, jointly and severally, as follows:

I) an order, entered as soon as practicable, certifying the Plaintiff Class pursuant to Federal Rules of Civil Procedure Rule 23(a),(b)(2) and (b)(3), appointing FRED SANDER, as class representative and appointing LAW OFFICES OF ROBERT M. BRILL, LLC, and BECNEL LAW FIRM, LLC as counsel to the Plaintiff Class;

ii) equitable, injunctive and declaratory relief;

iii) damages for plaintiff and other class members in an amount to be determined at trial, but in an amount exceeding the jurisdictional limits;

iv) pre-judgment and post-judgment interest at the maximum rate allowable at law;

v) treble, exemplary, and/or punitive damages in an amount to be determined at trial;

vi) the costs and disbursements incurred by Plaintiff and the Plaintiff Class Members in connection with this action, including reasonable attorneys' fees;

vii) awarding all statutory damages; and

viii) granting such other relief as the Court deems just and proper under all applicable state and federal law.

Dated: New York, New York
February 10, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

By: _____
Anita M. Jaskot, Esq. (AJ-6613)

TOY-RQ-05E-00011882

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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiff individually and on behalf of the Plaintiff Class Members, hereby demands a trial by jury as to all issues so triable.

Dated: New York, New York
February 9, 2010

LAW OFFICES OF ROBERT M. BRILL, LLC

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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED SANDER Individually,
and on behalf of all others similarly situated,

Plaintiff,

-against-

TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA MOTOR NORTH AMERICA, INC.; and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC.,

Defendants.

CLASS ACTION COMPLAINT

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Attorneys for Plaintiff Fred Sander on his own behalf and on behalf of all others similarly situated

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DEPARTMENT OF STATE
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED SANDER, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, v. TOYOTA MOTOR SALES, U.S.A., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC Defendants.	10 Civ. 1111 (AKH) **NOTICE OF APPEARANCE**

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for defendant

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

I certify that I am admitted to practice in this court.

Dated: March 3, 2010

Karl Geercken
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED SANDER, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, v. TOYOTA MOTOR SALES, U.S.A., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC Defendants.	10 Civ. 1111 (AKH) **NOTICE OF APPEARANCE**

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for defendant

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

I certify that I am admitted to practice in this court.

Dated: March 3, 2010

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED SANDER, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, v. TOYOTA MOTOR SALES, U.S.A., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC Defendants.	10 Civ. 1111 (AKH) **DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S RULE 7.1 DISCLOSURE STATEMENT**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Defendant Toyota Motor Sales, U.S.A., Inc. hereby makes the following disclosure. Toyota Motor Corporation is the only publicly-held corporation owning 10% or more of Toyota Motor Sales, U.S.A., Inc.'s stock.

Respectfully submitted this 3rd day of March, 2010.

ALSTON & BIRD LLP

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TOY-RQ-05E-00011889

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:10-cv-01111-AKH

Sander et al v. Toyota Motor Sales, U.SA., Inc. et al
Assigned to: Judge Alvin K. Hellerstein
Demand: $5,000,000
Cause: 28:1332 Diversity-Other Contract

Date Filed: 02/11/2010
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

Fred Sander
Individually

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Plaintiff

Fred Sander
On behalf of all others similarly situated

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V.

Defendant

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Defendant

Toyota Motor North America, Inc.

Defendant

Toyota Motor Engineering &Manufacturing North America Inc.

Date Filed	#	Docket Text
02/11/2010	1	COMPLAINT against Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America Inc., Toyota Motor Sales, U.SA., Inc.. (Filing Fee $ 350.00, Receipt Number 894103)Document filed by Fred Sander(Individually), Fred Sander(On behalf of all others similarly situated).(rdz) (Entered: 02/18/2010)
02/11/2010		SUMMONS ISSUED as to Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America Inc., Toyota Motor Sales, U.SA., Inc.. (rdz) (Entered: 02/18/2010)
02/11/2010		Magistrate Judge Henry Pitman is so designated. (rdz) (Entered: 02/18/2010)
02/11/2010		Case Designated ECF. (rdz) (Entered: 02/18/2010)
03/03/2010	2	NOTICE OF APPEARANCE by Karl Geercken on behalf of Toyota Motor Sales, U.SA., Inc. (Geercken, Karl) (Entered: 03/03/2010)
03/03/2010	3	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Toyota Motor Corporation as Corporate Parent. Document filed by Toyota Motor Sales, U.SA., Inc..(Geercken, Karl) (Entered: 03/03/2010)
03/03/2010	4	NOTICE OF APPEARANCE by Kristin Ann Meister on behalf of Toyota Motor Sales, U.SA., Inc. (Meister, Kristin) (Entered: 03/03/2010)

FILE START

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JERRY BAKER AUTO SALES, LLC,
Individually and on behalf of others
similarly situated

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90501

Agent for Service of Process:
CT Corporation System
1300 E. Ninth Street
Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Avenue
Erlanger, KY 41018

Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

TOYOTA MOTOR CORPORATION
1, Toyota-cho
Toyota, Aichi 471-8571 Japan,

See service instructions
in "Parties" section below

Defendants.

CASE NO: _____

JUDGE: _____

CLASS ACTION COMPLAINT

Jury Demand Endorsed Hereon

TOY-RQ-05E-00011893

For his Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation, Plaintiff, Jerry Baker Auto Sales, LLC, states, based upon personal knowledge, information and belief, and the investigation of his counsel, as follows:

OVERVIEW OF CLAIM

1. There is a daily cost for holding pre-owned inventory on a used car lot and used cars lose their value while sitting on a used car lot for an extended period of time. Profit margins for used cars begin to dramatically decline after the vehicles are on a lot for more than 30 days. Further, there are costs incurred in holding vehicles in inventory. Formulas can be used by dealers to determine the "Days in Stock Break – Even Point" which identifies the number of days a vehicle can remain in the used vehicle inventory before profitability on that vehicle hits a "break-even point." Cars that cannot be sold in a certain time period or at a profit are wholesaled at auction or sold to another dealer.

2. Automotive dealers either pay cash or use debt (a "floor plan") to finance used vehicle inventory. Regardless of which avenue a dealer uses, each day a car sits unsold on a dealer's lot, there is a daily cost associated with holding that car.

3. Most dealerships have a low threshold for adversity and liquidity and cash positions are affected very quickly. For example, having $200,000.00 in cash tied up in ten to twelve recalled vehicles that can't be sold can cripple a dealership. Dealers that rely on debt (floor plan) to finance their dealership have even a higher risk and less ability to withstand hardship because payments to reduce the principal amount must be made on the balance of the unsold inventory. A dealership should not have any more money tied-up in inventory than is absolutely necessary. This is why dealers will sell vehicles to other dealers, even if they have

to do so at a loss. Doing so eases cash considerations even though the vehicle did not make a profit. Excess inventory levels have negative consequences on cash flow and, consequently, on the ability to meet the cash demands of an ongoing business.

4. Because of Toyota's Stop Sales Orders and multiple recalls, all of which will be described below, used car dealers were forced to pull popular models from their lots and have not even had the opportunity to sell the vehicles subject to the recall to the public, other dealers or auto auction houses. Thus, dealers' money has been tied up in inventory with no chance of a foreseeable return. If "floor planned," the dealers have carried interest and other costs associated with holding the cars during the pendency of the recall. If the inventory was financed with cash, dealers are unable to realize a financial return on the cash tied up in the unsold Toyota inventory. Automotive auction houses have, likewise, been forced to carry expenses on vehicles subject to the Stop Sale Order. Finally, there is now a stigma associated with the recalled vehicles and the values of the recalled vehicles have dropped far below pre-recall and Stop Sales Order levels, further harming dealers and auction houses who own the recalled vehicles. All of these damages have been caused by Toyota's actions as described below.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the named Plaintiff and the Defendants are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) in that the amount in controversy exceeds the sum or value of $5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants. Finally, the Court has

jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1447 original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

6. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

PARTIES

7. Plaintiff, Jerry Baker Auto Sales LLC is a Missouri limited liability company with its principal place of business in Sedalia, Missouri. Plaintiff is in the business of purchasing and reselling vehicles. Plaintiff is the owner of a 2008 Toyota Highlander and 2007 Toyota Tacoma manufactured and sold by the Defendants and the subject of a Stop Sale Order and recall described below. Plaintiff specifically purchased these vehicles for the purpose of reselling them at a profit to the general public. Plaintiff brings this action on behalf of itself and all other similarly situated automotive sales businesses and automotive auction houses as more fully described herein.

8. 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.

9. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. (TEMA) is a manufacturing, research and development company owned by Toyota Motor Company with its principal place of business 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.

10. 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 the 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.

THE RECALL AND ASSOCIATED DISRUPTIONS

11. On January 21, 2010, Toyota announced a recall of about 2.3 million vehicles to correct sticking accelerator pedals. In a stunning and unprecedented move, five days later on January 26, 2010, Toyota instructed all of its United States franchised dealers via e-mail to immediately cease selling new models of the recalled vehicles and to refrain from selling certain used and certified used versions of the same models. This instruction is known as a "Stop Sale Order" in the automotive industry.

12. Contemporaneous with the Stop Sale Order, Toyota announced it was ceasing production of the affected vehicles.

13. Toyota vehicles subject to the Stop Sale Order were:

- 2009-2010 RAV4,
- 2009-2010 Corolla,
- 2009-2010 Matrix,
- 2005-2010 Avalon,
- Certain 2007-2010 Camry,
- 2010 Highlander,
- 2007-2010 Tundra,
- 2008-2010 Sequoia

14. In a press release at the time of the Stop Sales Order, Group Vice President and Toyota Division General Manager Bob Carter stated that, "Helping ensure the safety of our customers and restoring confidence in Toyota are very important to our company." Carter continued that, "This action [the Stop Sale Order and cessation of production] is necessary until a remedy is finalized. We're making every effort to address this situation for our customers as quickly as possible."

15. Toyota's Stop Sale Order and the public statements of its officers clearly indicated that the recalled vehicles were unsafe and not fit for wholesale or re-sale until the problem or problems were corrected.

16. On January 28, 2010, two days after Toyota's announcement, the National Automotive Dealers Association (NADA) issued a memorandum to its members regarding Toyota's Stop Sales Order. NADA represents more than 19,700 new car and truck dealers,

both domestic and international, with more than 43,000 separate franchises. NADA serves dealers by following pricing trends on new and used vehicles as well as providing an advocacy association to represent dealerships before the US Congress and other government agencies.

17. The NADA counseled its members that the applicable statutes and code of federal regulations governing a vehicle recall did not specifically prohibit the resale of used vehicles subject to the recall but stated that "there may be potential liability concerns under state law."

18. The National Independent Automobile Dealer Association (NIADA) sent an advisory to all of its members advising that the dealers should not sell any of the vehicles subject to the recall. The Executive Vice President and CEO of the NIADA told members that,

> You cannot sell an UNSAFE vehicle without assuming liability!! Examine your own insurance policies, but I think you will find that in most cases you are not covered under this type of circumstance. You may even modify your purchase agreement referencing the recall with a separate document attached with full disclosure, however you are still selling a vehicle deemed unsafe by its manufacturer.
>
> On the wholesale level, if you purchase one of the listed vehicles, be prepared to hold it in inventory until the solution has been identified and the problem corrected. The manufacturer, as of this afternoon, has not announced a date when a solution to the problem may be identified!

19. Many statewide automobile dealer associations followed suit, advising its members to not sell any vehicles subject to the recall because of associated liability.

20. Used-car retailer CarMax, Inc. publicly announced it was suspending sales of new and used Toyota vehicles included in the recall. In a statement, CarMax said it was "following Toyota's instructions, and vehicles covered by the Jan. 21st recall will currently not be available for sale."

21. The nation's largest used-vehicle auto auction association, The National Auto Auction Association ("NAAA") likewise, recommended that its member auctions temporarily stop selling Toyota cars and trucks that were subject to the recall.

22. "The safety of our customers and employees is our utmost priority, and in that regard, the suspension should continue until the issues have been resolved," the NAAA said in a statement.

23. Manheim, the nation's largest auction company, said it was complying with the recommendation of NAAA and immediately halted sales of the recalled Toyota vehicles at its 81 auction sites in the United States and Canada and on its OVE.com electronic sales channel. Manheim controls roughly half of the used-vehicle auction market in the United States.

24. Auction company ADESA Inc. said it, too, was halting sales of recalled vehicles. ADESA is the second-largest auction company in the United States, with approximately one-fifth of the market.

25. As a result of Toyota's Stop Sale Order and recall, Toyota vehicles subject to the recall have not been sold by the plaintiff and class members during the pendency of the recall and cannot be sold until the problems with the vehicles are corrected. Following the direction of the NADA, NAAA and state association dealers like the plaintiff have followed Toyota's Stop Sale Order.

26. During the pendency of the recall, the value of the vehicles has diminished because of the news of the problem.

27. Publishers of two high profile used vehicle value guide books have trimmed the

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values of used Toyota models included in the automaker's massive recall

28. Kelley Blue Book is the United States' largest automotive vehicle valuation company. The company's website is a source for new and used vehicle pricing and information for consumers. The company has become so identified with its services that the trademarked terms *blue book* and *blue book value* have become synonymous with a car's market value.

29. On February 8, 2010, Kelley Blue Book stated that it was dropping the used-vehicle values of recalled vehicles up to 3 percent. It says the lack of consumer demand for the vehicles and dealers' inability to sell or remarket recalled end-of-lease vehicles could put further pressure on values.

30. A growing inventory of used Toyota vehicles, coupled with a reduction in demand, however slight, only leads to the potential for further devaluation," Kelley said in a statement.

31. In addition to the advocacy provided on behalf of auto dealers, the NADA is one of the primary organizations offering pricing for cars, both new and old. Automotive sales companies use NADA guides to determine wholesale and trade-in values to purchase trade-ins and to buy vehicles at auction before determining a retail sales price.

32. NADA Used Car Guide said Toyota vehicles' retail prices have shown softness, dropping just over 3 percent. That compares to a slight increase in the retail prices of Honda models, NADA guide said.

33. "NADA's position is to lower numbers on most Toyota models in the short-term towards the lower range of prices that we have seen in the auctions," the company said in a statement.

34. "If we see significant downward movement in Toyota's prices next week, it will

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be incorporated in NADA values since we expect the downward shift to last until the recall issue is completely resolved."

35. ALG (Automotive Lease Guide), a company that serves as the source for vehicle leasing companies in setting future residual values for vehicles, states that it appears that Toyotas will lose approximately 5% of their previous residual values going forward.

36. Kelly Blue Book stated that it would further lower the value of the recalled Toyotas another 1.5% on February 12, 2010.

37. The factors driving the prices of used Toyotas down are decreased consumer demand for Toyota vehicles and the inability of dealers and automotive auction companies to sell any of the used Toyota models affected by the recall.

38. As an example of what the new pricing means in the market, a 3% decrease in value to a $15,000 used car means a price drop of $450. A 5% decrease means a drop of $750.

39. Vehicles in the model years affected by the recall are particularly attractive to automotive dealers because dealers typically experience the greatest gross profit selling vehicles zero to two years old.

40. Vehicles in the price range of those affected by the recall are, likewise, particularly attractive to automotive dealers because dealers generally experience the greatest gross profit selling vehicles in this price range.

41. Because of Toyota's Stop Sale Order, the plaintiff and class members have been unable to sell the recalled vehicles on their lots to consumers, other dealers or auction houses.

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As a result, plaintiff and class members have been forced into negative cash positions in regard to the vehicles subject to the Stop Sale Order and to carry unnecessary expenses on those vehicles during this period of time. The recalled vehicles on their lots have lost value and the plaintiff and class members will experience that loss when they are finally able to sell or wholesale the recalled vehicles.

TOYOTA'S PREVIOUS KNOWLEDGE OF THE CAUSE OF SUDDEN ACCELERATION PROBLEMS

42. For at least six years before Toyota's "Stop Sale Order," Toyota ignored evidence that its vehicles caused unexpected sudden acceleration. Importantly, for purposes of this lawsuit, Toyota concealed this adverse information to the detriment of the plaintiff and class for at least a year before the Stop Sale Order in a deliberate attempt to manipulate the retail and wholesale values of their vehicles. Toyota knew that disclosure of these problems would negatively impact the value of its vehicles and the profitability of its companies.

43. Initially, Toyota publicly blamed floor mats for pinning gas pedals and causing the sudden acceleration.

44. Toyota suddenly changed course on January 19, 2010, in a meeting with federal regulators. In that meeting, Toyota admitted that a mechanical defect in its gas pedals was the cause of the problem and that it had known of the problem for over a year. Facing reports of sudden acceleration in Europe, the Toyota European unit had investigated sudden acceleration problems.

45. In December 2008, Toyota's European unit determined that the cause of the sudden acceleration problem was a plastic part in the pedal mechanism widely used in vehicles in the

United States. Instead of announcing the problem, reporting to appropriate regulatory authorities, announcing a recall, or doing anything to correct the problem, Toyota merely redesigned the pedals for some new cars.

46. Upon prodding by federal regulators, Toyota recalled 3.8 million vehicles on October 5, 2009, explaining that bulky floor mats were the cause of the sudden acceleration problems. Toyota attempted to convince owners of the recalled vehicles that the sudden acceleration defect was limited to the gas pedal's interaction with the bulky floor mat and was unrelated to other factors. Toyota also posted a video statement to dispute news reports that unintended acceleration may be related to these other factors.

47. November 3, 2009, Toyota issued a press release saying that federal regulators concluded that "no defect exists" in the recalled vehicles.

48. The next day, federal regulators released their own statement saying that Toyota had put out "inaccurate and misleading information" and that the regulatory agency was still investigating "this very dangerous problem."

49. Federal regulators continued to meet with Toyota in December 2009 and early 2010 about the cause of the sudden acceleration problems.

50. On January 19, 2010, Toyota executives confessed to federal regulators that Toyota had known for more than a year that a design flaw in the gas pedal was the cause of the sudden accelerator problems. The January 21, 2010 recall and the January 26, 2010 Stop Sale Order described above followed shortly thereafter.

51. Toyota knew that before the class period that the vehicles subject to the Stop Sale Order and the recalls (and potentially others) did not operate in the manner intended during normal use.

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Toyota was made aware of the defects well before both the Stop Sale Order and recalls were issued. Toyota's fraudulent concealment of the real problem with the gas pedals causing sudden acceleration and its affirmative misrepresentations that floor mats were the cause and that the vehicles subject to the floor mat recall were safe caused damages to the Plaintiff and class members. Had Toyota timely announced the true problem with the gas pedals, plaintiff and class members would not have purchased the vehicles or paid a lesser price for them.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this case on behalf of itself and a class defined as follows:

All retail and wholesale automotive sales entities that own and / or have purchased for resale vehicles subject to the Stop Sale Order or recall such as 2009-2010 RAV4s, 2009-2010 Corollas, 2009-2010 Matrixs, 2005-2010 Avalons, Certain 2007-2010 Camrys, 2010 Highlanders, 2007-2010 Tundras, and 2008-2010 Sequoias and who purchased said vehicles before the January 21, 2010 recall.

The class excludes any licensed Toyota dealer, the Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to whom this case is assigned.

Plaintiff reserves the right to supplement or amend this definition.

53. 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.

54. The Class definition includes a well-defined time period. The period begins on January 21, 2010 when Toyota announced the recall.

55. The Class defined above is too numerous to make joinder practicable. The precise number of Class Members is unknown to the Plaintiff, but it is clear that there are too many for joinder to be practicable.

56. The Plaintiff is a Member of the Class it seeks to represent and the claims are typical of the claims of the other Class Members. The Plaintiff is the owner of a Toyota vehicle intended for resale and subject to the recall and Stop Sale Order. The Defendants' misconduct complained of herein applies equally to the Plaintiff and Class Members. Like all other Class Members the Plaintiff purchased a vehicle subsequently subjected to the recall and Stop Sale Order. The defect has been fraudulently concealed from the Plaintiff and Class Members alike.

57. The Plaintiff is an adequate representative of the Class and has hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiff nor Plaintiff's counsel have any interests that conflict with those of the Class.

58. 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 knew a year or more before the recall and Stop Sale Order of the defect in their vehicles;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles;

c. Whether the Defendants fraudulently concealed the true nature of the defect;

d. Whether Defendants engaged in a purposeful attempt to inflate or bolster wholesale and retail prices;

e. Whether the Defendants engaged in deceptive conduct by misrepresenting that the defect was due to floor mats; and

f. Whether the Plaintiff and Class Members are entitled to damage.

59. 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.

60. 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.

COUNT I: FRAUDULENT CONCEALMENT

61. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

62. Throughout the Class Period, the Defendants affirmatively concealed the fact that the affected vehicles were defective. The Defendants also omitted material information concerning the nature of the defect and misrepresented that the defect was caused by floor mats or driver error during the entire Class Period.

63. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats. The Defendants omitted to inform Class Members of the true defect which was known to them over a year before the announcement.

64. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiff and Class Members and that material facts were omitted from information provided to them.

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65. The Defendants had a duty to inform the Plaintiff 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.

66. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the gas pedals were defectively designed. The Plaintiff 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 this Complaint was filed. Plaintiff and Class Members were materially harmed because they continued to buy unsafe vehicles at premium prices and are now forced to carry increased costs on these vehicles while they sit unsold on their lots.

COUNT II: BREACH OF IMPLIED WARRANTIES

67. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

68. 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. Defendants' impliedly warranted to the Plaintiff and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling the vehicles subject to the recall after Defendants knew of the problem causing sudden acceleration.

69. At all times Plaintiff and the Class relied on the representations made by Defendants that their vehicles are reliable and of a quality that rendered them suitable for their

intended use. Plaintiff and Class Members also relied on the fact that Defendants would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

70. Defendants have 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.

71. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiff and Class Members have suffered and will continue to suffer losses.

COUNT III: UNIFORM MISREPRESENTATION/FRAUD

72. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

73. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiff and Class Members. The Defendants breached their duty by making the uniform, written, verbal material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats.

74. Class Members foreseeably and permissibly relied upon the Defendants' uniform written and verbal 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 to purchase other vehicles for resale or paid less of a price for them. Plaintiffs and Class Members could have reduced the likelihood of incurring expenses and carrying costs by purchasing another model of vehicle.

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75. The Plaintiff and Class Members reasonably relied upon the Defendants' uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably and reasonably relied upon the Defendants' misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats.

76. Because of the Defendants' uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

COUNT IV: NEGLIGENCE

77. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

78. Defendants had a duty to the Plaintiff and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiff and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiff and Class Members.

79. Defendants breached the duty owed to the Plaintiff and Class Members by negligently designing its gas pedals such that their vehicles were prone to unintended sudden acceleration.

80. Defendants breached the duty owed to the Plaintiff and Class Members by failing to adequately warn the Plaintiff and Class Members that their vehicles were prone to unintended acceleration. Defendants also breached their duty to warn the Plaintiff and Class Members when they became aware of the defect in December, 2008 but failed to recall the vehicles or take any action to warn plaintiff and class members of these problems..

81. As a direct and proximate result of the Defendants' negligence, the Plaintiff and Class Members have been harmed and will continue to suffer harm. The Plaintiff and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

COUNT V: PRODUCTS LIABILITY

82. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

83. 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 vehicles in the United States including those owned by the Plaintiff and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned and resold by the Plaintiff and Class Members. Defendants also knew that these vehicles would reach the Plaintiff and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

84. The defects in the Defendants' gas pedals could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiff and Class Members, even when used in a reasonable and foreseeable manner.

85. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiff and Class Members to harm resulting from the defects.

86. The Plaintiff and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiff and

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Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

WHEREFORE, Plaintiff prays 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.

DEMAND FOR JURY TRIAL

On behalf of himself and Members of the Class defined above, the Plaintiff hereby requests trial by jury of all issues so triable.

Respectfully submitted:

DAVIS, BETHUNE & JONES, LLC

/s/ Shawn G. Foster

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/

TOY-RQ-05E-00011915

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JERRY BAKER AUTO SALES, LLC,
Individually and on behalf of others
similarly situated

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90501

Agent for Service of Process:
CT Corporation System
1300 E. Ninth Street
Cleveland, Ohio 44114

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Avenue
Erlanger, KY 41018

Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

TOYOTA MOTOR CORPORATION
1, Toyota-cho
Toyota, Aichi 471-8571 Japan,

See service instructions
in "Parties" section below

Defendants.

CASE NO: _____

JUDGE: _____

CLASS ACTION COMPLAINT

Jury Demand Endorsed Hereon

TOY-RQ-05E-00011916

For his Complaint against the Defendants Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation, Plaintiff, Jerry Baker Auto Sales, LLC, states, based upon personal knowledge, information and belief, and the investigation of his counsel, as follows:

OVERVIEW OF CLAIM

1. There is a daily cost for holding pre-owned inventory on a used car lot and used cars lose their value while sitting on a used car lot for an extended period of time. Profit margins for used cars begin to dramatically decline after the vehicles are on a lot for more than 30 days. Further, there are costs incurred in holding vehicles in inventory. Formulas can be used by dealers to determine the "Days in Stock Break – Even Point" which identifies the number of days a vehicle can remain in the used vehicle inventory before profitability on that vehicle hits a "break-even point." Cars that cannot be sold in a certain time period or at a profit are wholesaled at auction or sold to another dealer.

2. Automotive dealers either pay cash or use debt (a "floor plan") to finance used vehicle inventory. Regardless of which avenue a dealer uses, each day a car sits unsold on a dealer's lot, there is a daily cost associated with holding that car.

3. Most dealerships have a low threshold for adversity and liquidity and cash positions are affected very quickly. For example, having $200,000.00 in cash tied up in ten to twelve recalled vehicles that can't be sold can cripple a dealership. Dealers that rely on debt (floor plan) to finance their dealership have even a higher risk and less ability to withstand hardship because payments to reduce the principal amount must be made on the balance of the unsold inventory. A dealership should not have any more money tied-up in inventory than is absolutely necessary. This is why dealers will sell vehicles to other dealers, even if they have

to do so at a loss. Doing so eases cash considerations even though the vehicle did not make a profit. Excess inventory levels have negative consequences on cash flow and, consequently, on the ability to meet the cash demands of an ongoing business.

4. Because of Toyota's Stop Sales Orders and multiple recalls, all of which will be described below, used car dealers were forced to pull popular models from their lots and have not even had the opportunity to sell the vehicles subject to the recall to the public, other dealers or auto auction houses. Thus, dealers' money has been tied up in inventory with no chance of a foreseeable return. If "floor planned," the dealers have carried interest and other costs associated with holding the cars during the pendency of the recall. If the inventory was financed with cash, dealers are unable to realize a financial return on the cash tied up in the unsold Toyota inventory. Automotive auction houses have, likewise, been forced to carry expenses on vehicles subject to the Stop Sale Order. Finally, there is now a stigma associated with the recalled vehicles and the values of the recalled vehicles have dropped far below pre-recall and Stop Sales Order levels, further harming dealers and auction houses who own the recalled vehicles. All of these damages have been caused by Toyota's actions as described below.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the named Plaintiff and the Defendants are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) in that the amount in controversy exceeds the sum or value of $5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants. Finally, the Court has

jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1447 original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

6. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

PARTIES

7. Plaintiff, Jerry Baker Auto Sales LLC is a Missouri limited liability company with its principal place of business in Sedalia, Missouri. Plaintiff is in the business of purchasing and reselling vehicles. Plaintiff is the owner of a 2008 Toyota Highlander and 2007 Toyota Tacoma manufactured and sold by the Defendants and the subject of a Stop Sale Order and recall described below. Plaintiff specifically purchased these vehicles for the purpose of reselling them at a profit to the general public. Plaintiff brings this action on behalf of itself and all other similarly situated automotive sales businesses and automotive auction houses as more fully described herein.

8. 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.

9. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. (TEMA) is a manufacturing, research and development company owned by Toyota Motor Company with its principal place of business 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.

10. 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 the 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.

THE RECALL AND ASSOCIATED DISRUPTIONS

11. On January 21, 2010, Toyota announced a recall of about 2.3 million vehicles to correct sticking accelerator pedals. In a stunning and unprecedented move, five days later on January 26, 2010, Toyota instructed all of its United States franchised dealers via e-mail to immediately cease selling new models of the recalled vehicles and to refrain from selling certain used and certified used versions of the same models. This instruction is known as a "Stop Sale Order" in the automotive industry.

12. Contemporaneous with the Stop Sale Order, Toyota announced it was ceasing production of the affected vehicles.

13. Toyota vehicles subject to the Stop Sale Order were:

- 2009-2010 RAV4,
- 2009-2010 Corolla,
- 2009-2010 Matrix,
- 2005-2010 Avalon,
- Certain 2007-2010 Camry,
- 2010 Highlander,
- 2007-2010 Tundra,
- 2008-2010 Sequoia

14. In a press release at the time of the Stop Sales Order, Group Vice President and Toyota Division General Manager Bob Carter stated that, "Helping ensure the safety of our customers and restoring confidence in Toyota are very important to our company." Carter continued that, "This action [the Stop Sale Order and cessation of production] is necessary until a remedy is finalized. We're making every effort to address this situation for our customers as quickly as possible."

15. Toyota's Stop Sale Order and the public statements of its officers clearly indicated that the recalled vehicles were unsafe and not fit for wholesale or re-sale until the problem or problems were corrected.

16. On January 28, 2010, two days after Toyota's announcement, the National Automotive Dealers Association (NADA) issued a memorandum to its members regarding Toyota's Stop Sales Order. NADA represents more than 19,700 new car and truck dealers,

both domestic and international, with more than 43,000 separate franchises. NADA serves dealers by following pricing trends on new and used vehicles as well as providing an advocacy association to represent dealerships before the US Congress and other government agencies.

17. The NADA counseled its members that the applicable statutes and code of federal regulations governing a vehicle recall did not specifically prohibit the resale of used vehicles subject to the recall but stated that "there may be potential liability concerns under state law."

18. The National Independent Automobile Dealer Association (NIADA) sent an advisory to all of its members advising that the dealers should not sell any of the vehicles subject to the recall. The Executive Vice President and CEO of the NIADA told members that,

> You cannot sell an UNSAFE vehicle without assuming liability!! Examine your own insurance policies, but I think you will find that in most cases you are not covered under this type of circumstance. You may even modify your purchase agreement referencing the recall with a separate document attached with full disclosure, however you are still selling a vehicle deemed unsafe by its manufacturer.
>
> On the wholesale level, if you purchase one of the listed vehicles, be prepared to hold it in inventory until the solution has been identified and the problem corrected. The manufacturer, as of this afternoon, has not announced a date when a solution to the problem may be identified!

19. Many statewide automobile dealer associations followed suit, advising its members to not sell any vehicles subject to the recall because of associated liability.

20. Used-car retailer CarMax, Inc. publicly announced it was suspending sales of new and used Toyota vehicles included in the recall. In a statement, CarMax said it was "following Toyota's instructions, and vehicles covered by the Jan. 21st recall will currently not be available for sale."

21. The nation's largest used-vehicle auto auction association, The National Auto Auction Association ("NAAA") likewise, recommended that its member auctions temporarily stop selling Toyota cars and trucks that were subject to the recall.

22. "The safety of our customers and employees is our utmost priority, and in that regard, the suspension should continue until the issues have been resolved," the NAAA said in a statement.

23. Manheim, the nation's largest auction company, said it was complying with the recommendation of NAAA and immediately halted sales of the recalled Toyota vehicles at its 81 auction sites in the United States and Canada and on its OVE.com electronic sales channel. Manheim controls roughly half of the used-vehicle auction market in the United States.

24. Auction company ADESA Inc. said it, too, was halting sales of recalled vehicles. ADESA is the second-largest auction company in the United States, with approximately one-fifth of the market.

25. As a result of Toyota's Stop Sale Order and recall, Toyota vehicles subject to the recall have not been sold by the plaintiff and class members during the pendency of the recall and cannot be sold until the problems with the vehicles are corrected. Following the direction of the NADA, NAAA and state association dealers like the plaintiff have followed Toyota's Stop Sale Order.

26. During the pendency of the recall, the value of the vehicles has diminished because of the news of the problem.

27. Publishers of two high profile used vehicle value guide books have trimmed the

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values of used Toyota models included in the automaker's massive recall

28. Kelley Blue Book is the United States' largest automotive vehicle valuation company. The company's website is a source for new and used vehicle pricing and information for consumers. The company has become so identified with its services that the trademarked terms *blue book* and *blue book value* have become synonymous with a car's market value.

29. On February 8, 2010, Kelley Blue Book stated that it was dropping the used-vehicle values of recalled vehicles up to 3 percent. It says the lack of consumer demand for the vehicles and dealers' inability to sell or remarket recalled end-of-lease vehicles could put further pressure on values.

30. A growing inventory of used Toyota vehicles, coupled with a reduction in demand, however slight, only leads to the potential for further devaluation," Kelley said in a statement.

31. In addition to the advocacy provided on behalf of auto dealers, the NADA is one of the primary organizations offering pricing for cars, both new and old. Automotive sales companies use NADA guides to determine wholesale and trade-in values to purchase trade-ins and to buy vehicles at auction before determining a retail sales price.

32. NADA Used Car Guide said Toyota vehicles' retail prices have shown softness, dropping just over 3 percent. That compares to a slight increase in the retail prices of Honda models, NADA guide said.

33. "NADA's position is to lower numbers on most Toyota models in the short-term towards the lower range of prices that we have seen in the auctions," the company said in a statement.

34. "If we see significant downward movement in Toyota's prices next week, it will

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be incorporated in NADA values since we expect the downward shift to last until the recall issue is completely resolved."

35. ALG (Automotive Lease Guide), a company that serves as the source for vehicle leasing companies in setting future residual values for vehicles, states that it appears that Toyotas will lose approximately 5% of their previous residual values going forward.

36. Kelly Blue Book stated that it would further lower the value of the recalled Toyotas another 1.5% on February 12, 2010.

37. The factors driving the prices of used Toyotas down are decreased consumer demand for Toyota vehicles and the inability of dealers and automotive auction companies to sell any of the used Toyota models affected by the recall.

38. As an example of what the new pricing means in the market, a 3% decrease in value to a $15,000 used car means a price drop of $450. A 5% decrease means a drop of $750.

39. Vehicles in the model years affected by the recall are particularly attractive to automotive dealers because dealers typically experience the greatest gross profit selling vehicles zero to two years old.

40. Vehicles in the price range of those affected by the recall are, likewise, particularly attractive to automotive dealers because dealers generally experience the greatest gross profit selling vehicles in this price range.

41. Because of Toyota's Stop Sale Order, the plaintiff and class members have been unable to sell the recalled vehicles on their lots to consumers, other dealers or auction houses.

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As a result, plaintiff and class members have been forced into negative cash positions in regard to the vehicles subject to the Stop Sale Order and to carry unnecessary expenses on those vehicles during this period of time. The recalled vehicles on their lots have lost value and the plaintiff and class members will experience that loss when they are finally able to sell or wholesale the recalled vehicles.

TOYOTA'S PREVIOUS KNOWLEDGE OF THE CAUSE OF SUDDEN ACCELERATION PROBLEMS

42. For at least six years before Toyota's "Stop Sale Order," Toyota ignored evidence that its vehicles caused unexpected sudden acceleration. Importantly, for purposes of this lawsuit, Toyota concealed this adverse information to the detriment of the plaintiff and class for at least a year before the Stop Sale Order in a deliberate attempt to manipulate the retail and wholesale values of their vehicles. Toyota knew that disclosure of these problems would negatively impact the value of its vehicles and the profitability of its companies.

43. Initially, Toyota publicly blamed floor mats for pinning gas pedals and causing the sudden acceleration.

44. Toyota suddenly changed course on January 19, 2010, in a meeting with federal regulators. In that meeting, Toyota admitted that a mechanical defect in its gas pedals was the cause of the problem and that it had known of the problem for over a year. Facing reports of sudden acceleration in Europe, the Toyota European unit had investigated sudden acceleration problems.

45. In December 2008, Toyota's European unit determined that the cause of the sudden acceleration problem was a plastic part in the pedal mechanism widely used in vehicles in the

United States. Instead of announcing the problem, reporting to appropriate regulatory authorities, announcing a recall, or doing anything to correct the problem, Toyota merely redesigned the pedals for some new cars.

46. Upon prodding by federal regulators, Toyota recalled 3.8 million vehicles on October 5, 2009, explaining that bulky floor mats were the cause of the sudden acceleration problems. Toyota attempted to convince owners of the recalled vehicles that the sudden acceleration defect was limited to the gas pedal's interaction with the bulky floor mat and was unrelated to other factors. Toyota also posted a video statement to dispute news reports that unintended acceleration may be related to these other factors.

47. November 3, 2009, Toyota issued a press release saying that federal regulators concluded that "no defect exists" in the recalled vehicles.

48. The next day, federal regulators released their own statement saying that Toyota had put out "inaccurate and misleading information" and that the regulatory agency was still investigating "this very dangerous problem."

49. Federal regulators continued to meet with Toyota in December 2009 and early 2010 about the cause of the sudden acceleration problems.

50. On January 19, 2010, Toyota executives confessed to federal regulators that Toyota had known for more than a year that a design flaw in the gas pedal was the cause of the sudden accelerator problems. The January 21, 2010 recall and the January 26, 2010 Stop Sale Order described above followed shortly thereafter.

51. Toyota knew that before the class period that the vehicles subject to the Stop Sale Order and the recalls (and potentially others) did not operate in the manner intended during normal use.

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Toyota was made aware of the defects well before both the Stop Sale Order and recalls were issued. Toyota's fraudulent concealment of the real problem with the gas pedals causing sudden acceleration and its affirmative misrepresentations that floor mats were the cause and that the vehicles subject to the floor mat recall were safe caused damages to the Plaintiff and class members. Had Toyota timely announced the true problem with the gas pedals, plaintiff and class members would not have purchased the vehicles or paid a lesser price for them.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this case on behalf of itself and a class defined as follows:

All retail and wholesale automotive sales entities that own and / or have purchased for resale vehicles subject to the Stop Sale Order or recall such as 2009-2010 RAV4s, 2009-2010 Corollas, 2009-2010 Matrixs, 2005-2010 Avalons, Certain 2007-2010 Camrys, 2010 Highlanders, 2007-2010 Tundras, and 2008-2010 Sequoias and who purchased said vehicles before the January 21, 2010 recall.

The class excludes any licensed Toyota dealer, the Defendants, Defendants' officers, Defendants' directors, Defendants' employees and the Judge to whom this case is assigned.

Plaintiff reserves the right to supplement or amend this definition.

53. 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.

54. The Class definition includes a well-defined time period. The period begins on January 21, 2010 when Toyota announced the recall.

55. The Class defined above is too numerous to make joinder practicable. The precise number of Class Members is unknown to the Plaintiff, but it is clear that there are too many for joinder to be practicable.

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56. The Plaintiff is a Member of the Class it seeks to represent and the claims are typical of the claims of the other Class Members. The Plaintiff is the owner of a Toyota vehicle intended for resale and subject to the recall and Stop Sale Order. The Defendants' misconduct complained of herein applies equally to the Plaintiff and Class Members. Like all other Class Members the Plaintiff purchased a vehicle subsequently subjected to the recall and Stop Sale Order. The defect has been fraudulently concealed from the Plaintiff and Class Members alike.

57. The Plaintiff is an adequate representative of the Class and has hired experienced counsel adequate to see this litigation to a conclusion. Neither the Plaintiff nor Plaintiff's counsel have any interests that conflict with those of the Class.

58. 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 knew a year or more before the recall and Stop Sale Order of the defect in their vehicles;

b. Whether the Defendants misrepresented the nature of the defect in their vehicles;

c. Whether the Defendants fraudulently concealed the true nature of the defect;

d. Whether Defendants engaged in a purposeful attempt to inflate or bolster wholesale and retail prices;

e. Whether the Defendants engaged in deceptive conduct by misrepresenting that the defect was due to floor mats; and

f. Whether the Plaintiff and Class Members are entitled to damage.

59. 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.

60. 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.

COUNT I: FRAUDULENT CONCEALMENT

61. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

62. Throughout the Class Period, the Defendants affirmatively concealed the fact that the affected vehicles were defective. The Defendants also omitted material information concerning the nature of the defect and misrepresented that the defect was caused by floor mats or driver error during the entire Class Period.

63. The Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats. The Defendants omitted to inform Class Members of the true defect which was known to them over a year before the announcement.

64. The Defendants were well aware that material facts were affirmatively concealed from the Plaintiff and Class Members and that material facts were omitted from information provided to them.

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65. The Defendants had a duty to inform the Plaintiff 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.

66. Defendants, through various devices of misrepresentation and secrecy, affirmatively and fraudulently concealed the fact that the gas pedals were defectively designed. The Plaintiff 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 this Complaint was filed. Plaintiff and Class Members were materially harmed because they continued to buy unsafe vehicles at premium prices and are now forced to carry increased costs on these vehicles while they sit unsold on their lots.

COUNT II: BREACH OF IMPLIED WARRANTIES

67. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

68. 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. Defendants' impliedly warranted to the Plaintiff and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling the vehicles subject to the recall after Defendants knew of the problem causing sudden acceleration.

69. At all times Plaintiff and the Class relied on the representations made by Defendants that their vehicles are reliable and of a quality that rendered them suitable for their

intended use. Plaintiff and Class Members also relied on the fact that Defendants would produce a vehicle of merchantable quality as required by the implied warranty of merchantability.

70. Defendants have 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.

71. As a direct and proximate cause of the Defendants' breach of the implied warranty of merchantability, the Plaintiff and Class Members have suffered and will continue to suffer losses.

COUNT III: UNIFORM MISREPRESENTATION/FRAUD

72. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

73. The Defendants uniformly misrepresented the true cause of the unintended acceleration of their vehicles. The Defendants owed a duty of care to the Plaintiff and Class Members. The Defendants breached their duty by making the uniform, written, verbal material misrepresentations that the unintended acceleration of their vehicles was caused by floor mats.

74. Class Members foreseeably and permissibly relied upon the Defendants' uniform written and verbal 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 to purchase other vehicles for resale or paid less of a price for them. Plaintiffs and Class Members could have reduced the likelihood of incurring expenses and carrying costs by purchasing another model of vehicle.

75. The Plaintiff and Class Members reasonably relied upon the Defendants' uniform misrepresentations to their detriment. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Members presumably and reasonably relied upon the Defendants' misrepresentations of material facts concerning the qualities and characteristics of their vehicles and the purported cause of the unintended acceleration – floor mats.

76. Because of the Defendants' uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

COUNT IV: NEGLIGENCE

77. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

78. Defendants had a duty to the Plaintiff and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiff and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiff and Class Members.

79. Defendants breached the duty owed to the Plaintiff and Class Members by negligently designing its gas pedals such that their vehicles were prone to unintended sudden acceleration.

80. Defendants breached the duty owed to the Plaintiff and Class Members by failing to adequately warn the Plaintiff and Class Members that their vehicles were prone to unintended acceleration. Defendants also breached their duty to warn the Plaintiff and Class Members when they became aware of the defect in December, 2008 but failed to recall the vehicles or take any action to warn plaintiff and class members of these problems..

81. As a direct and proximate result of the Defendants' negligence, the Plaintiff and Class Members have been harmed and will continue to suffer harm. The Plaintiff and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

COUNT V: PRODUCTS LIABILITY

82. Plaintiff repeats each and every allegation contained in the prior paragraphs of this Complaint.

83. 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 vehicles in the United States including those owned by the Plaintiff and Members of the Class defined herein. Defendants knew and anticipated that the vehicles owned and resold by the Plaintiff and Class Members. Defendants also knew that these vehicles would reach the Plaintiff and Class Members without substantial change in their condition from the time that the vehicles rolled off the Defendants' assembly lines.

84. The defects in the Defendants' gas pedals could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as the Plaintiff and Class Members, even when used in a reasonable and foreseeable manner.

85. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration equipment and ETC would subject the Plaintiff and Class Members to harm resulting from the defects.

86. The Plaintiff and Class Members have used the Defendants' vehicles for their intended purpose and in a reasonable and foreseeable manner. Nevertheless, the Plaintiff and

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Class Members have suffered damage through no fault of their own but as a direct and proximate result of the Defendants' negligence.

WHEREFORE, Plaintiff prays 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.

DEMAND FOR JURY TRIAL

On behalf of himself and Members of the Class defined above, the Plaintiff hereby requests trial by jury of all issues so triable.

Respectfully submitted:

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(To Seek Pro Hac Vice Admission)

/

TOY-RQ-05E-00011938

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

JERRY BAKER AUTO SALES, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10-04025-CV-C-NKL
	)	
TOYOTA MOTOR SALES,USA, et. al.,	)	
	)	
Defendants.	)	
	)	
	)	

ORDER ON PRETRIAL PROCEDURES

You are advised that:

A. ***SERVICE OF PROCESS***

Service must be obtained within forty (40) days of the date of this Order unless otherwise authorized by the Court.

B. ***SCHEDULING ORDER***

1. ***Deadline for Entry of Scheduling Order:*** The deadline for entry of a scheduling order in this case will be determined in accordance with Local Rule 16.1(b). A notice will be sent to you advising you of the specific deadline for filing a proposed scheduling order shortly after any Defendant files any paper in

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this case, or shortly after the expiration of 30 days from the date the complaint is filed if no Defendant has filed any paper in this case.

2. ***Filing of Proposed Scheduling Order:*** The proposed scheduling order must comply with all of the requirements of Local Rule 16.1(d), 16.1(f), 26.1(c) and 26.1(d). Plaintiff's counsel, in accordance with Local Rule 16.1(d), will take the lead in preparing the proposed scheduling order.

C. INITIAL DISCLOSURE AND DISCOVERY MEETING:

1. A Rule 26(f) meeting shall take place at least 30 days before the scheduling order is required to be issued in this case (Local Rule 26.1(a). *See* A(1), *supra* for scheduling order deadline.)

2. There will be no discovery from any source until after the Rule 26(f) meeting, unless agreed to by all the parties, or unless the case is exempted from this limitation by Local Rule 26.1(b).

3. The initial disclosure requirements of Rule 26(a)(1) shall be made at the Rule 26(f) meeting. Local Rule 26.1(a).

4. The number and form of interrogatories and the number of depositions are governed by Fed. R. Civ. P. 30.

5. The procedure for resolving discovery disputes is governed by Local Rule 37.1.

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6. The form of answers to certain discovery requests and the disclosures required by Rule 26 are provided in Local Rule 26.2.

7. The filing of motions does not postpone discovery. *See* Local Rule 26.1(b).

8. Extensions of discovery deadlines are governed by Local Rule 16.3.

D. ***PROPOSED ORDER***: Counsel are also advised that rulings on non-dispositive motions will be expedited if a proposed order is presented.

IT IS SO ORDERED.

s/ NANETTE K. LAUGHREY
NANETTE K. LAUGHREY
UNITED STATES DISTRICT JUDGE

Dated: February 17, 2010

TOY-RQ-05E-00011941

U.S. District Court
Western District of Missouri (Jefferson City)
CIVIL DOCKET FOR CASE #: 2:10-cv-04025-NKL

Jerry Baker Auto Sales, LLC v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: District Judge Nanette K. Laughrey
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/12/2010
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Jerry Baker Auto Sales, LLC

represented by **Shawn Gayland Foster**
Davis, Bethune &Jones, LLC
1100 Main
2930 City Center Square
Kansas City, MO 64105
(816)421-1600
Fax: (816)472-5972
Email: sfoster@dbjlaw.net
ATTORNEY TO BE NOTICED

V.

Defendant

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

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc.

Defendant

Toyota Motor Corporation

Date Filed	#	Docket Text
02/12/2010	1	COMPLAINT against Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. filed by Shawn Gayland Foster on behalf of Jerry Baker Auto Sales, LLC. Filing fee $350, receipt number 0866-2287663. Service due by 6/15/2010. (Attachments: #1 Civil Cover Sheet Civil Cover Sheet)(Foster, Shawn) (Entered: 02/12/2010)
02/17/2010	2	ORDER ON PRETRIAL PROCEDURES entered by Judge Nanette Laughrey. Service must be obtained within forty (40) days of the date of this Order unless otherwise authorized by the Court. (Kanies, Renea) (Entered: 02/17/2010)
02/18/2010		SUMMONS ISSUED as to Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.. (Kee, Georgia) (Entered: 02/18/2010)

TOY-RQ-05E-00011942

FILE START

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	CASE NO. 10-108-JVP-CN
Plaintiff,	*	
versus	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	JURY DEMAND
Defendants.	*	

****

CLASS ACTION COMPLAINT FOR DAMAGES

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

INTRODUCTION

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

PARTIES

2. Plaintiff, Roshawn Donahue, is a citizen of the State of Louisiana and resides in Baton Rouge, Louisiana in the Parish of East Baton Rouge.

3. In March 2007, Roshawn Donahue purchased a Toyota Camry CE, model year 2007, from Price Leblanc Toyota in Baton Rouge, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

BACKGROUND

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

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

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

15. On September 29, 2009, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

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

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

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

CLASS ACTION ALLEGATIONS

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

20. The proposed Plaintiff Class is defined as follows:

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

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

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

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

a. Whether Toyota violated the Louisiana Products Liability Law;

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

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

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

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

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

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning

extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

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

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

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

COUNT I
BREACH OF IMPLIED WARRANTY

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

28. At all times herein, Toyota designed, manufactured, assembled, marketed,

compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

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

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

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

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

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

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

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

function as represented and intended.

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

COUNT II
NEGLIGENCE

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

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

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

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

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

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

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

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

COUNT III
REDHIBITION

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

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

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

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

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

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

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

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

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

54. As a direct and proximate result, Defendant should be ordered to make restitution to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

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

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

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

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

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

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

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

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

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles,

including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

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

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

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

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

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its

reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

PRAYER FOR RELIEF

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

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

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

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

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

e. For restitution and disgorgement of profits;

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

g. For an award of reasonable attorneys' fees;

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

i. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Respectfully submitted:

/s/ Lawrence J. Centola, III
SCOTT R. BICKFORD (1165)
LAWRENCE J. CENTOLA, III (27402)
Martzell & Bickford
338 Lafayette St.
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Telephone: 504/581-9065
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PLEASE SERVE:

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

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

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

TOY-RQ-05E-00011957

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	**CASE NO.**
Plaintiff,	*	
versus	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
Defendants.	*	**JURY DEMAND**

****

CLASS ACTION COMPLAINT FOR DAMAGES

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

INTRODUCTION

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

PARTIES

2. Plaintiff, Roshawn Donahue, is a citizen of the State of Louisiana and resides in Baton Rouge, Louisiana in the Parish of East Baton Rouge.

3. In March 2007, Roshawn Donahue purchased a Toyota Camry CE, model year 2007, from Price Leblanc Toyota in Baton Rouge, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

BACKGROUND

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

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

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

15. On September 29, 2009, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

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

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

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

CLASS ACTION ALLEGATIONS

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

20. The proposed Plaintiff Class is defined as follows:

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

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

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

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

a. Whether Toyota violated the Louisiana Products Liability Law;

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

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

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

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

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

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning

extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

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

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

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

COUNT I
BREACH OF IMPLIED WARRANTY

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

28. At all times herein, Toyota designed, manufactured, assembled, marketed,

compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

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

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

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

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

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

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

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

function as represented and intended.

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

COUNT II
NEGLIGENCE

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

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

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

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

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

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

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

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

COUNT III
REDHIBITION

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

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

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

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

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

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

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

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

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

54. As a direct and proximate result, Defendant should be ordered to make restitution to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

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

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

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

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

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

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

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

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

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles,

including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

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

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

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

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

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its

reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

PRAYER FOR RELIEF

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

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

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

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

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

e. For restitution and disgorgement of profits;

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

g. For an award of reasonable attorneys' fees;

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

i. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Respectfully submitted:

/s/ Lawrence J. Centola, III
SCOTT R. BICKFORD (1165)
LAWRENCE J. CENTOLA, III (27402)
Martzell & Bickford
338 Lafayette St.
New Orleans, LA 70130
Telephone: 504/581-9065
Facsimile: 504/581-7636
usdcedla@mbfirm.com

PLEASE SERVE:

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

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

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

TOY-RQ-05E-00011971

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	**CASE NO.**
Plaintiff,	*	
versus	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
Defendants.	*	**JURY DEMAND**

****

CLASS ACTION COMPLAINT FOR DAMAGES

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

INTRODUCTION

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

PARTIES

2. Plaintiff, Roshawn Donahue, is a citizen of the State of Louisiana and resides in Baton Rouge, Louisiana in the Parish of East Baton Rouge.

3. In March 2007, Roshawn Donahue purchased a Toyota Camry CE, model year 2007, from Price Leblanc Toyota in Baton Rouge, Louisiana, which was subject to a recall by Toyota in January of 2010 for defects in the vehicle's accelerator pedal.

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

BACKGROUND

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

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

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

15. On September 29, 2009, the National Highway Traffic Safety Administration ("NHTSA") announced Toyota's intention to recall approximately 4.3 million vehicles' floor mats which allegedly were causing the accelerator pedals in these same vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.

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

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

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

CLASS ACTION ALLEGATIONS

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

20. The proposed Plaintiff Class is defined as follows:

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

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

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

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

a. Whether Toyota violated the Louisiana Products Liability Law;

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

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

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

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

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

23. **TYPICALITY:** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members have been injured by the same defective mechanism, that being the accelerator mechanism of Plaintiff and Class Members' vehicles becoming stuck in a depressed position and failing to return or returning

extremely slowly to the idle position causing extreme, uncontrollable and inherently dangerous acceleration of the vehicle. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members and are based on the same legal theories.

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

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

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

COUNT I
BREACH OF IMPLIED WARRANTY

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

28. At all times herein, Toyota designed, manufactured, assembled, marketed,

compounded, portrayed, distributed, recommended, advertised, promoted and sold the Subject Vehicles.

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

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

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

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

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

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

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

function as represented and intended.

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

COUNT II
NEGLIGENCE

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

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

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

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

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

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

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

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

COUNT III
REDHIBITION

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

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

47. Defendant's practices resulted in Plaintiff and members of the Class purchasing the Subject Vehicles, but not getting perceived benefits of a safe and reliable vehicle.

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

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

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

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

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

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

54. As a direct and proximate result, Defendant should be ordered to make restitution to Plaintiff and the Plaintiff Class of all monies that have been expended by them which was obtained by Defendant's utilization of deceptive acts or practices.

COUNT IV
LOUISIANA PRODUCTS LIABILITY ACT

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

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

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

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

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

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

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

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

59. Toyota knew and expected for the Subject Vehicles to eventually be sold to and operated by purchasers and /or eventual owners of the Subject Vehicles,

including Plaintiff and Class members; consequently, Plaintiff and Class Members were expected users of the product which Toyota manufactured.

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

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

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

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

64. As a direct and proximate cause of Toyota's design, manufacture, assembly, marketing, and sales of the Subject Vehicles, Plaintiff and Class Members have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiff and Class Members for breach of its duty to design, manufacture, assemble, market, and sell a safe product, fit for its

reasonably intended use. Plaintiff and Class Members are therefore entitled to equitable relief as described below.

PRAYER FOR RELIEF

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

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

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

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

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

e. For restitution and disgorgement of profits;

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

g. For an award of reasonable attorneys' fees;

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

i. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Respectfully submitted:

/s/ Lawrence J. Centola, III
SCOTT R. BICKFORD (1165)
LAWRENCE J. CENTOLA, III (27402)
Martzell & Bickford
338 Lafayette St.
New Orleans, LA 70130
Telephone: 504/581-9065
Facsimile: 504/581-7636
usdcedla@mbfirm.com

PLEASE SERVE:

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

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

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

TOY-RQ-05E-00011985

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America
Through its agent for Service of Process:
CT Corporation System
4169 Westport Road
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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00011986

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00011987

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor North America, Inc., Throught its Agent for Service of Process:
CT Corporation System
818 West Seventh Street
Los Angeles,CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00011988

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00011989

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U. S. A., Inc.,
Through its agent for Service of Process:
CT Corporation System
5615 Corporate Boulevard - Suite 400B
Baton Rouge, Louisiana 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00011990

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☒ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

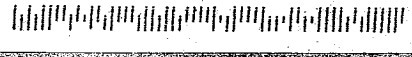
Additional information regarding attempted service, etc:

TOY-RQ-05E-00011991

MARTZELL & BICKFORD
ATTORNEYS AT LAW
338 LAFAYETTE STREET
NEW ORLEANS, LOUISIANA 70130-3244

1840-1

Toyota Motor Engineering & Manufacturing
North America
C. T. Corporation System
4169 Westport Road
Louisville, KY 40207



CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516189223

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:	Roshawn Donahue, etc., Pltfs. vs. Toyota Motor North America, Inc., et al., including Toyota Motor Engineering & Manufacturing North America, Inc.
DOCUMENT(S) SERVED:	Letter, Summons, Class Action Complaint
COURT/AGENCY:	USDC, ., LA Case # 10-108-JVP-CN
NATURE OF ACTION:	Product Liability Litigation - Acceleration Problem
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/22/2010 postmarked on 02/19/2010
APPEARANCE OR ANSWER DUE:	Within 21 days
ATTORNEY(S) / SENDER(S):	Lawrence J. Centola, III 338 Lafayette St. New Orleans, LA 70130 504-581-9065
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790696338609 Image SOP Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED:	C T Corporation System
ADDRESS:	4169 Westport Road Louisville, KY 40207
TELEPHONE:	502-721-0133

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.

MARTZELL & BICKFORD

ATTORNEYS AT LAW
A Professional Corporation
338 LAFAYETTE STREET
NEW ORLEANS, LOUISIANA 70130

WWW.MBFIRM.COM

TELEPHONE: (504) 581-9065
FACSIMILE: (504) 581-7635

JOHN R. MARTZELL (1937-2007)
SCOTT R. BICKFORD †
REGINA O. MATTHEWS
SPENCER R. DOODY
LAWRENCE J. CENTOLA, III
NEIL F. NAZARETH
ROSHAWN H. DONAHUE

† *also admitted in Texas & Colorado*

E-MAIL: MB@MBFIRM.COM

Writer's Direct Email:

February 19, 2010

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Toyota Motor Engineering & Manufacturing
North America
C. T. Corporation System
4169 Westport Road
Louisville, KY 40207

Re: Roshawn H. Donahue, et al vs. Toyota Motor North America, Inc., et al
USDC/EDLA No.10-108-JVP-CN
Our File No. 10890-01

Dear Sir or Madame:

Enclosed please find Summons and Original Complaint, which we are serving upon you through Long Arm Statute. The complaint was filed on behalf of our client, Roshawn H. Donahue regarding the above captioned matter.

Should you have any questions regarding the above, please do not hesitate to contact me anytime.

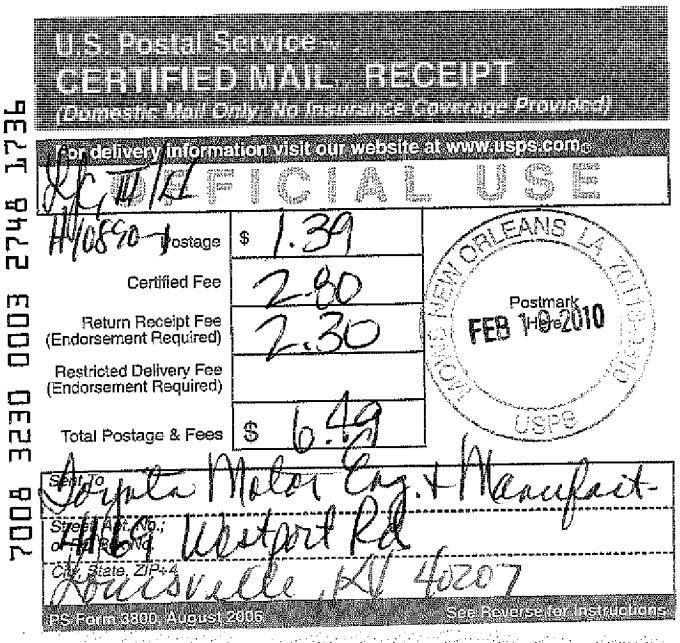
Yours Truly,

MARTZELL & BICKFORD

Lawrence J. Centola, III

Lawrence J. Centola, III

LJC,III/lwl
Enclosures
F:\Clients\Donahue, Roshawn\Correspondence\Ltr. Toyota Motor Engineering and Manufacturing N. America Long Arm Service 2010.02.19.wpd



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
OFFICIAL USE

7008 3230 0003 2748 1736

Postage	$ 1.39
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.49

Postmark: NEW ORLEANS LA 70113 FEB 18 2010 USPS

Sent To: Toyota Motor Eng. + Manufact-
Street, Apt. No.; or PO Box No.: 4469 Westport Rd
City, State, ZIP+4: Louisville, KY 40207

PS Form 3800, August 2006 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Toyota Motor Eng. + Manufacturing
C.T. Corporation System
4469 Westport Road
Louisville, KY 40207

FEB 22 2010

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X CT CORPORATION SYSTEM ☐ Agent ☐ Addressee

B. Received by (Printed Name) PHYLLIS A. FARMER — C. Date of Delivery FEB 22 2010

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 3230 0003 2748 1736

PS Form 3811, February 2004 — Domestic Return Receipt — 102595-02-M-1540

TOY-RQ-05E-00011995

MARTZELL & BICKFORD

ATTORNEYS AT LAW
A Professional Corporation
338 LAFAYETTE STREET
NEW ORLEANS, LOUISIANA 70130

WWW.MBFIRM.COM

TELEPHONE: (504) 581-9065
FACSIMILE: (504) 581-7635

E-MAIL: MB@MBFIRM.COM

Writer's Direct Email:

JOHN R. MARTZELL (1937-2007)
SCOTT R. BICKFORD †
REGINA O. MATTHEWS
SPENCER R. DOODY
LAWRENCE J. CENTOLA, III
NEIL F. NAZARETH
ROSHAWN H. DONAHUE

† *also admitted in Texas & Colorado*

February 19, 2010

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Toyota Motor Engineering & Manufacturing
North America
C. T. Corporation System
4169 Westport Road
Louisville, KY 40207

Re: Roshawn H. Donahue, et al vs. Toyota Motor North America, Inc., et al
USDC/EDLA No.10-108-JVP-CN
Our File No. 10890-01

Dear Sir or Madame:

Enclosed please find Summons and Original Complaint, which we are serving upon you through Long Arm Statute. The complaint was filed on behalf of our client, Roshawn H. Donahue regarding the above captioned matter.

Should you have any questions regarding the above, please do not hesitate to contact me anytime.

Yours Truly,

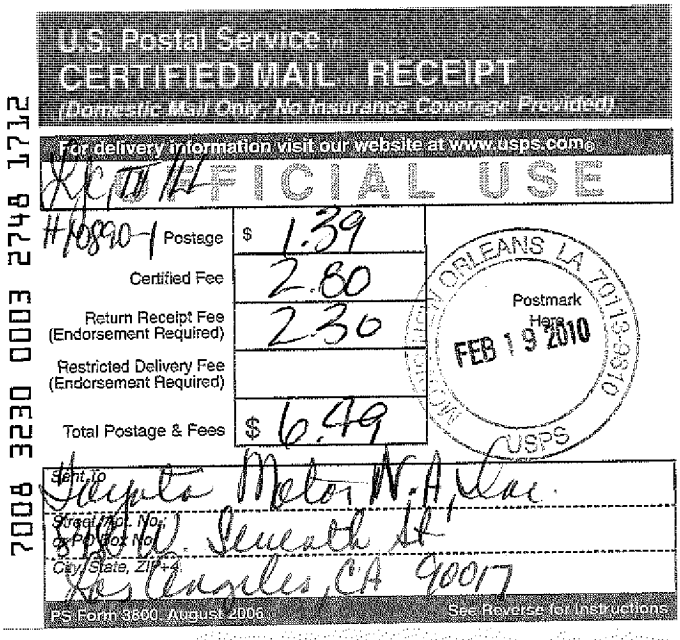
MARTZELL & BICKFORD

Lawrence J. Centola, III

Lawrence J. Centola, III

LJC,III/lwl
Enclosures
F:\Clients\Donahue, Roshawn\Correspondence\Ltr. Toyota Motor Engineering and Manufacturing N. America Long Arm Service 2010.02.19.wpd

TOY-RQ-05E-00011996



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
#10890-1
Postage $ 1.39
Certified Fee 2.80
Return Receipt Fee (Endorsement Required) 2.30
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 6.49
Postmark Here
NEW ORLEANS LA 70119-9510
FEB 19 2010
USPS
Sent To
Toyota Motor N.A. Inc.
Street, Apt. No.; or PO Box No.
618 W. Seventh St
City, State, ZIP+4
Los Angeles, CA 90017
PS Form 3800, August 2006 See Reverse for Instructions
7008 3230 0003 2748 1712

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Toyota Motor N.A Inc
618 W. Seventh St
Los Angeles CA 90017

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Ruby Reeves ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
FEB 25 2010

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 3230 0003 2748 1712

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

TOY-RQ-05E-00011997

MARTZELL & BICKFORD

ATTORNEYS AT LAW
A Professional Corporation
338 LAFAYETTE STREET
NEW ORLEANS, LOUISIANA 70130

WWW.MBFIRM.COM

TELEPHONE: (504) 581-9065
FACSIMILE: (504) 581-7635

E-MAIL: MB@MBFIRM.COM

Writer's Direct Email:

JOHN R. MARTZELL (1937-2007)
SCOTT R. BICKFORD †
REGINA O. MATTHEWS
SPENCER R. DOODY
LAWRENCE J. CENTOLA, III
NEIL F. NAZARETH
ROSHAWN H. DONAHUE

† *also admitted in Texas & Colorado*

February 19, 2010

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Toyota Motor North America, Inc.,
C. T. Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Re: Roshawn H. Donahue, et al vs. Toyota Motor North America, Inc., et al
USDC/EDLA No.10-108-JVP-CN
Our File No. 10890-01

Dear Sir or Madame:

Enclosed please find Summons and Original Complaint, which we are serving upon you through Long Arm Statute. The complaint was filed on behalf of our client, Roshawn H. Donahue regarding the above captioned matter.

Should you have any questions regarding the above, please do not hesitate to contact me anytime.

Yours Truly,

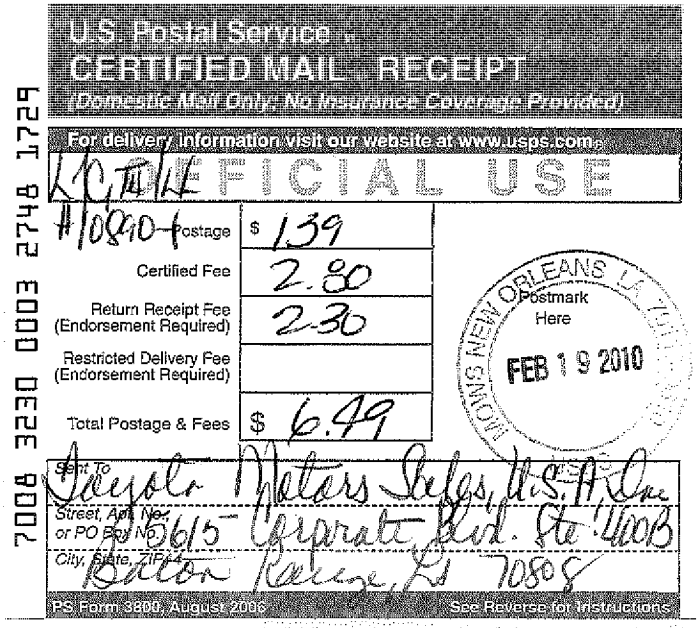
MARTZELL & BICKFORD

Lawrence J. Centola, III

Lawrence J. Centola, III

LJC,III/lwl
Enclosures
F:\Clients\Donahue, Roshawn\Correspondence\Ltr. Toyota Motor North America, Inc., Long Arm Service 2010.02.19.wpd

TOY-RQ-05E-00011998



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $ 1.39
Certified Fee 2.80
Return Receipt Fee (Endorsement Required) 2.30
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 6.49
Postmark Here
NEW ORLEANS LA
FEB 19 2010
Sent To Toyota Motors Sales, U.S.A. Inc
Street, Apt. No., or PO Box No. 5615 Corporate Blvd. Ste. 400B
City, State, ZIP+4 Baton Rouge, LA 70808
7008 3230 0003 2748 1729
PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Toyota Motor Sales
U.S.A Inc
5615 Corporate Blvd
Ste. 400B
B. Rg LA 70808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Express Courier
☑ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
FEB 22 RECD

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
FEB 23 2010

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7008 3230 0003 2748 1729

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

TOY-RQ-05E-00011999

MARTZELL & BICKFORD

ATTORNEYS AT LAW
A Professional Corporation
338 LAFAYETTE STREET
NEW ORLEANS, LOUISIANA 70130

WWW.MBFIRM.COM

TELEPHONE: (504) 581-9065
FACSIMILE: (504) 581-7635

E-MAIL: MB@MBFIRM.COM

Writer's Direct Email:

JOHN R. MARTZELL (1937-2007)
SCOTT R. BICKFORD †
REGINA O. MATTHEWS
SPENCER R. DOODY
LAWRENCE J. CENTOLA, III
NEIL F. NAZARETH
ROSHAWN H. DONAHUE

† *also admitted in Texas & Colorado*

February 19, 2010

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Toyota Motor Sales, U. S. A., Inc.,
C. T. Corporation System
5615 Corporate Boulevard
Suite 400B
Baton Rouge, Louisiana 70808

Re: Roshawn H. Donahue, et al vs. Toyota Motor North America, Inc., et al
USDC/EDLA No.10-108-JVP-CN
Our File No. 10890-01

Dear Sir or Madame:

Enclosed please find Summons and Original Complaint, which we are serving upon you through Long Arm Statute. The complaint was filed on behalf of our client, Roshawn H. Donahue regarding the above captioned matter.

Should you have any questions regarding the above, please do not hesitate to contact me anytime.

Yours Truly,

MARTZELL & BICKFORD

Lawrence J. Centola, III

Lawrence J. Centola, III

LJC,III/lwl
Enclosures
F:\Clients\Donahue, Roshawn\Correspondence\Ltr. Toyota Motor Sales Long Arm Service 2010.02.19.wpd

TOY-RQ-05E-00012000

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America
Through its agent for Service of Process:
CT Corporation System
4169 Westport Road
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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/12/2010

Nick J. Lorio
CLERK OF COURT

Nicole' R. Doupo
Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012001

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012002

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America
Through its agent for Service of Process:
CT Corporation System
4169 Westport Road
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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012003

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012004

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor North America, Inc., Throught its Agent for Service of Process:
CT Corporation System
818 West Seventh Street
Los Angeles,CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012005

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012006

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U. S. A., Inc.,
Through its agent for Service of Process:
CT Corporation System
5615 Corporate Boulevard - Suite 400B
Baton Rouge, Louisiana 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2010

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☒ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012008

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA
OFFICE OF THE CLERK

NICK J. LORIO
CLERK OF COURT

Telephone: 225-389-3500
Facsimile: 225-389-3501

February 17, 2010

Multidistrict Litigation Panel
Jeffrey N. Luthi
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal Judiciary Building
Room G-255, North Lobby
Washington, DC 20002-8004

Re: Civil Action 10-0108-JVP-CN
Donahue v. Toyota Motors Manufacturing U.S.A. Inc.

Dear Clerk:

Enclosed you will find a copy of the docket sheet and complaint in reference to a possible MDL case.

Respectfully submitted,

Nick J. Lorio, Clerk

By: Nicole' R. Soupo

Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U. S. A., Inc.,
Through its agent for Service of Process:
CT Corporation System
5615 Corporate Boulevard - Suite 400B
Baton Rouge, Louisiana 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/12/2010

Nick J. Lorio
CLERK OF COURT

Nicole' R. Doupo
Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012010

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☒ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012011

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor North America, Inc., Throught its Agent for Service of Process:
CT Corporation System
818 West Seventh Street
Los Angeles,CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Nick J. Lorio
CLERK OF COURT

Date: 02/12/2010

Nicole' R. Toupo
Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012012

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012013

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America
Through its agent for Service of Process:
CT Corporation System
4169 Westport Road
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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/12/2010

Nick J. Lorio
CLERK OF COURT

Nicole' R. Soupo
Signature of Clerk or Deputy Clerk

TOY-RQ-05E-00012014

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012015

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
Roshawn Donahue

(b) County of Residence of First Listed Plaintiff East Baton Rouge, LA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Lawrence J. Centola, III
338 Lafayette Street, New Orleans, LA 70130
504-581-9065

DEFENDANTS
Toyota Motor Sales, U.S.A., Inc., Toyota Motors Manufacturing U.S.A. Inc., toyota Motor Engineering & Manufacturing North America, 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 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**):
28 USC 1332
Brief description of cause:
Toyota Class Action

VII. REQUESTED IN COMPLAINT:
☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ 100,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
2-17-10

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

TOY-RQ-05E-00012016

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE

VERSUS

TOYOTA MOTORS MANUFACTURING U.S.A. INC., ET AL

CIVIL ACTION

NO. 10-108-JVP-CN

O R D E R

IT IS ORDERED that a scheduling conference is hereby set before United States Magistrate Judge Christine Noland for **JUNE 10, 2010 at 9:45 A.M. in chambers.**

IT IS FURTHER ORDERED that a Status Report **shall be filed no later than fourteen (14) days** prior to the date of the scheduling conference. It shall be the duty of the attorney for plaintiff(s) to provide the defendant(s) with a copy of this Order and attachment, and to prepare, sign and file the Status Report in accordance with Attachment "A".

No party may submit a separate Status Report without first obtaining leave of Court for good cause shown. Mere disagreements among parties with respect to any of the matters addressed in the report should be set forth in the appropriate section of the joint Status Report

The Court will review the report prepared and filed in accordance with Attachment "A" in advance of the conference to determine whether or not the scheduling conference should go forward as scheduled, be reset or be cancelled and a Scheduling Order issued based upon the report. In the event there are no reported problems requiring Court intervention and the parties have provided a timely report setting forth applicable deadlines, the Court will notify the parties that the conference ***will not*** be held and that a Scheduling

TOY-RQ-05E-00012017

Order based on their submitted deadlines will be forthcoming. **Unless the Court issues an Order cancelling the conference, the conference *will be held* as scheduled**

Signed in chambers in Baton Rouge, Louisiana, February 24, 2010.

MAGISTRATE JUDGE CHRISTINE NOLAND

Encs. Attachment "A"
Consent Notice

TOY-RQ-05E-00012018

ATTACHMENT "A"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE

VERSUS

TOYOTA MOTORS MANUFACTURING U.S.A. INC., ET AL

CIVIL ACTION

NO. 10-108-JVP-CN

STATUS REPORT

A. JURISDICTION:

What is the basis for the jurisdiction of the Court?

B. BRIEF EXPLANATION OF THE CASE:

1. Plaintiff's claims:

2. Defendant's claims:

C. PENDING MOTIONS:

List any pending motion(s), the date filed and the basis of the motion(s):

D. ISSUES:

List the principal legal issues involved and indicate whether or not any of those issues are in dispute:

E. DAMAGES:

Separately, for each party who claims damages or an offset, set forth the computation of damages or the offset:

1. Plaintiff's calculation of damages:

2. Defendant's calculation of offset and/or plaintiff's damages:

3. Counter claimant/cross claimant/third party's calculation of damages:

F. SERVICE:

TOY-RQ-05E-00012019

Identify any unresolved issues as to waiver or service of process, personal jurisdiction, or venue:

G. DISCOVERY:

1. Have the initial disclosures required under FRCP 26(a)(1) been completed?

[ ] YES [ ] NO

A. Do any parties object to initial disclosures:

[ ] YES [ ] NO

For any party who answered *yes*, please explain your reasons for objecting.

B. Please provide any stipulations reached by the parties with regard to FRCP 26(a)(1) initial disclosures.

2. Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

By defendant(s):

3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery. (For example: are there any confidential business records or medical records that will be sought? Will information that is otherwise privileged be at issue?)

4. Discovery from Experts:

Identify the subject matter(s) as to which expert testimony will be offered by:

Plaintiff(s):

Defendant(s):

H. PROPOSED SCHEDULING ORDER:

1. Recommended deadlines for amending the complaint, or adding new parties, claim, counter claims or cross claims:

2. Recommended deadlines for completion of fact discovery:

A. Exchanging initial disclosures required by FRCP 26(a)(1):

B. Filing all discovery motions and completing all discovery except experts:

3. Disclosure of identities and resumes of expert witnesses (if appropriate, you may suggest different dates for disclosure of experts in different subject

TOY-RQ-05E-00012020

matters):

Plaintiff(s):

Defendant(s):

4. Exchange of expert reports:

Plaintiff(s):

Defendant(s):

5. Completion of discovery from experts:

6. Filing dispositive motions:

7. If the general outline of proposed deadlines set forth in numbers 1-6 does not fit the circumstances of your particular case, please provide a proposed joint schedule of deadlines which is more appropriate for your case.

I. TRIAL:

1. Has a demand for trial by jury been made?

[ ] YES [ ] NO

2. Estimate the number of days that trial will require.

J. OTHER MATTERS:

Are there any specific problems the parties wish to address at the scheduling conference?

[ ] YES [ ] NO

1. If the answer is yes, please explain.

2. If the answer is *no*, do the parties want the Court to cancel the scheduling conference and enter a Scheduling Order based on the deadlines set out in this report?

[ ] YES [ ] NO

K. ALTERNATIVE DISPUTE RESOLUTION ("ADR"):

1. Several ADR techniques are available through the Court and may be helpful in your case. These include early neutral evaluation, mediation, and summary jury trial. Do the parties wish to engage in alternative dispute resolution proceedings?

TOY-RQ-05E-00012021

[ ] YES [ ] NO

2. If the parties have been unable to agree on an ADR procedure, but one or more parties believes that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended:

L. SETTLEMENT:

1. Please set forth what efforts, if any, the parties have made to settle this case.

2. Do the parties wish to have a settlement conference:

[ ] YES [ ] NO

Is your answer is *yes*, at what stage of litigation would a settlement conference be most beneficial?

M. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE:

You have the right to waive your right to proceed before a United States District Judge and you may instead consent to proceed before a United States Magistrate Judge.

Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. §636(c), to have a Magistrate Judge handle all the remaining pretrial aspects of this case and preside over a jury or court trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this Court:

[ ] YES [ ] NO

If your response is "yes," all attorneys and unrepresented parties please sign the attached Consent to Proceed Before A United States Magistrate Judge to indicate your consent.

Report dated: _____

_____
Attorneys for Plaintiff(s) or Pro Se Plaintiff

TOY-RQ-05E-00012022

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF CIVIL CASE BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c), you are hereby notified that all of the parties in this civil case may consent to allow a United States Magistrate Judge of this District Court to conduct any and all proceedings, including trial of the case and entry of a final judgment.

You may consent by signing the form contained with the Status Report, or you may use the attached form at any later stage of the proceedings should you decide at that time to proceed before the United States Magistrate Judge. A copy of a consent form is enclosed and is also available from the Clerk of Court. In the event all parties consent to proceed before the Magistrate Judge, the signed consent form must be filed with the court, either electronically or conventionally, but ONLY AFTER **ALL** PARTIES HAVE SIGNED THE FORM.

You should be aware that your decision to consent, or not to consent, to the disposition of your case before a United States Magistrate Judge is entirely voluntary and should be communicated in writing to the Clerk of the District Court by signing the enclosed form. Either the District Judge or the Magistrate Judge may again advise the parties of the availability of the Magistrate Judge, but in doing so, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.

Please note that the parties may appeal the Magistrate Judge's decision directly to the Court of Appeals in the same manner as an appeal from any other judgment of the District Court.

TOY-RQ-05E-00012023

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE

VERSUS

TOYOTA MOTORS MANUFACTURING U.S.A. INC., ET AL

CIVIL ACTION

NO. 10-108-JVP-CN

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c), the parties to the above captioned civil proceeding hereby waive their right to proceed before a United States District Judge and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including but not limited to the trial of the case, and order the entry of judgment in the case.

The parties are aware that in accordance with 28 U.S.C. 636(c)(3), any aggrieved party may appeal from the judgment directly to the United States Court of Appeals for the Fifth Circuit in the same manner as an appeal from any other judgment of the District Court.

DATE	PARTY REPRESENTED	PRO SE OR ATTY. NAME	PRO SE OR ATTY. SIGNATURE

TOY-RQ-05E-00012024

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America
Through its agent for Service of Process:
CT Corporation System
4169 Westport Road
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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/12/2010

Nick J. Lorio
CLERK OF COURT

Nicole' R. Doyle
Signature of Clerk or Deputy Clerk

FEB 17 2010

TOY-RQ-05E-00012025

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012026

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, Individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor North America, Inc., Throught its Agent for Service of Process:
CT Corporation System
818 West Seventh Street
Los Angeles,CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Nick J. Lorio
CLERK OF COURT

Date: 02/12/2010

Nicole' R. Longo
Signature of Clerk or Deputy Clerk

FEB 17 2010

TOY-RQ-05E-00012027

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012028

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Louisiana

ROSHAWN DONAHUE, individually and on behalf of all other Similarly Situated Plaintiffs

Plaintiff

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL

Defendant

Civil Action No. 10-108-JVP-CN

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U. S. A., Inc.,
Through its agent for Service of Process:
CT Corporation System
5615 Corporate Boulevard - Suite 400B
Baton Rouge, Louisiana 70808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Lawrence J. Centola, III, Esq.,
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/12/2010

Nick J. Lorio
CLERK OF COURT

Nicole' R. Joyce
Signature of Clerk or Deputy Clerk

RECEIVED
FEB 17 2010

Case 3:10-cv-00108-JVP-CN Document 3 02/17/10 Page 1 of 6
Case 3:10-cv-00108-JVP-CN Document 8 02/26/10 Page 2 of 4

TOY-RQ-05E-00012029

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☒ Other *(specify)*:

Serving Via Certified Mail

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

TOY-RQ-05E-00012030

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

EX PARTE MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADINGS

NOW INTO COURT, through undersigned counsel, come defendants Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc., and pursuant to Local Rule 7.9M, move for one extension for a period of 21 days, until April 5, 2010, to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Undersigned counsel certifies that there has been no previous extension of time requested or obtained by Toyota Motor Engineering & Manufacturing North America, Inc. or Toyota Motor Sales, U.S.A., Inc., and that no opposing party has filed in the record an objection to an extension of time.

TOY-RQ-05E-00012031

Respectfully Submitted,

/s/ Mark N. Bodin
Colvin G. Norwood, Jr., T.A. (No. 10083)
Henri Wolbrette III (No. 13631)
Mark N. Bodin (No. 18803)
Patrick J. O'Cain (No. 20993)
MCGLINCHEY STAFFORD, PLLC
601 Poydras Street, 12th Floor
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
Telecopier: (504) 596-2861
Counsel For Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.

TOY-RQ-05E-00012032

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel/parties by placing same in the United States mail, properly addressed and postage prepaid, and/or via the Court's electronic filing system.

Done this 26th day of February, 2010.

/s/ Mark N. Bodin

Scott R. Bickford (Bar 1165)
Lawrence J. Centola, III (Bar 27402)
Martzell & Bickford
338 Lafayette Street
New Orleans, Louisiana 70130

TOY-RQ-05E-00012033

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

ORDER

CONSIDERING THE FOREGOING "Ex Parte Motion for Extension of Time to File Responsive Pleadings" filed on behalf of Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.:

IT IS ORDERED that, pursuant to Local Rule 7.9M, the motion be and is GRANTED, and that Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. shall have until April 5, 2010 to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Baton Rouge, Louisiana, this _____ day of _____, 2010.

_____
JUDGE

TOY-RQ-05E-00012034

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

ORDER

CONSIDERING THE FOREGOING "Ex Parte Motion for Extension of Time to File Responsive Pleadings" filed on behalf of Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.:

IT IS ORDERED that the motion is GRANTED, and that Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. shall have until April 5, 2010 to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Signed in Baton Rouge, Louisiana, on March 2, 2010.

MAGISTRATE JUDGE CHRISTINE NOLAND

TOY-RQ-05E-00012035

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

EX PARTE MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADINGS

NOW INTO COURT, through undersigned counsel, comes defendant Toyota Motor North America, Inc., and pursuant to Local Rule 7.9M, moves for one extension for a period of 21 days, until April 8, 2010, to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Undersigned counsel certifies that there has been no previous extension of time requested or obtained by Toyota Motor North America, Inc., and that no opposing party has filed in the record an objection to an extension of time.

TOY-RQ-05E-00012036

Respectfully Submitted,

/s/ Mark N. Bodin
Colvin G. Norwood, Jr., T.A. (No. 10083)
Henri Wolbrette III (No. 13631)
Mark N. Bodin (No. 18803)
Patrick J. O'Cain (No. 20993)
MCGLINCHEY STAFFORD, PLLC
601 Poydras Street, 12th Floor
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
Telecopier: (504) 596-2861
Counsel For Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc.

TOY-RQ-05E-00012037

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel/parties by placing same in the United States mail, properly addressed and postage prepaid, and/or via the Court's electronic filing system.

Done this 1st day of March, 2010.

/s/ Mark N. Bodin

Scott R. Bickford (Bar 1165)
Lawrence J. Centola, III (Bar 27402)
Martzell & Bickford
338 Lafayette Street
New Orleans, Louisiana 70130

TOY-RQ-05E-00012038

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

ORDER

CONSIDERING THE FOREGOING "Ex Parte Motion for Extension of Time to File Responsive Pleadings" filed on behalf of Toyota Motor North America, Inc.:

IT IS ORDERED that, pursuant to Local Rule 7.9M, the motion be and is GRANTED, and that Toyota Motor North America, Inc. shall have until April 8, 2010 to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Baton Rouge, Louisiana, this _____ day of _____, 2010.

_____
JUDGE

TOY-RQ-05E-00012039

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROSHAWN DONAHUE, individually and on behalf of all other similarly situated Plaintiffs	*	NO. 3:10-cv-00108-JVP-CN
PLAINTIFFS	*	
VERSUS	*	
TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES, U.S.A., INC.	*	
DEFENDANTS	*	JURY DEMAND

* *

ORDER

CONSIDERING THE FOREGOING "Ex Parte Motion for Extension of Time to File Responsive Pleadings" filed on behalf of Toyota Motor North America, Inc. (Dkt. #10):

IT IS ORDERED that the motion be and is GRANTED, and that Toyota Motor North America, Inc. shall have until April 8, 2010 to answer, move, or otherwise plead in response to Plaintiffs' Complaint.

Signed in Baton Rouge, Louisiana, on March 2, 2010.

MAGISTRATE JUDGE CHRISTINE NOLAND

TOY-RQ-05E-00012040

U.S. District Court
Middle District of Louisiana (Baton Rouge)
CIVIL DOCKET FOR CASE #: 3:10-cv-00108-JVP-CN

Donahue v. Toyota Motors Manufacturing U.S.A. Inc. et al
Assigned to: Judge John V. Parker
Referred to: Magistrate Judge Christine Noland
Demand: $100,000,000
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/12/2010
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Roshawn Donahue
individually and on behalf of all other similarly plaintiffs

represented by **Lawrence J. Centola , III**
Martzell &Bickford
338 Lafayette Street
New Orleans, LA 70130
504-581-9065
Fax: 504-581-7635
Email: lcentola@mbfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Scott R. Bickford
Martzell &Bickford
338 Lafayette St.
New Orleans, LA 70130
504-581-9065
Fax: 504-581-7635 FAX
Email: usdcmdla@mbfirm.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motors Manufacturing U.S.A. Inc.

Defendant

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

represented by **Mark N. Bodin**
McGlinchey Stafford- N.O.
12th Floor, 601 Poydras Street
New Orleans, LA 70130
504-586-1200
Fax: 504-596-2861
Email: mbodin@mcglinchey.com
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc.,

represented by **Mark N. Bodin**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor North America, Inc.

represented by **Colvin G. Norwood , Jr.**
McGlinchey Stafford- N.O.
601 Poydras Street
12th Floor
New Orleans, LA 70130
504-586-1200
Fax: 504-596-2861
Email: wnorwood@mcglinchey.com

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Henri Wolbrette , III
McGlinchey Stafford– N.O.
601 Poydras Street
12th Floor
New Orleans, LA 70130
504–586–1200
Fax: 504–596–0336
Email: hwolbrette@mcglinchey.com
ATTORNEY TO BE NOTICED

Mark N. Bodin
(See above for address)
ATTORNEY TO BE NOTICED

Patrick J. O'Cain
McGlinchey Stafford– N.O.
601 Poydras Street
Suite 1200
New Orleans, LA 70130
504–586–1200
Fax: 504–596–2800
Email: pocain@mcglinchey.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/12/2010	1	COMPLAINT *Roshawn Donahue, individually and on behalf of all other Similarly Situated Plaintiffs* against Toyota Motor Sales, U.S.A., Inc., Toyota Motors Manufacturing U.S.A. Inc., toyota Motor Engineering &Manufacturing North America, Inc., (Filing fee $ 350 receipt number 053N–532986.), filed by Roshawn Donahue. (Attachments: # 1 Attachment, # 2 Attachment, # 3 Attachment)(Centola, Lawrence) (Entered: 02/12/2010)
02/17/2010	2	Letter to MDL Panel notifying panel of possible MDL case (NLT) (Entered: 02/17/2010)
02/17/2010	3	Summons Issued as to Toyota Motor Sales, U.S.A., Inc., Toyota Motors Manufacturing U.S.A. Inc., toyota Motor Engineering &Manufacturing North America, Inc.,. (NOTICE: Counsel shall print and serve both the summons and all attachments in accordance with Federal Rule of Civil Procedure 4.) (NLT) (Entered: 02/17/2010)
02/17/2010	4	NOTICE by Roshawn Donahue re 1 Complaint, *filing Civil Cover Sheet* (Centola, Lawrence) (Entered: 02/17/2010)
02/24/2010	5	90 DAY CONFERENCE ORDER: Scheduling Conference set for 6/10/2010 at 09:45 AM in chambers before Magistrate Judge Christine Noland. Status Report due by 5/27/2010.. Signed by Magistrate Judge Christine Noland on 2/24/10. (BP,) (Entered: 02/24/2010)
02/26/2010	6	SUMMONS Returned Executed by Roshawn Donahue. Toyota Motor Engineering &Manufacturing North America, Inc., served on 2/22/2010, answer due 3/15/2010. (Centola, Lawrence) (Entered: 02/26/2010)
02/26/2010	7	SUMMONS Returned Executed by Roshawn Donahue. Toyota Motors Manufacturing U.S.A. Inc. served on 2/22/2010, answer due 3/15/2010. (Centola, Lawrence) (Entered: 02/26/2010)
02/26/2010	8	SUMMONS Returned Executed by Roshawn Donahue. Toyota Motor Sales, U.S.A., Inc. served on 2/22/2010, answer due 3/15/2010. (Centola, Lawrence) (Entered: 02/26/2010)

02/26/2010	9	Ex Parte MOTION for Extension of Time to File Answer *to Plaintiffs' Complaint* by Toyota Motor Engineering &Manufacturing North America, Inc.,, Toyota Motor Sales, U.S.A., Inc.. (Attachments: #1 Proposed Pleading;)(Bodin, Mark) (Entered: 02/26/2010)
02/26/2010		MOTION(S) REFERRED: 9 Ex Parte MOTION for Extension of Time to File Answer *to Plaintiffs' Complaint*. This motion is now pending before the USMJ. (LSM,) (Entered: 02/26/2010)
03/01/2010	10	Ex Parte MOTION for Extension of Time to File Answer *to Complaint* by Toyota Motor North America, Inc.. (Attachments: #1 Proposed Pleading;)(Bodin, Mark) (Entered: 03/01/2010)
03/01/2010		MOTION(S) REFERRED: 10 Ex Parte MOTION for Extension of Time to File Answer *to Complaint*. This motion is now pending before the USMJ. (BP,) (Entered: 03/01/2010)
03/02/2010	11	ORDER granting 9 Motion for Extension of Time to Answer 1 Complaint by. Toyota Motor Engineering &Manufacturing North America, Inc...IT IS ORDERED that the motion is GRANTED, and that Toyota Motor Engineering &Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. shall have until 4/5/2010 to answer, move, or otherwise plead in response to Plaintiffs Complaint. Signed by Magistrate Judge Christine Noland on 3/2/2010. (LSM,) (Entered: 03/02/2010)
03/02/2010	12	ORDER granting 10 Motion for Extension of Time to Answer to 1 Complaint. IT IS ORDERED that the motion be and is GRANTED, and that Toyota Motor North America, Inc. shall have until 4/8/2010 to answer, move, or otherwise plead in response to Plaintiffs Complaint. Signed by Magistrate Judge Christine Noland on 3/2/2010. (LSM,) (Entered: 03/02/2010)

FILE START

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE NO.

JAMES R. HAUSTEIN, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING, NORTH AMERICA, INC. Defendants.	CIVIL ACTION 5:10-cv-178 (NPM/ATB) JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, James R. Haustein, by and through his undersigned attorneys, files this Complaint on behalf of himself and all persons similarly situated. This Complaint is based upon personal knowledge as to allegations regarding Plaintiff and upon information and belief as to other allegations in the Complaint. Plaintiff hereby alleges as follows:

PARTIES

1. Plaintiff is and at all relevant times hereto has been a resident of Tompkins County and a citizen of the State of New York.

2. Defendant Toyota Motor Corporation is a corporation organized and existing pursuant to the laws of Japan.

3. Defendant Toyota Motor Sales, U.S.A., Inc. ("Motor Sales") is a wholly-owned subsidiary of Toyota Motor Corporation.

4. Motor Sales is incorporated in California with its principal place of business in Torrance, California.

5. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation.

6. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is incorporated in Kentucky with its headquarters in Erlanger, Kentucky.

7. At all relevant times, each and every defendant was acting as an agent and/or employee of each other defendant. The above-named defendants will hereinafter collectively be referred to as "Defendants."

VENUE AND JURISDICTION

8. Defendants promote, market, sell and/or distribute their products and services in this state. At all relevant times hereto, Defendants have done, and continue to do, business in the State of New York, as well as in every other state in the United States, and purposefully avail themselves of the consumers and markets of the State of New York.

9. Defendants' vehicles are marketed, sold and serviced by Defendants throughout this judicial district, including but not limited to Tompkins County, New York.

10. Pursuant to 28 U.S.C. § 1332(d)(2), this Court has jurisdiction over the claims brought by Plaintiff because, as set forth below, the aggregate claims of the

putative class members exceed $5 million, exclusive of interests and costs, and Plaintiff is diverse in citizenship from Defendants.

11. The amount in controversy in this matter, aggregated as required by 28 U.S.C. § 1332(d)(6), is, upon information and belief, in excess of $5 million, exclusive of interests and costs.

12. In view of Defendants' extensive and widespread business activities, Plaintiff anticipates hundreds of thousands of potential class members will be revealed during the discovery process.

13. Each class member has suffered damages as a result of Defendants' conduct as described herein and continues to suffer both the loss of use and the loss of value of their vehicles.

14. Plaintiff seeks more than just compensatory damages, including attorney's fees and injunctive relief, all of which may be considered in determining the amount in controversy.

15. Venue also is proper in this district pursuant 28 U.S.C. § 1391, as a substantial part of the events occurred here, a substantial part of the property that is the subject of the action is situated here, and/or Defendants are subject to personal jurisdiction here.

FACTUAL ALLEGATIONS

16. Defendants and their subsidiaries and affiliates collectively are the largest manufacturers and sellers of automobiles in the world and Motor Sales has been operating in the United States since 1957. Defendants collectively promote, market, sell

TOY-RQ-05E-00012047

and distribute their goods and services to every state in the United States and, in fact, sold more than 2.2 million vehicles in the United States during 2008 alone.

17. Specifically, Defendants promote and market their vehicles in Tompkins County, New York. Defendants' marketing campaign focuses on the quality and safety of its vehicles.

18. In or around July of 2007, Plaintiff purchased a new 2007 Tundra (hereinafter "the Vehicle") from Williams Toyota in Sayre, Pennsylvania, over the New York border from Tompkins County.

19. Plaintiff currently owns, and has owned since its purchase, the Vehicle, which bears the vehicle identification number 5TBBT54197S454716.

20. The Vehicle was designed, manufactured and sold by Defendants with an Electronic Throttle Control System with Intelligence (hereinafter "ETCS").

21. ETCS allows an engine's throttle to be controlled by a series of electronic signals rather than the traditional method of controlling the throttle with a direct, mechanical connection between the gas pedal and the throttle. An electronic sensor detects the position of the gas pedal and sends electronic signals to a control module that then translates these signals and, in turn, sends its own electronic signals to the throttle control motor that directs the opening and closing of the throttle plate.

22. In or around 2001, Defendants began designing, manufacturing, selling and/or distributing vehicles ("Toyota-produced vehicles") with ETCS.

23. In the past, Defendants employed ETCS technology in conjunction with the traditional mechanical connection between the gas pedal and the throttle. This

TOY-RQ-05E-00012048

provided the driver with an important fail-safe in the event that there was an unintended acceleration, which is an acceleration not caused by the driver applying pressure to the gas pedal. Thus, if an unintended acceleration occurred, ETCS could be deactivated and throttle control would be returned to the driver by way of the mechanical connection.

24. In or around 2002, Defendants stopped including the mechanical connection between the gas pedal and the throttle in their vehicles.

25. Complaints of unintended acceleration in Toyota-produced vehicles rose sharply after 2001, when Defendants began implementing ETCS.

26. Complaints of unintended acceleration in Toyota-produced vehicles also increased after 2002, when Toyota removed all mechanical fail-safe measures and only installed ETCS.

27. Defendants failed to implement ETCS technology in conjunction with other important fail-safe measures that would maintain driver control in the event of unintended acceleration.

28. An example of such a fail-safe is a computer algorithm that was available in non-Toyota-produced vehicles designed with ETCS and that would have required ETCS to reduce the engine to idle if the brakes were applied while the throttle was in an open position (hereinafter "the Brake to Idle feature").

29. The Toyota-produced vehicles equipped with ETCS are unreasonably dangerous and defective because these vehicles are susceptible to sudden, unintended acceleration.

TOY-RQ-05E-00012049

30. The Toyota-produced vehicles equipped with ETCS are defective as designed because, *inter alia*, they lack important fail-safe measures, including the direct mechanical connection between the gas pedal and the throttle and the Brake to Idle feature, to assist the driver in the event there is an unintended acceleration and to prevent such instances from occurring.

31. The defectiveness of Toyota-produced vehicles with ETCS renders such vehicles dangerous and uncontrollable.

32. The aforementioned defects have caused plaintiff and other class members damage in that the defects reduce the value of all vehicles with ETCS and have resulted in a loss of use of the Toyota-produced vehicles.

33. Uncontrollable and unintended sudden acceleration poses significant risk of injury and death to those persons in or around the vehicle when it is in use.

34. Plaintiff alleges on information and belief that more than 2,000 complaints of sudden, unintended acceleration have been made by owners of the Toyota-produced vehicles to Defendants and government agencies since the introduction of ETCS.

35. On several occasions after he purchased the Vehicle, Plaintiff experienced the unintended, sudden acceleration of the Vehicle when he was not applying any pressure to the gas pedal.

36. Plaintiff also experienced a sudden, unintended acceleration of the Vehicle that continued after he applied pressure to his brake pedal resulting in the revving of the engine despite no pressure being applied to the gas pedal.

37. At all relevant times, Defendants knew that Toyota-produced vehicles with ETCS were susceptible to dangerous, sudden, and unintended acceleration.

38. Despite this knowledge, Defendants continued to design, manufacture, advertise, and distribute Toyota-produced vehicles employing ETCS technology that are at risk of sudden, unintended acceleration.

39. Despite this knowledge, Defendants continued to design, manufacture, advertise, and distribute Toyota-produced vehicles employing ETCS technology while advertising and marketing them in New York and other states in the United States as safe vehicles.

40. Despite this knowledge, Defendants still choose not to incorporate vital fail-safe measures that would assist drivers faced with sudden unintended acceleration and, in fact, could prevent and/or significantly decrease the frequency of such an occurrence.

CLASS ACTION ALLEGATIONS

41. Pursuant to Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(1), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3), Plaintiff brings this action on behalf of himself and also on behalf of a New York class (the "New York Class") consisting of all New York State residents who purchased and own Toyota-produced vehicles equipped with ETCS. Plaintiff also brings this action on behalf of himself and all others similarly situated in the United States (the "National Class") consisting of all persons in the United States who own Toyota-produced vehicles equipped with ETCS. Plaintiff reserves the right to modify the New York Class and National Class definitions and their respective class

TOY-RQ-05E-00012051

periods, based on information learned through discovery. Collectively, the New York Class and the National Class are referred to as "the Classes."

42. Excluded from the Classes are all persons who have suffered, or possess a right of action for, any personal injury or wrongful death as a result of sudden unintended acceleration. Also excluded from the Classes is any entity in which Defendants have a controlling interest, and officers or directors of Defendants.

43. This action is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b). This action satisfies the numerosity, commonality and predominance, typicality, superiority, and adequacy requirements of Rule 23.

44. Plaintiff is a member of the Classes which he seeks to represent.

45. The Classes consists of, at least, hundreds of thousands of members whose identities are within the knowledge of Defendants and can be ascertained by resort to their business records, as well as through the records of public agencies. The members of the Classes, however, are so numerous that individual joinder is impractical.

46. Common questions of law and fact exist as to all members of the Classes and predominate over any questions affecting solely individual members of the Classes. Among the questions of law and fact common to the Classes are:

a) Whether Toyota-produced vehicles utilizing ETCS are prone to sudden and unintended acceleration.

b) What causes sudden and unintended acceleration of Toyota-produced vehicles utilizing ETCS.

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c) Whether Toyota-produced vehicles utilizing ETCS are dangerous due to defective design.

d) Whether Toyota-produced vehicles utilizing ETCS are dangerous because Toyota failed to incorporate safety measures into their design.

e) Whether Defendants knew that the Toyota-produced vehicles equipped with ETCS were prone to sudden and unintended acceleration before such vehicles were sold.

f) Whether Defendants failed to timely and properly remedy the dangerous possibility of sudden and unintended acceleration caused by ETCS.

g) Whether Defendants breached the implied warranty of merchantability by equipping Toyota-produced vehicles with ETCS, which is unreasonably dangerous.

h) Whether Defendants breached the implied warranty of fitness for a particular purpose by equipping Toyota-produced vehicles with ETCS, which were not fit for the vehicles' intended use.

i) Whether Defendants' conduct, described above, violates N.Y. Gen. Bus. Law § 349, *et seq.*

j) The proper measure of damages and other remedies available to Plaintiff and the Classes, as well as the amount of compensation due to Plaintiff and the Classes, because of Defendants' conduct.

k) Whether Plaintiff and the Classes are entitled to injunctive relief.

47. Plaintiff's claims are typical of the claims of the other members of the Classes. Plaintiff, like all members of the Classes, has been injured by Defendants' wrongful conduct. Plaintiff and all members of the Classes have been identically or similarly harmed by the wrongful conduct of Defendants.

48. The individual ascertainable losses and damages to the Plaintiff and each member of the Classes are not sufficiently large to warrant instituting individual actions.

49. A class action is superior to all other available methods for fair and efficient adjudication of the matters at hand. The prosecution of separate actions by members of the Classes would create a risk of inconsistent, contradictory, or varying adjudications which could confront Defendants with incompatible standards of conduct or could lead to adjudications which could be dispositive of the interests of other members of the Classes not parties to the adjudication or substantially impair or impede their ability to protect their interests. Damages to the individual members of the Classes are relatively small in comparison to the costs of litigation, making the expense of individual litigation of these claims prohibitive for Plaintiff and the other members of the Classes. Also, individual actions by all members of the Classes would heavily burden the judicial system, resulting in delay and extra expense. Furthermore, there are no unusual difficulties likely to be encountered in the management of this case as a class action.

50. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff does not have any interest that is antagonistic to or in conflict with the other members of the Classes which Plaintiff seeks to represent.

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51. Plaintiff has retained counsel competent and experienced in complex consumer class actions and consumer litigation. Counsel will strongly assert the claims of the Classes.

FIRST CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILTY

52. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

53. Defendants have violated the implied warranty of merchantability.

54. Defendants have violated U.C.C. § 2-314.

55. Defendants are, and at all relevant time have been, merchants as they deal in goods of the kind at issue here.

56. Defendants impliedly warrant their vehicles as merchantable, or in other words, as fit for the ordinary purposes for which such goods are used.

57. The ordinary purpose for which Toyota-produced vehicles are used is to provide the purchaser with a reasonably safe vehicle that can be used to transport persons and things, without unduly endangering them, from one point to another.

58. Defendants have breached their implied warranty of merchantability by selling vehicles that are unreasonably dangerous due to sudden, unintended acceleration and that do not contain safety mechanisms which would prevent such sudden, unintended acceleration or assist the driver in controlling the vehicle in the event of such sudden, unintended acceleration.

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59. As a result of this breach of warranty of merchantability, Plaintiff, and every member of the Classes, has been similarly damaged.

SECOND CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF FITNESS

60. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

61. Defendants have violated the implied warranty of fitness.

62. Defendants have violated U.C.C. § 2-315.

63. At the time of contracting, Defendants had reason to know that the purpose of Plaintiff, and members of the Classes, was to obtain a vehicle for the safe transport of persons and things from one point to another.

64. Defendants knew that purchasers of Toyota-produced vehicles relied upon the Defendants' skill or judgment to furnish vehicles that were capable of the safe transport of persons and things from one point to another.

65. Due to the aforementioned design and/or manufacturing defects, Toyota-produced vehicles are not fit for this intended purpose as they are susceptible to sudden and unintentional acceleration and are not equipped with sufficient safety devices to prevent or combat this problem.

66. As a result of this breach of warranty of fitness, Plaintiff, and every member of the Classes, has been similarly damaged.

TOY-RQ-05E-00012056

THIRD CLAIM FOR RELIEF

NEW YORK GENERAL BUSINESS LAW

67. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

68. Plaintiff and the other members of the Classes are consumers within the meaning of N.Y. Gen. Bus. Law § 349, *et seq.*

69. Deceptive acts and practices are declared unlawful pursuant to the N.Y. Act, which provides in pertinent part under N.Y. Gen. Bus. Law § 349 as follows: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

70. N.Y. Gen. Bus. Law § 349(h) provides Plaintiff with standing to commence this action, recover treble damages, attorneys' fees and costs, and enjoin the continuation of practices complained of herein and provides in relevant part as follows:

> In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

71. The conduct of Defendants in the design, manufacture, distribution, promotion, marketing and sale of Toyota-produced vehicles with ETCS without disclosing the dangerous defects in design and manufacture and as otherwise set forth in this Complaint constitute deceptive acts or practices.

72. Defendants' unfair and deceptive conduct proximately caused Plaintiff and members of the Classes to be similarly injured.

73. Defendants have engaged in unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq*.

WHEREFORE, Plaintiff prays for the following relief:

a) Certification of this action as a class action to proceed on behalf of the Classes as defined herein after suitable discovery has been completed;

b) Compensatory and/or treble damages as authorized by law;

c) Reasonable costs and attorneys' fees incurred by Plaintiff;

d) Interest on all claims;

e) Injunctive relief as set forth herein;

f) Trial by jury on all claims;

g) Disgorgement of all excessive sums obtained through the unfair practices described herein; and

h) Such other and further relief as the Court may deem just and equitable.

Dated: New York, New York
February 9, 2010

Respectfully Submitted,

TRIEF & OLK

By: _____

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TOY-RQ-05E-00012059

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE NO.

JAMES R. HAUSTEIN, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING, NORTH AMERICA, INC. Defendants.	CIVIL ACTION 5:10-cv-178 (NPM/ATB) JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, James R. Haustein, by and through his undersigned attorneys, files this Complaint on behalf of himself and all persons similarly situated. This Complaint is based upon personal knowledge as to allegations regarding Plaintiff and upon information and belief as to other allegations in the Complaint. Plaintiff hereby alleges as follows:

PARTIES

1. Plaintiff is and at all relevant times hereto has been a resident of Tompkins County and a citizen of the State of New York.

2. Defendant Toyota Motor Corporation is a corporation organized and existing pursuant to the laws of Japan.

3. Defendant Toyota Motor Sales, U.S.A., Inc. ("Motor Sales") is a wholly-owned subsidiary of Toyota Motor Corporation.

4. Motor Sales is incorporated in California with its principal place of business in Torrance, California.

5. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation.

6. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is incorporated in Kentucky with its headquarters in Erlanger, Kentucky.

7. At all relevant times, each and every defendant was acting as an agent and/or employee of each other defendant. The above-named defendants will hereinafter collectively be referred to as "Defendants."

VENUE AND JURISDICTION

8. Defendants promote, market, sell and/or distribute their products and services in this state. At all relevant times hereto, Defendants have done, and continue to do, business in the State of New York, as well as in every other state in the United States, and purposefully avail themselves of the consumers and markets of the State of New York.

9. Defendants' vehicles are marketed, sold and serviced by Defendants throughout this judicial district, including but not limited to Tompkins County, New York.

10. Pursuant to 28 U.S.C. § 1332(d)(2), this Court has jurisdiction over the claims brought by Plaintiff because, as set forth below, the aggregate claims of the

putative class members exceed $5 million, exclusive of interests and costs, and Plaintiff is diverse in citizenship from Defendants.

11. The amount in controversy in this matter, aggregated as required by 28 U.S.C. § 1332(d)(6), is, upon information and belief, in excess of $5 million, exclusive of interests and costs.

12. In view of Defendants' extensive and widespread business activities, Plaintiff anticipates hundreds of thousands of potential class members will be revealed during the discovery process.

13. Each class member has suffered damages as a result of Defendants' conduct as described herein and continues to suffer both the loss of use and the loss of value of their vehicles.

14. Plaintiff seeks more than just compensatory damages, including attorney's fees and injunctive relief, all of which may be considered in determining the amount in controversy.

15. Venue also is proper in this district pursuant 28 U.S.C. § 1391, as a substantial part of the events occurred here, a substantial part of the property that is the subject of the action is situated here, and/or Defendants are subject to personal jurisdiction here.

FACTUAL ALLEGATIONS

16. Defendants and their subsidiaries and affiliates collectively are the largest manufacturers and sellers of automobiles in the world and Motor Sales has been operating in the United States since 1957. Defendants collectively promote, market, sell

and distribute their goods and services to every state in the United States and, in fact, sold more than 2.2 million vehicles in the United States during 2008 alone.

17. Specifically, Defendants promote and market their vehicles in Tompkins County, New York. Defendants' marketing campaign focuses on the quality and safety of its vehicles.

18. In or around July of 2007, Plaintiff purchased a new 2007 Tundra (hereinafter "the Vehicle") from Williams Toyota in Sayre, Pennsylvania, over the New York border from Tompkins County.

19. Plaintiff currently owns, and has owned since its purchase, the Vehicle, which bears the vehicle identification number 5TBBT54197S454716.

20. The Vehicle was designed, manufactured and sold by Defendants with an Electronic Throttle Control System with Intelligence (hereinafter "ETCS").

21. ETCS allows an engine's throttle to be controlled by a series of electronic signals rather than the traditional method of controlling the throttle with a direct, mechanical connection between the gas pedal and the throttle. An electronic sensor detects the position of the gas pedal and sends electronic signals to a control module that then translates these signals and, in turn, sends its own electronic signals to the throttle control motor that directs the opening and closing of the throttle plate.

22. In or around 2001, Defendants began designing, manufacturing, selling and/or distributing vehicles ("Toyota-produced vehicles") with ETCS.

23. In the past, Defendants employed ETCS technology in conjunction with the traditional mechanical connection between the gas pedal and the throttle. This

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provided the driver with an important fail-safe in the event that there was an unintended acceleration, which is an acceleration not caused by the driver applying pressure to the gas pedal. Thus, if an unintended acceleration occurred, ETCS could be deactivated and throttle control would be returned to the driver by way of the mechanical connection.

24. In or around 2002, Defendants stopped including the mechanical connection between the gas pedal and the throttle in their vehicles.

25. Complaints of unintended acceleration in Toyota-produced vehicles rose sharply after 2001, when Defendants began implementing ETCS.

26. Complaints of unintended acceleration in Toyota-produced vehicles also increased after 2002, when Toyota removed all mechanical fail-safe measures and only installed ETCS.

27. Defendants failed to implement ETCS technology in conjunction with other important fail-safe measures that would maintain driver control in the event of unintended acceleration.

28. An example of such a fail-safe is a computer algorithm that was available in non-Toyota-produced vehicles designed with ETCS and that would have required ETCS to reduce the engine to idle if the brakes were applied while the throttle was in an open position (hereinafter "the Brake to Idle feature").

29. The Toyota-produced vehicles equipped with ETCS are unreasonably dangerous and defective because these vehicles are susceptible to sudden, unintended acceleration.

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30. The Toyota-produced vehicles equipped with ETCS are defective as designed because, *inter alia*, they lack important fail-safe measures, including the direct mechanical connection between the gas pedal and the throttle and the Brake to Idle feature, to assist the driver in the event there is an unintended acceleration and to prevent such instances from occurring.

31. The defectiveness of Toyota-produced vehicles with ETCS renders such vehicles dangerous and uncontrollable.

32. The aforementioned defects have caused plaintiff and other class members damage in that the defects reduce the value of all vehicles with ETCS and have resulted in a loss of use of the Toyota-produced vehicles.

33. Uncontrollable and unintended sudden acceleration poses significant risk of injury and death to those persons in or around the vehicle when it is in use.

34. Plaintiff alleges on information and belief that more than 2,000 complaints of sudden, unintended acceleration have been made by owners of the Toyota-produced vehicles to Defendants and government agencies since the introduction of ETCS.

35. On several occasions after he purchased the Vehicle, Plaintiff experienced the unintended, sudden acceleration of the Vehicle when he was not applying any pressure to the gas pedal.

36. Plaintiff also experienced a sudden, unintended acceleration of the Vehicle that continued after he applied pressure to his brake pedal resulting in the revving of the engine despite no pressure being applied to the gas pedal.

37. At all relevant times, Defendants knew that Toyota-produced vehicles with ETCS were susceptible to dangerous, sudden, and unintended acceleration.

38. Despite this knowledge, Defendants continued to design, manufacture, advertise, and distribute Toyota-produced vehicles employing ETCS technology that are at risk of sudden, unintended acceleration.

39. Despite this knowledge, Defendants continued to design, manufacture, advertise, and distribute Toyota-produced vehicles employing ETCS technology while advertising and marketing them in New York and other states in the United States as safe vehicles.

40. Despite this knowledge, Defendants still choose not to incorporate vital fail-safe measures that would assist drivers faced with sudden unintended acceleration and, in fact, could prevent and/or significantly decrease the frequency of such an occurrence.

CLASS ACTION ALLEGATIONS

41. Pursuant to Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(1), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3), Plaintiff brings this action on behalf of himself and also on behalf of a New York class (the "New York Class") consisting of all New York State residents who purchased and own Toyota-produced vehicles equipped with ETCS. Plaintiff also brings this action on behalf of himself and all others similarly situated in the United States (the "National Class") consisting of all persons in the United States who own Toyota-produced vehicles equipped with ETCS. Plaintiff reserves the right to modify the New York Class and National Class definitions and their respective class

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periods, based on information learned through discovery. Collectively, the New York Class and the National Class are referred to as "the Classes."

42. Excluded from the Classes are all persons who have suffered, or possess a right of action for, any personal injury or wrongful death as a result of sudden unintended acceleration. Also excluded from the Classes is any entity in which Defendants have a controlling interest, and officers or directors of Defendants.

43. This action is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b). This action satisfies the numerosity, commonality and predominance, typicality, superiority, and adequacy requirements of Rule 23.

44. Plaintiff is a member of the Classes which he seeks to represent.

45. The Classes consists of, at least, hundreds of thousands of members whose identities are within the knowledge of Defendants and can be ascertained by resort to their business records, as well as through the records of public agencies. The members of the Classes, however, are so numerous that individual joinder is impractical.

46. Common questions of law and fact exist as to all members of the Classes and predominate over any questions affecting solely individual members of the Classes. Among the questions of law and fact common to the Classes are:

a) Whether Toyota-produced vehicles utilizing ETCS are prone to sudden and unintended acceleration.

b) What causes sudden and unintended acceleration of Toyota-produced vehicles utilizing ETCS.

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c) Whether Toyota-produced vehicles utilizing ETCS are dangerous due to defective design.

d) Whether Toyota-produced vehicles utilizing ETCS are dangerous because Toyota failed to incorporate safety measures into their design.

e) Whether Defendants knew that the Toyota-produced vehicles equipped with ETCS were prone to sudden and unintended acceleration before such vehicles were sold.

f) Whether Defendants failed to timely and properly remedy the dangerous possibility of sudden and unintended acceleration caused by ETCS.

g) Whether Defendants breached the implied warranty of merchantability by equipping Toyota-produced vehicles with ETCS, which is unreasonably dangerous.

h) Whether Defendants breached the implied warranty of fitness for a particular purpose by equipping Toyota-produced vehicles with ETCS, which were not fit for the vehicles' intended use.

i) Whether Defendants' conduct, described above, violates N.Y. Gen. Bus. Law § 349, *et seq.*

j) The proper measure of damages and other remedies available to Plaintiff and the Classes, as well as the amount of compensation due to Plaintiff and the Classes, because of Defendants' conduct.

k) Whether Plaintiff and the Classes are entitled to injunctive relief.

47. Plaintiff's claims are typical of the claims of the other members of the Classes. Plaintiff, like all members of the Classes, has been injured by Defendants' wrongful conduct. Plaintiff and all members of the Classes have been identically or similarly harmed by the wrongful conduct of Defendants.

48. The individual ascertainable losses and damages to the Plaintiff and each member of the Classes are not sufficiently large to warrant instituting individual actions.

49. A class action is superior to all other available methods for fair and efficient adjudication of the matters at hand. The prosecution of separate actions by members of the Classes would create a risk of inconsistent, contradictory, or varying adjudications which could confront Defendants with incompatible standards of conduct or could lead to adjudications which could be dispositive of the interests of other members of the Classes not parties to the adjudication or substantially impair or impede their ability to protect their interests. Damages to the individual members of the Classes are relatively small in comparison to the costs of litigation, making the expense of individual litigation of these claims prohibitive for Plaintiff and the other members of the Classes. Also, individual actions by all members of the Classes would heavily burden the judicial system, resulting in delay and extra expense. Furthermore, there are no unusual difficulties likely to be encountered in the management of this case as a class action.

50. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff does not have any interest that is antagonistic to or in conflict with the other members of the Classes which Plaintiff seeks to represent.

TOY-RQ-05E-00012069

51. Plaintiff has retained counsel competent and experienced in complex consumer class actions and consumer litigation. Counsel will strongly assert the claims of the Classes.

FIRST CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILTY

52. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

53. Defendants have violated the implied warranty of merchantability.

54. Defendants have violated U.C.C. § 2-314.

55. Defendants are, and at all relevant time have been, merchants as they deal in goods of the kind at issue here.

56. Defendants impliedly warrant their vehicles as merchantable, or in other words, as fit for the ordinary purposes for which such goods are used.

57. The ordinary purpose for which Toyota-produced vehicles are used is to provide the purchaser with a reasonably safe vehicle that can be used to transport persons and things, without unduly endangering them, from one point to another.

58. Defendants have breached their implied warranty of merchantability by selling vehicles that are unreasonably dangerous due to sudden, unintended acceleration and that do not contain safety mechanisms which would prevent such sudden, unintended acceleration or assist the driver in controlling the vehicle in the event of such sudden, unintended acceleration.

TOY-RQ-05E-00012070

59. As a result of this breach of warranty of merchantability, Plaintiff, and every member of the Classes, has been similarly damaged.

SECOND CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF FITNESS

60. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

61. Defendants have violated the implied warranty of fitness.

62. Defendants have violated U.C.C. § 2-315.

63. At the time of contracting, Defendants had reason to know that the purpose of Plaintiff, and members of the Classes, was to obtain a vehicle for the safe transport of persons and things from one point to another.

64. Defendants knew that purchasers of Toyota-produced vehicles relied upon the Defendants' skill or judgment to furnish vehicles that were capable of the safe transport of persons and things from one point to another.

65. Due to the aforementioned design and/or manufacturing defects, Toyota-produced vehicles are not fit for this intended purpose as they are susceptible to sudden and unintentional acceleration and are not equipped with sufficient safety devices to prevent or combat this problem.

66. As a result of this breach of warranty of fitness, Plaintiff, and every member of the Classes, has been similarly damaged.

THIRD CLAIM FOR RELIEF

NEW YORK GENERAL BUSINESS LAW

67. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above as though fully set forth at length herein.

68. Plaintiff and the other members of the Classes are consumers within the meaning of N.Y. Gen. Bus. Law § 349, *et seq.*

69. Deceptive acts and practices are declared unlawful pursuant to the N.Y. Act, which provides in pertinent part under N.Y. Gen. Bus. Law § 349 as follows: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

70. N.Y. Gen. Bus. Law § 349(h) provides Plaintiff with standing to commence this action, recover treble damages, attorneys' fees and costs, and enjoin the continuation of practices complained of herein and provides in relevant part as follows:

> In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

71. The conduct of Defendants in the design, manufacture, distribution, promotion, marketing and sale of Toyota-produced vehicles with ETCS without disclosing the dangerous defects in design and manufacture and as otherwise set forth in this Complaint constitute deceptive acts or practices.

72. Defendants' unfair and deceptive conduct proximately caused Plaintiff and members of the Classes to be similarly injured.

73. Defendants have engaged in unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq*.

WHEREFORE, Plaintiff prays for the following relief:

a) Certification of this action as a class action to proceed on behalf of the Classes as defined herein after suitable discovery has been completed;

b) Compensatory and/or treble damages as authorized by law;

c) Reasonable costs and attorneys' fees incurred by Plaintiff;

d) Interest on all claims;

e) Injunctive relief as set forth herein;

f) Trial by jury on all claims;

g) Disgorgement of all excessive sums obtained through the unfair practices described herein; and

h) Such other and further relief as the Court may deem just and equitable.

Dated: New York, New York
February 9, 2010

Respectfully Submitted,

TRIEF & OLK

By: _____

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TOY-RQ-05E-00012073

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TOY-RQ-05E-00012074

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
MAR 01 2010
AT ____ O'CLOCK ____
Lawrence K. Baerman, Clerk - Syracuse

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February 26, 2010

VIA FIRST CLASS MAIL

5:10-CV-178

Clerk of Court
United States District Court

Re: ***In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation*, MDL No. 2151**

Dear Sir or Madam:

On behalf of Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corp., and New United Motor Manufacturing, Inc. ("Toyota Defendants"), enclosed please find a service copy of the Toyota Defendants' Notice of Related Actions filed in the above-referenced Multidistrict Litigation proceedings.

The Toyota Defendants, by its attorneys Alston & Bird LLP, are providing this service copy to you pursuant to Rule 5.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, which requires service of the Clerks of Court for each district in which one of the noticed cases is pending.

In providing this service copy, the Toyota Defendants are not entering an appearance nor are the Toyota Defendants waiving service or their rights to assert any defenses related to service of process or jurisdiction.[1]

Should you have any questions about the enclosed or require additional information, please contact me at the number above.

---

[1] *See, In re Multidistrict Private Civil Treble Damage Litigation Involving Library Editions Of Children's Books*, 299 F.Supp. 1139, 1142 (J.P.M.L. 1969) ("A 1407 transfer will not deprive an unserved defendant of any right which is entitled to judicial protection. . . . Therefore, proper service must still be made on each defendant pursuant to the rules of the transferor court even after a transfer under 1407. Additionally, any party served with process after such a transfer may raise any and all motions available to a defendant properly served before transfer.")

TOY-RQ-05E-00012075

Sincerely yours,

Cari K. Dawson

Cari K. Dawson

CKD:kfk
Enclosure

LEGAL02/31782457v1

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
MAR 01 2010
AT ____ O'CLOCK
Lawrence K. Baerman, Clerk - Syracuse

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

5:10-CV-178

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	: : :	MDL No. 2151

NOTICE OF RELATED ACTIONS

Pursuant to Rule 7.2(i) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corp., and New United Motor Manufacturing, Inc. hereby notify the Clerk of the Panel of the related actions as listed on the Schedule of Related Cases, attached hereto as Exhibit A.

[Signature on next page]

Respectfully submitted, this 26th day of February.

Cari K. Dawson

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Counsel for Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corp., and New United Motor Manufacturing, Inc.

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION
MDL DOCKET NO. 2151

EXHIBIT A: Schedule of Related Actions[1]

No.	Full Case Name	Civ. Action No.	District	Division	Judge
1.	Karen Bush Gertz v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01089	C.D. Cal.	Southern (Santa Anna)	Gee
2.	Lacey Laudicina and Kevin Funez, individually and on behalf of all other similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01030	C.D. Cal.	Western (Los Angeles)	Marshall
3.	Stuart Grant, an individual, v. Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and Does One through Twenty	2:10-cv-01234	C.D. Cal.	Western (Los Angeles)	Matz

[1] The Toyota Defendants have not been served in many of the cases identified in this Schedule of Related Actions. Toyota's identification of these cases for purposes of transfer and consolidation pursuant to 28 U.S.C. § 1407 does not constitute an appearance by Toyota or imply that Toyota has waived service in any of these constituent cases.

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 3 of 25

TOY-RQ-05E-00012079

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
4.	Nimishabahen Patel, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors LLC, a foreign corporation.	3:10-cv-00210	D. Conn.	New Haven	Underhill
5.	S. Firgon, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor North America, Inc.	2:10-cv-02075	D. Kan.	Kansas City	Murguia
6.	Darshak Shah, v. Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and General Motors, LLC	1:10-cv-10263	D. Mass.	Boston	Tauro
7.	Don Gureski and Carol Gureski, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00031	D. Wyo.	Casper	Johnson
8.	Cheryl Abken and Sandra Valdez, individually and on behalf of all persons similarly situated, v. Toyota motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and General Motors LLC	3:10-cv-00763	D.N.J.	Trenton	Cooper

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 4 of 25

TOY-RQ-05E-00012080

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
9.	Francine Goukas, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00778	D.N.J.	Trenton	Cooper
10.	Julie Rainwater, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00116	E.D. Ark.	Western	Wilson
11.	Christopher L. Leaverton, individually and on behalf of all others similarly situated, v. Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00032	E.D. Ky.	Northern (Covington)	Bertelsman
12.	Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward & Joan Skillman, and Melissa Arnzen Moeddel, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and Toyota Motor Manufacturing, Northern Kentucky, Inc.	2:10-cv-00031	E.D. Ky.	Northern (Covington)	Bertelsman

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 5 of 25

TOY-RQ-05E-0001208

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
13.	Frederick Greisiger, individually and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors, LLC, a foreign corporation.	5:10-cv-00554	E.D. Pa.	Allentown	Slomsky
14.	Frank Whiddon, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation,	1:10-cv-00080	E.D. Tex.	Beaumont	Clark
15.	William Fitts and Phyllis Fitts, individually; Billy C. Fitts and Freida Fitts individually v. Toyota Motor Corporation	2:10-cv-00052	E.D. Tex.	Marshall	Ward
16.	John Harding, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation.	2:10-cv-00100	M.D. Ala.	Montgomery	Fuller
17.	Renita Cipriani, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a Japanese Corp.; and Toyota Motor Sales, U.S.A., Inc., a CA Corp.	8:10-cv-00427	M.D. Fla.	Tampa	Bucklew

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 6 of 25

TOY-RQ-05E-00012082

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
18.	Viviane Stoller, individually and on behalf of a class of similarly situated citizens in Georgia, v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc.	4:10-cv-00024	M.D. Ga.	Columbus	Land
19.	Roshawn Donahue, individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00108	M.D. La.	Baton Rouge	Parker
20.	Christina Ochs, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00918	N.D. Ill.	Chicago	Coar
21.	Belva Simmons, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, Toyota Motor Sales, USA, Inc., a California corporation, and Toyota North America, Inc., a California corporation.	3:10-cv-00009	N.D. Miss.	Western	Mills
22.	Roxanne Early and Edward Ransom, individually and as legal heirs to the estate of Sharon Ransom, deceased, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Kentucky, Inc.	3:10-cv-00332	N.D. Tex	Dallas	Lindsay

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 7 of 25

TOY-RQ-05E-00012083

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
23.	James R. Haustein, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, North America, Inc.	5:10-cv-00178	N.D.N.Y.	Syracuse	McCurn
24.	Rebecca S. Shumaker v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00061	S.D. Ohio	Western (Dayton)	Rice
25.	Thomas Davis, on behalf of himself and all other similarly situated individuals, v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	1:10-cv-00900	S.D.N.Y.	Foley Square	Buchwald
26.	Mark Adkinson, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	6:10-cv-06013	W.D. Ark.	Hot Springs	Dawson
27.	Jerry Baker Auto Sales, LLC, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	2:10-cv-04025	W.D. Mo.	Central	Laughrey

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TOY-RQ-05E-00012084

EXHIBIT A: Schedule of Related Actions

No.	Full Case Name	Civ. Action No.	District	Division	Judge
28.	Carol D. Sill, individually, and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	5:10-cv-00117	W.D. Okla.	Oklahoma City	Russell

Case 5:10-cv-00178-NPM-ATB Document 8 Filed 03/01/10 Page 9 of 25

TOY-RQ-05E-00012085

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP.	:	
DEFECTIVE GAS PEDAL PRODUCTS	:	MDL No. 2151
LIABILITY LITIGATION	:	

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2010, I caused a true and correct copy of the foregoing NOTICE OF RELATED ACTIONS to be served upon all Parties, Counsel, and Clerks of Court identified on the attached Panel Service List and Service List B via U.S. Mail.

This 26th day of February, 2010.

Cari K. Dawson

CARI K. DAWSON

Judicial Panel On Multidistrict Litigation - Panel Service List

Docket: 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Status: Pending On / /
Transferee District:
Judge:
Transferee District Master Docket No.:

Report key: * Signifies that an appearance was made on behalf of the party by the representing attorney.
Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

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March 2, 2010

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RE: Haustein vs. Toyota Motor Corporation, et al
NYND CASE NO. 5:10-CV-178 (NPM/ATB)

Dear Ms. Dawson:

Please be advised that upon receiving the Notice of Related Cases for the above referenced case, the Clerk checked the attorney admission records for the Northern District of New York, and did not find a record of your admission. Although you noted in your letter that you are not entering an appearance, that is the only way you can be noticed by the Court. You are directed to advise this Court in writing if you will remain as counsel of record for the defendants in the above entitled matter, and if so, your formal admission is required in the Northern District of New York for all further proceedings. The attorney admission forms are enclosed and can also be found on our website at www.nynd.uscourts.gov. Otherwise new counsel should file a notice of appearance as soon as possible.

Pursuant to the Notice of Related Actions, MDL No. 2151, the parties are advised that all future filings and inquiries should be made with this Court in accordance with its local rules. Please refer to the NDNY case number listed above on all filings.

Respectfully,

LAWRENCE K. BAERMAN, CLERK

By: s/ Joanne Bleskoski, Deputy Clerk

Encs.
cc: Ted Trief, Esq. (via CM/ECF)
NDNY File

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NOTICE

THE ATTACHED FILING ORDER IS A TIME SENSITIVE DOCUMENT

This filing order is to be served on all parties to the action along with the complaint or petition for removal within **sixty (60) days** of filing this action.

The attached Civil Case Management Plan must be completed and filed with the clerk no later than **ten (10) days** prior to the conference date referenced below.

CONFERENCE DATE/TIME: **June 22, 2010, at 10:00 AM**

CONFERENCE LOCATION: **Syracuse, New York**

BEFORE MAGISTRATE JUDGE: **ANDREW T. BAXTER**

CONTENTS:

- ✪ General Order #25 (Filing Order)
- ✪ Case Management Plan (Attachment B)
- ✪ Case Assignment/Motion Schedules and Filing Locations (Attachment C)
- ✪ Consent Form to Proceed before U.S. Magistrate Judge (Attachment D)

NOTE: IF THIS IS A QUALIFYING CONTRACT, TORT OR NON-PRISONER CIVIL RIGHTS CASE IT WILL BE DIVERTED INTO THE DISTRICT'S NON-BINDING ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR) FOR Arbitration, Mediation or Early Neutral Evaluation. The Clerk will indicate the appropriate track based on the Nature of Suit.

__X__ADR Track

Form Date - 1/3/2010

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER #25

I. PURPOSE

It is the policy of this court to help litigants resolve their civil disputes in a just, timely and cost-effective manner. To that end, this court has adopted an Expense and Delay Reduction Plan in accordance with the Civil Justice Reform Act of 1990. This will tailor the level of individualized case management needs to such criteria as case complexity, and the amount of time reasonably needed to prepare the case for trial.

II. SCOPE

This order applies to all civil cases filed in this court except: multi-district litigation, cases remanded from the appellate court, reinstated and reopened cases, and cases in the following nature of suit categories indicated on the civil cover sheet: Prisoner Petitions(510-550), Forfeiture/Penalty (610-690), Bankruptcy (422-423), Social Security (861-865) Contracts (only nos. 150: Recovery of Overpayment and Enforcement of Judgment 151: Medicare Act, 152: Recovery of Defaulted Student Loans, 153: Recovery of Overpayment of Veteran's Benefits, and other contract actions which involve the collection of debts owed to the United States), Real Property (only no. 220: Foreclosure, and other Statutes (only no. 900: Appeal of Fee Determination Under Equal Access to Justice).

*Note - When the Court deems it appropriate, Rule 16 Scheduling Conferences will be held in the above excepted actions.

The Court has adopted the guidelines of civility as outlined in the New York State Bar Association Guidelines on Civility in Litigation, a copy of which is available on the courts web-site at www.nynd.uscourts.gov.

III. SERVICE

A. Timing:
When serving a Complaint or Notice of Removal, the filing party shall serve on all other parties a copy of this General Order and the attached materials. Service of process should be completed within **Sixty** (60) days from the initial filing date. This expedited service is necessary to fulfill the dictates of the Civil Justice Reform Act Expense and Delay Reduction Plan of this court and to ensure adequate time for pretrial discovery and motion practice. However, in no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4, or any other Rule or Statute which may govern service of process in a given action.

B. Filing Proof(s) of Service:
Proof(s) of service of process are to be filed with the clerk's office no later than five (5) days after service of the complaint or notice of removal with a copy of this General Order.

C. Non Compliance with Sixty (60) Day Service Requirement:
In the event that the filing party cannot comply with the Sixty (60) day service requirement, that party shall immediately notify the assigned Magistrate Judge and request an adjournment of the initial Rule 16 case management conference date contained in the attached Civil Case Management Plan.

If an adjournment of the conference date is granted, it shall be the responsibility of the filing party to notify all parties to the action of the new date, time and location for the case management conference. Proof of service of such notice shall then be immediately filed with the clerk's office.

IV. ADDITIONAL PARTIES

Any party who, after the filing of the original complaint

or notice of removal, causes a new party to be joined in the action shall promptly serve on that new party a copy of General Order 25 along with any additional Uniform Pretrial Scheduling Order that has been entered by the court.

V. REMOVED CASES

In cases removed to this court from a state court, the removing defendant(s) shall serve on the plaintiff(s) and all other parties, at the time of service of the notice of removal, a copy of this General Order with the attached materials. The filing of a motion for remand does not relieve the moving party of any obligation under this General Order unless the assigned judge or magistrate judge specifically grants such relief.

VI. TRANSFERRED CASES

The clerk shall serve a copy of this General Order on all parties that have appeared in any action transferred to this district. The clerk shall set a return date for the initial Rule 16 case management conference on the form attached to the General Order. It shall be the obligation of the plaintiff or plaintiff's counsel to arrange for completion of the attached Case Management Plan and to file the Plan with the clerk and to serve this General Order upon any party who had not appeared in the action at the time of transfer.

Attorneys appearing in transferred cases are reminded of their obligation to be properly admitted to this district in accordance with Local Rule 83.1.

VII. MATERIALS INCLUDED WITH THIS GENERAL ORDER PACKET

A) Notice of Initial Rule 16 Case Management Conference
B) Civil Case Management Plan
C) Case Assignment Form
D) Notice and Consent Form to Exercise of Jurisdiction by a United States Magistrate Judge

VIII. ADR PROGRAMS

It is the mission of this court to do everything it can to help parties resolve their disputes as fairly, quickly, and efficiently as possible. We offer a wide selection of non-binding alternative dispute resolution (ADR) options - each of which provides different kinds of services so that parties can use the procedure that best fits the particular circumstances of their case. Selected Contract, Tort and non-prisoner Civil Rights cases will be diverted into Court-Annexed non-binding Arbitration, Mediation or Early Neutral Evaluation. The Northern District of New York alternative dispute resolution programs are governed by Local Rules 83.7 (Arbitration), 83.11-1, (Mediation), and 83.12-1 (Early Neutral Evaluation). The parties are encouraged to discuss the ADR alternatives in advance of the Rule 16 Pretrial Conference. At the Rule 16 Pretrial Conference, the assigned Magistrate Judge or District Court Judge will assist the parties in the selection of an appropriate ADR alternative.

In addition to Arbitration, Mediation and Early Neutral Evaluation, the court also offers the following ADR processes:

A) Settlement Conferences:

The parties are advised that the court will honor a request for a settlement conference at <u>any</u> stage of the proceeding. A representative of the parties with the authority to bind the parties must be present with counsel or available by telephone at any settlement conference.

B) Consent to Jury or Court Trial Before A United States Magistrate Judge:

By written stipulation, the parties to any civil action may elect to have a magistrate judge (instead of the assigned Article III judge) conduct all proceedings in any civil case, including presiding over a jury or bench trial. A trial before a magistrate judge is governed by the same procedural and evidentiary rules as trial before a district judge. The right to appeal is automatically preserved to the United States Court of Appeals under the same standards which govern appeals from an Article III judge. Parties often consent to resolution of their civil disputes by magistrate judge bench or jury

trial because magistrate judges have less crowded calendars.

IX. DISCOVERY

A. Discovery Motions: Prior to bringing a discovery dispute to a Magistrate Judge, the parties must confer in good faith in accordance with the provisions of Local Rule 7.1(d). In addition, no non-dispostive or discovery motions should be presented to the Court unless authorized by the Magistrate Judge after communication with the Magistrate Judges' chambers.

B. Filing Discovery: Parties are directed not to file discovery material unless it is being filed in accordance with Local Rule 26.2.

For additional information on local requirements related to depositions and discovery please refer to Section V. of the Local Rules of this court.

X. MOTIONS

A. Motion Return Dates: Please refer to the attached case assignment form for a complete listing of the motion return dates for the judges and magistrate judges of this court.

For additional information on local requirements related to motion practice, please refer to Local Rule 7.1.

XI. CASE MANAGEMENT CONFERENCE

Except in actions exempted under Section II of this order, or when otherwise ordered by the court, the parties shall as soon as practicable, meet to jointly address each item contained in the attached Case Management Plan packet. The completed plan is to be filed with the clerk not later than **ten (10) days** prior to the conference date. The NOTICE setting the date, time, and location for the initial Rule 16 conference with the court is included as part of this filing order.

The Civil Justice Reform Act Plan of this court requires the court to set "early, firm" trial dates, such that the trial is scheduled to occur within eighteen (18) months after the filing of the complaint, unless a judicial officer certifies that (I) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or (II) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.

XII. ELECTRONIC FILING

As of January 1, 2004, all documents submitted for filing by attorneys admitted to practice in the Northern District of New York shall be filed electronically using the CM/ECF system. Refer to General Order #22 for procedures for filing documents electronically. Attorneys must be registered for both PACER and CM/ECF. Consult the CM/ECF section of the courts web-site at www.nynd.uscourts.gov for PACER registration, CM/ECF registration, CM/ECF training dates, and General Order #22.

REVISED GENERAL ORDER #25
Dated: January 3, 2010

s/
Hon. Norman A. Mordue.
Chief U.S. District Judge

G-25.ord - FRM Date: 1/3/2010

The 3/30/95 revision clarifies the time frame for filing the case management plan. The revision also includes a provision for issuing G-25 orders on excepted actions when the court deems it appropriate to schedule a Rule 16 conference.

The 3/26/97 revision expands the scope of ADR programs offered by the Northern District of New York and removes the reference to General Order #41 which was incorporated into Local Rule 7.1(b)1 on January 1, 1997.

The 11/30/00 revision allows for the inclusion of non-prisoner civil rights cases in the ADR program.

The 04/01/02 revision modifies Section IX - Discovery motions.

The 06/18/04 revision adds Section XII - Electronic Filing.

The 06/13/2007 revision includes a modification to the civil case management plan document attached to this General Order - in re: Electronic Discovery.

TOY-RQ-05E-00012106

CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES R. HAUSTEIN

No. **5:10-CV-178 NPM/ATB**

VS

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING, NORTH AMERICA, INC.

IT IS HEREBY ORDERED that, Pursuant to Rule16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable ANDREW T. BAXTER, United States Magistrate Judge on **June 22, 2010, at 10:00 AM** at the United States Courthouse, at 3rd Floor Court Annex ,Syracuse, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below. That meeting must be attended in person or, if counsel for the parties are not located in the same city and do not agree to meet in person, then by telephone, and must be held at least **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of that meeting, in the format set forth below, must be filed with the clerk within **fourteen (14) days** after the date of the Rule 26(f) meeting or not later than **ten (10) days** prior to the scheduled Rule 16 conference with the Court, whichever date is earlier. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if the parties disagree):

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before the _____ day of _____, _____.

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before the _____ day of _____, _____.

3) DISCOVERY: All discovery in this action shall be completed on or before the _____ day of _____, _____. **(Discovery time table is to be based on the complexity of the action)**

4) MOTIONS: All motions, including discovery motions, shall be made on or before the _____ day of _____, _____. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

Form Date - 1/3/2010

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the _____day of_____, _____. It is anticipated that the trial will take approximately _____ days to complete. The parties request that the trial be held in _____, N.Y. **(The proposed date for the commencement of trial must be within 18 months of the filing date).**

6) HAVE THE PARTIES FILED A JURY DEMAND: _____(YES) / _____(NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(I) on or before

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

TOY-RQ-05E-00012109

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

TOY-RQ-05E-00012110

H. Protective Orders

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

I. Anticipated Issues Requiring Court Intervention

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

1-----2-----3-----4-----5-----6-----7-----8-----9-----10
(VERY UNLIKELY)➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ (LIKELY)

CANNOT BE EVALUATED PRIOR TO _____(DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

_____

_____

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE. THE PROGRAMS LISTED BELOW ARE COURT-ANNEXED AND NON-BINDING.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING CONTRACT, TORT, OR NON-PRISONER CIVIL RIGHTS ACTION, PLEASE SELECT THE PREFERRED ADR METHOD.

_____ ARBITRATION

_____ MEDIATION

_____ EARLY NEUTRAL EVALUATION

****

Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on _____ at _____and was attended by:
(Date) (Place)

_____for plaintiff(s)

_____for defendant(s)_____
(party name)

_____for defendant(s)_____
(party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and return the completed form to the clerk for filing at least ten (10) days in advance of the conference date.

Case Management Plan
Form Date - 1/3/2010

CASE ASSIGNMENT FORM

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CIVIL ACTION NUMBER 5:10-CV-178, NPM/ATB

ALL CORRESPONDENCE AND FILINGS SHOULD BEAR THE INITIALS OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE IMMEDIATELY FOLLOWING THE CIVIL ACTION NUMBER.
(*IE: CIVIL ACTION NO 5:02-CV-0123, FJS-GJD*)

DOCUMENTS SHOULD BE FILED IN ACCORDANCE WITH GENERAL ORDER #22.

ACTION ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE CHECKED BELOW:

		INITIALS
X	SENIOR JUDGE NEAL P. McCURN	(NPM)
X	MAGISTRATE JUDGE ANDREW T. BAXTER	(ATB)

PRO SE LITIGANTS:
SEND ALL ORIGINAL PAPERS TO THE CLERK'S OFFICE LISTED BELOW:

Clerk, U.S. District Court
Federal Building & Courthouse
P.O. Box 7367
Syracuse NY 13261-7367

All papers filed with the Court must conform to Local Rule 10.1

~ COUNSEL ~

ALL DOCUMENTS SHALL BE FILED ELECTRONICALLY ON THE COURT'S CM/ECF SYSTEM

PLEASE REFER TO GENERAL ORDER #22 FOR PROCEDURES FOR FILING DOCUMENTS ELECTRONICALLY

TOY-RQ-05E-00012113

ALL **NON-DISPOSITIVE** MOTIONS ARE TO BE MADE RETURNABLE ON A SUBMIT BASIS BEFORE THE ASSIGNED **MAGISTRATE JUDGE**. *PLEASE REFER TO LOCAL RULE 7.1(b)1.* **ALL MOTIONS FILED AND MADE RETURNABLE BEFORE MAGISTRATE JUDGES WILL BE TAKEN ON A SUBMIT BASIS UNLESS:** THE PARTIES REQUEST ORAL ARGUMENT AND/OR THE COURT DIRECTS THE PARTIES TO APPEAR FOR ORAL ARGUMENTS, PROVIDED, HOWEVER, THAT MAGISTRATE JUDGE DAVID E. PEEBLES REQUIRES ORAL ARGUMENT ON ALL MOTIONS UNLESS THE COURT DIRECTS OTHERWISE.

SENIOR JUDGE McCURN WILL NOT HAVE REGULAR MOTION DAYS DURING THE MONTH OF AUGUST. MOTIONS MAY NOT BE FILED WITHOUT PRIOR APPROVAL OF THE COURT DURING THESE PERIODS.

For more specific schedules please visit our website at:
www.nynd.uscourts.gov

MONTHLY MOTION SCHEDULES

SENIOR JUDGE NEAL P. McCURN	**MAGISTRATE JUDGE ANDREW T. BAXTER**
10:00 A.M. - 2ND AND 4TH TUESDAYS OF EACH MONTH AT SYRACUSE. 11:00 A.M. - 1ST TUESDAY OF EACH MONTH AT ALBANY. No oral argument on scheduled motion return date, unless Judge McCurn's chambers sua sponte directs or grants the request of any party for oral argument.	10:00 A.M.- LAST THURSDAY OF EACH MONTH AT SYRACUSE. No oral argument on scheduled motion return date, unless Judge Baxter's chambers sua sponte directs or grants the request of any party for oral argument.

TOY-RQ-05E-00012114

CONSENT TO THE EXERCISE
OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that the United States Magistrate Judges of this district court, in addition to their other duties, may, upon consent of all the parties in a civil case, conduct any or all proceedings in the case, including a jury or non jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent to the referral of your case to a United States Magistrate Judge for disposition is entirely voluntary and should be indicated by counsel endorsing the attached consent form for the plaintiff(s)and defendant(s). If the form is executed by all counsel for the parties (or by the parties if appearing pro se), it should be communicated solely to the clerk of the district court. ONLY if all the parties to the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be informed of your decision.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. Section 636(c) (3), an appeal from a judgment entered by a magistrate judge will be taken to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. See Also L.R. 72.2(b)(5).

Copies of the consent form are available in any office of the clerk of the court and on the court webpage at www.nynd.uscourts.gov

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

TOY-RQ-05E-00012115

UNITED STATES DISTRICT COURT
Northern District of New York

JAMES R. HAUSTEIN	NOTICE, CONSENT, AND ORDER OF REFERENCE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE
VS	Case Number: **5:10-CV-178, NPM/ATB**
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND TOYOTA MOTOR ENGINEERING & MANUFACTURING, NORTH AMERICA, INC.	

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE 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 consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures	Date

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to **ANDREW T. BAXTER** United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed. R. Civ. P. 73.

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.

ADR NOTICE TO LITIGANTS

THIS NOTICE SHOULD BE SERVED WITH THE GENERAL ORDER 25 FILING PACKET, ALONG WITH THE SUMMONS AND COMPLAINT ON THE DEFENDANTS.

This action has been identified for tracking in the court-annexed Alternative Dispute Resolution Program (ADR).

Designated Nature of Suite Codes in Contract, Tort and Non-Prisoner Civil Rights Cases as follows:

Contract
110-140, 160-195

Torts
310-385

Non-Prisoner Civil Rights
440-446

Parties must confer prior to the status conference in order to:

1. Complete the proposed case management plan:
2. Select an ADR program;
3. File the proposed plan at least 10 days before the conference.

During the conference, the Magistrate Judge will discuss the case management plan, ADR programs and assist the parties in their selection.

LAWRENCE K. BAERMAN, CLERK

By: Suzanne Gunter, ADR Administrator
(518)257-1807

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

JAMES R. HAUSTEIN

Plaintiff

v.

TOYOTA MOTOR CORPORATION, et al

Defendant

Civil Action No. 5:10-CV-178 (NPM/ATB)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Toyota Motor Engineering & Manufacturing of North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ted Trief, Esq.
150 East 58th Street, 34th Floor
New York, New York 10155

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk of Court

Date: 02/12/2010

s/ Melissa Ennis

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-CV-178 (NPM/ATB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

JAMES R. HAUSTEIN

Plaintiff

v.

TOYOTA MOTOR CORPORATION, et al

Defendant

Civil Action No. 5:10-CV-178 (NPM/ATB)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Toyota Motor Corporation
1 Toyota - Cho
Toyota City
Aichi Prefecture 471-8571
Japan

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ted Trief, Esq.
150 East 58th Street, 34th Floor
New York, New York 10155

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk of Court

Date: 02/12/2010

s/ Melissa Ennis

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-CV-178 (NPM/ATB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

JAMES R. HAUSTEIN

Plaintiff

v.

TOYOTA MOTOR CORPORATION, et al

Defendant

Civil Action No. 5:10-CV-178 (NPM/ATB)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Toyota Motor Sales
U.S.A., Inc.
19001 S. Western Avenue
Torrance, CA 90501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ted Trief, Esq.
150 East 58th Street, 34th Floor
New York, New York 10155

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk of Court

Date: 02/12/2010

s/ Melissa Ennis
Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-CV-178 (NPM/ATB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN
Clerk

JOHN M. DOMURAD
Chief Deputy

DAN MCALLISTER
Chief Deputy

James T. Foley Courthouse
445 Broadway, Room 509
Albany, New York 12207
(518) 257-1800

February 17, 2010

Noah Silverman
Garwin Gerstein & Fisher, LLP
1501 Broadway
New York, NY 10036

Re: Haustein v. Toyota Motor Corporation et al
(NDNY Case No. 5:10-cv-178)

Mr. Pearlman:

On February 12, 2010, your firm's name appeared on a Complaint that was filed in the U.S. District Court for the Northern District of New York. You are directed to advise this Court in writing if you will remain as counsel. If you remain as counsel, your formal admission is required. The attorney admission forms are enclosed and can also be found on our website at:

http://www.nynd.uscourts.gov/.

If you have any questions regarding Attorney Admissions, please do not hesitate to contact us at (518) 257-1800.

Sincerely,

LAWRENCE K. BAERMAN

/s/

By: Daniel Krug
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN
Clerk

JOHN M. DOMURAD
Chief Deputy

DAN MCALLISTER
Chief Deputy

James T. Foley Courthouse
445 Broadway, Room 509
Albany, New York 12207
(518) 257-1800

February 17, 2010

Peter Pearlman
Cohn Lifland Pearlman Herrmann & Knopf LLP
Park 80 Plaza West One
Saddle Brook, NJ 07663

Re: Haustein v. Toyota Motor Corporation et al
(NDNY Case No. 5:10-cv-178)

Mr. Pearlman:

On February 12, 2010, your firm's name appeared on a Complaint that was filed in the U.S. District Court for the Northern District of New York. You are directed to advise this Court in writing if you will remain as counsel. If you remain as counsel, your formal admission is required. The attorney admission forms are enclosed and can also be found on our website at:

http://www.nynd.uscourts.gov/.

If you have any questions regarding Attorney Admissions, please do not hesitate to contact us at (518) 257-1800.

Sincerely,

LAWRENCE K. BAERMAN

/s/

By: Daniel Krug
Deputy Clerk

TRIEF & OLK
ATTORNEYS AT LAW
150 EAST 58TH STREET
34TH FLOOR
NEW YORK, NEW YORK 10155

FACSIMILE: (212) 317-2946
E-MAIL: FIRM@TRIEFANDOLK.COM

TELEPHONE: (212) 486-6060

NEW JERSEY OFFICE
9 KANSAS STREET
HACKENSACK, NEW JERSEY 07601
(201) 343-5770

February 18, 2010

Magistrate Judge Andrew T. Baxter
U.S. District Court: Northern District of New York
100 South Clinton Street
Syracuse, New York 13261-7367

Re: James R. Haustein
v. Toyota Motor Corporation et al.
Docket No. 5:10-178 (NPM)(ATB)

Dear Magistrate Judge Baxter:

I am writing to follow up on a conversation that my associate had with your clerk and to clarify issues raised in my letter dated February 16, 2010.

I am requesting an adjournment not only of the initial conference to August 16, 2010, but also of the date by which service of process must be made. I respectfully request that this date be extended by from 60 days of the filing of this action to July 9, 2010.

As stated in my prior letter, the defendant Toyota Motor Corporation has its headquarters in Japan and must be served under the Hague Convention. I have been told by the service company that I have retained that by the time it translates the necessary documents and is ready to serve them in Japan, the 60-day period will have expired and Japanese authorities will not allow service. Therefore, I will need a court-ordered adjournment of the service date to show those authorities so service can be made.

Thus, I am writing to Your Honor to clarify that I am requesting an adjournment of both the service of process deadline and the initial conference.

Thank you very much for your courtesies.

Respectfully submitted,

Ted Trief

TT:ry
encl. (prior letter of 2-16-10)

TRIEF & OLK
ATTORNEYS AT LAW
150 EAST 58TH STREET
34TH FLOOR
NEW YORK, NEW YORK 10155

FACSIMILE: (212) 317-2946
E-MAIL: FIRM@TRIEFANDOLK.COM

TELEPHONE: (212) 486-6060

NEW JERSEY OFFICE
9 KANSAS STREET
HACKENSACK, NEW JERSEY 07601
(201) 343-5770

February 16, 2010

Magistrate Judge Andrew T. Baxter
U.S. District Court: Northern District of New York
100 South Clinton Street
Syracuse, New York 13261-7367

Re: James R. Haustein
v. Toyota Motor Corporation et al.
Docket No. 5:10-178 (NPM)(ATB)

Dear Magistrate Judge Baxter:

My firm represents the plaintiffs in the above-referenced action which is one of several class action lawsuits filed against Toyota arising from sudden acceleration defects.

I am writing to request an adjournment of the initial conference currently scheduled for June 22, 2010 in this matter. I make this request because, since Toyota is a company with headquarters in Japan, I will have to make service upon it under the Hague Convention which will take a number of months to accomplish.

Therefore, I respectfully request an adjournment of the conference for approximately two months to August 16, 2010 which will allow sufficient time for service upon Toyota and for it to serve an answer.

Thank you very much for your courtesies.

Respectfully submitted,

Ted Trief (7594)

TT:ry

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

JAMES R. HAUSTEIN

Plaintiff

v.

TOYOTA MOTOR CORPORATION, et al

Defendant

Civil Action No. 5:10-CV-178 (NPM/ATB)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Toyota Motor Engineering & Manufacturing of North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ted Trief, Esq.
150 East 58th Street, 34th Floor
New York, New York 10155

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Executed 2/11/10 on CT Corp a Corporation by delivering a copy of the within summons to P.A. being MARY of said Company, and being its chief officer or agent found in this county at this time.

SHERIFF, Jefferson County, KY D.S.

By 3364

Clerk of Court

Date: 02/12/2010

s/ Melissa Ennis

Signature of Clerk or Deputy Clerk

SHERIFF JEFFERSON COUNTY

CAMP TOWAND LUBREY

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 5:10-CV-178 (NPM/ATB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* C T Corp, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* 2/19/10 ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

Jon C. Pfeifer Dep. Sheriff

_____
Printed name and title Jefferson Co.

_____
Server's address

Additional information regarding attempted service, etc:

JEFFERSON COUNTY, KENTUCKY
SHERIFF'S OFFICE
COL. JOHN E. AUBREY
SHERIFF

Zip Code: 40207

Alt Zip Code

Received Date: 02/18/2010

2010009639

Civil Number: 2010009639

SUMMONS-CIVIL

Court Case Number: **510CV178**
Issued County: NORTHERN
Court: DISTRICT COURT
Serve By:
Court Date:
Court Time:

JAMES R HAUSTEIN
VS
TOTYOTA MOTOR CORPORTATION

Entered By: MADONNA BARNES
Last Modified:
Warrant Check? Y N
Warrant Hit? Y N
Warrant: _____

PTBS

Name: **C T CORPORATOIN SYSTEM**

Atty: TRIEF AND OLK

Race: **Sex:** **DOB:**
Height: **Weight:** 0 **SSN:**
ID Type: **ID State:** **ID Number:**
Local ID: **Moniker:**
Hm Add: **4169 W PORT RD**

HM Phone: ( )
Alt Address:
ALT Phone: ( )
Employer:
Employer Address:

Alt Employer:
Alt Employer Address:

	DATE	TIME	DEPUTY	REMARKS
1				
2				
3				
4				
5				FEB 22 2010
6				
7				

Paid by: TRIEF AND OLK
Date Paid: 02/18/2010
Collected By: MADONNA BARNES
Fee: 40.00 **CK #** 22398
Amount Paid: 40.00

Served: (Y) N R
Date : 2/19/10
Time : 8:10
Arrest Code 3364
Deputy Signature: _____

Date Returned to Court: _____
Reason: _____

ADR

U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 4.0.3] (Syracuse)
CIVIL DOCKET FOR CASE #: 5:10-cv-00178-NPM-ATB

Haustein v. Toyota Motor Corporation et al
Assigned to: Senior Judge Neal P. McCurn
Referred to: US Magistrate Judge Andrew T. Baxter
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 02/12/2010
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

James R. Haustein

represented by **Ted Trief**
Trief, Olk Law Firm
150 East 58th Street
34th Floor
New York, NY 10155
212-486-6060
Fax: 212-317-2946
Email: ttrief@triefandolk.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

Defendant

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

Defendant

Toyota Motor Engineering &Manufacturing, North America, Inc.

Date Filed	#	Docket Text
02/12/2010	1	COMPLAINT (Class Action Requested) against Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing, North America, Inc. and Toyota Motor Sales, U.S.A., Inc. (Filing fee $350 receipt number 1498740) filed by James R. Haustein. (Attachments: #1 Civil Cover Sheet)(dpk) (Entered: 02/12/2010)
02/12/2010	2	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 6/22/2010 at 10:00 AM in Syracuse before U.S. Magistrate Judge Andrew T. Baxter. Civil Case Management Plan due by 6/8/2010. (dpk) (Entered: 02/12/2010)
02/12/2010	3	Summons Issued as to Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing, North America, Inc. and Toyota Motor Sales, U.S.A., Inc. (Attachments: #1 Summons Issued as to Toyota Motor Corporation, #2 Summons Issued as to Toyota Motor Sales U.S.A., Inc.)(dpk) (Entered: 02/12/2010)
02/17/2010	4	NOTICE of Admission Requirement for attorney Peter Pearlman. Admissions due by 3/19/2010. (dpk) (Entered: 02/17/2010)
02/17/2010	5	NOTICE of Admission Requirement for attorney Noah Silverman. Admissions due by 3/19/2010. (dpk) (Entered: 02/17/2010)
02/17/2010	6	Letter Motion from Ted Trief, Esq. for James R. Haustein requesting Extension of time to serve initiating documents on defendant Toyota Motor Corporation and adjournment of initial conference to 8/16/10 submitted to Judge Magistrate Andrew T. Baxter *enclosure is prior letter dated 2-16-10*. (Attachments: #1 Enclosure)(Trief, Ted) (Entered: 02/17/2010)

02/18/2010		TEXT ORDER: re: 6 Letter Request: Upon plaintiff's letter request to adjourn the deadline for service or process and the date for the Rule 16 Conference (Dkt. 6): service or process will be completed within 120 days from the initial filing date and the conference will be conducted on August 17, 2010 at 10:00 A.M. Signed by U.S. Magistrate Judge Andrew T. Baxter on 2/18/10. (kmg) (Entered: 02/18/2010)
02/26/2010	7	AFFIDAVIT of Service for summons, complaint and other initiating documents served on Toyota Motor Engineering &Manufacturing of North America, Inc. on 02/19/2010, filed by James R. Haustein. (Trief, Ted) (Entered: 02/26/2010)
03/01/2010	8	NOTICE OF RELATED ACTIONS: filed by Altson &Bird, LLP on behalf of Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc., regarding MDL # 2151, In Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation, pursuant to Rule 7.2(i) of the Rule of Procudure of the Judicial Panel on Multidistrict Litigation. (jmb) (Entered: 03/02/2010)
03/01/2010	9	NOTICE/COVER LETTER: dated 2/26/2010 by Cari K. Dawson, Esq., of Alston &Bird, LLP on behalf of Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc., advising the Court that she is submitting the # MDL Notice of Related Actions as required in the attached Schedule A pursuant to Rule 5.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, however the Toyota defendants are not entering an appearance, nor are they waiving service or their rights to assert any defenses related to service of process or jurisdiction. (jmb) (Entered: 03/02/2010)
03/02/2010	10	NOTICE of Admission Requirement for Attorney Cari K. Dawson. Admissions due by 4/1/2010. {Copy mailed to Attorney Dawson by regular mail with admission forms} (jmb) (Entered: 03/02/2010)

FILE START

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER
Individually and on behalf of others similarly situated
4743 N. Highway 421
Manchester, KY 40962

And

STEVE CLEMONS
Individually and on behalf of others similarly situated
74 Willie's Way
Hazard, Kentucky

And

SONYA GRAY
Individually and on behalf of others similarly situated
34 Glenway Avenue
Fort Thomas, KY 41075

And

WAYNE & BETTY TOMLIN
Individually and on behalf of others similarly situated
1201 Cannonball Way
Independence, KY 41051

And

PATRICK KWIATKOWSKI
Individually and on behalf of others similarly situated
5429 Romilda Dr.
Cincinnati, Ohio 45238

And

PLAINTIFFS

NO. _____

CLASS ACTION COMPLAINT

Electronically Filed

EDWARD & JOAN SKILLMAN)
Individually and on behalf of others)
similarly situated)
1428 Gatlinburg Ct.)
Lexington, KY 40515)
)
And)
)
MELISSA ARNZEN MOEDDEL)
Individually and on behalf of others)
similarly situated)
4165 Sherel Lane)
Cincinnati, Ohio 45209)
)
v.)
)
TOYOTA MOTOR SALES, U.S.A., INC.,)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR CORP.,)
Served Pursuant to The Hague Convention)
)
And)
)
TOYOTA MOTOR ENGINEERING &)
MANUFACTURING NORTH AMERICA, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR MANUFACTURING,)
KENTUCKY, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)

TOYOTA MOTOR MANUFACTURING,
NORTHERN KENTUCKY, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

DEFENDANTS

Plaintiffs, Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward and Joan Skillman, and Melissa Arnzen Moeddel bring this action on their own behalf and on behalf of a class of persons defined below against the Defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C §1331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds $5 million. This Court has personal jurisdiction over Defendants because Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky, within this District, Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located in Georgetown, Kentucky, within this District, and all Defendants conduct business in this state.
2. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in this District.

NATURE OF ACTION

3. This is a class action lawsuit against Defendants for an admittedly dangerous defect in millions of its vehicles that can cause accelerator pedal mechanisms to get stuck in an open position, causing the vehicle to accelerate unintentionally ("unintended acceleration").
4. Defendants issued two separate recalls to address problems with unintended acceleration in its vehicles. One involved accelerator pedals interfering with floor mats (the "Floor Mat Interference" recall). The other involved worn accelerator mechanisms getting stuck in an open position, independent of any floor mat interference (the "Worn Accelerator" recall). In total, Defendants recalled 5.9 million cars due to these defects.
5. Notably, the recalls did not provide immediate relief for vehicle owners. Rather, Toyota disclosed that dangerous defects existed and stated that Toyota would implement a repair plan in the future. With respect to the Floor Mat Interference recall, Toyota advised owners to remove the floor mats as an interim measure, and that more complete repairs would not be available for several weeks or months. With respect to the Worn Accelerator recall, Toyota advised owners of the dangerous condition and stated that a remedy was not yet available. These announcements left vehicle owners in the position of having to drive knowingly dangerous vehicles.
6. Some vehicle owners, including Plaintiffs, have driven their cars less than they otherwise would due to fear of being in an accident.
7. According to a Los Angeles Times article dated January 30, 2010, since 1999, nearly 2,000 complaints about sudden, unintended acceleration in Toyota and Lexus vehicles have reportedly been identified. Sudden, unintended accelerations have been blamed for at least 815 vehicle crashes and at least 19 deaths.
8. Defendants have been reportedly aware of many of the incidents that resulted in personal injuries or deaths, as well as many more complaints from consumers about unintended accelerations since as early as 1999. However, the company failed to adequately investigate or fix the defect in the United States and denied that there was any problem.
9. Plaintiffs seek damages suffered by the Class as a result of Toyota's conduct, including but not limited to: (i) loss of use of the vehicles; (ii) reimbursement of out of pocket costs for, among other things, alternative transportation, prior repairs to address accelerator problems,

floor mats that had to be discarded, etc.; (iii) diminution in resale value of the vehicles; and (iv) an increased risk of physical harm.

10. Plaintiffs also seeks injunctive relief including: (i) repairs to remove the dangerous condition; (ii) an extension of warranty coverage covering components of the acceleration system; and (iii) individual notice to each owner effected by the Worn Accelerator recall disclosing the dangerous condition.
11. An undated article on usatoday.com discussing the recalls stated: "Kelley Blue Book says resale values of [Toyota's] affected models could fall 4% to 5% within the next six weeks."
12. An Associated Press article dated Monday, February 8, 2010, and entitled, "Toyota Resale Value, Reputation Fall From Heights," also discussing the recalls, stated: "Kelley Blue Book dropped the resale values of recalled Toyotas for the second time in four days Monday, leaving them as much as 4 percent or $300 to $750 lower than a week ago, depending on the model." The article further stated: "[A] key factor in Toyota's rise to the top was its reputation for quality vehicles with high resale values."
13. Defendants' unlawful conduct emanated, in part, from Kentucky, where TEMA and TMMK are based. On information and belief, this is where Defendants' decisions regarding safety issues, including the accelerator defect, were made or approved.

PARTIES

14. Plaintiffs Michael and Cathy Miller are residents of Kentucky. They own a 2008 Lexus RX 350. Their model year Lexus RX 350 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2008 Lexus RX 350s.
15. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra, a vehicle model subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
16. Plaintiff Sonya Gray is a resident of Kentucky. She owns a 2007 Toyota Camry LE, a model that is subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
17. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav 4. Their model year Rav 4 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2004 Rav 4s.

TOY-RQ-05E-00012138

18. Plaintiff Patrick Kwiatkowski is a resident of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2005 Corollas.
19. Plaintiffs Edward Skillman and Joan Skillman are residents of Kentucky. They lease a 2009 Toyota Corolla, a model affected by both the Floor Mat Interference recall and Worn Accelerator recall. Based upon the VIN number of their vehicle and Toyota's representations, their particular vehicle may be excluded from either or both the Floor Mat Interference recall and Worn Accelerator recall. However, Mrs. Skillman has experienced sudden, unintended acceleration events in the 2009 Corolla.
20. Plaintiff Melissa Arnzen Moeddel is a resident of the State of Ohio. She owns a 2007 Lexus 400h Hybrid, a model not affected by any of the sudden acceleration recalls to date.
21. Defendant Toyota Motor Corporation ("Toyota-Japan") is headquartered in Japan. Toyota-Japan wholly owns and controls Defendants Toyota-USA, TEMA, TMMK, and TMMNK and conducts business in this District.
22. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota-USA") is headquartered in Los Angeles, California. Toyota-USA is a wholly owned subsidiary of Defendant Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota automobiles in the United States.
23. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky. TEMA is a wholly owned subsidiary of Defendant Toyota. Defendant TEMA is responsible for Toyota's engineering design, development, research and development, and manufacturing activities in the U.S., Canada, and Mexico.
24. Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located at 1001 Cherry Blossom Way in Georgetown, Kentucky, within this District. TMMK is Toyota's largest manufacturing facility outside of Japan and builds the Toyota Avalon and Toyota Camry. In addition, TMMK builds 4-cylinder and V6 engines and powertrain parts that upon information and belief, are subject to the unintended acceleration defect.
25. Defendant Toyota Motor Manufacturing, Northern Kentucky, Inc., ("TMMNK") is located at 25 Atlantic Avenue in Erlanger, Kentucky, within this District. Upon information and belief,

TMMNK is responsible, in part, for Toyota's production control, production engineering, purchasing, and quality in North America, including Northern Kentucky, within this District.

26. Toyota-Japan, Toyota-USA, TEMA, TMMK, and TMMNK are collectively referred to herein as "Toyota."

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

FACTUAL BACKGROUND

A. **Toyota's Electronic Throttle Control System**

28. Beginning in the late 1990s and continuing to today, Toyota manufactured certain automobiles with an Electronic Throttle Control system ("ETC").

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

30. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control. This mechanical fail-safe was intended as a safety measure in the event of a sudden, unintended acceleration. The safety measure system would disconnect the ETC and automatically allow the throttle to be controlled by the mechanical linkage.

31. Beginning with the 2001 model year, however, Toyota began manufacturing vehicles without a mechanical linkage.

32. In addition, Toyota's ETC system fails to include a "brake over-ride" safety measure incorporated by other manufacturers that instructs the ETC system to reduce the engine idle when the brakes are applied while the accelerator is in an open position.

33. Many of Toyota's vehicles now include an electronic ignition button rather than a key-turned switch. In these cars, no easy mechanical means exist to turn off the engine in case of an unintended acceleration.
34. The combination of a lack of these safety systems creates a situation in which there are no mechanical or electronic safety mechanisms to allow the driver to stop or slow the car during an unintended acceleration. Upon information and belief, Toyota deliberately chose to omit the fail-safe mechanisms to stop or slow a vehicle in the event of a sudden, unintended acceleration in order to save money and reap greater profits on sales of its vehicles.
35. Moreover, in a January 21, 2010 press release announcing the Worn Accelerator recall, Toyota warned drivers that, in the event of unintended acceleration, the "brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure." Thus, pumping the brakes, which occurs instinctually for some drivers, could actually impair the vehicle's ability to slow or stop.

B. **Toyota's Recalls**

36. Toyota has engaged in a campaign to conceal the sudden, unintended acceleration defect in many of its vehicle models and model years from its customers and the general public.
37. For years, Toyota's method of dealing with the hundreds of reports it received each year of its vehicles suddenly and unintentionally accelerating out of control, up to speed of 100 miles per hour or more, and resulting in serious physical injuries and deaths, was to simply deny the existence of any problem.
38. On September 29, 2009, Toyota issued a consumer alert on its website that it was investigating the "potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat." Toyota claimed that the sudden acceleration issue affected only a limited number of models of Toyota and Lexus vehicles. Toyota advised owners of those particular models to remove their floor mats and not replace them.
39. On November 2, 2009, Toyota issued a press release announcing a "future voluntary recall" related to floor mats that interfere with accelerator pedals. Toyota stated that it had not yet developed a remedy, but it was advising owners to remove the driver's side floor mat as a temporary measure. Toyota also mailed letters to affected owners notifying them of the issue.

40. The following makes and models were affected by the recall:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES350
- 2006-2010 Lexus IS250 and IS350

41. The recall initially affected 3.8 million vehicles. The number of vehicles was later increased to 4.2 million.

42. On November 6, 2009, Toyota issued a press release responding to media reports about growing suspicion that the unintended acceleration was caused by a glitch in the "electronic engine management system" rather than simple interference with floor mats. Toyota's press release noted that removal of floor mats was only a temporary measure, and that further repairs would be needed once a remedy was available. Thus, vehicle owners were placed in the position of having to drive dangerously defective cars until a future remedy was implemented.

43. On November 8, 2009, the Los Angeles Times published an article reporting that many instances of unwanted acceleration had occurred, fanning the flames of consumer skepticism and distrust of the Toyota brand by Toyota owners and the general public.

44. The article noted that Toyota was aware of many of the instances of unintended acceleration, and that Toyota withheld certain consumer complaints about unintended acceleration when responding to the NHTSA's requests for customer complaints.

45. On November 25, 2009, Toyota issued a press release claiming that, in addition to floor mats, the accelerator pedal design in many models was also contributing to the sudden, unintended accelerations. Toyota announced a remedy it developed for the Floor Mat Interference recall. The shape of the accelerator pedal would be reconfigured for all effected vehicles, and the shape of the floor surface underneath the floor mat would be reconfigured for certain vehicles.

46. The November 25, 2009 press release also stated that a brake over-ride system to cut engine power in case of simultaneous application of both the accelerator and brake pedals would be installed on Camry, Avalon, Lexus 350, Lexus IS350, and Lexus IS250 as "an extra measure

of confidence." These vehicle models, it should be noted, are among the most expensive and best-selling in Toyota's fleet. Apparently, Toyota's practice is to provide greater safety advantages to the owners of the vehicles that account for the most profits.

47. In any event, the repairs described in the November 25, 2009 press release would only be available some months later for three Toyota models, and on a "rolling schedule during 2010" for the remaining models. Thus, all vehicle owners had to continue to drive dangerously defective cars.

48. On December 5, 2009, the Los Angeles Times again reported that the unintended acceleration might be related to a problem beyond floor mat interference.

49. On December 10, 2009, Toyota issued a statement on its website rebutting the Los Angeles Times report and denying that an electronic problem existed.

50. On December 23, 2009, the Los Angeles Times reported that Toyota had a history of delaying recalls and keeping a "tight lid on disclosure of potential problems." The article outlined several instances of Toyota's failure to notify consumers of known dangerous conditions.

51. On January 21, 2010, Toyota announced that it was recalling a further 2.3 million vehicles and claimed that it had discovered yet another problem, "sticking accelerator pedals," that was supposedly the root of the sudden acceleration issue.

52. This recall, the Worn Accelerator recall, was "separate from the on-going recall of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by ... floor mats." The Worn Accelerator recall addressed a condition that "can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." According to the press release, this defect was discovered when Toyota was investigating reports of sticking accelerator pedals "without the presence of floor mats."

53. The Worn Accelerator recall involved the following Toyota models:

- 2009-2010 RAV4
- 2009-2010 Corolla
- 2009-2010 Matrix
- 2005-2010 Avalon
- 2007-2010 Camry
- 2010 Highlander

- 2007-2010 Tundra
- 2008-2010 Sequoia

54. Some, but not all, of these 2.3 million vehicles were also affected by the Floor Mat Interference recall. Approximately 1.7 million vehicles were affected by both recalls.
55. The January 21, 2010 press release noted that Toyota had not yet determined how to correct the defect underlying the Worn Accelerator recall. Thus, similar to owners subject to the Floor Mat Interference recall, owners subject to the Worn Accelerator recall could not yet bring their cars to dealerships for repairs. This left more owners in the position of having to drive a dangerously defective car indefinitely.
56. The Worn Accelerator recall was more serious than the Floor Mat Interference recall because drivers could not simply remove the floor mat as an interim measure.
57. On January 26, 2009, Toyota issued a press release announcing that it would suspend sales of vehicles affected by the Worn Accelerator recall until a remedy was available.
58. Toyota also failed to notify vehicle owners affected by the Worn Accelerator recall. Toyota announced the recall via press release, but has not contacted owners by mail or other direct means.
59. On January 27, 2010, Toyota announced on its website that the following additional models were being added to the Floor Mat Interference recall:

- 2008-2010 Highlander
- 2009-2010 Corolla
- 2009-2010 Venza
- 2009-2010 Matrix

60. This development increased the total number of vehicles subject to the Floor Mat Interference recall by 1.1 million, to a total of 5.3 million.
61. To date, 5.9 million vehicles have been affected by one or both of the recalls: 5.3 million vehicles related to the Floor Mat Interference recall, plus 2.3 million vehicles related to the Worn Accelerator recall, less 1.7 million vehicles affected by both recalls
62. On February 1, 2010, Toyota announced that it had developed a "comprehensive fix" for the sudden acceleration problem in its vehicles, and that the fix would be performed on all vehicles subject to the January 21, 2010 recall.

63. On February 1, 2010, Jim Lentz, president and chief operating officer of Defendant Toyota Motor Sales U.S.A., Inc., appeared on NBC's "Today" show and announced that the recalls and the "comprehensive fix" would "stop what is going on" with the sudden accelerations in Toyota vehicles.
64. The majority of Toyota owners, however, who have experienced sudden, unintended accelerations, have been offered no "fix" or solution by Toyota at all, and their vehicles have not been part of any recalls addressing the sudden acceleration defect. 702 of the 1,234 reported sudden acceleration events (about 57%) have occurred in Toyota models and models years that are not included in any of the relevant recalls.
65. The sticking accelerator pedal recall of January 21, 2010 included Toyota models and model years that were involved in only 245 of the 1234, or about 20%, of the reported sudden acceleration events.
66. The brake over-ride safeguard system that Toyota announced as a means of bringing the vehicle's engine to idle in case of a sudden acceleration affected models and models years involved in only 296 of 1234 (about 24%) reported sudden acceleration events.
67. Akio Toyoda, the president of Toyota, submitted an op-ed in the Washington post acknowledging that "Toyota has not lived up to the high standards we set for ourselves."
68. Toyota continues to misrepresent to Plaintiffs, to prospective class members, and to the public at large that it has identified the problem causing the sudden accelerations and that it is recalling and repairing all vehicles affected by this defect. Toyota has continued to downplay and deny the suspicions and concerns of safety experts, the media, and consumers alike that the defect is actually caused by a flaw in the computer-controlled accelerator system.
69. Given the vast number of instances of unintended acceleration since 2001, and Toyota's knowledge of many or all of the instances, Toyota should have aggressively investigated the cause of the unintended acceleration and developed a remedy years ago. Toyota failed to do either, evidenced by the fact that the first recall wasn't implemented until 2009, eight years after instances of unintended acceleration first began.
70. The sudden, unintended acceleration defect in Toyota vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this

serious problem, Toyota customers and the general public are extremely skeptical about the quality and safety of Toyota vehicles. The entire fleet of Toyota vehicles has been stigmatized by this defect, regardless of which vehicle models and model years have been included in the recalls or excluded therefrom.

71. Defendants' mishandling of the sudden, unintended acceleration defect, including but not limited to their denial of any problem, even after receiving a substantial number of reports of sudden, unintended acceleration events, including ones that resulted in serious physical injury or death, and all other allegations set forth herein, has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. Toyota customers and the general public have reason to be skeptical about whether Toyota is coming forth with truthful information about the sudden acceleration defect. Likewise, Toyota customers and the general public are left to wonder whether safety concerns about Toyota vehicles are limited to this particular problem. In essence, American consumers have no way to know the lengths to which Defendants will go to cover up other potentially deadly defects in its vehicles, as they did for so long with the sudden acceleration defect.

C. **Plaintiffs' Experiences**

a. Michael & Cathy Miller

72. Plaintiffs Miller own a 2008 Lexus RX 350, a model that has not been subject to any sudden acceleration recall. Upon information and belief, there have been incidents of sudden acceleration in Lexus RX vehicles reported to Toyota and the federal government.
73. Plaintiffs Miller chose the Lexus RX 350 over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.
74. Plaintiffs Miller have experienced sudden, unintended acceleration in their Lexus RX 350 on a number of occasions. They have reported the problem to their Lexus dealer, Lexus of Lexington (Ky.).
75. Plaintiffs Miller were told by the service technicians at Lexus of Lexington that there was nothing wrong with the vehicle, despite Plaintiffs' insistence that the vehicle was

accelerating for no apparent reason and adversely affecting their ability to drive it in a controlled manner.

76. Plaintiffs Miller have lost trust in the Toyota and Lexus brand names, and the RX 350 in particular. They are skeptical that their RX 350 will ever be completely safe, as evidenced by the fact that their local Lexus dealer has told them that there is nothing wrong with the vehicle.

77. Plaintiffs Miller also believe that the resale value of their Lexus RX 350 will decrease due to general consumer skepticism about Toyota and Lexus vehicles.

78. Plaintiffs Miller are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused economic harm to them, namely damage to their property and devaluation of their Lexus RX 350.

b. Steve Clemons

79. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra. He chose the Tundra over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

80. Plaintiff Clemons is concerned about his safety and that of others, especially since learning that his vehicle is part of both Toyota recalls relating to sudden accelerations.

81. Plaintiff Clemons has lost trust in Toyota and the Tundra he owns. He is skeptical that the Tundra will be safe, even if he takes the vehicle to his Toyota dealer to have it fixed.

82. Plaintiff Clemons is concerned for his safety and the safety of others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Tundra.

c. Sonya Gray

83. Plaintiff Sonya Gray owns a 2007 Toyota Camry. She chose the Camry over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

84. Plaintiff Gray is concerned about her safety and that of others, especially since learning that, her vehicle is part of both Toyota recalls relating to sudden accelerations.
85. Plaintiff Gray has driven her Camry less often since learning about the sudden acceleration defect and corresponding recalls. This has caused her inconvenience and worry.
86. Plaintiff Gray has lost trust in Toyota and the Camry she owns. She is skeptical that the Camry will be safe, even if she takes the vehicle to her Toyota dealer to have it fixed.
87. Plaintiff Gray is concerned for her safety and the safety of others. She believes Defendants' actions and omissions have caused her economic harm, namely damage to her property and devaluation of her Toyota Camry.

d. Wayne and Betty Tomlin

88. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav4, a model not affected by either recall based on Toyota's representations.
89. Plaintiffs Tomlin chose the Rav4 over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiffs Mr. and Mrs. Tomlin have lost trust in Toyota and their Rav4 in the wake of news reports and public outcry over sudden accelerations.
90. Plaintiffs Tomlin are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused them economic harm, namely damage to their property and devaluation of their Toyota Rav4.

e. Patrick Kwiatkowski

91. Plaintiff Patrick Kwiatkowski is a resident of the state of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any relevant recalls.
92. Plaintiff Kwiatkowski chose the Corolla over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiff Kwiatkowski has lost trust in Toyota and his Corolla in the wake of news reports and public outcry over sudden accelerations.
93. Plaintiff Kwiatkowski is skeptical that Toyota is being honest and straightforward with him and the American public, based on the fact that the 2005 Corolla is not subject to the recalls,

despite sudden acceleration events involving that model and model year being reported to Toyota and the federal government.

94. Plaintiff Kwiatkowski is concerned for his safety and the safety of his family and others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Corolla.

f. Edward and Joan Skillman

95. Plaintiffs Edward and Joan Skillman live in Lexington, Kentucky and lease a 2009 Toyota Corolla, with an option to buy the vehicle at the end of the lease term.

96. Plaintiffs Skillman chose the Corolla over a competing brand's vehicle partly in reliance upon Toyota's reputation for manufacturing cars with higher resale value than other brands.

97. In late 2009, Mrs. Skillman experienced unintended acceleration in the 2009 Corolla. Fortunately, she was able to stop the car without incident. She has experienced unintended acceleration on other occasions since then.

98. Plaintiffs Skillman have driven their Corolla less often since learning of the recalls and after experiencing unintended acceleration in their Corolla. Plaintiffs are concerned about putting themselves and others at risk. They generally do not allow passengers to ride with them in their Corolla, for fear that passengers could get hurt. This has been an inconvenience to Plaintiffs.

99. Plaintiffs Skillman own a non-Toyota vehicle, in addition to their Corolla. Since experiencing sudden acceleration and learning of the Toyota recalls, they have been so scared of driving their Corolla that they drive their other, non-Toyota vehicle unless it is absolutely essential that they need to use both cars at the same time. They have, as much as possible, reorganized their daily schedules and routines to avoid driving their Corolla as much as they can. This has been an inconvenience to Plaintiffs.

100. Plaintiffs Skillman have lost trust in Toyota and their 2009 Corolla. They are skeptical that their Corolla will be safe, even if they take it to their Toyota dealer to have it fixed.

101. Plaintiffs Skillman are concerned for their safety and the safety of others. Additionally, Plaintiffs Skillman believe Defendants' actions have caused economic harm to them, namely damage to their property and devaluation of their Toyota Corolla.

g. Melissa Arnzen Moeddel

102. Plaintiff Melissa Arnzen Moeddel is a resident of Ohio. She owns a 2007 Lexus 400h Hybrid. Her vehicle model has not been subject to any of the sudden acceleration recalls to date, and she has not experienced any sudden acceleration while driving her vehicle.

103. Notwithstanding the lack of reported sudden accelerations involving the Lexus 400h Hybrid, Plaintiff Moeddel is concerned for the safety of herself and others, including her young daughter, who rides as a passenger in the vehicle on a daily basis.

104. Plaintiff Moeddel chose the Lexus 400h Hybrid over a competing brand's vehicle, at least in part, because of Toyota's and Lexus's reputation for selling cars with a higher resale value than competing brands. Plaintiff Moeddel have lost trust in Toyota and her Lexus 400h Hybrid in the wake of news reports and public outcry over sudden accelerations.

105. Plaintiff Moeddel believes Defendants' actions and omissions have caused economic harm to her, namely damage to her property and devaluation of her Lexus 400h Hybrid.

CLASS ACTION ALLEGATIONS

106. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

> All persons or entities in the United States owning Toyota vehicles, or leasing Toyota vehicles with the option to buy at the end of the lease term, regardless of whether their vehicle models and model years have been the subject of a recall involving sudden, unintended accelerations.

107. The Class does not include Defendants or their officers or directors.

108. Also excluded from the Class are individuals who have claims for personal injury as a result of unintended acceleration. The claims at issue in this case do not seek damages for physical injury. Thus, individualized determinations as to causation of bodily injury will not be required. This class action only seeks the economic and equitable relief requested herein.

109. The Class is comprised of millions of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

110. There are questions of law or fact common to the class, including but not limited to the following:

a. Whether the recalled automobiles contained a dangerous or defective condition;

b. Whether Defendants' conduct constituted actionable negligence;

c. Whether Defendants entered into and breached implied contracts;

d. Whether Defendants' conduct violated the Kentucky Consumer Protection Act;

e. Whether Defendants' conduct constituted false advertising;

f. Whether Defendants' conduct constituted a breach of the implied warranty of merchantability; and

i. Whether Defendants' conduct constituted a breach of the implied warranty of fitness for a particular purpose.

g. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

h. Whether Defendants failed to give adequate warnings regarding the cars;

i. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

j. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

k. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

111. Plaintiffs' claims are typical of the claims of the Class they seek to represent.

112. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.

113. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.

114. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.

115. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving millions of Class members.

116. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief.

FIRST CLAIM FOR RELIEF NEGLIGENCE

117. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

118. Defendants assumed a duty to exercise reasonable care in, among other things, manufacturing and selling automobiles that did not contain a dangerous condition. Defendants' duties arose from, among other things, the relationship between the parties as buyers and sellers and/or lessor and lessee.

119. Defendants also assumed a duty to adequately investigate claims of unintended acceleration and to timely notify Class members of known dangerous conditions.

120. Defendants breached their duties by manufacturing and selling automobiles with dangerous accelerator systems. They also breached their duties by failing to adequately investigate acceleration complaints and failing to individually notify Class members of the Worn Accelerator recall and underlying dangerous condition.

121. But for Defendants' breach of duties, Plaintiffs and Class members would not be faced with driving unsafe automobiles and suffering the related consequences alleged herein, including but not limited to economic injuries, specifically damage to their property.

122. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

123. The damages set forth in paragraph 9 are not limited to those individuals who own or lease Toyota vehicles subject to the recalls associated with the sudden acceleration defect. The acts and omissions of Defendants have caused their entire fleet of vehicles to be stigmatized as dangerous cars and trucks prone to uncontrolled acceleration that could result in serious physical injury or death. The harm to Toyota's reputation is brand-wide and all Toyota drivers have suffered economic loss, including but not limited to diminution in resale value of their vehicles.

SECOND CLAIM FOR RELIEF BREACH OF IMPLIED CONTRACT

124. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

125. The essential elements of an implied contract under Kentucky law are an offer, acceptance, and consideration. The existence and terms of the contract are implied by the conduct of the parties.

126. An offer, acceptance, and consideration for the sale or lease of vehicles existed, evidenced by the fact that Plaintiffs and Class members paid money to Defendants in exchange for vehicles or, for those Plaintiffs and Class members who leased vehicles, the right to use and drive the vehicles for the stated lease term, and in many, if not all leases, the option to purchase the vehicles at the end of the lease term. The act of exchanging money for vehicles was an offer and acceptance. The money and vehicles constituted consideration.

127. An implied term of the sale was that Defendants would provide vehicles that did not contain an unreasonably dangerous condition. There was a meeting of the minds regarding the absence of unreasonably dangerous conditions.

128. Defendants' intent to provide safe vehicles was evidenced by, among other things, its advertising and marketing materials emphasizing the safety qualities of its vehicles. For example, a statement on Toyota's website dated November 18, 2009, states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." In light of this statement and others like it, Plaintiffs and Class members had a reasonable expectation that the vehicles they purchased would not contain an unreasonably dangerous condition.

129. The absence of unreasonably dangerous conditions was a material term to the contracts. Plaintiffs and Class members would not have purchased or leased the vehicles, or would not have paid the purchase price or lease price they paid, had they known of the unintended acceleration defect.

130. Defendants breached the implied terms of their contracts by providing vehicles that contained unreasonably dangerous conditions.

131. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

THIRD CLAIM FOR RELIEF VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – UNFAIR CONDUCT

132. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

133. KRS § 367.110 *et seq.*, also known as the Kentucky Consumer Protection Act, makes unlawful all "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." KRS § 367.170.

134. Defendants violated and continue to violate the KCPA through one or more of the following unfair and/or deceptive practices:

a. Manufacturing and selling vehicles containing a dangerous condition;

b. Failing to adequately investigate claims of unintended acceleration;

c. Failing to adequately and individually notify Class members of the recalls and underlying dangerous condition;

d. Violating other laws alleged herein.

135. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

136. Defendants' conduct has impaired competition in the motor vehicle industry. It provided Defendants with an unfair advantage compared to its competitors when manufacturing and selling vehicles and earning profits thereon. Plaintiffs and Class members bought or leased Toyota vehicles, at least in part, because of Toyota's reputation as a safe brand whose vehicles have a high resale value. This reputation has thrived, in part, because of Toyota's efforts to keep quiet the sudden acceleration defect and corresponding threat to the safety of Toyota customers and the general public.

FOURTH CLAIM FOR RELIEF – VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – DECEPTIVE/FALSE CONDUCT

137. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

138. Plaintiffs are informed and believe and thereon allege that, as described herein, Toyota has engaged in unfair practices, in violation of the Kentucky Consumer Protection Act, as codified in KRS 367.110 et seq.

139. Toyota stated directly and indirectly in various marketing and advertising campaigns that its vehicles are safe and reliable. For example, a statement on Toyota's website dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." These statements were untrue in light of the problems with unintended acceleration.

140. Defendants' statements in its brochures, websites, television ads, newspaper ads, and other means constituted advertising for purposes of this claim.

141. Defendants' advertising program contained statements concerning vehicle safety and reliability that were false or misleading and that were known or should have been known to Defendants to be false or misleading.

142. Defendant knew or should have know that its vehicles were defective and failed to inform Plaintiffs and the Class of known defects prior to Plaintiffs and the Class purchasing or leasing their Toyota vehicles.

143. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered the damages set forth in paragraph 9.

FIFTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

144. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

145. Defendants' vehicles were accompanied by an implied warranty of merchantability when sold, pursuant to KRS § 355.2-314.

146. Pursuant to KRS § 355.2-314, for "good to be merchantable" the consumer goods must meet each of the following:

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

147. The vehicles encompassed by Toyota's recalls would not pass without objection in the automotive trade. The vehicles are unreasonably dangerous and in need of repair.

148. The vehicles are not fit for the ordinary purpose for which they were sold. The vehicles were purchased to, among other things, safely transport drivers and passengers. The vehicles cannot be used for safe transportation in their current condition.

149. The vehicles were not adequately labeled because the labeling failed to disclose the dangerous conditions.

150. Defendants breached the implied warranty of merchantability by manufacturing and selling vehicles containing an unreasonably dangerous condition.

151. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

SIXTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

152. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

153. KRS § 355.2-315 states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

154. Defendants knew at the time they sold or leased vehicles to Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

155. Defendants knew at the time they sold or leased vehicles to Class members that those individuals chose to buy or lease their vehicles from Toyota at least in part because of the reputation of Toyota cars and trucks as safe vehicles with high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

156. Defendants knew that Class members were relying on Defendants' skill and judgment in furnishing and/or recommending vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

157. Defendants breached the implied warranty of fitness because the vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the vehicles has resulted in a substantial drop in the resale value of those vehicles.

158. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Fed. R. Civ. P. 23(b)(2) and (3) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

B. Finding that Defendants are liable under all legal claims asserted herein;

C. Awarding damages to the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages as set forth in paragraph 9, punitive damages, and any other damages provided under the law;

D. Ordering injunctive relief as set forth in paragraph 10;

E. Awarding attorneys' fees and litigation costs; and

F. Awarding any other legal or equitable relief as justice so requires.

Dated: February 12, 2010.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2010.

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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

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CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U.S.A., Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

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❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Corp.
To Be Served Pursuant to the Hague Convention
on the Service Abroad of Judicial and
Extrajudicial Documents - FRCP 4(f)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Civil
Case Assignment

Case number **2:10CV-31**

Assigned : Judge David L. Bunning
Judge Code : 4315

Assigned on 02/16/2010

Request New Judge ....

TOY-RQ-05E-00012170

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2:10-cv-31-WOB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Sales, U.S.A., Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

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☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Corp.
To Be Served Pursuant to the Hague Convention
on the Service Abroad of Judicial and
Extrajudicial Documents - FRCP 4(f)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Gudgeon

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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This summons for *(name of individual and title, if any)* _____

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_____ on *(date)* _____ ; or

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☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DCB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

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CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

CT Corporation

Service of Process Transmittal

02/23/2010
CT Log Number 516196076

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:	Michael & Cathy Miller, et al., Pltfs. vs. Toyota Motor Sales, U.S.A., Inc., et al. including Toyota Motor Engineering & Manufacturing North Americas, Inc., Dfts.
DOCUMENT(S) SERVED:	Letter, Summons, Class Action Complaint
COURT/AGENCY:	USDC Eastern District of Covington, . Case # 2:10-cv-00031-DLB
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Acceleration
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/23/2010 postmarked on 02/22/2010
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Justin A. Sanders The Sanders Law Firm 1017 Russell Street Covington, KY 41011 859-491-3000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790204720113 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

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.

The Sanders Law Firm
Attorneys & Counselors at Law
The Charles H. Fisk House
www.TheSandersLawFirm.com

Attorneys
Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
W. Matt Nakajima

Paralegal
Mary L. O'Neil

Office Manager/Paralegal
M. Renee Cain

Controller
Jennifer L. Blatt

Medical-Legal Assistant
Shirley L. Sanders, R.N.

February 22, 2010

Toyota Motor Engineering & Manufacturing, North America, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 40207
SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Miller, et al., v. Toyota Motor Sales, U.S.A., Inc., et al.
U.S. District Court – Eastern District of Kentucky
Case No. 2:10-cv-00031-DLB

Dear Toyota Defendant:

Please find enclosed a copy of the summons and complaint in the above-captioned civil action filed in the United States District Court, Eastern District of Kentucky.

Best Regards,

Justin A. Sanders
Attorney for Plaintiffs

JAS/pbs
Enclosures

1017 Russell Street • Covington, Kentucky 41011-3052 • (859) 491-3000 •Fax (859) 655-4642
email: info@thesanderslawfirm.com

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER
Individually and on behalf of others
similarly situated
4743 N. Highway 421
Manchester, KY 40962

And

STEVE CLEMONS
Individually and on behalf of others
similarly situated
74 Willie's Way
Hazard, Kentucky

And

SONYA GRAY
Individually and on behalf of others
similarly situated
34 Glenway Avenue
Fort Thomas, KY 41075

And

WAYNE & BETTY TOMLIN
Individually and on behalf of others
similarly situated
1201 Cannonball Way
Independence, KY 41051

And

PATRICK KWIATKOWSKI
Individually and on behalf of others
similarly situated
5429 Romilda Dr.
Cincinnati, Ohio 45238

And

PLAINTIFFS

NO. 2:10-cv-00031-DLB
CLASS ACTION COMPLAINT
Electronically Filed

EDWARD & JOAN SKILLMAN
Individually and on behalf of others
similarly situated
1428 Gatlinburg Ct.
Lexington, KY 40515

And

MELISSA ARNZEN MOEDDEL
Individually and on behalf of others
similarly situated
4165 Sherel Lane
Cincinnati, Ohio 45209

v.

TOYOTA MOTOR SALES, U.S.A., INC.,
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

And

TOYOTA MOTOR CORP.,
Served Pursuant to The Hague Convention

And

TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

And

TOYOTA MOTOR MANUFACTURING,
KENTUCKY, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

And

TOYOTA MOTOR MANUFACTURING,
NORTHERN KENTUCKY, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

DEFENDANTS

Plaintiffs, Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward and Joan Skillman, and Melissa Arnzen Moeddel bring this action on their own behalf and on behalf of a class of persons defined below against the Defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C §1331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds $5 million. This Court has personal jurisdiction over Defendants because Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky, within this District, Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located in Georgetown, Kentucky, within this District, and all Defendants conduct business in this state.
2. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in this District.

NATURE OF ACTION

3. This is a class action lawsuit against Defendants for an admittedly dangerous defect in millions of its vehicles that can cause accelerator pedal mechanisms to get stuck in an open position, causing the vehicle to accelerate unintentionally ("unintended acceleration").
4. Defendants issued two separate recalls to address problems with unintended acceleration in its vehicles. One involved accelerator pedals interfering with floor mats (the "Floor Mat Interference" recall). The other involved worn accelerator mechanisms getting stuck in an open position, independent of any floor mat interference (the "Worn Accelerator" recall). In total, Defendants recalled 5.9 million cars due to these defects.
5. Notably, the recalls did not provide immediate relief for vehicle owners. Rather, Toyota disclosed that dangerous defects existed and stated that Toyota would implement a repair plan in the future. With respect to the Floor Mat Interference recall, Toyota advised owners to remove the floor mats as an interim measure, and that more complete repairs would not be available for several weeks or months. With respect to the Worn Accelerator recall, Toyota advised owners of the dangerous condition and stated that a remedy was not yet available. These announcements left vehicle owners in the position of having to drive knowingly dangerous vehicles.
6. Some vehicle owners, including Plaintiffs, have driven their cars less than they otherwise would due to fear of being in an accident.
7. According to a Los Angeles Times article dated January 30, 2010, since 1999, nearly 2,000 complaints about sudden, unintended acceleration in Toyota and Lexus vehicles have reportedly been identified. Sudden, unintended accelerations have been blamed for at least 815 vehicle crashes and at least 19 deaths.
8. Defendants have been reportedly aware of many of the incidents that resulted in personal injuries or deaths, as well as many more complaints from consumers about unintended accelerations since as early as 1999. However, the company failed to adequately investigate or fix the defect in the United States and denied that there was any problem.
9. Plaintiffs seek damages suffered by the Class as a result of Toyota's conduct, including but not limited to: (i) loss of use of the vehicles; (ii) reimbursement of out of pocket costs for, among other things, alternative transportation, prior repairs to address accelerator problems,

floor mats that had to be discarded, etc.; (iii) diminution in resale value of the vehicles; and (iv) an increased risk of physical harm.

10. Plaintiffs also seeks injunctive relief including: (i) repairs to remove the dangerous condition; (ii) an extension of warranty coverage covering components of the acceleration system; and (iii) individual notice to each owner effected by the Worn Accelerator recall disclosing the dangerous condition.
11. An undated article on usatoday.com discussing the recalls stated: "Kelley Blue Book says resale values of [Toyota's] affected models could fall 4% to 5% within the next six weeks."
12. An Associated Press article dated Monday, February 8, 2010, and entitled, "Toyota Resale Value, Reputation Fall From Heights," also discussing the recalls, stated: "Kelley Blue Book dropped the resale values of recalled Toyotas for the second time in four days Monday, leaving them as much as 4 percent or $300 to $750 lower than a week ago, depending on the model." The article further stated: "[A] key factor in Toyota's rise to the top was its reputation for quality vehicles with high resale values."
13. Defendants' unlawful conduct emanated, in part, from Kentucky, where TEMA and TMMK are based. On information and belief, this is where Defendants' decisions regarding safety issues, including the accelerator defect, were made or approved.

PARTIES

14. Plaintiffs Michael and Cathy Miller are residents of Kentucky. They own a 2008 Lexus RX 350. Their model year Lexus RX 350 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2008 Lexus RX 350s.
15. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra, a vehicle model subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
16. Plaintiff Sonya Gray is a resident of Kentucky. She owns a 2007 Toyota Camry LE, a model that is subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
17. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav 4. Their model year Rav 4 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2004 Rav 4s.

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18. Plaintiff Patrick Kwiatkowski is a resident of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2005 Corollas.
19. Plaintiffs Edward Skillman and Joan Skillman are residents of Kentucky. They lease a 2009 Toyota Corolla, a model affected by both the Floor Mat Interference recall and Worn Accelerator recall. Based upon the VIN number of their vehicle and Toyota's representations, their particular vehicle may be excluded from either or both the Floor Mat Interference recall and Worn Accelerator recall. However, Mrs. Skillman has experienced sudden, unintended acceleration events in the 2009 Corolla.
20. Plaintiff Melissa Arnzen Moeddel is a resident of the State of Ohio. She owns a 2007 Lexus 400h Hybrid, a model not affected by any of the sudden acceleration recalls to date.
21. Defendant Toyota Motor Corporation ("Toyota-Japan") is headquartered in Japan. Toyota-Japan wholly owns and controls Defendants Toyota-USA, TEMA, TMMK, and TMMNK and conducts business in this District.
22. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota-USA") is headquartered in Los Angeles, California. Toyota-USA is a wholly owned subsidiary of Defendant Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota automobiles in the United States.
23. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky. TEMA is a wholly owned subsidiary of Defendant Toyota. Defendant TEMA is responsible for Toyota's engineering design, development, research and development, and manufacturing activities in the U.S., Canada, and Mexico.
24. Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located at 1001 Cherry Blossom Way in Georgetown, Kentucky, within this District. TMMK is Toyota's largest manufacturing facility outside of Japan and builds the Toyota Avalon and Toyota Camry. In addition, TMMK builds 4-cylinder and V6 engines and powertrain parts that upon information and belief, are subject to the unintended acceleration defect.
25. Defendant Toyota Motor Manufacturing, Northern Kentucky, Inc., ("TMMNK") is located at 25 Atlantic Avenue in Erlanger, Kentucky, within this District. Upon information and belief,

TMMNK is responsible, in part, for Toyota's production control, production engineering, purchasing, and quality in North America, including Northern Kentucky, within this District.

26. Toyota-Japan, Toyota-USA, TEMA, TMMK, and TMMNK are collectively referred to herein as "Toyota."

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

FACTUAL BACKGROUND

A. Toyota's Electronic Throttle Control System

28. Beginning in the late 1990s and continuing to today, Toyota manufactured certain automobiles with an Electronic Throttle Control system ("ETC").

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

30. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control. This mechanical fail-safe was intended as a safety measure in the event of a sudden, unintended acceleration. The safety measure system would disconnect the ETC and automatically allow the throttle to be controlled by the mechanical linkage.

31. Beginning with the 2001 model year, however, Toyota began manufacturing vehicles without a mechanical linkage.

32. In addition, Toyota's ETC system fails to include a "brake over-ride" safety measure incorporated by other manufacturers that instructs the ETC system to reduce the engine idle when the brakes are applied while the accelerator is in an open position.

33. Many of Toyota's vehicles now include an electronic ignition button rather than a key-turned switch. In these cars, no easy mechanical means exist to turn off the engine in case of an unintended acceleration.
34. The combination of a lack of these safety systems creates a situation in which there are no mechanical or electronic safety mechanisms to allow the driver to stop or slow the car during an unintended acceleration. Upon information and belief, Toyota deliberately chose to omit the fail-safe mechanisms to stop or slow a vehicle in the event of a sudden, unintended acceleration in order to save money and reap greater profits on sales of its vehicles.
35. Moreover, in a January 21, 2010 press release announcing the Worn Accelerator recall, Toyota warned drivers that, in the event of unintended acceleration, the "brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure." Thus, pumping the brakes, which occurs instinctually for some drivers, could actually impair the vehicle's ability to slow or stop.

B. **Toyota's Recalls**

36. Toyota has engaged in a campaign to conceal the sudden, unintended acceleration defect in many of its vehicle models and model years from its customers and the general public.
37. For years, Toyota's method of dealing with the hundreds of reports it received each year of its vehicles suddenly and unintentionally accelerating out of control, up to speed of 100 miles per hour or more, and resulting in serious physical injuries and deaths, was to simply deny the existence of any problem.
38. On September 29, 2009, Toyota issued a consumer alert on its website that it was investigating the "potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat." Toyota claimed that the sudden acceleration issue affected only a limited number of models of Toyota and Lexus vehicles. Toyota advised owners of those particular models to remove their floor mats and not replace them.
39. On November 2, 2009, Toyota issued a press release announcing a "future voluntary recall" related to floor mats that interfere with accelerator pedals. Toyota stated that it had not yet developed a remedy, but it was advising owners to remove the driver's side floor mat as a temporary measure. Toyota also mailed letters to affected owners notifying them of the issue.

40. The following makes and models were affected by the recall:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES350
- 2006-2010 Lexus IS250 and IS350

41. The recall initially affected 3.8 million vehicles. The number of vehicles was later increased to 4.2 million.

42. On November 6, 2009, Toyota issued a press release responding to media reports about growing suspicion that the unintended acceleration was caused by a glitch in the "electronic engine management system" rather than simple interference with floor mats. Toyota's press release noted that removal of floor mats was only a temporary measure, and that further repairs would be needed once a remedy was available. Thus, vehicle owners were placed in the position of having to drive dangerously defective cars until a future remedy was implemented.

43. On November 8, 2009, the Los Angeles Times published an article reporting that many instances of unwanted acceleration had occurred, fanning the flames of consumer skepticism and distrust of the Toyota brand by Toyota owners and the general public.

44. The article noted that Toyota was aware of many of the instances of unintended acceleration, and that Toyota withheld certain consumer complaints about unintended acceleration when responding to the NHTSA's requests for customer complaints.

45. On November 25, 2009, Toyota issued a press release claiming that, in addition to floor mats, the accelerator pedal design in many models was also contributing to the sudden, unintended accelerations. Toyota announced a remedy it developed for the Floor Mat Interference recall. The shape of the accelerator pedal would be reconfigured for all effected vehicles, and the shape of the floor surface underneath the floor mat would be reconfigured for certain vehicles.

46. The November 25, 2009 press release also stated that a brake over-ride system to cut engine power in case of simultaneous application of both the accelerator and brake pedals would be installed on Camry, Avalon, Lexus 350, Lexus IS350, and Lexus IS250 as "an extra measure

of confidence." These vehicle models, it should be noted, are among the most expensive and best-selling in Toyota's fleet. Apparently, Toyota's practice is to provide greater safety advantages to the owners of the vehicles that account for the most profits.

47. In any event, the repairs described in the November 25, 2009 press release would only be available some months later for three Toyota models, and on a "rolling schedule during 2010" for the remaining models. Thus, all vehicle owners had to continue to drive dangerously defective cars.

48. On December 5, 2009, the Los Angeles Times again reported that the unintended acceleration might be related to a problem beyond floor mat interference.

49. On December 10, 2009, Toyota issued a statement on its website rebutting the Los Angeles Times report and denying that an electronic problem existed.

50. On December 23, 2009, the Los Angeles Times reported that Toyota had a history of delaying recalls and keeping a "tight lid on disclosure of potential problems." The article outlined several instances of Toyota's failure to notify consumers of known dangerous conditions.

51. On January 21, 2010, Toyota announced that it was recalling a further 2.3 million vehicles and claimed that it had discovered yet another problem, "sticking accelerator pedals," that was supposedly the root of the sudden acceleration issue.

52. This recall, the Worn Accelerator recall, was "separate from the on-going recall of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by ... floor mats." The Worn Accelerator recall addressed a condition that "can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." According to the press release, this defect was discovered when Toyota was investigating reports of sticking accelerator pedals "without the presence of floor mats."

53. The Worn Accelerator recall involved the following Toyota models:

- 2009-2010 RAV4
- 2009-2010 Corolla
- 2009-2010 Matrix
- 2005-2010 Avalon
- 2007-2010 Camry
- 2010 Highlander

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- 2007-2010 Tundra
- 2008-2010 Sequoia

54. Some, but not all, of these 2.3 million vehicles were also affected by the Floor Mat Interference recall. Approximately 1.7 million vehicles were affected by both recalls.
55. The January 21, 2010 press release noted that Toyota had not yet determined how to correct the defect underlying the Worn Accelerator recall. Thus, similar to owners subject to the Floor Mat Interference recall, owners subject to the Worn Accelerator recall could not yet bring their cars to dealerships for repairs. This left more owners in the position of having to drive a dangerously defective car indefinitely.
56. The Worn Accelerator recall was more serious than the Floor Mat Interference recall because drivers could not simply remove the floor mat as an interim measure.
57. On January 26, 2009, Toyota issued a press release announcing that it would suspend sales of vehicles affected by the Worn Accelerator recall until a remedy was available.
58. Toyota also failed to notify vehicle owners affected by the Worn Accelerator recall. Toyota announced the recall via press release, but has not contacted owners by mail or other direct means.
59. On January 27, 2010, Toyota announced on its website that the following additional models were being added to the Floor Mat Interference recall:

- 2008-2010 Highlander
- 2009-2010 Corolla
- 2009-2010 Venza
- 2009-2010 Matrix

60. This development increased the total number of vehicles subject to the Floor Mat Interference recall by 1.1 million, to a total of 5.3 million.
61. To date, 5.9 million vehicles have been affected by one or both of the recalls: 5.3 million vehicles related to the Floor Mat Interference recall, plus 2.3 million vehicles related to the Worn Accelerator recall, less 1.7 million vehicles affected by both recalls
62. On February 1, 2010, Toyota announced that it had developed a "comprehensive fix" for the sudden acceleration problem in its vehicles, and that the fix would be performed on all vehicles subject to the January 21, 2010 recall.

63. On February 1, 2010, Jim Lentz, president and chief operating officer of Defendant Toyota Motor Sales U.S.A., Inc., appeared on NBC's "Today" show and announced that the recalls and the "comprehensive fix" would "stop what is going on" with the sudden accelerations in Toyota vehicles.

64. The majority of Toyota owners, however, who have experienced sudden, unintended accelerations, have been offered no "fix" or solution by Toyota at all, and their vehicles have not been part of any recalls addressing the sudden acceleration defect. 702 of the 1,234 reported sudden acceleration events (about 57%) have occurred in Toyota models and models years that are not included in any of the relevant recalls.

65. The sticking accelerator pedal recall of January 21, 2010 included Toyota models and model years that were involved in only 245 of the 1234, or about 20%, of the reported sudden acceleration events.

66. The brake over-ride safeguard system that Toyota announced as a means of bringing the vehicle's engine to idle in case of a sudden acceleration affected models and models years involved in only 296 of 1234 (about 24%) reported sudden acceleration events.

67. Akio Toyoda, the president of Toyota, submitted an op-ed in the Washington post acknowledging that "Toyota has not lived up to the high standards we set for ourselves."

68. Toyota continues to misrepresent to Plaintiffs, to prospective class members, and to the public at large that it has identified the problem causing the sudden accelerations and that it is recalling and repairing all vehicles affected by this defect. Toyota has continued to downplay and deny the suspicions and concerns of safety experts, the media, and consumers alike that the defect is actually caused by a flaw in the computer-controlled accelerator system.

69. Given the vast number of instances of unintended acceleration since 2001, and Toyota's knowledge of many or all of the instances, Toyota should have aggressively investigated the cause of the unintended acceleration and developed a remedy years ago. Toyota failed to do either, evidenced by the fact that the first recall wasn't implemented until 2009, eight years after instances of unintended acceleration first began.

70. The sudden, unintended acceleration defect in Toyota vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this

serious problem, Toyota customers and the general public are extremely skeptical about the quality and safety of Toyota vehicles. The entire fleet of Toyota vehicles has been stigmatized by this defect, regardless of which vehicle models and model years have been included in the recalls or excluded therefrom.

71. Defendants' mishandling of the sudden, unintended acceleration defect, including but not limited to their denial of any problem, even after receiving a substantial number of reports of sudden, unintended acceleration events, including ones that resulted in serious physical injury or death, and all other allegations set forth herein, has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. Toyota customers and the general public have reason to be skeptical about whether Toyota is coming forth with truthful information about the sudden acceleration defect. Likewise, Toyota customers and the general public are left to wonder whether safety concerns about Toyota vehicles are limited to this particular problem. In essence, American consumers have no way to know the lengths to which Defendants will go to cover up other potentially deadly defects in its vehicles, as they did for so long with the sudden acceleration defect.

C. Plaintiffs' Experiences

a. Michael & Cathy Miller

72. Plaintiffs Miller own a 2008 Lexus RX 350, a model that has not been subject to any sudden acceleration recall. Upon information and belief, there have been incidents of sudden acceleration in Lexus RX vehicles reported to Toyota and the federal government.

73. Plaintiffs Miller chose the Lexus RX 350 over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

74. Plaintiffs Miller have experienced sudden, unintended acceleration in their Lexus RX 350 on a number of occasions. They have reported the problem to their Lexus dealer, Lexus of Lexington (Ky.).

75. Plaintiffs Miller were told by the service technicians at Lexus of Lexington that there was nothing wrong with the vehicle, despite Plaintiffs' insistence that the vehicle was

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accelerating for no apparent reason and adversely affecting their ability to drive it in a controlled manner.

76. Plaintiffs Miller have lost trust in the Toyota and Lexus brand names, and the RX 350 in particular. They are skeptical that their RX 350 will ever be completely safe, as evidenced by the fact that their local Lexus dealer has told them that there is nothing wrong with the vehicle.

77. Plaintiffs Miller also believe that the resale value of their Lexus RX 350 will decrease due to general consumer skepticism about Toyota and Lexus vehicles.

78. Plaintiffs Miller are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused economic harm to them, namely damage to their property and devaluation of their Lexus RX 350.

b. Steve Clemons

79. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra. He chose the Tundra over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

80. Plaintiff Clemons is concerned about his safety and that of others, especially since learning that his vehicle is part of both Toyota recalls relating to sudden accelerations.

81. Plaintiff Clemons has lost trust in Toyota and the Tundra he owns. He is skeptical that the Tundra will be safe, even if he takes the vehicle to his Toyota dealer to have it fixed.

82. Plaintiff Clemons is concerned for his safety and the safety of others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Tundra.

c. Sonya Gray

83. Plaintiff Sonya Gray owns a 2007 Toyota Camry. She chose the Camry over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

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84. Plaintiff Gray is concerned about her safety and that of others, especially since learning that, her vehicle is part of both Toyota recalls relating to sudden accelerations.
85. Plaintiff Gray has driven her Camry less often since learning about the sudden acceleration defect and corresponding recalls. This has caused her inconvenience and worry.
86. Plaintiff Gray has lost trust in Toyota and the Camry she owns. She is skeptical that the Camry will be safe, even if she takes the vehicle to her Toyota dealer to have it fixed.
87. Plaintiff Gray is concerned for her safety and the safety of others. She believes Defendants' actions and omissions have caused her economic harm, namely damage to her property and devaluation of her Toyota Camry.

d. Wayne and Betty Tomlin

88. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav4, a model not affected by either recall based on Toyota's representations.
89. Plaintiffs Tomlin chose the Rav4 over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiffs Mr. and Mrs. Tomlin have lost trust in Toyota and their Rav4 in the wake of news reports and public outcry over sudden accelerations.
90. Plaintiffs Tomlin are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused them economic harm, namely damage to their property and devaluation of their Toyota Rav4.

e. Patrick Kwiatkowski

91. Plaintiff Patrick Kwiatkowski is a resident of the state of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any relevant recalls.
92. Plaintiff Kwiatkowski chose the Corolla over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiff Kwiatkowski has lost trust in Toyota and his Corolla in the wake of news reports and public outcry over sudden accelerations.
93. Plaintiff Kwiatkowski is skeptical that Toyota is being honest and straightforward with him and the American public, based on the fact that the 2005 Corolla is not subject to the recalls,

despite sudden acceleration events involving that model and model year being reported to Toyota and the federal government.

94. Plaintiff Kwiatkowski is concerned for his safety and the safety of his family and others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Corolla.

f. Edward and Joan Skillman

95. Plaintiffs Edward and Joan Skillman live in Lexington, Kentucky and lease a 2009 Toyota Corolla, with an option to buy the vehicle at the end of the lease term.

96. Plaintiffs Skillman chose the Corolla over a competing brand's vehicle partly in reliance upon Toyota's reputation for manufacturing cars with higher resale value than other brands.

97. In late 2009, Mrs. Skillman experienced unintended acceleration in the 2009 Corolla. Fortunately, she was able to stop the car without incident. She has experienced unintended acceleration on other occasions since then.

98. Plaintiffs Skillman have driven their Corolla less often since learning of the recalls and after experiencing unintended acceleration in their Corolla. Plaintiffs are concerned about putting themselves and others at risk. They generally do not allow passengers to ride with them in their Corolla, for fear that passengers could get hurt. This has been an inconvenience to Plaintiffs.

99. Plaintiffs Skillman own a non-Toyota vehicle, in addition to their Corolla. Since experiencing sudden acceleration and learning of the Toyota recalls, they have been so scared of driving their Corolla that they drive their other, non-Toyota vehicle unless it is absolutely essential that they need to use both cars at the same time. They have, as much as possible, reorganized their daily schedules and routines to avoid driving their Corolla as much as they can. This has been an inconvenience to Plaintiffs.

100. Plaintiffs Skillman have lost trust in Toyota and their 2009 Corolla. They are skeptical that their Corolla will be safe, even if they take it to their Toyota dealer to have it fixed.

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101. Plaintiffs Skillman are concerned for their safety and the safety of others. Additionally, Plaintiffs Skillman believe Defendants' actions have caused economic harm to them, namely damage to their property and devaluation of their Toyota Corolla.

g. Melissa Arnzen Moeddel

102. Plaintiff Melissa Arnzen Moeddel is a resident of Ohio. She owns a 2007 Lexus 400h Hybrid. Her vehicle model has not been subject to any of the sudden acceleration recalls to date, and she has not experienced any sudden acceleration while driving her vehicle.

103. Notwithstanding the lack of reported sudden accelerations involving the Lexus 400h Hybrid, Plaintiff Moeddel is concerned for the safety of herself and others, including her young daughter, who rides as a passenger in the vehicle on a daily basis.

104. Plaintiff Moeddel chose the Lexus 400h Hybrid over a competing brand's vehicle, at least in part, because of Toyota's and Lexus's reputation for selling cars with a higher resale value than competing brands. Plaintiff Moeddel have lost trust in Toyota and her Lexus 400h Hybrid in the wake of news reports and public outcry over sudden accelerations.

105. Plaintiff Moeddel believes Defendants' actions and omissions have caused economic harm to her, namely damage to her property and devaluation of her Lexus 400h Hybrid.

CLASS ACTION ALLEGATIONS

106. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

> All persons or entities in the United States owning Toyota vehicles, or leasing Toyota vehicles with the option to buy at the end of the lease term, regardless of whether their vehicle models and model years have been the subject of a recall involving sudden, unintended accelerations.

107. The Class does not include Defendants or their officers or directors.

108. Also excluded from the Class are individuals who have claims for personal injury as a result of unintended acceleration. The claims at issue in this case do not seek damages for physical injury. Thus, individualized determinations as to causation of bodily injury will not be required. This class action only seeks the economic and equitable relief requested herein.

109. The Class is comprised of millions of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

110. There are questions of law or fact common to the class, including but not limited to the following:

a. Whether the recalled automobiles contained a dangerous or defective condition;

b. Whether Defendants' conduct constituted actionable negligence;

c. Whether Defendants entered into and breached implied contracts;

d. Whether Defendants' conduct violated the Kentucky Consumer Protection Act;

e. Whether Defendants' conduct constituted false advertising;

f. Whether Defendants' conduct constituted a breach of the implied warranty of merchantability; and

i. Whether Defendants' conduct constituted a breach of the implied warranty of fitness for a particular purpose.

g. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

h. Whether Defendants failed to give adequate warnings regarding the cars;

i. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

j. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

k. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

111. Plaintiffs' claims are typical of the claims of the Class they seek to represent.

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112. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.

113. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.

114. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.

115. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving millions of Class members.

116. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief.

FIRST CLAIM FOR RELIEF NEGLIGENCE

117. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

118. Defendants assumed a duty to exercise reasonable care in, among other things, manufacturing and selling automobiles that did not contain a dangerous condition. Defendants' duties arose from, among other things, the relationship between the parties as buyers and sellers and/or lessor and lessee.

119. Defendants also assumed a duty to adequately investigate claims of unintended acceleration and to timely notify Class members of known dangerous conditions.

120. Defendants breached their duties by manufacturing and selling automobiles with dangerous accelerator systems. They also breached their duties by failing to adequately investigate acceleration complaints and failing to individually notify Class members of the Worn Accelerator recall and underlying dangerous condition.

121. But for Defendants' breach of duties, Plaintiffs and Class members would not be faced with driving unsafe automobiles and suffering the related consequences alleged herein, including but not limited to economic injuries, specifically damage to their property.

TOY-RQ-05E-00012203

122. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

123. The damages set forth in paragraph 9 are not limited to those individuals who own or lease Toyota vehicles subject to the recalls associated with the sudden acceleration defect. The acts and omissions of Defendants have caused their entire fleet of vehicles to be stigmatized as dangerous cars and trucks prone to uncontrolled acceleration that could result in serious physical injury or death. The harm to Toyota's reputation is brand-wide and all Toyota drivers have suffered economic loss, including but not limited to diminution in resale value of their vehicles.

SECOND CLAIM FOR RELIEF BREACH OF IMPLIED CONTRACT

124. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

125. The essential elements of an implied contract under Kentucky law are an offer, acceptance, and consideration. The existence and terms of the contract are implied by the conduct of the parties.

126. An offer, acceptance, and consideration for the sale or lease of vehicles existed, evidenced by the fact that Plaintiffs and Class members paid money to Defendants in exchange for vehicles or, for those Plaintiffs and Class members who leased vehicles, the right to use and drive the vehicles for the stated lease term, and in many, if not all leases, the option to purchase the vehicles at the end of the lease term. The act of exchanging money for vehicles was an offer and acceptance. The money and vehicles constituted consideration.

127. An implied term of the sale was that Defendants would provide vehicles that did not contain an unreasonably dangerous condition. There was a meeting of the minds regarding the absence of unreasonably dangerous conditions.

128. Defendants' intent to provide safe vehicles was evidenced by, among other things, its advertising and marketing materials emphasizing the safety qualities of its vehicles. For example, a statement on Toyota's website dated November 18, 2009, states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." In light of this statement and others like it, Plaintiffs and Class members had a reasonable expectation that the vehicles they purchased would not contain an unreasonably dangerous condition.

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129. The absence of unreasonably dangerous conditions was a material term to the contracts. Plaintiffs and Class members would not have purchased or leased the vehicles, or would not have paid the purchase price or lease price they paid, had they known of the unintended acceleration defect.

130. Defendants breached the implied terms of their contracts by providing vehicles that contained unreasonably dangerous conditions.

131. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

THIRD CLAIM FOR RELIEF VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – UNFAIR CONDUCT

132. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

133. KRS § 367.110 *et seq.,* also known as the Kentucky Consumer Protection Act, makes unlawful all "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." KRS § 367.170.

134. Defendants violated and continue to violate the KCPA through one or more of the following unfair and/or deceptive practices:

a. Manufacturing and selling vehicles containing a dangerous condition;

b. Failing to adequately investigate claims of unintended acceleration;

c. Failing to adequately and individually notify Class members of the recalls and underlying dangerous condition;

d. Violating other laws alleged herein.

135. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

136. Defendants' conduct has impaired competition in the motor vehicle industry. It provided Defendants with an unfair advantage compared to its competitors when manufacturing and selling vehicles and earning profits thereon. Plaintiffs and Class members bought or leased Toyota vehicles, at least in part, because of Toyota's reputation as a safe brand whose vehicles have a high resale value. This reputation has thrived, in part, because of Toyota's efforts to keep quiet the sudden acceleration defect and corresponding threat to the safety of Toyota customers and the general public.

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FOURTH CLAIM FOR RELIEF – VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – DECEPTIVE/FALSE CONDUCT

137. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

138. Plaintiffs are informed and believe and thereon allege that, as described herein, Toyota has engaged in unfair practices, in violation of the Kentucky Consumer Protection Act, as codified in KRS 367.110 et seq.

139. Toyota stated directly and indirectly in various marketing and advertising campaigns that its vehicles are safe and reliable. For example, a statement on Toyota's website dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." These statements were untrue in light of the problems with unintended acceleration.

140. Defendants' statements in its brochures, websites, television ads, newspaper ads, and other means constituted advertising for purposes of this claim.

141. Defendants' advertising program contained statements concerning vehicle safety and reliability that were false or misleading and that were known or should have been known to Defendants to be false or misleading.

142. Defendant knew or should have know that its vehicles were defective and failed to inform Plaintiffs and the Class of known defects prior to Plaintiffs and the Class purchasing or leasing their Toyota vehicles.

143. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered the damages set forth in paragraph 9.

FIFTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

144. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

145. Defendants' vehicles were accompanied by an implied warranty of merchantability when sold, pursuant to KRS § 355.2-314.

146. Pursuant to KRS § 355.2-314, for "good to be merchantable" the consumer goods must meet each of the following:

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

147. The vehicles encompassed by Toyota's recalls would not pass without objection in the automotive trade. The vehicles are unreasonably dangerous and in need of repair.

148. The vehicles are not fit for the ordinary purpose for which they were sold. The vehicles were purchased to, among other things, safely transport drivers and passengers. The vehicles cannot be used for safe transportation in their current condition.

149. The vehicles were not adequately labeled because the labeling failed to disclose the dangerous conditions.

150. Defendants breached the implied warranty of merchantability by manufacturing and selling vehicles containing an unreasonably dangerous condition.

151. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

SIXTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

152. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

153. KRS § 355.2-315 states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

154. Defendants knew at the time they sold or leased vehicles to Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

155. Defendants knew at the time they sold or leased vehicles to Class members that those individuals chose to buy or lease their vehicles from Toyota at least in part because of the reputation of Toyota cars and trucks as safe vehicles with high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

156. Defendants knew that Class members were relying on Defendants' skill and judgment in furnishing and/or recommending vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

157. Defendants breached the implied warranty of fitness because the vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the vehicles has resulted in a substantial drop in the resale value of those vehicles.

158. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Fed. R. Civ. P. 23(b)(2) and (3) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

B. Finding that Defendants are liable under all legal claims asserted herein;

C. Awarding damages to the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages as set forth in paragraph 9, punitive damages, and any other damages provided under the law;

D. Ordering injunctive relief as set forth in paragraph 10;

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E. Awarding attorneys' fees and litigation costs; and

F. Awarding any other legal or equitable relief as justice so requires.

Dated: February 12, 2010.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2010.

ROBERT E. SANDERS
DELANA S. SANDERS
JUSTIN A. SANDERS
W. MATTHEW NAKAJIMA
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By: /s/ Robert E. Sanders
Kentucky Attorney No. 61395

By: /s/ Delana S. Sanders
Kentucky Attorney No. 87543

By: /s/ Justin A. Sanders
Kentucky Attorney No. 90390

By: /s/ W. Matthew Nakajima (application for admission to be submitted)
Kentucky Attorney No. 93210

Of Counsel (application to Pro Hac Vice admission to be submitted):

TOY-RQ-05E-00012209

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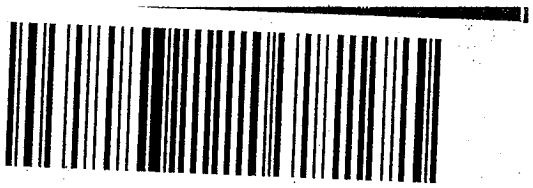

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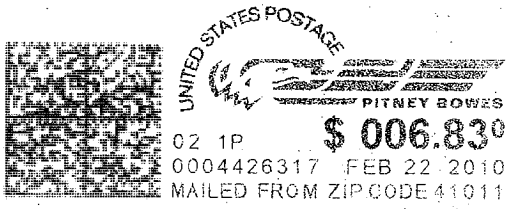

The Sanders Law Firm
The Charles H. Fisk House
1017 Russell Street, Covington, KY 41011-3052

To:

Toyota Motor Engineering & Manufacturing
N. America, Inc.,
c/o CT Corp.System, Registered Agent
4169 Westport Rd.
Louisville, KY 40207

CT Corporation

Service of Process Transmittal

02/23/2010
CT Log Number 516196336

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 Manufacturing, Northern Kentucky, Inc. (Domestic State: KY)

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

TITLE OF ACTION:	Michael & Cathy Miller, et al., Pltfs. vs. Toyota Motor Sales, U.S.A., Inc., et al. including Toyota Motor Manufacturing Northern Kentucky, Inc., Dfts.
DOCUMENT(S) SERVED:	Letter, Summons, Class Action Complaint
COURT/AGENCY:	USDC Eastern District of Covington, . Case # 2:10-cv-00031-DLB
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Acceleration
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/23/2010 postmarked on 02/22/2010
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Justin A. Sanders The Sanders Law Firm 1017 Russell Street Covington, KY 41011 859-491-3000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790204720113 Image SOP Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED:	C T Corporation System
ADDRESS:	4169 Westport Road Louisville, KY 40207
TELEPHONE:	502-721-0133

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.

The Sanders Law Firm
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The Charles H. Fisk House
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Paralegal
Mary L. O'Neil

Office Manager/Paralegal
M. Renee Cain

Controller
Jennifer L. Blatt

Medical-Legal Assistant
Shirley L. Sanders, R.N.

February 22, 2010

Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 40207
SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Miller, et al., v. Toyota Motor Sales, U.S.A., Inc., et al.
U.S. District Court – Eastern District of Kentucky
Case No. 2:10-cv-00031-DLB

Dear Toyota Defendant:

Please find enclosed a copy of the summons and complaint in the above-captioned civil action filed in the United States District Court, Eastern District of Kentucky.

Best Regards,

Justin A. Sanders
Attorney for Plaintiffs

JAS/pbs
Enclosures

1017 Russell Street • Covington, Kentucky 41011-3052 • (859) 491-3000 •Fax (859) 655-4642
email: info@thesanderslawfirm.com

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER
Individually and on behalf of others
similarly situated
4743 N. Highway 421
Manchester, KY 40962

And

STEVE CLEMONS
Individually and on behalf of others
similarly situated
74 Willie's Way
Hazard, Kentucky

And

SONYA GRAY
Individually and on behalf of others
similarly situated
34 Glenway Avenue
Fort Thomas, KY 41075

And

WAYNE & BETTY TOMLIN
Individually and on behalf of others
similarly situated
1201 Cannonball Way
Independence, KY 41051

And

PATRICK KWIATKOWSKI
Individually and on behalf of others
similarly situated
5429 Romilda Dr.
Cincinnati, Ohio 45238

And

PLAINTIFFS

NO. 2:10-cv-00031-DLB
CLASS ACTION COMPLAINT
Electronically Filed

EDWARD & JOAN SKILLMAN)
Individually and on behalf of others)
similarly situated)
1428 Gatlinburg Ct.)
Lexington, KY 40515)
)
And)
)
MELISSA ARNZEN MOEDDEL)
Individually and on behalf of others)
similarly situated)
4165 Sherel Lane)
Cincinnati, Ohio 45209)
)
v.)
)
TOYOTA MOTOR SALES, U.S.A., INC.,)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR CORP.,)
Served Pursuant to The Hague Convention)
)
And)
)
TOYOTA MOTOR ENGINEERING &)
MANUFACTURING NORTH AMERICA, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR MANUFACTURING,)
KENTUCKY, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)

TOYOTA MOTOR MANUFACTURING,
NORTHERN KENTUCKY, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

DEFENDANTS

Plaintiffs, Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward and Joan Skillman, and Melissa Arnzen Moeddel bring this action on their own behalf and on behalf of a class of persons defined below against the Defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C §1331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds $5 million. This Court has personal jurisdiction over Defendants because Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky, within this District, Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located in Georgetown, Kentucky, within this District, and all Defendants conduct business in this state.
2. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in this District.

NATURE OF ACTION

3. This is a class action lawsuit against Defendants for an admittedly dangerous defect in millions of its vehicles that can cause accelerator pedal mechanisms to get stuck in an open position, causing the vehicle to accelerate unintentionally ("unintended acceleration").
4. Defendants issued two separate recalls to address problems with unintended acceleration in its vehicles. One involved accelerator pedals interfering with floor mats (the "Floor Mat Interference" recall). The other involved worn accelerator mechanisms getting stuck in an open position, independent of any floor mat interference (the "Worn Accelerator" recall). In total, Defendants recalled 5.9 million cars due to these defects.
5. Notably, the recalls did not provide immediate relief for vehicle owners. Rather, Toyota disclosed that dangerous defects existed and stated that Toyota would implement a repair plan in the future. With respect to the Floor Mat Interference recall, Toyota advised owners to remove the floor mats as an interim measure, and that more complete repairs would not be available for several weeks or months. With respect to the Worn Accelerator recall, Toyota advised owners of the dangerous condition and stated that a remedy was not yet available. These announcements left vehicle owners in the position of having to drive knowingly dangerous vehicles.
6. Some vehicle owners, including Plaintiffs, have driven their cars less than they otherwise would due to fear of being in an accident.
7. According to a Los Angeles Times article dated January 30, 2010, since 1999, nearly 2,000 complaints about sudden, unintended acceleration in Toyota and Lexus vehicles have reportedly been identified. Sudden, unintended accelerations have been blamed for at least 815 vehicle crashes and at least 19 deaths.
8. Defendants have been reportedly aware of many of the incidents that resulted in personal injuries or deaths, as well as many more complaints from consumers about unintended accelerations since as early as 1999. However, the company failed to adequately investigate or fix the defect in the United States and denied that there was any problem.
9. Plaintiffs seek damages suffered by the Class as a result of Toyota's conduct, including but not limited to: (i) loss of use of the vehicles; (ii) reimbursement of out of pocket costs for, among other things, alternative transportation, prior repairs to address accelerator problems,

floor mats that had to be discarded, etc.; (iii) diminution in resale value of the vehicles; and (iv) an increased risk of physical harm.

10. Plaintiffs also seeks injunctive relief including: (i) repairs to remove the dangerous condition; (ii) an extension of warranty coverage covering components of the acceleration system; and (iii) individual notice to each owner effected by the Worn Accelerator recall disclosing the dangerous condition.
11. An undated article on usatoday.com discussing the recalls stated: "Kelley Blue Book says resale values of [Toyota's] affected models could fall 4% to 5% within the next six weeks."
12. An Associated Press article dated Monday, February 8, 2010, and entitled, "Toyota Resale Value, Reputation Fall From Heights," also discussing the recalls, stated: "Kelley Blue Book dropped the resale values of recalled Toyotas for the second time in four days Monday, leaving them as much as 4 percent or $300 to $750 lower than a week ago, depending on the model." The article further stated: "[A] key factor in Toyota's rise to the top was its reputation for quality vehicles with high resale values."
13. Defendants' unlawful conduct emanated, in part, from Kentucky, where TEMA and TMMK are based. On information and belief, this is where Defendants' decisions regarding safety issues, including the accelerator defect, were made or approved.

PARTIES

14. Plaintiffs Michael and Cathy Miller are residents of Kentucky. They own a 2008 Lexus RX 350. Their model year Lexus RX 350 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2008 Lexus RX 350s.
15. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra, a vehicle model subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
16. Plaintiff Sonya Gray is a resident of Kentucky. She owns a 2007 Toyota Camry LE, a model that is subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
17. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav 4. Their model year Rav 4 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2004 Rav 4s.

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18. Plaintiff Patrick Kwiatkowski is a resident of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2005 Corollas.
19. Plaintiffs Edward Skillman and Joan Skillman are residents of Kentucky. They lease a 2009 Toyota Corolla, a model affected by both the Floor Mat Interference recall and Worn Accelerator recall. Based upon the VIN number of their vehicle and Toyota's representations, their particular vehicle may be excluded from either or both the Floor Mat Interference recall and Worn Accelerator recall. However, Mrs. Skillman has experienced sudden, unintended acceleration events in the 2009 Corolla.
20. Plaintiff Melissa Arnzen Moeddel is a resident of the State of Ohio. She owns a 2007 Lexus 400h Hybrid, a model not affected by any of the sudden acceleration recalls to date.
21. Defendant Toyota Motor Corporation ("Toyota-Japan") is headquartered in Japan. Toyota-Japan wholly owns and controls Defendants Toyota-USA, TEMA, TMMK, and TMMNK and conducts business in this District.
22. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota-USA") is headquartered in Los Angeles, California. Toyota-USA is a wholly owned subsidiary of Defendant Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota automobiles in the United States.
23. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky. TEMA is a wholly owned subsidiary of Defendant Toyota. Defendant TEMA is responsible for Toyota's engineering design, development, research and development, and manufacturing activities in the U.S., Canada, and Mexico.
24. Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located at 1001 Cherry Blossom Way in Georgetown, Kentucky, within this District. TMMK is Toyota's largest manufacturing facility outside of Japan and builds the Toyota Avalon and Toyota Camry. In addition, TMMK builds 4-cylinder and V6 engines and powertrain parts that upon information and belief, are subject to the unintended acceleration defect.
25. Defendant Toyota Motor Manufacturing, Northern Kentucky, Inc., ("TMMNK") is located at 25 Atlantic Avenue in Erlanger, Kentucky, within this District. Upon information and belief,

TMMNK is responsible, in part, for Toyota's production control, production engineering, purchasing, and quality in North America, including Northern Kentucky, within this District.

26. Toyota-Japan, Toyota-USA, TEMA, TMMK, and TMMNK are collectively referred to herein as "Toyota."

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

FACTUAL BACKGROUND

A. Toyota's Electronic Throttle Control System

28. Beginning in the late 1990s and continuing to today, Toyota manufactured certain automobiles with an Electronic Throttle Control system ("ETC").

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

30. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control. This mechanical fail-safe was intended as a safety measure in the event of a sudden, unintended acceleration. The safety measure system would disconnect the ETC and automatically allow the throttle to be controlled by the mechanical linkage.

31. Beginning with the 2001 model year, however, Toyota began manufacturing vehicles without a mechanical linkage.

32. In addition, Toyota's ETC system fails to include a "brake over-ride" safety measure incorporated by other manufacturers that instructs the ETC system to reduce the engine idle when the brakes are applied while the accelerator is in an open position.

33. Many of Toyota's vehicles now include an electronic ignition button rather than a key-turned switch. In these cars, no easy mechanical means exist to turn off the engine in case of an unintended acceleration.
34. The combination of a lack of these safety systems creates a situation in which there are no mechanical or electronic safety mechanisms to allow the driver to stop or slow the car during an unintended acceleration. Upon information and belief, Toyota deliberately chose to omit the fail-safe mechanisms to stop or slow a vehicle in the event of a sudden, unintended acceleration in order to save money and reap greater profits on sales of its vehicles.
35. Moreover, in a January 21, 2010 press release announcing the Worn Accelerator recall, Toyota warned drivers that, in the event of unintended acceleration, the "brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure." Thus, pumping the brakes, which occurs instinctually for some drivers, could actually impair the vehicle's ability to slow or stop.

B. **Toyota's Recalls**

36. Toyota has engaged in a campaign to conceal the sudden, unintended acceleration defect in many of its vehicle models and model years from its customers and the general public.
37. For years, Toyota's method of dealing with the hundreds of reports it received each year of its vehicles suddenly and unintentionally accelerating out of control, up to speed of 100 miles per hour or more, and resulting in serious physical injuries and deaths, was to simply deny the existence of any problem.
38. On September 29, 2009, Toyota issued a consumer alert on its website that it was investigating the "potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat." Toyota claimed that the sudden acceleration issue affected only a limited number of models of Toyota and Lexus vehicles. Toyota advised owners of those particular models to remove their floor mats and not replace them.
39. On November 2, 2009, Toyota issued a press release announcing a "future voluntary recall" related to floor mats that interfere with accelerator pedals. Toyota stated that it had not yet developed a remedy, but it was advising owners to remove the driver's side floor mat as a temporary measure. Toyota also mailed letters to affected owners notifying them of the issue.

40. The following makes and models were affected by the recall:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES350
- 2006-2010 Lexus IS250 and IS350

41. The recall initially affected 3.8 million vehicles. The number of vehicles was later increased to 4.2 million.

42. On November 6, 2009, Toyota issued a press release responding to media reports about growing suspicion that the unintended acceleration was caused by a glitch in the "electronic engine management system" rather than simple interference with floor mats. Toyota's press release noted that removal of floor mats was only a temporary measure, and that further repairs would be needed once a remedy was available. Thus, vehicle owners were placed in the position of having to drive dangerously defective cars until a future remedy was implemented.

43. On November 8, 2009, the Los Angeles Times published an article reporting that many instances of unwanted acceleration had occurred, fanning the flames of consumer skepticism and distrust of the Toyota brand by Toyota owners and the general public.

44. The article noted that Toyota was aware of many of the instances of unintended acceleration, and that Toyota withheld certain consumer complaints about unintended acceleration when responding to the NHTSA's requests for customer complaints.

45. On November 25, 2009, Toyota issued a press release claiming that, in addition to floor mats, the accelerator pedal design in many models was also contributing to the sudden, unintended accelerations. Toyota announced a remedy it developed for the Floor Mat Interference recall. The shape of the accelerator pedal would be reconfigured for all effected vehicles, and the shape of the floor surface underneath the floor mat would be reconfigured for certain vehicles.

46. The November 25, 2009 press release also stated that a brake over-ride system to cut engine power in case of simultaneous application of both the accelerator and brake pedals would be installed on Camry, Avalon, Lexus 350, Lexus IS350, and Lexus IS250 as "an extra measure

of confidence." These vehicle models, it should be noted, are among the most expensive and best-selling in Toyota's fleet. Apparently, Toyota's practice is to provide greater safety advantages to the owners of the vehicles that account for the most profits.

47. In any event, the repairs described in the November 25, 2009 press release would only be available some months later for three Toyota models, and on a "rolling schedule during 2010" for the remaining models. Thus, all vehicle owners had to continue to drive dangerously defective cars.

48. On December 5, 2009, the Los Angeles Times again reported that the unintended acceleration might be related to a problem beyond floor mat interference.

49. On December 10, 2009, Toyota issued a statement on its website rebutting the Los Angeles Times report and denying that an electronic problem existed.

50. On December 23, 2009, the Los Angeles Times reported that Toyota had a history of delaying recalls and keeping a "tight lid on disclosure of potential problems." The article outlined several instances of Toyota's failure to notify consumers of known dangerous conditions.

51. On January 21, 2010, Toyota announced that it was recalling a further 2.3 million vehicles and claimed that it had discovered yet another problem, "sticking accelerator pedals," that was supposedly the root of the sudden acceleration issue.

52. This recall, the Worn Accelerator recall, was "separate from the on-going recall of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by ... floor mats." The Worn Accelerator recall addressed a condition that "can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." According to the press release, this defect was discovered when Toyota was investigating reports of sticking accelerator pedals "without the presence of floor mats."

53. The Worn Accelerator recall involved the following Toyota models:

- 2009-2010 RAV4
- 2009-2010 Corolla
- 2009-2010 Matrix
- 2005-2010 Avalon
- 2007-2010 Camry
- 2010 Highlander

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- 2007-2010 Tundra
- 2008-2010 Sequoia

54. Some, but not all, of these 2.3 million vehicles were also affected by the Floor Mat Interference recall. Approximately 1.7 million vehicles were affected by both recalls.
55. The January 21, 2010 press release noted that Toyota had not yet determined how to correct the defect underlying the Worn Accelerator recall. Thus, similar to owners subject to the Floor Mat Interference recall, owners subject to the Worn Accelerator recall could not yet bring their cars to dealerships for repairs. This left more owners in the position of having to drive a dangerously defective car indefinitely.
56. The Worn Accelerator recall was more serious than the Floor Mat Interference recall because drivers could not simply remove the floor mat as an interim measure.
57. On January 26, 2009, Toyota issued a press release announcing that it would suspend sales of vehicles affected by the Worn Accelerator recall until a remedy was available.
58. Toyota also failed to notify vehicle owners affected by the Worn Accelerator recall. Toyota announced the recall via press release, but has not contacted owners by mail or other direct means.
59. On January 27, 2010, Toyota announced on its website that the following additional models were being added to the Floor Mat Interference recall:

- 2008-2010 Highlander
- 2009-2010 Corolla
- 2009-2010 Venza
- 2009-2010 Matrix

60. This development increased the total number of vehicles subject to the Floor Mat Interference recall by 1.1 million, to a total of 5.3 million.
61. To date, 5.9 million vehicles have been affected by one or both of the recalls: 5.3 million vehicles related to the Floor Mat Interference recall, plus 2.3 million vehicles related to the Worn Accelerator recall, less 1.7 million vehicles affected by both recalls
62. On February 1, 2010, Toyota announced that it had developed a "comprehensive fix" for the sudden acceleration problem in its vehicles, and that the fix would be performed on all vehicles subject to the January 21, 2010 recall.

63. On February 1, 2010, Jim Lentz, president and chief operating officer of Defendant Toyota Motor Sales U.S.A., Inc., appeared on NBC's "Today" show and announced that the recalls and the "comprehensive fix" would "stop what is going on" with the sudden accelerations in Toyota vehicles.

64. The majority of Toyota owners, however, who have experienced sudden, unintended accelerations, have been offered no "fix" or solution by Toyota at all, and their vehicles have not been part of any recalls addressing the sudden acceleration defect. 702 of the 1,234 reported sudden acceleration events (about 57%) have occurred in Toyota models and models years that are not included in any of the relevant recalls.

65. The sticking accelerator pedal recall of January 21, 2010 included Toyota models and model years that were involved in only 245 of the 1234, or about 20%, of the reported sudden acceleration events.

66. The brake over-ride safeguard system that Toyota announced as a means of bringing the vehicle's engine to idle in case of a sudden acceleration affected models and models years involved in only 296 of 1234 (about 24%) reported sudden acceleration events.

67. Akio Toyoda, the president of Toyota, submitted an op-ed in the Washington post acknowledging that "Toyota has not lived up to the high standards we set for ourselves."

68. Toyota continues to misrepresent to Plaintiffs, to prospective class members, and to the public at large that it has identified the problem causing the sudden accelerations and that it is recalling and repairing all vehicles affected by this defect. Toyota has continued to downplay and deny the suspicions and concerns of safety experts, the media, and consumers alike that the defect is actually caused by a flaw in the computer-controlled accelerator system.

69. Given the vast number of instances of unintended acceleration since 2001, and Toyota's knowledge of many or all of the instances, Toyota should have aggressively investigated the cause of the unintended acceleration and developed a remedy years ago. Toyota failed to do either, evidenced by the fact that the first recall wasn't implemented until 2009, eight years after instances of unintended acceleration first began.

70. The sudden, unintended acceleration defect in Toyota vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this

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serious problem, Toyota customers and the general public are extremely skeptical about the quality and safety of Toyota vehicles. The entire fleet of Toyota vehicles has been stigmatized by this defect, regardless of which vehicle models and model years have been included in the recalls or excluded therefrom.

71. Defendants' mishandling of the sudden, unintended acceleration defect, including but not limited to their denial of any problem, even after receiving a substantial number of reports of sudden, unintended acceleration events, including ones that resulted in serious physical injury or death, and all other allegations set forth herein, has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. Toyota customers and the general public have reason to be skeptical about whether Toyota is coming forth with truthful information about the sudden acceleration defect. Likewise, Toyota customers and the general public are left to wonder whether safety concerns about Toyota vehicles are limited to this particular problem. In essence, American consumers have no way to know the lengths to which Defendants will go to cover up other potentially deadly defects in its vehicles, as they did for so long with the sudden acceleration defect.

C. **Plaintiffs' Experiences**

a. Michael & Cathy Miller

72. Plaintiffs Miller own a 2008 Lexus RX 350, a model that has not been subject to any sudden acceleration recall. Upon information and belief, there have been incidents of sudden acceleration in Lexus RX vehicles reported to Toyota and the federal government.
73. Plaintiffs Miller chose the Lexus RX 350 over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.
74. Plaintiffs Miller have experienced sudden, unintended acceleration in their Lexus RX 350 on a number of occasions. They have reported the problem to their Lexus dealer, Lexus of Lexington (Ky.).
75. Plaintiffs Miller were told by the service technicians at Lexus of Lexington that there was nothing wrong with the vehicle, despite Plaintiffs' insistence that the vehicle was

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accelerating for no apparent reason and adversely affecting their ability to drive it in a controlled manner.

76. Plaintiffs Miller have lost trust in the Toyota and Lexus brand names, and the RX 350 in particular. They are skeptical that their RX 350 will ever be completely safe, as evidenced by the fact that their local Lexus dealer has told them that there is nothing wrong with the vehicle.
77. Plaintiffs Miller also believe that the resale value of their Lexus RX 350 will decrease due to general consumer skepticism about Toyota and Lexus vehicles.
78. Plaintiffs Miller are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused economic harm to them, namely damage to their property and devaluation of their Lexus RX 350.

b. Steve Clemons

79. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra. He chose the Tundra over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.
80. Plaintiff Clemons is concerned about his safety and that of others, especially since learning that his vehicle is part of both Toyota recalls relating to sudden accelerations.
81. Plaintiff Clemons has lost trust in Toyota and the Tundra he owns. He is skeptical that the Tundra will be safe, even if he takes the vehicle to his Toyota dealer to have it fixed.
82. Plaintiff Clemons is concerned for his safety and the safety of others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Tundra.

c. Sonya Gray

83. Plaintiff Sonya Gray owns a 2007 Toyota Camry. She chose the Camry over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

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84. Plaintiff Gray is concerned about her safety and that of others, especially since learning that, her vehicle is part of both Toyota recalls relating to sudden accelerations.
85. Plaintiff Gray has driven her Camry less often since learning about the sudden acceleration defect and corresponding recalls. This has caused her inconvenience and worry.
86. Plaintiff Gray has lost trust in Toyota and the Camry she owns. She is skeptical that the Camry will be safe, even if she takes the vehicle to her Toyota dealer to have it fixed.
87. Plaintiff Gray is concerned for her safety and the safety of others. She believes Defendants' actions and omissions have caused her economic harm, namely damage to her property and devaluation of her Toyota Camry.

d. Wayne and Betty Tomlin

88. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav4, a model not affected by either recall based on Toyota's representations.
89. Plaintiffs Tomlin chose the Rav4 over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiffs Mr. and Mrs. Tomlin have lost trust in Toyota and their Rav4 in the wake of news reports and public outcry over sudden accelerations.
90. Plaintiffs Tomlin are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused them economic harm, namely damage to their property and devaluation of their Toyota Rav4.

e. Patrick Kwiatkowski

91. Plaintiff Patrick Kwiatkowski is a resident of the state of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any relevant recalls.
92. Plaintiff Kwiatkowski chose the Corolla over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiff Kwiatkowski has lost trust in Toyota and his Corolla in the wake of news reports and public outcry over sudden accelerations.
93. Plaintiff Kwiatkowski is skeptical that Toyota is being honest and straightforward with him and the American public, based on the fact that the 2005 Corolla is not subject to the recalls,

despite sudden acceleration events involving that model and model year being reported to Toyota and the federal government.

94. Plaintiff Kwiatkowski is concerned for his safety and the safety of his family and others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Corolla.

f. Edward and Joan Skillman

95. Plaintiffs Edward and Joan Skillman live in Lexington, Kentucky and lease a 2009 Toyota Corolla, with an option to buy the vehicle at the end of the lease term.

96. Plaintiffs Skillman chose the Corolla over a competing brand's vehicle partly in reliance upon Toyota's reputation for manufacturing cars with higher resale value than other brands.

97. In late 2009, Mrs. Skillman experienced unintended acceleration in the 2009 Corolla. Fortunately, she was able to stop the car without incident. She has experienced unintended acceleration on other occasions since then.

98. Plaintiffs Skillman have driven their Corolla less often since learning of the recalls and after experiencing unintended acceleration in their Corolla. Plaintiffs are concerned about putting themselves and others at risk. They generally do not allow passengers to ride with them in their Corolla, for fear that passengers could get hurt. This has been an inconvenience to Plaintiffs.

99. Plaintiffs Skillman own a non-Toyota vehicle, in addition to their Corolla. Since experiencing sudden acceleration and learning of the Toyota recalls, they have been so scared of driving their Corolla that they drive their other, non-Toyota vehicle unless it is absolutely essential that they need to use both cars at the same time. They have, as much as possible, reorganized their daily schedules and routines to avoid driving their Corolla as much as they can. This has been an inconvenience to Plaintiffs.

100. Plaintiffs Skillman have lost trust in Toyota and their 2009 Corolla. They are skeptical that their Corolla will be safe, even if they take it to their Toyota dealer to have it fixed.

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101. Plaintiffs Skillman are concerned for their safety and the safety of others. Additionally, Plaintiffs Skillman believe Defendants' actions have caused economic harm to them, namely damage to their property and devaluation of their Toyota Corolla.

g. Melissa Arnzen Moeddel

102. Plaintiff Melissa Arnzen Moeddel is a resident of Ohio. She owns a 2007 Lexus 400h Hybrid. Her vehicle model has not been subject to any of the sudden acceleration recalls to date, and she has not experienced any sudden acceleration while driving her vehicle.

103. Notwithstanding the lack of reported sudden accelerations involving the Lexus 400h Hybrid, Plaintiff Moeddel is concerned for the safety of herself and others, including her young daughter, who rides as a passenger in the vehicle on a daily basis.

104. Plaintiff Moeddel chose the Lexus 400h Hybrid over a competing brand's vehicle, at least in part, because of Toyota's and Lexus's reputation for selling cars with a higher resale value than competing brands. Plaintiff Moeddel have lost trust in Toyota and her Lexus 400h Hybrid in the wake of news reports and public outcry over sudden accelerations.

105. Plaintiff Moeddel believes Defendants' actions and omissions have caused economic harm to her, namely damage to her property and devaluation of her Lexus 400h Hybrid.

CLASS ACTION ALLEGATIONS

106. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

> All persons or entities in the United States owning Toyota vehicles, or leasing Toyota vehicles with the option to buy at the end of the lease term, regardless of whether their vehicle models and model years have been the subject of a recall involving sudden, unintended accelerations.

107. The Class does not include Defendants or their officers or directors.

108. Also excluded from the Class are individuals who have claims for personal injury as a result of unintended acceleration. The claims at issue in this case do not seek damages for physical injury. Thus, individualized determinations as to causation of bodily injury will not be required. This class action only seeks the economic and equitable relief requested herein.

109. The Class is comprised of millions of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

110. There are questions of law or fact common to the class, including but not limited to the following:

a. Whether the recalled automobiles contained a dangerous or defective condition;

b. Whether Defendants' conduct constituted actionable negligence;

c. Whether Defendants entered into and breached implied contracts;

d. Whether Defendants' conduct violated the Kentucky Consumer Protection Act;

e. Whether Defendants' conduct constituted false advertising;

f. Whether Defendants' conduct constituted a breach of the implied warranty of merchantability; and

i. Whether Defendants' conduct constituted a breach of the implied warranty of fitness for a particular purpose.

g. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

h. Whether Defendants failed to give adequate warnings regarding the cars;

i. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

j. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

k. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

111. Plaintiffs' claims are typical of the claims of the Class they seek to represent.

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112. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.

113. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.

114. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.

115. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving millions of Class members.

116. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief.

FIRST CLAIM FOR RELIEF NEGLIGENCE

117. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

118. Defendants assumed a duty to exercise reasonable care in, among other things, manufacturing and selling automobiles that did not contain a dangerous condition. Defendants' duties arose from, among other things, the relationship between the parties as buyers and sellers and/or lessor and lessee.

119. Defendants also assumed a duty to adequately investigate claims of unintended acceleration and to timely notify Class members of known dangerous conditions.

120. Defendants breached their duties by manufacturing and selling automobiles with dangerous accelerator systems. They also breached their duties by failing to adequately investigate acceleration complaints and failing to individually notify Class members of the Worn Accelerator recall and underlying dangerous condition.

121. But for Defendants' breach of duties, Plaintiffs and Class members would not be faced with driving unsafe automobiles and suffering the related consequences alleged herein, including but not limited to economic injuries, specifically damage to their property.

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122. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

123. The damages set forth in paragraph 9 are not limited to those individuals who own or lease Toyota vehicles subject to the recalls associated with the sudden acceleration defect. The acts and omissions of Defendants have caused their entire fleet of vehicles to be stigmatized as dangerous cars and trucks prone to uncontrolled acceleration that could result in serious physical injury or death. The harm to Toyota's reputation is brand-wide and all Toyota drivers have suffered economic loss, including but not limited to diminution in resale value of their vehicles.

SECOND CLAIM FOR RELIEF BREACH OF IMPLIED CONTRACT

124. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

125. The essential elements of an implied contract under Kentucky law are an offer, acceptance, and consideration. The existence and terms of the contract are implied by the conduct of the parties.

126. An offer, acceptance, and consideration for the sale or lease of vehicles existed, evidenced by the fact that Plaintiffs and Class members paid money to Defendants in exchange for vehicles or, for those Plaintiffs and Class members who leased vehicles, the right to use and drive the vehicles for the stated lease term, and in many, if not all leases, the option to purchase the vehicles at the end of the lease term. The act of exchanging money for vehicles was an offer and acceptance. The money and vehicles constituted consideration.

127. An implied term of the sale was that Defendants would provide vehicles that did not contain an unreasonably dangerous condition. There was a meeting of the minds regarding the absence of unreasonably dangerous conditions.

128. Defendants' intent to provide safe vehicles was evidenced by, among other things, its advertising and marketing materials emphasizing the safety qualities of its vehicles. For example, a statement on Toyota's website dated November 18, 2009, states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." In light of this statement and others like it, Plaintiffs and Class members had a reasonable expectation that the vehicles they purchased would not contain an unreasonably dangerous condition.

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129. The absence of unreasonably dangerous conditions was a material term to the contracts. Plaintiffs and Class members would not have purchased or leased the vehicles, or would not have paid the purchase price or lease price they paid, had they known of the unintended acceleration defect.

130. Defendants breached the implied terms of their contracts by providing vehicles that contained unreasonably dangerous conditions.

131. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

THIRD CLAIM FOR RELIEF VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – UNFAIR CONDUCT

132. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

133. KRS § 367.110 *et seq.,* also known as the Kentucky Consumer Protection Act, makes unlawful all "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." KRS § 367.170.

134. Defendants violated and continue to violate the KCPA through one or more of the following unfair and/or deceptive practices:

a. Manufacturing and selling vehicles containing a dangerous condition;

b. Failing to adequately investigate claims of unintended acceleration;

c. Failing to adequately and individually notify Class members of the recalls and underlying dangerous condition;

d. Violating other laws alleged herein.

135. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

136. Defendants' conduct has impaired competition in the motor vehicle industry. It provided Defendants with an unfair advantage compared to its competitors when manufacturing and selling vehicles and earning profits thereon. Plaintiffs and Class members bought or leased Toyota vehicles, at least in part, because of Toyota's reputation as a safe brand whose vehicles have a high resale value. This reputation has thrived, in part, because of Toyota's efforts to keep quiet the sudden acceleration defect and corresponding threat to the safety of Toyota customers and the general public.

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FOURTH CLAIM FOR RELIEF – VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – DECEPTIVE/FALSE CONDUCT

137. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

138. Plaintiffs are informed and believe and thereon allege that, as described herein, Toyota has engaged in unfair practices, in violation of the Kentucky Consumer Protection Act, as codified in KRS 367.110 et seq.

139. Toyota stated directly and indirectly in various marketing and advertising campaigns that its vehicles are safe and reliable. For example, a statement on Toyota's website dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." These statements were untrue in light of the problems with unintended acceleration.

140. Defendants' statements in its brochures, websites, television ads, newspaper ads, and other means constituted advertising for purposes of this claim.

141. Defendants' advertising program contained statements concerning vehicle safety and reliability that were false or misleading and that were known or should have been known to Defendants to be false or misleading.

142. Defendant knew or should have know that its vehicles were defective and failed to inform Plaintiffs and the Class of known defects prior to Plaintiffs and the Class purchasing or leasing their Toyota vehicles.

143. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered the damages set forth in paragraph 9.

FIFTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

144. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

145. Defendants' vehicles were accompanied by an implied warranty of merchantability when sold, pursuant to KRS § 355.2-314.

146. Pursuant to KRS § 355.2-314, for "good to be merchantable" the consumer goods must meet each of the following:

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

147. The vehicles encompassed by Toyota's recalls would not pass without objection in the automotive trade. The vehicles are unreasonably dangerous and in need of repair.

148. The vehicles are not fit for the ordinary purpose for which they were sold. The vehicles were purchased to, among other things, safely transport drivers and passengers. The vehicles cannot be used for safe transportation in their current condition.

149. The vehicles were not adequately labeled because the labeling failed to disclose the dangerous conditions.

150. Defendants breached the implied warranty of merchantability by manufacturing and selling vehicles containing an unreasonably dangerous condition.

151. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

SIXTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

152. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

153. KRS § 355.2-315 states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

154. Defendants knew at the time they sold or leased vehicles to Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

155. Defendants knew at the time they sold or leased vehicles to Class members that those individuals chose to buy or lease their vehicles from Toyota at least in part because of the reputation of Toyota cars and trucks as safe vehicles with high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

156. Defendants knew that Class members were relying on Defendants' skill and judgment in furnishing and/or recommending vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

157. Defendants breached the implied warranty of fitness because the vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the vehicles has resulted in a substantial drop in the resale value of those vehicles.

158. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Fed. R. Civ. P. 23(b)(2) and (3) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

B. Finding that Defendants are liable under all legal claims asserted herein;

C. Awarding damages to the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages as set forth in paragraph 9, punitive damages, and any other damages provided under the law;

D. Ordering injunctive relief as set forth in paragraph 10;

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E. Awarding attorneys' fees and litigation costs; and

F. Awarding any other legal or equitable relief as justice so requires.

Dated: February 12, 2010.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2010.

ROBERT E. SANDERS
DELANA S. SANDERS
JUSTIN A. SANDERS
W. MATTHEW NAKAJIMA
The Sanders Law Firm
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By: /s/ Robert E. Sanders
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By: /s/ Delana S. Sanders
Kentucky Attorney No. 87543

By: /s/ Justin A. Sanders
Kentucky Attorney No. 90390

By: /s/ W. Matthew Nakajima (application for admission to be submitted)
Kentucky Attorney No. 93210

Of Counsel (application to Pro Hac Vice admission to be submitted):

TOY-RQ-05E-00012240

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The Sanders Law Firm

The Charles H. Fisk House

1017 Russell Street, Covington, KY 41011-3052

To: Toyota Motor Manufacturing, N. Ky., Inc.
c/o CT Corp. System, Registered Agent
4169 Westport Rd.
Louisville, KY 40207

CT Corporation

Service of Process Transmittal

02/23/2010
CT Log Number 516196419

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 Manufacturing, Kentucky, Inc. (Domestic State: KY)

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

TITLE OF ACTION:	Michael & Cathy Miller, et al., Pltfs. vs. Toyota Motor Sales, U.S.A., Inc., et al. including Toyota Motor Manufacturing Kentucky, Inc., Dfts.
DOCUMENT(S) SERVED:	Letter, Summons, Class Action Complaint
COURT/AGENCY:	USDC Eastern District of Covington, . Case # 2:10-cv-00031-DLB
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Acceleration
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/23/2010 postmarked on 02/22/2010
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Justin A. Sanders The Sanders Law Firm 1017 Russell Street Covington, KY 41011 859-491-3000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790204720113 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

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.

The Sanders Law Firm
Attorneys & Counselors at Law
The Charles H. Fisk House
www.TheSandersLawFirm.com

Attorneys
Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
W. Matt Nakajima

Paralegal
Mary L. O'Neil

Office Manager/Paralegal
M. Renee Cain

Controller
Jennifer L. Blatt

Medical-Legal Assistant
Shirley L. Sanders, R.N.

February 22, 2010

Toyota Motor Manufacturing, Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 40207
SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Miller, et al., v. Toyota Motor Sales, U.S.A., Inc., et al.
U.S. District Court – Eastern District of Kentucky
Case No. 2:10-cv-00031-DLB

Dear Toyota Defendant:

Please find enclosed a copy of the summons and complaint in the above-captioned civil action filed in the United States District Court, Eastern District of Kentucky.

Best Regards,

Justin A. Sanders
Attorney for Plaintiffs

JAS/pbs
Enclosures

1017 Russell Street • Covington, Kentucky 41011-3052 • (859) 491-3000 • Fax (859) 655-4642
email: info@thesanderslawfirm.com

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Michael & Cathy Miller, et al.,

Plaintiff

v.

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

Defendant

Civil Action No. 2-10-cv-31-DLB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Toyota Motor Manufacturing, Kentucky, Inc.
c/o CT Corporation System, Registered Agent
4169 Westport Road
Louisville, Kentucky 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) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. Sanders
Delana S. Sanders
Justin A. Sanders
The Sanders Law Firm, PSC
1017 Russell Street
Covington, Kentucky 41011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: FEB 12 2010

Elaine C. Oldiges

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER
Individually and on behalf of others
similarly situated
4743 N. Highway 421
Manchester, KY 40962

And

STEVE CLEMONS
Individually and on behalf of others
similarly situated
74 Willie's Way
Hazard, Kentucky

And

SONYA GRAY
Individually and on behalf of others
similarly situated
34 Glenway Avenue
Fort Thomas, KY 41075

And

WAYNE & BETTY TOMLIN
Individually and on behalf of others
similarly situated
1201 Cannonball Way
Independence, KY 41051

And

PATRICK KWIATKOWSKI
Individually and on behalf of others
similarly situated
5429 Romilda Dr.
Cincinnati, Ohio 45238

And

PLAINTIFFS

NO. 2:10-cv-00031-DLB
CLASS ACTION COMPLAINT
Electronically Filed

EDWARD & JOAN SKILLMAN)
Individually and on behalf of others)
similarly situated)
1428 Gatlinburg Ct.)
Lexington, KY 40515)
)
And)
)
MELISSA ARNZEN MOEDDEL)
Individually and on behalf of others)
similarly situated)
4165 Sherel Lane)
Cincinnati, Ohio 45209)
)
v.)
)
TOYOTA MOTOR SALES, U.S.A., INC.,)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR CORP.,)
Served Pursuant to The Hague Convention)
)
And)
)
TOYOTA MOTOR ENGINEERING &)
MANUFACTURING NORTH AMERICA, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR MANUFACTURING,)
KENTUCKY, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)

TOYOTA MOTOR MANUFACTURING,
NORTHERN KENTUCKY, INC.
Agent for Service of Process:
CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

DEFENDANTS

Plaintiffs, Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward and Joan Skillman, and Melissa Arnzen Moeddel bring this action on their own behalf and on behalf of a class of persons defined below against the Defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C §1331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds $5 million. This Court has personal jurisdiction over Defendants because Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky, within this District, Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located in Georgetown, Kentucky, within this District, and all Defendants conduct business in this state.
2. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in this District.

NATURE OF ACTION

3. This is a class action lawsuit against Defendants for an admittedly dangerous defect in millions of its vehicles that can cause accelerator pedal mechanisms to get stuck in an open position, causing the vehicle to accelerate unintentionally ("unintended acceleration").
4. Defendants issued two separate recalls to address problems with unintended acceleration in its vehicles. One involved accelerator pedals interfering with floor mats (the "Floor Mat Interference" recall). The other involved worn accelerator mechanisms getting stuck in an open position, independent of any floor mat interference (the "Worn Accelerator" recall). In total, Defendants recalled 5.9 million cars due to these defects.
5. Notably, the recalls did not provide immediate relief for vehicle owners. Rather, Toyota disclosed that dangerous defects existed and stated that Toyota would implement a repair plan in the future. With respect to the Floor Mat Interference recall, Toyota advised owners to remove the floor mats as an interim measure, and that more complete repairs would not be available for several weeks or months. With respect to the Worn Accelerator recall, Toyota advised owners of the dangerous condition and stated that a remedy was not yet available. These announcements left vehicle owners in the position of having to drive knowingly dangerous vehicles.
6. Some vehicle owners, including Plaintiffs, have driven their cars less than they otherwise would due to fear of being in an accident.
7. According to a Los Angeles Times article dated January 30, 2010, since 1999, nearly 2,000 complaints about sudden, unintended acceleration in Toyota and Lexus vehicles have reportedly been identified. Sudden, unintended accelerations have been blamed for at least 815 vehicle crashes and at least 19 deaths.
8. Defendants have been reportedly aware of many of the incidents that resulted in personal injuries or deaths, as well as many more complaints from consumers about unintended accelerations since as early as 1999. However, the company failed to adequately investigate or fix the defect in the United States and denied that there was any problem.
9. Plaintiffs seek damages suffered by the Class as a result of Toyota's conduct, including but not limited to: (i) loss of use of the vehicles; (ii) reimbursement of out of pocket costs for, among other things, alternative transportation, prior repairs to address accelerator problems,

floor mats that had to be discarded, etc.; (iii) diminution in resale value of the vehicles; and (iv) an increased risk of physical harm.

10. Plaintiffs also seeks injunctive relief including: (i) repairs to remove the dangerous condition; (ii) an extension of warranty coverage covering components of the acceleration system; and (iii) individual notice to each owner effected by the Worn Accelerator recall disclosing the dangerous condition.
11. An undated article on usatoday.com discussing the recalls stated: "Kelley Blue Book says resale values of [Toyota's] affected models could fall 4% to 5% within the next six weeks."
12. An Associated Press article dated Monday, February 8, 2010, and entitled, "Toyota Resale Value, Reputation Fall From Heights," also discussing the recalls, stated: "Kelley Blue Book dropped the resale values of recalled Toyotas for the second time in four days Monday, leaving them as much as 4 percent or $300 to $750 lower than a week ago, depending on the model." The article further stated: "[A] key factor in Toyota's rise to the top was its reputation for quality vehicles with high resale values."
13. Defendants' unlawful conduct emanated, in part, from Kentucky, where TEMA and TMMK are based. On information and belief, this is where Defendants' decisions regarding safety issues, including the accelerator defect, were made or approved.

PARTIES

14. Plaintiffs Michael and Cathy Miller are residents of Kentucky. They own a 2008 Lexus RX 350. Their model year Lexus RX 350 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2008 Lexus RX 350s.
15. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra, a vehicle model subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
16. Plaintiff Sonya Gray is a resident of Kentucky. She owns a 2007 Toyota Camry LE, a model that is subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
17. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav 4. Their model year Rav 4 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2004 Rav 4s.

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18. Plaintiff Patrick Kwiatkowski is a resident of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2005 Corollas.
19. Plaintiffs Edward Skillman and Joan Skillman are residents of Kentucky. They lease a 2009 Toyota Corolla, a model affected by both the Floor Mat Interference recall and Worn Accelerator recall. Based upon the VIN number of their vehicle and Toyota's representations, their particular vehicle may be excluded from either or both the Floor Mat Interference recall and Worn Accelerator recall. However, Mrs. Skillman has experienced sudden, unintended acceleration events in the 2009 Corolla.
20. Plaintiff Melissa Arnzen Moeddel is a resident of the State of Ohio. She owns a 2007 Lexus 400h Hybrid, a model not affected by any of the sudden acceleration recalls to date.
21. Defendant Toyota Motor Corporation ("Toyota-Japan") is headquartered in Japan. Toyota-Japan wholly owns and controls Defendants Toyota-USA, TEMA, TMMK, and TMMNK and conducts business in this District.
22. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota-USA") is headquartered in Los Angeles, California. Toyota-USA is a wholly owned subsidiary of Defendant Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota automobiles in the United States.
23. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky. TEMA is a wholly owned subsidiary of Defendant Toyota. Defendant TEMA is responsible for Toyota's engineering design, development, research and development, and manufacturing activities in the U.S., Canada, and Mexico.
24. Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located at 1001 Cherry Blossom Way in Georgetown, Kentucky, within this District. TMMK is Toyota's largest manufacturing facility outside of Japan and builds the Toyota Avalon and Toyota Camry. In addition, TMMK builds 4-cylinder and V6 engines and powertrain parts that upon information and belief, are subject to the unintended acceleration defect.
25. Defendant Toyota Motor Manufacturing, Northern Kentucky, Inc., ("TMMNK") is located at 25 Atlantic Avenue in Erlanger, Kentucky, within this District. Upon information and belief,

TMMNK is responsible, in part, for Toyota's production control, production engineering, purchasing, and quality in North America, including Northern Kentucky, within this District.

26. Toyota-Japan, Toyota-USA, TEMA, TMMK, and TMMNK are collectively referred to herein as "Toyota."

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

FACTUAL BACKGROUND

A. Toyota's Electronic Throttle Control System

28. Beginning in the late 1990s and continuing to today, Toyota manufactured certain automobiles with an Electronic Throttle Control system ("ETC").

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

30. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control. This mechanical fail-safe was intended as a safety measure in the event of a sudden, unintended acceleration. The safety measure system would disconnect the ETC and automatically allow the throttle to be controlled by the mechanical linkage.

31. Beginning with the 2001 model year, however, Toyota began manufacturing vehicles without a mechanical linkage.

32. In addition, Toyota's ETC system fails to include a "brake over-ride" safety measure incorporated by other manufacturers that instructs the ETC system to reduce the engine idle when the brakes are applied while the accelerator is in an open position.

33. Many of Toyota's vehicles now include an electronic ignition button rather than a key-turned switch. In these cars, no easy mechanical means exist to turn off the engine in case of an unintended acceleration.
34. The combination of a lack of these safety systems creates a situation in which there are no mechanical or electronic safety mechanisms to allow the driver to stop or slow the car during an unintended acceleration. Upon information and belief, Toyota deliberately chose to omit the fail-safe mechanisms to stop or slow a vehicle in the event of a sudden, unintended acceleration in order to save money and reap greater profits on sales of its vehicles.
35. Moreover, in a January 21, 2010 press release announcing the Worn Accelerator recall, Toyota warned drivers that, in the event of unintended acceleration, the "brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure." Thus, pumping the brakes, which occurs instinctually for some drivers, could actually impair the vehicle's ability to slow or stop.

B. **Toyota's Recalls**

36. Toyota has engaged in a campaign to conceal the sudden, unintended acceleration defect in many of its vehicle models and model years from its customers and the general public.
37. For years, Toyota's method of dealing with the hundreds of reports it received each year of its vehicles suddenly and unintentionally accelerating out of control, up to speed of 100 miles per hour or more, and resulting in serious physical injuries and deaths, was to simply deny the existence of any problem.
38. On September 29, 2009, Toyota issued a consumer alert on its website that it was investigating the "potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat." Toyota claimed that the sudden acceleration issue affected only a limited number of models of Toyota and Lexus vehicles. Toyota advised owners of those particular models to remove their floor mats and not replace them.
39. On November 2, 2009, Toyota issued a press release announcing a "future voluntary recall" related to floor mats that interfere with accelerator pedals. Toyota stated that it had not yet developed a remedy, but it was advising owners to remove the driver's side floor mat as a temporary measure. Toyota also mailed letters to affected owners notifying them of the issue.

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40. The following makes and models were affected by the recall:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES350
- 2006-2010 Lexus IS250 and IS350

41. The recall initially affected 3.8 million vehicles. The number of vehicles was later increased to 4.2 million.

42. On November 6, 2009, Toyota issued a press release responding to media reports about growing suspicion that the unintended acceleration was caused by a glitch in the "electronic engine management system" rather than simple interference with floor mats. Toyota's press release noted that removal of floor mats was only a temporary measure, and that further repairs would be needed once a remedy was available. Thus, vehicle owners were placed in the position of having to drive dangerously defective cars until a future remedy was implemented.

43. On November 8, 2009, the Los Angeles Times published an article reporting that many instances of unwanted acceleration had occurred, fanning the flames of consumer skepticism and distrust of the Toyota brand by Toyota owners and the general public.

44. The article noted that Toyota was aware of many of the instances of unintended acceleration, and that Toyota withheld certain consumer complaints about unintended acceleration when responding to the NHTSA's requests for customer complaints.

45. On November 25, 2009, Toyota issued a press release claiming that, in addition to floor mats, the accelerator pedal design in many models was also contributing to the sudden, unintended accelerations. Toyota announced a remedy it developed for the Floor Mat Interference recall. The shape of the accelerator pedal would be reconfigured for all effected vehicles, and the shape of the floor surface underneath the floor mat would be reconfigured for certain vehicles.

46. The November 25, 2009 press release also stated that a brake over-ride system to cut engine power in case of simultaneous application of both the accelerator and brake pedals would be installed on Camry, Avalon, Lexus 350, Lexus IS350, and Lexus IS250 as "an extra measure

of confidence." These vehicle models, it should be noted, are among the most expensive and best-selling in Toyota's fleet. Apparently, Toyota's practice is to provide greater safety advantages to the owners of the vehicles that account for the most profits.

47. In any event, the repairs described in the November 25, 2009 press release would only be available some months later for three Toyota models, and on a "rolling schedule during 2010" for the remaining models. Thus, all vehicle owners had to continue to drive dangerously defective cars.

48. On December 5, 2009, the Los Angeles Times again reported that the unintended acceleration might be related to a problem beyond floor mat interference.

49. On December 10, 2009, Toyota issued a statement on its website rebutting the Los Angeles Times report and denying that an electronic problem existed.

50. On December 23, 2009, the Los Angeles Times reported that Toyota had a history of delaying recalls and keeping a "tight lid on disclosure of potential problems." The article outlined several instances of Toyota's failure to notify consumers of known dangerous conditions.

51. On January 21, 2010, Toyota announced that it was recalling a further 2.3 million vehicles and claimed that it had discovered yet another problem, "sticking accelerator pedals," that was supposedly the root of the sudden acceleration issue.

52. This recall, the Worn Accelerator recall, was "separate from the on-going recall of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by ... floor mats." The Worn Accelerator recall addressed a condition that "can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." According to the press release, this defect was discovered when Toyota was investigating reports of sticking accelerator pedals "without the presence of floor mats."

53. The Worn Accelerator recall involved the following Toyota models:

- 2009-2010 RAV4
- 2009-2010 Corolla
- 2009-2010 Matrix
- 2005-2010 Avalon
- 2007-2010 Camry
- 2010 Highlander

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- 2007-2010 Tundra
- 2008-2010 Sequoia

54. Some, but not all, of these 2.3 million vehicles were also affected by the Floor Mat Interference recall. Approximately 1.7 million vehicles were affected by both recalls.
55. The January 21, 2010 press release noted that Toyota had not yet determined how to correct the defect underlying the Worn Accelerator recall. Thus, similar to owners subject to the Floor Mat Interference recall, owners subject to the Worn Accelerator recall could not yet bring their cars to dealerships for repairs. This left more owners in the position of having to drive a dangerously defective car indefinitely.
56. The Worn Accelerator recall was more serious than the Floor Mat Interference recall because drivers could not simply remove the floor mat as an interim measure.
57. On January 26, 2009, Toyota issued a press release announcing that it would suspend sales of vehicles affected by the Worn Accelerator recall until a remedy was available.
58. Toyota also failed to notify vehicle owners affected by the Worn Accelerator recall. Toyota announced the recall via press release, but has not contacted owners by mail or other direct means.
59. On January 27, 2010, Toyota announced on its website that the following additional models were being added to the Floor Mat Interference recall:

- 2008-2010 Highlander
- 2009-2010 Corolla
- 2009-2010 Venza
- 2009-2010 Matrix

60. This development increased the total number of vehicles subject to the Floor Mat Interference recall by 1.1 million, to a total of 5.3 million.
61. To date, 5.9 million vehicles have been affected by one or both of the recalls: 5.3 million vehicles related to the Floor Mat Interference recall, plus 2.3 million vehicles related to the Worn Accelerator recall, less 1.7 million vehicles affected by both recalls
62. On February 1, 2010, Toyota announced that it had developed a "comprehensive fix" for the sudden acceleration problem in its vehicles, and that the fix would be performed on all vehicles subject to the January 21, 2010 recall.

63. On February 1, 2010, Jim Lentz, president and chief operating officer of Defendant Toyota Motor Sales U.S.A., Inc., appeared on NBC's "Today" show and announced that the recalls and the "comprehensive fix" would "stop what is going on" with the sudden accelerations in Toyota vehicles.

64. The majority of Toyota owners, however, who have experienced sudden, unintended accelerations, have been offered no "fix" or solution by Toyota at all, and their vehicles have not been part of any recalls addressing the sudden acceleration defect. 702 of the 1,234 reported sudden acceleration events (about 57%) have occurred in Toyota models and models years that are not included in any of the relevant recalls.

65. The sticking accelerator pedal recall of January 21, 2010 included Toyota models and model years that were involved in only 245 of the 1234, or about 20%, of the reported sudden acceleration events.

66. The brake over-ride safeguard system that Toyota announced as a means of bringing the vehicle's engine to idle in case of a sudden acceleration affected models and models years involved in only 296 of 1234 (about 24%) reported sudden acceleration events.

67. Akio Toyoda, the president of Toyota, submitted an op-ed in the Washington post acknowledging that "Toyota has not lived up to the high standards we set for ourselves."

68. Toyota continues to misrepresent to Plaintiffs, to prospective class members, and to the public at large that it has identified the problem causing the sudden accelerations and that it is recalling and repairing all vehicles affected by this defect. Toyota has continued to downplay and deny the suspicions and concerns of safety experts, the media, and consumers alike that the defect is actually caused by a flaw in the computer-controlled accelerator system.

69. Given the vast number of instances of unintended acceleration since 2001, and Toyota's knowledge of many or all of the instances, Toyota should have aggressively investigated the cause of the unintended acceleration and developed a remedy years ago. Toyota failed to do either, evidenced by the fact that the first recall wasn't implemented until 2009, eight years after instances of unintended acceleration first began.

70. The sudden, unintended acceleration defect in Toyota vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this

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serious problem, Toyota customers and the general public are extremely skeptical about the quality and safety of Toyota vehicles. The entire fleet of Toyota vehicles has been stigmatized by this defect, regardless of which vehicle models and model years have been included in the recalls or excluded therefrom.

71. Defendants' mishandling of the sudden, unintended acceleration defect, including but not limited to their denial of any problem, even after receiving a substantial number of reports of sudden, unintended acceleration events, including ones that resulted in serious physical injury or death, and all other allegations set forth herein, has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. Toyota customers and the general public have reason to be skeptical about whether Toyota is coming forth with truthful information about the sudden acceleration defect. Likewise, Toyota customers and the general public are left to wonder whether safety concerns about Toyota vehicles are limited to this particular problem. In essence, American consumers have no way to know the lengths to which Defendants will go to cover up other potentially deadly defects in its vehicles, as they did for so long with the sudden acceleration defect.

C. **Plaintiffs' Experiences**

a. Michael & Cathy Miller

72. Plaintiffs Miller own a 2008 Lexus RX 350, a model that has not been subject to any sudden acceleration recall. Upon information and belief, there have been incidents of sudden acceleration in Lexus RX vehicles reported to Toyota and the federal government.

73. Plaintiffs Miller chose the Lexus RX 350 over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

74. Plaintiffs Miller have experienced sudden, unintended acceleration in their Lexus RX 350 on a number of occasions. They have reported the problem to their Lexus dealer, Lexus of Lexington (Ky.).

75. Plaintiffs Miller were told by the service technicians at Lexus of Lexington that there was nothing wrong with the vehicle, despite Plaintiffs' insistence that the vehicle was

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accelerating for no apparent reason and adversely affecting their ability to drive it in a controlled manner.

76. Plaintiffs Miller have lost trust in the Toyota and Lexus brand names, and the RX 350 in particular. They are skeptical that their RX 350 will ever be completely safe, as evidenced by the fact that their local Lexus dealer has told them that there is nothing wrong with the vehicle.

77. Plaintiffs Miller also believe that the resale value of their Lexus RX 350 will decrease due to general consumer skepticism about Toyota and Lexus vehicles.

78. Plaintiffs Miller are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused economic harm to them, namely damage to their property and devaluation of their Lexus RX 350.

b. Steve Clemons

79. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra. He chose the Tundra over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

80. Plaintiff Clemons is concerned about his safety and that of others, especially since learning that his vehicle is part of both Toyota recalls relating to sudden accelerations.

81. Plaintiff Clemons has lost trust in Toyota and the Tundra he owns. He is skeptical that the Tundra will be safe, even if he takes the vehicle to his Toyota dealer to have it fixed.

82. Plaintiff Clemons is concerned for his safety and the safety of others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Tundra.

c. Sonya Gray

83. Plaintiff Sonya Gray owns a 2007 Toyota Camry. She chose the Camry over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

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84. Plaintiff Gray is concerned about her safety and that of others, especially since learning that, her vehicle is part of both Toyota recalls relating to sudden accelerations.
85. Plaintiff Gray has driven her Camry less often since learning about the sudden acceleration defect and corresponding recalls. This has caused her inconvenience and worry.
86. Plaintiff Gray has lost trust in Toyota and the Camry she owns. She is skeptical that the Camry will be safe, even if she takes the vehicle to her Toyota dealer to have it fixed.
87. Plaintiff Gray is concerned for her safety and the safety of others. She believes Defendants' actions and omissions have caused her economic harm, namely damage to her property and devaluation of her Toyota Camry.

d. Wayne and Betty Tomlin

88. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav4, a model not affected by either recall based on Toyota's representations.
89. Plaintiffs Tomlin chose the Rav4 over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiffs Mr. and Mrs. Tomlin have lost trust in Toyota and their Rav4 in the wake of news reports and public outcry over sudden accelerations.
90. Plaintiffs Tomlin are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused them economic harm, namely damage to their property and devaluation of their Toyota Rav4.

e. Patrick Kwiatkowski

91. Plaintiff Patrick Kwiatkowski is a resident of the state of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any relevant recalls.
92. Plaintiff Kwiatkowski chose the Corolla over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiff Kwiatkowski has lost trust in Toyota and his Corolla in the wake of news reports and public outcry over sudden accelerations.
93. Plaintiff Kwiatkowski is skeptical that Toyota is being honest and straightforward with him and the American public, based on the fact that the 2005 Corolla is not subject to the recalls,

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despite sudden acceleration events involving that model and model year being reported to Toyota and the federal government.

94. Plaintiff Kwiatkowski is concerned for his safety and the safety of his family and others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Corolla.

f. Edward and Joan Skillman

95. Plaintiffs Edward and Joan Skillman live in Lexington, Kentucky and lease a 2009 Toyota Corolla, with an option to buy the vehicle at the end of the lease term.

96. Plaintiffs Skillman chose the Corolla over a competing brand's vehicle partly in reliance upon Toyota's reputation for manufacturing cars with higher resale value than other brands.

97. In late 2009, Mrs. Skillman experienced unintended acceleration in the 2009 Corolla. Fortunately, she was able to stop the car without incident. She has experienced unintended acceleration on other occasions since then.

98. Plaintiffs Skillman have driven their Corolla less often since learning of the recalls and after experiencing unintended acceleration in their Corolla. Plaintiffs are concerned about putting themselves and others at risk. They generally do not allow passengers to ride with them in their Corolla, for fear that passengers could get hurt. This has been an inconvenience to Plaintiffs.

99. Plaintiffs Skillman own a non-Toyota vehicle, in addition to their Corolla. Since experiencing sudden acceleration and learning of the Toyota recalls, they have been so scared of driving their Corolla that they drive their other, non-Toyota vehicle unless it is absolutely essential that they need to use both cars at the same time. They have, as much as possible, reorganized their daily schedules and routines to avoid driving their Corolla as much as they can. This has been an inconvenience to Plaintiffs.

100. Plaintiffs Skillman have lost trust in Toyota and their 2009 Corolla. They are skeptical that their Corolla will be safe, even if they take it to their Toyota dealer to have it fixed.

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101. Plaintiffs Skillman are concerned for their safety and the safety of others. Additionally, Plaintiffs Skillman believe Defendants' actions have caused economic harm to them, namely damage to their property and devaluation of their Toyota Corolla.

g. Melissa Arnzen Moeddel

102. Plaintiff Melissa Arnzen Moeddel is a resident of Ohio. She owns a 2007 Lexus 400h Hybrid. Her vehicle model has not been subject to any of the sudden acceleration recalls to date, and she has not experienced any sudden acceleration while driving her vehicle.

103. Notwithstanding the lack of reported sudden accelerations involving the Lexus 400h Hybrid, Plaintiff Moeddel is concerned for the safety of herself and others, including her young daughter, who rides as a passenger in the vehicle on a daily basis.

104. Plaintiff Moeddel chose the Lexus 400h Hybrid over a competing brand's vehicle, at least in part, because of Toyota's and Lexus's reputation for selling cars with a higher resale value than competing brands. Plaintiff Moeddel have lost trust in Toyota and her Lexus 400h Hybrid in the wake of news reports and public outcry over sudden accelerations.

105. Plaintiff Moeddel believes Defendants' actions and omissions have caused economic harm to her, namely damage to her property and devaluation of her Lexus 400h Hybrid.

CLASS ACTION ALLEGATIONS

106. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

> All persons or entities in the United States owning Toyota vehicles, or leasing Toyota vehicles with the option to buy at the end of the lease term, regardless of whether their vehicle models and model years have been the subject of a recall involving sudden, unintended accelerations.

107. The Class does not include Defendants or their officers or directors.

108. Also excluded from the Class are individuals who have claims for personal injury as a result of unintended acceleration. The claims at issue in this case do not seek damages for physical injury. Thus, individualized determinations as to causation of bodily injury will not be required. This class action only seeks the economic and equitable relief requested herein.

109. The Class is comprised of millions of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

110. There are questions of law or fact common to the class, including but not limited to the following:

a. Whether the recalled automobiles contained a dangerous or defective condition;

b. Whether Defendants' conduct constituted actionable negligence;

c. Whether Defendants entered into and breached implied contracts;

d. Whether Defendants' conduct violated the Kentucky Consumer Protection Act;

e. Whether Defendants' conduct constituted false advertising;

f. Whether Defendants' conduct constituted a breach of the implied warranty of merchantability; and

i. Whether Defendants' conduct constituted a breach of the implied warranty of fitness for a particular purpose.

g. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

h. Whether Defendants failed to give adequate warnings regarding the cars;

i. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

j. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

k. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

111. Plaintiffs' claims are typical of the claims of the Class they seek to represent.

112. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.

113. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.

114. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.

115. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving millions of Class members.

116. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief.

FIRST CLAIM FOR RELIEF NEGLIGENCE

117. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

118. Defendants assumed a duty to exercise reasonable care in, among other things, manufacturing and selling automobiles that did not contain a dangerous condition. Defendants' duties arose from, among other things, the relationship between the parties as buyers and sellers and/or lessor and lessee.

119. Defendants also assumed a duty to adequately investigate claims of unintended acceleration and to timely notify Class members of known dangerous conditions.

120. Defendants breached their duties by manufacturing and selling automobiles with dangerous accelerator systems. They also breached their duties by failing to adequately investigate acceleration complaints and failing to individually notify Class members of the Worn Accelerator recall and underlying dangerous condition.

121. But for Defendants' breach of duties, Plaintiffs and Class members would not be faced with driving unsafe automobiles and suffering the related consequences alleged herein, including but not limited to economic injuries, specifically damage to their property.

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122. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

123. The damages set forth in paragraph 9 are not limited to those individuals who own or lease Toyota vehicles subject to the recalls associated with the sudden acceleration defect. The acts and omissions of Defendants have caused their entire fleet of vehicles to be stigmatized as dangerous cars and trucks prone to uncontrolled acceleration that could result in serious physical injury or death. The harm to Toyota's reputation is brand-wide and all Toyota drivers have suffered economic loss, including but not limited to diminution in resale value of their vehicles.

SECOND CLAIM FOR RELIEF BREACH OF IMPLIED CONTRACT

124. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

125. The essential elements of an implied contract under Kentucky law are an offer, acceptance, and consideration. The existence and terms of the contract are implied by the conduct of the parties.

126. An offer, acceptance, and consideration for the sale or lease of vehicles existed, evidenced by the fact that Plaintiffs and Class members paid money to Defendants in exchange for vehicles or, for those Plaintiffs and Class members who leased vehicles, the right to use and drive the vehicles for the stated lease term, and in many, if not all leases, the option to purchase the vehicles at the end of the lease term. The act of exchanging money for vehicles was an offer and acceptance. The money and vehicles constituted consideration.

127. An implied term of the sale was that Defendants would provide vehicles that did not contain an unreasonably dangerous condition. There was a meeting of the minds regarding the absence of unreasonably dangerous conditions.

128. Defendants' intent to provide safe vehicles was evidenced by, among other things, its advertising and marketing materials emphasizing the safety qualities of its vehicles. For example, a statement on Toyota's website dated November 18, 2009, states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." In light of this statement and others like it, Plaintiffs and Class members had a reasonable expectation that the vehicles they purchased would not contain an unreasonably dangerous condition.

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129. The absence of unreasonably dangerous conditions was a material term to the contracts. Plaintiffs and Class members would not have purchased or leased the vehicles, or would not have paid the purchase price or lease price they paid, had they known of the unintended acceleration defect.

130. Defendants breached the implied terms of their contracts by providing vehicles that contained unreasonably dangerous conditions.

131. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

THIRD CLAIM FOR RELIEF VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – UNFAIR CONDUCT

132. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

133. KRS § 367.110 *et seq.,* also known as the Kentucky Consumer Protection Act, makes unlawful all "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." KRS § 367.170.

134. Defendants violated and continue to violate the KCPA through one or more of the following unfair and/or deceptive practices:

a. Manufacturing and selling vehicles containing a dangerous condition;

b. Failing to adequately investigate claims of unintended acceleration;

c. Failing to adequately and individually notify Class members of the recalls and underlying dangerous condition;

d. Violating other laws alleged herein.

135. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

136. Defendants' conduct has impaired competition in the motor vehicle industry. It provided Defendants with an unfair advantage compared to its competitors when manufacturing and selling vehicles and earning profits thereon. Plaintiffs and Class members bought or leased Toyota vehicles, at least in part, because of Toyota's reputation as a safe brand whose vehicles have a high resale value. This reputation has thrived, in part, because of Toyota's efforts to keep quiet the sudden acceleration defect and corresponding threat to the safety of Toyota customers and the general public.

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FOURTH CLAIM FOR RELIEF – VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – DECEPTIVE/FALSE CONDUCT

137. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

138. Plaintiffs are informed and believe and thereon allege that, as described herein, Toyota has engaged in unfair practices, in violation of the Kentucky Consumer Protection Act, as codified in KRS 367.110 et seq.

139. Toyota stated directly and indirectly in various marketing and advertising campaigns that its vehicles are safe and reliable. For example, a statement on Toyota's website dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." These statements were untrue in light of the problems with unintended acceleration.

140. Defendants' statements in its brochures, websites, television ads, newspaper ads, and other means constituted advertising for purposes of this claim.

141. Defendants' advertising program contained statements concerning vehicle safety and reliability that were false or misleading and that were known or should have been known to Defendants to be false or misleading.

142. Defendant knew or should have know that its vehicles were defective and failed to inform Plaintiffs and the Class of known defects prior to Plaintiffs and the Class purchasing or leasing their Toyota vehicles.

143. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered the damages set forth in paragraph 9.

FIFTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

144. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

145. Defendants' vehicles were accompanied by an implied warranty of merchantability when sold, pursuant to KRS § 355.2-314.

146. Pursuant to KRS § 355.2-314, for "good to be merchantable" the consumer goods must meet each of the following:

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

147. The vehicles encompassed by Toyota's recalls would not pass without objection in the automotive trade. The vehicles are unreasonably dangerous and in need of repair.

148. The vehicles are not fit for the ordinary purpose for which they were sold. The vehicles were purchased to, among other things, safely transport drivers and passengers. The vehicles cannot be used for safe transportation in their current condition.

149. The vehicles were not adequately labeled because the labeling failed to disclose the dangerous conditions.

150. Defendants breached the implied warranty of merchantability by manufacturing and selling vehicles containing an unreasonably dangerous condition.

151. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

SIXTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

152. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

153. KRS § 355.2-315 states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

154. Defendants knew at the time they sold or leased vehicles to Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

155. Defendants knew at the time they sold or leased vehicles to Class members that those individuals chose to buy or lease their vehicles from Toyota at least in part because of the reputation of Toyota cars and trucks as safe vehicles with high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

156. Defendants knew that Class members were relying on Defendants' skill and judgment in furnishing and/or recommending vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

157. Defendants breached the implied warranty of fitness because the vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the vehicles has resulted in a substantial drop in the resale value of those vehicles.

158. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Fed. R. Civ. P. 23(b)(2) and (3) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

B. Finding that Defendants are liable under all legal claims asserted herein;

C. Awarding damages to the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages as set forth in paragraph 9, punitive damages, and any other damages provided under the law;

D. Ordering injunctive relief as set forth in paragraph 10;

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E. Awarding attorneys' fees and litigation costs; and

F. Awarding any other legal or equitable relief as justice so requires.

Dated: February 12, 2010.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2010.

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JUSTIN A. SANDERS
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By: /s/ Robert E. Sanders
Kentucky Attorney No. 61395

By: /s/ Delana S. Sanders
Kentucky Attorney No. 87543

By: /s/ Justin A. Sanders
Kentucky Attorney No. 90390

By: /s/ W. Matthew Nakajima (application for admission to be submitted)
Kentucky Attorney No. 93210

Of Counsel (application to Pro Hac Vice admission to be submitted):

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The Charles H. Fisk House
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To:

Toyota Motor Manufacturing, Ky. inc.
c/o CT Corp. System, Registered Agent
4169 Westport Rd.
Louisville, KY 40207

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCY
CLERK'S OFFICE

IN RE: MANDATORY ELECTRONIC CASE FILING AND NOTICING

THIS NOTICE REQUIRES IMMEDIATE ACTION

NOTICE

Pursuant to the attached Notice of Electronic Filing, you are hereby placed on notice that you are in direct violation of the court's General Orders regarding Mandatory ECF.

All documents filed in the official electronic record[1] shall be filed electronically using the ECF system unless otherwise exempt pursuant to the Administrative Policies and Procedures governing ECF, the Joint Local Rules and/or court orders.

Compliance with the court's General Orders require attorneys in pending cases to register as an ECF Filing User and consent to electronic service of all documents through the court's transmission facilities in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Joint Local Rules of this Court.

If you are not a Filing User for the court's electronic case filing system and you currently have a pending case before the court, please go the court's website at www.kyed.uscourts.gov for information on registering as an ECF filing user and/or registration for training by court personnel. For additional assistance contact the Help Desk at 1-866-485-6349. In order to continue the effective administration of the court's business, you are required to register as an ECF Filing User.

Failure to comply with the General Orders of the court re: Mandatory ECF will result in this matter being submitted to the Chief Judge to institute contempt proceedings, unless said attorney has been previously ordered by this court to comply. Your compliance with the orders of the court is mandatory and appreciated.

s/ Leslie G. Whitmer
LESLIE G. WHITMER, CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

[1]Cases filed prior to March 17, 2003 in the Eastern District of Kentucky shall remain paper cases.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-DLB**
Plaintiffs,	:	
VS.	:	**MOTION FOR ADMISSION PRO HAC VICE**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

MOTION TO ADMIT RALPH I. KNOWLES TO PRACTICE *PRO HAC VICE* BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY AS CO-COUNSEL FOR PLAINTIFFS

Robert E. Sanders, Trial Attorney for Plaintiffs, Michael and Cathy Miller, et al., respectfully moves this Court, to admit Ralph I. Knowles to practice *Pro Hac Vice* as Plaintiffs' co-counsel in the above-styled action, pursuant to Joint Local Rule of Civil Practice 83.2. Ralph I. Knowles is licensed to practice law in Alabama and Georgia and is a member in good standing with the State Bars of Alabama and Georgia.

In support of this motion, see the attached Affidavit/Oath of Ralph I. Knowles, which is hereby incorporated by reference.

Respectfully submitted,

/s/ *Robert E. Sanders*

ROBERT E. SANDERS (KY. ATTY. NO. 61395)
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TOY-RQ-05E-00012275

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2010, the foregoing motion and notice, along with the affidavit of Ralph I. Knowles that follows, was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record in the case. In addition, the following Defendants, which do not have an attorney of record, have been served today by regular U.S. mail, postage prepaid:

Toyota Motor Sales, U.S.A., Inc.
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Manufacturing, Kentucky, Inc.
Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation Systems
4169 Westport Road
Louisville, Kentucky 40207

/s/ *Robert E. Sanders*

ROBERT E. SANDERS
THE SANDERS LAW FIRM
ATTORNEYS FOR PLAINTIFFS

TOY-RQ-05E-00012276

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-DLB**
Plaintiffs,	:	
VS.	:	**AFFIDAVIT/OATH OF RALPH I. KNOWLES**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

AFFIDAVIT/OATH OF RALPH I. KNOWLES

The Affiant, Ralph I. Knowles, being duly sworn and cautioned states as follows:

1. I am an attorney employed at Doffermyre, Shields, Canfield & Knowles, LLC, located at 1355 Peachtree Street, Atlanta, Georgia 30309.

2. I am licensed to practice law in the State of Alabama, after being duly admitted by the Supreme Court of Alabama, the highest court in the state, in 1969. I am currently and have continuously been a member in Good Standing of the State Bar of Alabama since I was admitted to practice.

3. I am licensed to practice law in the State of Georgia, after being duly admitted by the Supreme Court of Georgia, the highest court in the state, in 1990. I am currently and have continuously been a member in Good Standing of the State Bar of Georgia since I was admitted to practice.

4. There are currently no disciplinary actions or contempt proceedings pending against me before any court or administrative body.

5. Upon admission to practice pro hac vice in the above-styled action, I consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

WHEREFORE, the Affiant respectfully requests this Court to admit him to practice *Pro Hac Vice* as co-counsel for Plaintiffs, Michael and Cathy Miller, et al., in the above-styled action.

Signed this 19th day of February, 2010.

RALPH I. KNOWLES, AFFIANT

STATE OF GEORGIA

COUNTY OF Fulton

Signed and sworn to before me, a Notary Public, for the State of Georgia, by Ralph I. Knowles, on this 19th day of February, 2010.

DEBRA L. VICKERY NOTARY PUBLIC COWETA COUNTY GEORGIA EXPIRES MAY 21, 2011

NOTARY PUBLIC, GEORGIA

My commission expires: 3-21-2011

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-DLB**
Plaintiffs,	:	
VS.	:	**ORDER ADMITTING RALPH I. KNOWLES *PRO HAC VICE***
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

Upon the Motion of Plaintiffs, Michael and Cathy Miller, et al., to admit Ralph I. Knowles as co-counsel *pro hac vice*, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Ralph I. Knowles is hereby admitted *pro hac vice* in the above styled action, pursuant to LR 83.2. Mr. Shields is a duly licensed and practicing attorney with Doffermyre, Shields, Canfield & Knowles, LLC, 1355 Peachtree Street, Atlanta, Georgia 30309 and is a member in good standing of the State Bar of Alabama, having been admitted in 1969, the State Bar of Georgia, having been admitted in 1990. Mr. Knowles consents to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

SIGNED AND ENTERED as the Order of this Court this ____ day of _____ 2010.

_____

DAVID L. BUNNING, JUDGE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
KENTUCKY NORTHERN DIVISION
at COVINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CIVIL ACTION NO. 2010-31 (WOB)

MICHAEL & CATHY MILLER, ET AL. PLAINTIFFS

VS. ORDER

TOYOTA MOTOR SALES, USA, INC., ET AL. DEFENDANTS

This matter is before the court on the motion of plaintiffs for Ralph I. Knowles to appear *pro hac vice* in this matter (Doc. #5), and the court being advised,

IT IS ORDERED that said motion be, and it hereby is, **granted.**

This 22nd day of February, 2010.

Signed By:
William O. Bertelsman WOB
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-WOB**
Plaintiffs,	:	
VS.	:	**MOTION FOR ADMISSION PRO HAC VICE**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

MOTION TO ADMIT KENNETH S. CANFIELD TO PRACTICE *PRO HAC VICE* BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY AS CO-COUNSEL FOR PLAINTIFFS

Robert E. Sanders, Trial Attorney for Plaintiffs, Michael and Cathy Miller, et al., respectfully moves this Court, to admit Kenneth S. Canfield to practice *Pro Hac Vice* as Plaintiffs' co-counsel in the above-styled action, pursuant to Joint Local Rule of Civil Practice 83.2. Kenneth S. Canfield is licensed to practice law in The District of Columbia, Colorado, and Georgia. He is an inactive member of The District of Columbia Bar and is a member in good standing with the State Bars of Colorado and Georgia.

In support of this motion, see the attached Affidavit/Oath of Kenneth S. Canfield, which is hereby incorporated by reference.

Respectfully submitted,

/s/ *Robert E. Sanders*

ROBERT E. SANDERS (KY. ATTY. NO. 61395)
The Sanders Law Firm
The Charles H. Fisk House
1017 Russell Street
Covington, Kentucky 41011

TOY-RQ-05E-00012281

Telephone: (859) 491-3000
Facsimile: (859) 655-4642

CERTIFICATE OF SERVICE

I hereby certify that on the ___th day of February, 2010, the foregoing motion and notice, along with the affidavit of Kenneth S. Canfield that follows, was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record in the case. In addition, the following Defendants, which do not have an attorney of record, have been served today by regular U.S. mail, postage prepaid:

Toyota Motor Sales, U.S.A., Inc.
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Manufacturing, Kentucky, Inc.
Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation Systems
4169 Westport Road
Louisville, Kentucky 40207

/s/ *Robert E. Sanders*

ROBERT E. SANDERS
THE SANDERS LAW FIRM
ATTORNEYS FOR PLAINTIFFS

TOY-RQ-05E-00012282

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-DLB**
Plaintiffs,	:	
VS.	:	**AFFIDAVIT/OATH OF KENNETH S. CANFIELD**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

AFFIDAVIT/OATH OF KENNETH S. CANFIELD

The Affiant, Kenneth S. Canfield, being duly sworn and cautioned states as follows:

1. I am an attorney employed at Doffermyre, Shields, Canfield & Knowles, LLC, located at 1355 Peachtree Street, Atlanta, Georgia 30309.

2. I am licensed to practice law in the District of Columbia, after being duly admitted by the D.C. Court of Appeals, the highest court in the District, in 1979. I am currently an inactive member of the District of Columbia bar. While active, I had continuously been a member in Good Standing from the date of my admission to the date I became inactive.

3. I am licensed to practice law in the State of Colorado, after being duly admitted by the Supreme Court of Colorado, the highest court in the state, in 1982. I am currently and have continuously been a member in Good Standing of the State Bar of Colorado since I was admitted to practice. However, for several years I was an inactive member.

4. I am licensed to practice law in the State of Georgia, after being duly admitted by the Supreme Court of Georgia, the highest court in the state, in 1986. I am currently and have continuously been a member in Good Standing of the State Bar of Georgia since I was admitted to practice.

5. There are currently no disciplinary actions or contempt proceedings pending against me before any court or administrative body. In fact, I have never been subject to any disciplinary complaints or contempt proceedings.

6. Upon admission to practice pro hac vice in the above-styled action, I consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

WHEREFORE, the Affiant respectfully requests this Court to admit him to practice *Pro Hac Vice* as co-counsel for Plaintiffs, Michael and Cathy Miller, et al., in the above-styled action.

Signed this 22nd day of February, 2010.

KENNETH S. CANFIELD, AFFIANT

STATE OF GEORGIA

COUNTY OF Douglas

Signed and sworn to before me, a Notary Public, for the State of Georgia, by Kenneth S. Canfield, on this 22nd day of February, 2010.

Vickie Dianne Rawlins
NOTARY PUBLIC, GEORGIA

My commission expires: Notary Public Douglas County, Georgia My Commission Expires Nov. 29, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-WOB**
Plaintiffs,	:	
VS.	:	**ORDER ADMITTING KENNETH S. CANFIELD *PRO HAC VICE***
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

Upon the Motion of Plaintiffs, Michael and Cathy Miller, et al., to admit Kenneth S. Canfield as co-counsel *pro hac vice*, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Kenneth S. Canfield is hereby admitted *pro hac vice* in the above styled action, pursuant to LR 83.2. Mr. Canfield is a duly licensed and practicing attorney with Doffermyre, Shields, Canfield & Knowles, LLC, 1355 Peachtree Street, Atlanta, Georgia 30309 and is a member in good standing of the State Bar of Colorado, having been admitted in 1982 and the State Bar of Georgia, having been admitted in 1986. He is an inactive member of the The District of Columbia Bar, to which he was admitted in 1979. Mr. Canfield consents to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

SIGNED AND ENTERED as the Order of this Court this ____ day of _____ 2010.

_____

DAVID L. BUNNING, JUDGE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
KENTUCKY NORTHERN DIVISION
at COVINGTON

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, et al.,	)	NO. **2:10-cv-00031-WOB**
Plaintiffs	)	Judge William O. Bertelsman
v.	)	**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF THE CLAIMS OF MELISSA ARNZEN MOEDDEL**
TOYOTA MOTOR SALES, U.S.A., INC., et al.,	)	
Defendants	)	

Now come Plaintiffs, by and through counsel, pursuant Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, and hereby gives notice of the voluntary dismissal without prejudice of Plaintiff Melissa Arnzen Moeddel only. The rights and claims of all other named Plaintiffs and prospective Class members are unaffected by the dismissal of Melissa Arnzen Moeddel's claims against Defendants.

/s/ *Robert E. Sanders*
ROBERT E. SANDERS
The Sanders Law Firm
The Charles H. Fisk House
1017 Russell Street
Covington, Kentucky 41011
Tel. 859-491-3000
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2010, a copy of the foregoing document was sent by U.S. Mail, first class postage prepaid, to:

Toyota Motor Sales, U.S.A., Inc.
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Manufacturing, Kentucky, Inc.
Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation Systems
4169 Westport Road
Louisville, Kentucky 40207

/s/ *Robert E. Sanders*
Robert E. Sanders

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CIVIL ACTION NO. 2010-31 (WOB)

MICHAEL & CATHY MILLER, ET AL. **PLAINTIFFS**

VS. **ORDER**

TOYOTA MOTOR SALES, U.S.A., INC., ET AL. **DEFENDANTS**

This matter is before the court on the motion of plaintiffs for Kenneth S. Canfield (Doc. #7) to appear *pro hac vice* herein, and the court being advised,

IT IS ORDERED that said motion be, and it is, hereby **granted**.

This 1st day of March, 2010.

Signed By:
William O. Bertelsman WOB
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CIVIL ACTION NO. 2010-31 (WOB)

MICHAEL & CATHY MILLER, ET AL. **PLAINTIFFS**

VS. **ORDER**

TOYOTA MOTOR SALES, U.S.A., INC., ET AL. **DEFENDANTS**

Pursuant to plaintiff's Notice of Voluntary Dismissal (Doc. #8) filed herein, and the court being advised,

IT IS ORDERED that plaintiff, Melissa Arnzen Moeddel, is hereby **dismissed**, without prejudice, as a named plaintiff herein.

This 1st day of March, 2010.

Signed By:
William O. Bertelsman WOB
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-WOB**
Plaintiffs,	:	
VS.	:	**MOTION TO APPEAR PRO HAC VICE**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

MOTION TO ADMIT ROBERT E. SHIELDS TO APPEAR *PRO HAC VICE* BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY AS CO-COUNSEL FOR PLAINTIFFS

Robert E. Sanders, Trial Attorney for Plaintiffs, Michael and Cathy Miller, et al., respectfully moves this Court, to admit Robert E. Shields to practice *Pro Hac Vice* as Plaintiffs' co-counsel in the above-styled action, pursuant to Joint Local Rule of Civil Practice 83.2. Robert E. Shields is licensed to practice law in California, Kansas, and Georgia and is a member in good standing with the State Bars of California, Kansas, and Georgia.

In support of this motion, see the attached Affidavit/Oath of Robert E. Shields, which is hereby incorporated by reference.

Respectfully submitted,

/s/ *Robert E. Sanders*

ROBERT E. SANDERS (KY. ATTY. NO. 61395)
The Sanders Law Firm
The Charles H. Fisk House
1017 Russell Street
Covington, Kentucky 41011
Telephone: (859) 491-3000
Facsimile: (859) 655-4642

TOY-RQ-05E-00012290

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2010, the foregoing motion and notice, along with the affidavit of Robert E. Shields that follows, was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record in the case. In addition, the following Defendants, which do not have an attorney of record, have been served today by regular U.S. mail, postage prepaid:

Toyota Motor Sales, U.S.A., Inc.
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Manufacturing, Kentucky, Inc.
Toyota Motor Manufacturing, Northern Kentucky, Inc.
c/o CT Corporation Systems
4169 Westport Road
Louisville, Kentucky 40207

/s/ *Robert E. Sanders*

ROBERT E. SANDERS
THE SANDERS LAW FIRM
ATTORNEYS FOR PLAINTIFFS

TOY-RQ-05E-00012291

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-DLB**
Plaintiffs,	:	
VS.	:	**AFFIDAVIT/OATH OF ROBERT E. SHIELDS**
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

AFFIDAVIT/OATH OF ROBERT E. SHIELDS

The Affiant, Robert E. Shields, being duly sworn and cautioned states as follows:

1. I am an attorney employed at Doffermyre, Shields, Canfield & Knowles, LLC, located at 1355 Peachtree Street, Atlanta, Georgia 30309.

2. I am licensed to practice law in the State of California, after being duly admitted by the Supreme Court of California, the highest court in the state, in 1971. I am currently and have continuously been a member in Good Standing of the State Bar of California since I was admitted to practice.

3. I am licensed to practice law in the State of Kansas, after being duly admitted by the Supreme Court of Kansas, the highest court in the state, in 1973. I am currently and have continuously been a member in Good Standing of the State Bar of Kansas since I was admitted to practice.

4. I am licensed to practice law in the State of Georgia, after being duly admitted by the Supreme Court of Georgia, the highest court in the state, in 1974. I am currently and have continuously been a member in Good Standing of the State Bar of Georgia since I was admitted to practice.

5. There are currently no disciplinary actions or contempt proceedings pending against me before any court or administrative body.

6. Upon admission to practice pro hac vice in the above-styled action, I consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

WHEREFORE, the Affiant respectfully requests this Court to admit him to practice *Pro Hac Vice* as co-counsel for Plaintiffs, Michael and Cathy Miller, et al., in the above-styled action.

Signed this 1st day of ~~February~~ March, 2010.

ROBERT E. SHIELDS, AFFIANT

STATE OF GEORGIA

COUNTY OF Rockdale

Signed and sworn to before me, a Notary Public, for the State of Georgia, by Robert E. Shields, on this 1st day of ~~February~~ March, 2010.

NOTARY PUBLIC, GEORGIA

BEVELY J SINGLETON NOTARY EXPIRES GEORGIA SEPT. 9, 2013 PUBLIC ROCKDALE COUNTY

My commission expires: 9-9-13

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

MICHAEL & CATHY MILLER, ET AL.	:	**CASE NO. 2:10-cv-00031-WOB**
Plaintiffs,	:	
VS.	:	**ORDER ADMITTING ROBERT E. SHIELDS *PRO HAC VICE***
TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,	:	
Defendants.	:	

Upon the Motion of Plaintiffs, Michael and Cathy Miller, et al., to admit Robert E. Shields as co-counsel *pro hac vice*, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Robert E. Shields is hereby admitted *pro hac vice* in the above styled action, pursuant to LR 83.2. Mr. Shields is a duly licensed and practicing attorney with Doffermyre, Shields, Canfield & Knowles, LLC, 1355 Peachtree Street, Atlanta, Georgia 30309 and is a member in good standing of the State Bar of California, having been admitted in 1971, the State Bar of Kansas, having been admitted in 1973, and the State Bar of Georgia, having been admitted in 1974. Mr. Shields consents to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

SIGNED AND ENTERED as the Order of this Court this ____ day of _____ 2010.

_____

WILLIAM O. BERTELSMAN, JUDGE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
KENTUCKY NORTHERN DIVISION
at COVINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CIVIL ACTION NO. 2010-31 (WOB)

MICHAEL & CATHY MILLER, ET AL. **PLAINTIFFS**

VS. **ORDER**

TOYOTA MOTOR SALES, U.S.A., INC., ET AL. **DEFENDANTS**

This matter is before the court on the motion of plaintiffs for Robert E. Shields (Doc. #11) to appear *pro hac vice* herein, and the court being advised,

IT IS ORDERED that said motion be, and it is, hereby **granted**.

This 2ND day of March, 2010.

Signed By:
William O. Bertelsman WOB
United States District Judge

U.S. District Court
Eastern District of Kentucky (Covington)
CIVIL DOCKET FOR CASE #: 2:10-cv-00031-WOB

Miller et al v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: Judge William O. Bertelsman
Cause: 28:1331 Fed. Question: Personal Injury

Date Filed: 02/12/2010
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Federal Question

Plaintiff

Michael Miller
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
The Sanders Law Firm
1017 Russell Street
Covington, KY 41011
859-491-3000
Fax: 859-655-4642
Email: dsanders@thesanderslawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
The Sanders Law Firm
1017 Russell Street
Covington, KY 41011
859-491-3000
Fax: 859-655-4642
Email: jsanders@thesanderslawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
The Sanders Law Firm
1017 Russell Street
Covington, KY 41011
859-491-3000
Fax: 859-655-4642
Email: resanders@thesanderslawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
The Sanders Law Firm
1017 Russell Street
Covington, KY 41011
859-491-3000

TOY-RQ-05E-00012296

Fax: 859-655-4642
Email:
mnakajima@thesanderslawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
Doffermyre, Shields, Canfield &
Knowles, LLC
1355 Peachtree Street
Atlanta, GA 30309
404-881-8900
Fax: 404-881-3007
Email: kcanfield@dsckd.com
ATTORNEY TO BE NOTICED

Ralph I. Knowles
Doffermyre, Shields, Canfield &
Knowles, LLC
1355 Peachtree Street
Atlanta, GA 30309
404-881-8900
Fax: 404-881-3007
Email: rknowles@dsckd.com
ATTORNEY TO BE NOTICED

Robert E. Shields
Doffermyre, Shields, Canfield, Knowles

1355 Peachtree Street
Atlanta, GA 30309
404-881-8900
Fax: 404-881-3007
Email: rshields@dsckd.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Cathy Miller
Individually and on behalf of others similarly situated

represented by

Delana S. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)

TOY-RQ-05E-00012297

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Steve Clemons
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

TOY-RQ-05E-00012298

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Sonya Gray
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Wayne Tomlin
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

TOY-RQ-05E-00012299

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Betty Tomlin
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)

TOY-RQ-05E-00012300

ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Patrick Kwiatkowski
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Edward Skillman
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY

TOY-RQ-05E-00012301

ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Joan Skillman
Individually and on behalf of others similarly situated

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

TOY-RQ-05E-00012302

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Robert E. Shields
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Melissa Arnzen Moeddel
Individually and on behalf of other similarly situated
TERMINATED: 03/01/2010

represented by **Delana S. Sanders**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin A. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E. Sanders
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W. Matthew Nakajima
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kenneth S. Canfield
(See above for address)
ATTORNEY TO BE NOTICED

Ralph I. Knowles
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

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

Defendant

Toyota Motor Corp.

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.

TOY-RQ-05E-00012303

Defendant

Toyota Motor Manufacturing, Kentucky, Inc.

Defendant

Toyota Motor Manufacturing, Northern Kentucky, Inc.

Date Filed	#	Docket Text
02/12/2010	1	COMPLAINT (Filing fee $350; receipt number 1686044), filed by Steve Clemons, Sonya Gray, Michael Miller, Wayne Tomlin, Betty Tomlin, Patrick Kwiatkowski, Edward Skillman, Joan Skillman, Melissa Arnzen Moeddel, Cathy Miller. (Attachments: # 1 Summons to Toyota Motor Engineering & Mfg. North America, Inc., # 2 Summons to Toyota Motor Mfg, Kentucky, Inc., # 3 Summons to Toyota Motor Mfg, NKY, Inc., # 4 Summons to Toyota Motor Sales, USA, Inc., # 5 Summons to Toyota Motor Corp.)(ECO) (Additional attachment(s) added on 2/17/2010: # 6 Case Assignment) (ECO). (Entered: 02/17/2010)
02/12/2010	2	Summons Issued as to Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc.; issued summons returned to counsel via U.S. Mail (ECO) (Entered: 02/17/2010)
02/17/2010		Conflict Check run. (ECO) (Entered: 02/17/2010)
02/18/2010	3	ORDER REASSIGNING CASE. Case reassigned to Judge William O. Bertelsman for all further proceedings. Judge David L. Bunning no longer assigned to case. Signed by Judge David L. Bunning on 2/18/2010.(LMB)cc: COR Modified on 2/19/2010 to correct file date(LMB). (Entered: 02/19/2010)
02/18/2010	4	NOTICE OF MANDATORY ECF DIRECTED TO William Matthew Nakajima, non-registered attorney re 3 Order Reassigning Case had to be MAILED TO a non-registered attorney, which is in direct violation of this court's General Orders re: Mandatory ECF. ***Failure to comply will result in this matter being submitted to the Chief Judge.*** cc: COR w/copy of Mandatory ECF General Order & ECF Registration form. (LMB) (Entered: 02/19/2010)
02/19/2010	5	MOTION for Ralph I. Knowles to Appear Pro Hac Vice by Michael Miller (Filing fee $65; receipt number 1690373) (Attachments: # 1 Affidavit /Oath of Ralph I. Knowles, # 2 Proposed Order Admitting Ralph I. Knowles Pro Hace Vice)(Sanders, Robert) (Entered: 02/19/2010)
02/19/2010		Attorney Update. Attorney Ralph I Knowles for Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Melissa Arnzen Moeddel, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin added. (ECO) (Entered: 02/22/2010)

TOY-RQ-05E-00012304

02/22/2010		BAR STATUS Check completed as to Ralph I Knowles re 5 MOTION for Ralph I. Knowles to Appear Pro Hac Vice by Michael Miller (Filing fee $65; receipt number 1690373) (ECO) (Entered: 02/22/2010)
02/22/2010	6	ORDER: 1) Pltfs' 5 Motion for Ralph I. Knowles to Appear Pro Hac Vice be, and it hereby is, **granted**. Signed by Judge William O. Bertelsman on 2/22/2010. (ECO)cc: COR Modified to add attorney name on 2/22/2010 (ECO). (Entered: 02/22/2010)
02/26/2010		Clerk's Note: ECF Mandatory Notice re 4 to attorney William Matthew Nakajima was entered in error and attorney can disregard. (LMB) (Entered: 02/26/2010)
02/26/2010	7	MOTION for Kenneth S. Canfield to Appear Pro Hac Vice by Michael Miller, Cathy Miller, Steve Clemons, Sonya Gray, Wayne Tomlin, Betty Tomlin, Patrick Kwiatkowski, Edward Skillman, Joan Skillman, Melissa Arnzen Moeddel (Filing fee $65; receipt number 1695846) (Attachments: # 1 Affidavit /Oath of Kenneth S. Canfield, # 2 Proposed Order Admitting Kenneth S. Canfield Pro Hac Vice)(Sanders, Robert) Modified text to add additional pltf filers on 3/1/2010 (ECO). (Entered: 02/26/2010)
02/26/2010	8	NOTICE of Voluntary Dismissal by Melissa Arnzen Moeddel (Sanders, Robert) (Entered: 02/26/2010)
02/26/2010		Attorney Update. Attorney Kenneth S. Canfield for Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Melissa Arnzen Moeddel, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin added. (ECO) (Entered: 03/01/2010)
03/01/2010		BAR STATUS Check completed as to Kenneth S. Canfield re 7 MOTION for Kenneth S. Canfield to Appear Pro Hac Vice by Michael Miller (Filing fee $65; receipt number 1695846) (ECO) (Entered: 03/01/2010)
03/01/2010		NOTICE OF DOCKET MODIFICATION TO Robert Sanders re 7 MOTION for Kenneth S. Canfield to Appear Pro Hac Vice. Error: the correct filers were not selected; Clerk added the additional plaintiffs as filers to the document. In the future, hold the ctrl key on the keyboard and click on each party filing the pleading. No further actions required by counsel. cc: COR (ECO) (Entered: 03/01/2010)
03/01/2010		***MOTION SUBMITTED TO CHAMBERS of William O. Bertelsman for review: re 7 MOTION for Kenneth S. Canfield to Appear Pro Hac Vice ***FILE SUBMITTED TO CHAMBERS of William O. Bertelsman for review: 8 Notice of Voluntary Dismissal By Melissa Arnzen Moeddel. (ECO) (Entered: 03/01/2010)
03/01/2010	9	ORDER: **IT IS ORDERED** that said 7 Motion for Kenneth S. Cranfield to Appear Pro Hac Vice be, and it is, hereby **granted**.Signed by Judge William O. Bertelsman on 3/1/2010. (ECO)cc: COR (Entered: 03/01/2010)
03/01/2010	10	ORDER: **IT IS ORDERED** that Pltf Melissa Arnzen Moeddel, is hereby **dismissed**, without prejudice, as a named Pltf herein. Signed by Judge William O. Bertelsman on 3/1/2010. (ECO)cc: COR (Entered: 03/01/2010)

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03/01/2010	11	MOTION for Robert E. Shields to Appear Pro Hac Vice by Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin (Filing fee $65; receipt number 1697228) (Attachments: # 1 Affidavit /Oath of Robert E. Shields, # 2 Proposed Order Admitting Robert E. Shields Pro Hac Vice) (Sanders, Robert) (Entered: 03/01/2010)
03/01/2010		Attorney Update. Attorney Robert E. Shields for Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin added. (ECO) (Entered: 03/02/2010)
03/02/2010		***MOTION SUBMITTED TO CHAMBERS of William O. Bertelsman for review: re 11 MOTION for Robert E. Shields to Appear Pro Hac Vice by Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin (Filing fee $65; receipt number 1697228) (ECO) (Entered: 03/02/2010)
03/02/2010	12	ORDER: 1) Said 11 Motion for Robert A. Shields to Appear Pro Hac Vice be, and it is, hereby **granted**. Signed by Judge William O. Bertelsman on 3/2/2010. (ECO)cc: COR (Entered: 03/02/2010)
03/04/2010		BAR STATUS Check completed as to Robert E. Shields re 11 MOTION for Robert E. Shields to Appear Pro Hac Vice by Steve Clemons, Sonya Gray, Patrick Kwiatkowski, Cathy Miller, Michael Miller, Edward Skillman, Joan Skillman, Betty Tomlin, Wayne Tomlin (Filing fee $65; receipt number 1697228) (ECO) (Entered: 03/04/2010)

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