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T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

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BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

V.

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

Defendants.

CASE NO. **SACV10-00183 JVS(ANX)**

CLASS ACTION COMPLAINT FOR:
1) **FRADULENT CONCEALMENT**
2) **BREACH OF IMPLIED WARRENTIES**
3) **MISREPRESENTATION**
4) **NEGLIGENCE**
5) **PRODUCTS LIABILITY**
6) **UNJUST ENRICHMENT**
7) **UNFAIR COMPETITION**
8) **BREACH OF EXPRESS WARRANTY**
9) **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10) **BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PUPOSE**
11) **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
12) **VIOLATION OF THE LANHAM ACT, 15 USC §1125 (a))**

DEMAND FOR JURY TRIAL

TOY-RQ-05E-00012308

CLASS ACTION COMPLAINT

Plaintiffs T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR ("Plaintiffs"), sue Defendants, TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., on their own behalf and as representative plaintiffs for other consumers similarly situated and alleges as follows:

PARTIES

Plaintiff T. LEIGH BEARD is an individual consumer who purchased or leased a 2010 Toyota Camry SE, and is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff CATHERINE NGUYEN is an individual consumer who purchased or leased a 2009 TC Scion, who is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff MALINA SALVADOR is an individual consumer who purchased or leased a 2009 Toyota Sequoia and is a resident of the city and County of Honolulu, Hawaii.

Defendant, Toyota Motor Corporation, is 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.

Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with USA headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc., markets, distributes, and sells Toyota, Prius, Scion, and Lexus vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are collectively referred herein to as "Toyota."

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OVERVIEW & BACKGROUND

JURISDICTION AND VENUE

This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because Plaintiffs are residents of this jurisdiction and/or Defendants intentionally conduct substantial business and maintain offices within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

This District Court has jurisdiction over this class action under 18 U.S.C. § 13332(d). The provisions of the Class Action Fairness Act ("CAFA") provide for original jurisdiction of the Federal Courts of this class action. Plaintiffs allege that the total claims of individual class members in this action exceed $5,000,000 in the aggregated, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs allege that the total number of claimant members of the proposed class is over one million consumers and meets the requirements of 28 U.S.S. § 1332(d)(5)(B). Diversity of citizenship exists pursuant to CAFA 28 U.S.C. § 1332(d)(2)(A).

Venue in this District is proper under 28 U.S.C. § 1391. Toyota maintains primary offices in Torrance, California, located within the Central District of California. The Central District of California is believed to have the largest number of recalled Toyota vehicles of any judicial districts in the United States. A substantial part of the acts, events, or omissions giving rise to the claims occurred in the Central District. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

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FACTUAL ALLEGATIONS

Toyota Motor Corporation is the world's largest automobile manufacturer. Toyota reported more than $200 billion in worldwide sales for the fiscal year that ended in March 2009. Toyota manufactures numerous vehicles sold under various brand names including Toyota, Prius, Scion and Lexus. Toyota recently issued massive recalls for accelerator and braking problems. Since the fall of 2009, Toyota has issued 10 million recall notices for problems related to unintended acceleration, with approximately 2 million vehicles subject to more than one recall. The recalls followed consumer reports of numerous crashes of Toyota vehicles causing injury and death and concerns about significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

Toyota initially blamed unintended acceleration on floor mats that could entrap the accelerator. As consumer complaints continued to mount and government officials investigated, Toyota eventually expanded possible factors causing unintended acceleration to include gas pedals that could stick.

On information and belief, Plaintiffs allege that the causes of unintended acceleration are more than mechanical and include unsafe electronic defects in Toyota vehicles. On information and belief, plaintiffs allege Toyota was aware of safety problems with unintended acceleration for a significant period of time and intentionally failed to disclose the full scope of the problems fearing full disclosure and broadened safety recalls might harm Toyota's reputation and hurt its sales.

On information and belief, plaintiffs allege that Toyota failed to properly and timely remedy an unsafe and defective throttle control system known as drive-by-wire accelerator controls or Electronic Throttle Control System with Intelligence ("ETCS-I") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple Toyota models. The unsafe and defective accelerators on the Toyota vehicles can make it difficult and sometimes impossible to stop the vehicle.

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In the last decade, the electronic throttle system in many Toyota vehicles has used sensors, microprocessors and electronic motors instead of mechanical linkage or steel cable to connect the accelerator pedal to the throttle plate. When the ETC system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe back up in the event of a problem with the ETC system. Many newer vehicles made by Toyota have no such failsafe. In addition, although many vehicle manufacturers use a safety feature know as "brake-to-idle override" that enables drivers to override the electronic throttle and control the vehicle in the event of sudden unintended acceleration, Toyota has failed to equip vehicles with this safety feature.

Recently Toyota began a series of product recalls relating to sudden unintended acceleration that have failed to address the problem with the ETC system. Toyota sought to conceal the defect in its electronic throttle controls by publicly stating that sudden unintended acceleration in Toyota vehicles was caused by floor mats. On information and belief, Toyota was aware that floor mats were not the cause of sudden unintended acceleration.

On September 29, 2009, the National Highway Traffic Safety Administration (NHTSA) issued a warning to owners of Toyota and Lexus vehicles that: "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." 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.

The same day, Defendants launched a safety recall on eight Toyota and Lexus vehicles:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra

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- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

Upon information and belief, these reports to NHTSA and the public were false and misleading as Toyota was aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

From September, 2009, Defendants continued to receive numerous consumer reports of vehicles accelerating rapidly after release of the accelerator pedal, many of which were not included in the recall. Defendants continued to falsely claim that the incidents "appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying actual defects leading to the unintended acceleration.

On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota. NHTSA said a press release put out by Toyota earlier that week 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 said: "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."

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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 the 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 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

To avoid having to address the real problem with the "drive by wire" ETC system, Defendants said they would reconfigure the accelerator pedal, and in some cases, the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference. Defendants said they would develop replacement pedals for these vehicles. Defendants stated that they would provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

Although it had knowledge of continued reports of accelerator problems in other vehicles, Defendants stated that they would only replace floor mats in those vehicles indentified in their recall and not other vehicles it sold.

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

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confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals were simultaneously applied.

At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a widespread defect in many if not all of its product line thereby leaving drivers of its vehicles at risk for sudden and unexpected acceleration.

While publicly blaming floor mats for their sudden unintended acceleration problem, Defendants have recently indicated that they are considering software changes to the onboard computer systems as a solution to the sudden and unintended acceleration. The considered software change would cause the accelerator to disengage whenever the brakes are engaged.

A former Toyota lawyer responsible for handling safety litigation sued Toyota, disclosing that Toyota perpetrated a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a pattern and practice to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmonds.com have commenced pricing declines in the value of Toyota products. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmonds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. On information and belief, Toyota vehicle owners have been adversely impacted by the recalls in that the value of their vehicles has dropped. The estimated aggregate value loss for impacted Toyota owners exceeds $2 Billion.

On information and belief Plaintiffs allege that Toyota knew its product was susceptible to malfunction that could result in unintended acceleration and braking

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conditions and serious safety issues including injury and death. On information and belief, Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

Plaintiffs have received Toyota recall notices and are unable to safely operate their vehicles due to the safety problems. On information and belief the value of all Toyota vehicles subject to any recall, and possibly other Toyota vehicles as well, have declined.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. According to the *LA Times*, which relied upon statements by Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte located within this Judicial District, dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, place or modify vehicles. While Toyota may be finally addressing some of the colossal safety issues in terms of repairing, replacing, or modifying vehicles, no provision has been made to preserve the defect parts and systems being repaired or altered in the subject Toyota vehicles. With the number of lawsuits against Toyota for fraud, concealment and product liability mounting, the component parts and systems being removed from Toyota vehicles is critical evidence that needs to be preserved, cataloged and examined in ongoing litigation.

CLASS ALLEGATIONS

Plaintiffs repeat and reallege all preceding paragraphs, as fully set forth herein.

Pursuant to F.R.C.P. 23, Plaintiffs brings this action on behalf of themselves, all other consumers who purchased a Toyota vehicle subject to a safety recall for sudden unintended acceleration ("Class") (class is defined as "A" Toyota models and model years subject to recall for unintended acceleration and "B" Toyota models and models

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years with Unintended Throttle Activation Reports that have not been included in any Toyota recall and "C" all persons who suffered economic loss as a result of the Toyota recall including but not limited to those who own or lease a Toyota vehicle). 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 Toyota vehicles for their intended and foreseeable purpose as promoted, marketed, advertised, packaged, labeled and sold by Toyota. The relief sought herein is for the benefit of the Plaintiffs and Members of the putative Class. Plaintiffs allege that the Class of millions of consumers is so numerous that joinder of all members would be impractical.

With millions of vehicles subject to recall joinder is not practical. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members.

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TOYOTA MODEL AND MODEL YEARS SUBJECT TO RECALL

MODEL	MODEL YEARS
Toyota Camry	2002 – 2006
Lexus ES	2002 – 2010
Toyota Tacoma	2003 – 2010
Toyota Prius	2001 – 2010
Toyota Sienna	2004 – 2010
Toyota Rav4	2004 – 2008
Toyota Tundra	2001 – 2006
Toyota Highlander	2004 – 2010
Toyota Solara	2003 – 2008
Toyota Corolla	2005 – 2008
Toyota 4-Runner	2001 – 2010
Lexus IS250	2006 – 2010
Lexus RX	2004 – 2010
Toyota Sequoia	2001 – 2007
Lexus GS 3 Series	2001 – 2010
Lexus IS300 & 350	2002 – 2010

"A"

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MODELS AND MODEL YEARS WITH UNINTENDED THORTTLE ACTIVATION REPORTS THAT ARE NOT INCLUDED IN ANY RECALL

MODEL	MODEL YEARS	ANY RECALL MODEL/MODEL YEAR	NON-RECALL MODEL/MODEL YEAR
Camry	2002 – 2006		344
	2007 – 2010	166	
Lexus ES	2002 – 2006		88
	2007 – 2010	58	
Tacoma	2003 – 2004		11
	2005 – 2010	120	
Prius	2001 – 2003		6
	2004 – 2010	85	
Avalon	2005 – 2010	52	
Sienna	2004 – 2010		45
Rav4	2004 – 2008		41
	2009 – 2010	3	
Tundra	2001 – 2006		21
	2007 – 2010	17	
Highlander	2004 – 2007		31
	2008 – 2010	4	
Solara	2003 – 2008		30
Corolla	2005 – 2008		18
	2009 – 2010	6	
4-Runner	2001 – 2010		23
Lexus IS250	2006 – 2010	16	
Lexus RX	2004 – 2010		15
Sequoia	2001 – 2007		13
	2008 – 2010	1	
Lexus GS 3 Series	2002 – 2005		8
	2006 – 2010	1	

"B"

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The claims asserted by the Plaintiffs in this action are typical of the claims of other Class members as the claims arise from the same tortuous conduct by Toyota. Common relief is sought.

The Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and highly experienced in consumer protection claims and class action litigation.

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 member 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 the claims Absent a class action remedy, it is almost certain that the Plaintiffs and of the Class Members would be unable to protect their interests because of the cost and complexity of litigation. Certification is appropriate as a final relief with respect to the Class as a whole can be achieved and a class action avoids the risk of inconsistent and conflicting adjudications.

A class action is fair and appropriate method for the adjudication of this controversy. Millions of claims will be resolved in a single forum without the unnecessary hardship that will result from prosecution of numerous individual actions, duplication of discovery, expense, and burden on the judicial system. The benefits of proceeding as a class action, including providing a method for obtaining redress for compensation, repair, trade-in and other claims that are not practical to pursue individually outweigh any difficulties that might present with regard to the management of this class action.

CLASS ACTION ALLEGATIONS

The Plaintiffs are Members of the Class they seek to represent and claims are typical of the claims of the other Class Members. The Plaintiffs own or lease a vehicle

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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 or leased a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members.

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.

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.

Plaintiffs seeks 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.

Because the Plaintiffs seeks injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FIRST CAUSE OF ACTION

FRAUDULENT CONCEALMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint. Throughout the Class Period, the Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. Defendants affirmatively concealed the fact that the ETC was defective. The Defendants omitted to inform Class Members that the true defect was in the ETC and in the failure of the Defendants to include safety override controls.

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. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles, but delayed and failed to do so.

Toyota concealed facts relating to the accelerator and braking systems of the vehicles in question when they knew, or had reason to know, the true and correct facts regarding the defects, and Toyota took steps to prevent these facts from becoming known to the public in the marketing, promotion and sale of the vehicles. The concealment of the true facts, from the Plaintiffs and other Member of the Class, was done with the intent to induce the Plaintiffs and Class Members to purchase the vehicles in question.

As a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein, the running statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring. The Plaintiff and Class Members had no knowledge of the Defendants' unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing, until shortly before the Complaint was filed. The reliance by the Plaintiffs and Class members was reasonable and justified in that Toyota appeared to be, and

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represented itself to be, a reputable business. The Plaintiffs and Class Members would not have purchased the vehicles in question had they known the true facts about the vehicles that possible defects could result in potential injury or death.

As a direct and proximate result of the fraud and deceit alleged, the Plaintiffs and Class Members were induced to purchase the vehicles in question, and they used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the vehicles in question as set forth in detail above were defective before it issued a recall. Toyota intended that its customers rely on its representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the vehicles in question, in inducing customers to purchase such vehicles.

Plaintiffs and other Members of the Class, in purchasing or leasing and using the vehicles in question, did rely on Toyota's representations and suppression of facts, and suffered damage as a result. In taking these actions, Toyota was guilty of malice, oppression and fraud, and the Plaintiffs and Class Members are, therefore, entitled to recover punitive damages.

Additionally, or in the alternative, the Plaintiffs and other Members of the Class suffered actual damages, including a diminution of value of their 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), plus further diminution based upon Toyota's actions.

SECOND CAUSE ACTION

BREACH OF IMPLIED WARRANTIES

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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Defendants breached the implied warranties of merchantability. All commercial transactions have an implied warranty of merchantability requiring that products be of reasonable workmanlike quality and free from defects. Defendants gave an implied warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace vehicles after it became apparent they were defective and could be unsafe to drive.

At all times Plaintiffs and the Class relied on the implied warranty of merchantability as well as representations made by Defendants that their vehicles were reliable and of a quality that rendered them suitable for their intended use.

Defendants have breached its implied warranties to Plaintiffs and the Class in that the defective design of Toyota vehicles in question renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

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.

THIRD CAUSE OF ACTION

MISREPRESENTATION

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

The Defendants uniformly misrepresented the true cause of the unintended acceleration of Toyota vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making uniform, written, material misrepresentations that unintended acceleration of Toyota vehicles was caused by floor mats or faulty pedal designs. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles.

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Class Members foreseeably and permissibly relied upon the Defendant's uniform written misrepresentations when making a decision to purchase a vehicle. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Member 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.

Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

FOURTH CAUSE OF ACTION

NEGLIGENCE

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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 Plaintiff and Class Members.

Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its electronic throttle control (ETC) system such that 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 back up for their electronic throttle control system.

Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn that their vehicles were prone to unintended acceleration and/or that it might be difficult to disengage the throttle once the accelerator pedal had been pressed. Defendants also failed to adequately warn the Plaintiffs and Class Members how to disengage the accelerator pedal manually – by shifting to neutral

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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.

As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FIFTH CAUSE OF ACTION

PRODUCTS LIABILITY

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

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, Scion, Prius and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that their vehicles would be sold or leased and operated by consumers, including the Plaintiff and Class Members.

The defects in the Defendants' acceleration and braking equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonable danger for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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.

Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration and braking equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

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SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Defendants obtained monies from the marketing, labeling and/or sale of its vehicles and profited from the payment of the purchase price for Toyota's vehicles when the vehicles in question were not safe as Toyota purported them to be in deceptive, fraudulent and misleading labeling, advertising, marketing and sales.

Defendants have been unjustly enriched to the detriment of Plaintiffs and the Members of the Class by the retention of consumer's purchase.

Consumers conferred this enrichment on Defendants as a direct result of the failures, omissions and deceptive and fraudulent conduct of Defendants. 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. 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

UNFAIR COMPETITION

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Cal. Bus. & Prof. Code § 17200, permits Plaintiffs to remedy unfair, unlawful, or fraudulent practices: "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." Cal. Bus. & Prof. Code § 17203. Moreover, the situation authorizes any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition" to seek such an injunction. Cal. Bus. & Prof. Code § 17204. Toyota has engaged in unlawful, unfair and fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200.

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Toyota has known for many years that its vehicles had safety problems that could result in injury or death. Defendants failed to disclose these problems to the public, and in fact intentionally denied knowledge of safety defects.

Defendants made false or misleading statements and omissions about the safety of its vehicles in advertising, promotional materials and marketing efforts, and other communications with prospective buyers, owners and the public. Defendants concealed adverse information and misrepresented information at a time when they knew, or should have known, because they were in a superior position to know. Alternatively, Defendants made statements or omissions with reckless disregard for their truth or falsity.

The facts misrepresented, concealed or not fully disclosed were material.

Defendants made misrepresentations, failed to disclose information, or actively concealed information with the intention that the public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

Defendants should have reasonably known that consumers were likely to rely on the facts misrepresented or not disclosed.

Plaintiffs and Class Members reasonably relied on and were induced by Defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles. Plaintiffs and the Members of the Class sustained losses as a direct and proximate result of Defendants' misrepresentations or active concealment of information.

EIGHTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Toyota provided the Plaintiffs and other Members of the Class with written express warranties including, but not limited to, that the vehicles in question were safe

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to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

Toyota breached these express warranties, which resulted in damages to the Plaintiffs and other Members of the Class who overpaid for the vehicles, as the vehicles in question were not safe as they may contain defects that could cause serious injury or death, including defects to the accelerator and braking.

As a proximate result of the breach of warranties by Toyota, the Plaintiffs and Class Members suffered damages in an amount to be determined at trial. The Plaintiffs and Class Members paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled. 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.

The Plaintiffs and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Class Members also suffer in that not knowing if any repair made by Toyota will be successful in making their vehicles safe. Additionally, or in alternative, the Plaintiffs 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).

NINTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of its vehicles that they were safe to operate. Plaintiffs and Class Members bought the vehicles in question from Toyota, relying on Toyota's skill and judgment in

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furnishing suitable goods as well as Toyota's representations that the vehicles in question were safe to operate. However, Toyota's vehicles in question were not safe to operate as they may have had defects causing unintended acceleration and/or erratic braking conditions potentially resulting in injury and death.

Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class Members did not receive vehicles that were safe to operate as they possibly contained a defects that could potentially result in injury or death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaging, labeled or sold.

As a proximate result of this breach of warranty by Toyota, the 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 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 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. The Plaintiff and other Member of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

TENTH CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Plaintiffs' agreement with the Defendants includes not only express written provisions, but also terms and conditions, which although not formally expressed, are

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implied by the law. Such terms are as binding as the terms that are actually written in the agreement with the Plaintiff and Class Members.

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 inure the other party or compromise the benefit of the agreement.

The obligation of Defendants to abide by the covenant of good faith and fair dealing is heightened by the imbalance of power between Defendants and the Plaintiffs that allowed Defendants to engage in business as described in this Complaint.

Through the actions and inactions of the Defendants as outlined in this Complaint, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and Class Members.

As a proximate result of the breach of the covenant of good faith and fair dealing by Defendants, the Plaintiffs and Class Members have suffered damages in an amount to be determined at trial in that, among other things, they purchased or leased 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 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. The Plaintifsf and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

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ELEVENTH CAUSE OF ACTION

VIOLATION OF THE LANHAM ACT, 15 USC § 1125 (a))

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

As a result of Toyota's deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the vehicles in question described in detail above, violated the Lanham Act, 15 USC § 1125 (a).

The Defendants through their actions and inactions did deceive the Plaintiffs and Class Members into purchasing the vehicles in question. The Defendants violated this act through the use of advertising and marketing and statements that portrayed the vehicles in question as among other things, safe and reliable. This false and misleading advertising, misstatement of facts regarding the Defendant's products has caused the Plaintiffs and Class Members to purchase the vehicles in question which may actually be unsafe.

The Plaintiffs' use of the vehicles in question may result in injury or death. The vehicles on question would also have sold for and will continue to sell for, a lesser value because of the Defendant's violation of the Lanham Act as described above. As a result, the Plaintiffs and Class Members have been damaged by the acts of the Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follow:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. Compensatory damages in an amount to be determined at trial;

C. Punitive damages in an amount to be determined at trial;

D. Damages for reduced resale value of Toyota vehicles;

E. Damages for lost use of Toyota vehicles during repair;

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F. Damages Plaintiff and Class Members are required to pay from accidents resulting prior to repair of Toyota safety defects;

G. Legal interest;

H. Costs of suit incurred; and

I Such relief as the Court may deem just and proper.

DATED: February 15, 2010 By: _____

Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
dbt@lanierlawfirm.com
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: February 15, 2010 By: _____

Dana B. Taschner
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
dbt@lanierlawfirm.com
Attorneys for Plaintiffs

TOY-RQ-05E-00012333

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) **PLAINTIFFS** (Check box if you are representing yourself ☐)	**DEFENDANTS**
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,	TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Dana B. Taschner, Esq., SBN 135494 dbt@lanierlawfirm.com LANIER LAW FIRM 2029 Century Park East, Suite 1400, Los Angeles CA (310)277-5100	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:** $ according 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.)

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

FOR OFFICE USE ONLY: Case Number: **SACV10-00183 JVS(ANX)**

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

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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): Wrongful death claims have been filed vs Toyota in various states and JPMDL may include Toyota Product Lit on 3/25/2010 docket.

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
Orange County - Beard Orange County - Nguyen	Honolulu, Hawaii - Salvador

(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
Los Angeles - Toyota Motor Sales	Japan - Toyota Motor Corporation

(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
Orange, Los Angeles	Honolulu, Hawaii

*** 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 2/__/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))

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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 James V. Selna and the assigned discovery Magistrate Judge is Arthur Nakazato.

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

SACV10- 183 JVS (ANx)

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:

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

[X] **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.

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Name & Address:
Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
310/277-5100 dbt@lanierlawfirm.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

PLAINTIFF(S)

v.

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

DEFENDANT(S).

CASE NUMBER

SACV10-00183 JVS(ANX)

SUMMONS

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

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Dana B Taschner, whose address is 2029 Century Park East, Suite 1400 Los Angeles CA 90067. 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: February 16, 2010

By: Nancy Cardo
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)].

TOY-RQ-05E-00012337

Dana B. Taschner, Esq., SBN 135494
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Los Angeles, CA 90067
310/277-5100

W. Mark Lanier
LANIER LAW FIRM
6810 FM 1960 West
Houston, TX 77069
713/659-5200

Attorneys for Plaintiffs,
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

FILED
2010 FEB 16 AM 8:39
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

V.

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

Defendants.

CASE NO. **SACV10-00183 JVS(ANX)**

CLASS ACTION COMPLAINT FOR:
1) **FRADULENT CONCEALMENT**
2) **BREACH OF IMPLIED WARRENTIES**
3) **MISREPRESENTATION**
4) **NEGLIGENCE**
5) **PRODUCTS LIABILITY**
6) **UNJUST ENRICHMENT**
7) **UNFAIR COMPETITION**
8) **BREACH OF EXPRESS WARRANTY**
9) **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10) **BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PUPOSE**
11) **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
12) **VIOLATION OF THE LANHAM ACT, 15 USC §1125 (a))**

DEMAND FOR JURY TRIAL

TOY-RQ-05E-00012338

CLASS ACTION COMPLAINT

Plaintiffs T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR ("Plaintiffs"), sue Defendants, TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., on their own behalf and as representative plaintiffs for other consumers similarly situated and alleges as follows:

PARTIES

Plaintiff T. LEIGH BEARD is an individual consumer who purchased or leased a 2010 Toyota Camry SE, and is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff CATHERINE NGUYEN is an individual consumer who purchased or leased a 2009 TC Scion, who is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff MALINA SALVADOR is an individual consumer who purchased or leased a 2009 Toyota Sequoia and is a resident of the city and County of Honolulu, Hawaii.

Defendant, Toyota Motor Corporation, is 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.

Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with USA headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc., markets, distributes, and sells Toyota, Prius, Scion, and Lexus vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are collectively referred herein to as "Toyota."

TOY-RQ-05E-00012339

OVERVIEW & BACKGROUND

JURISDICTION AND VENUE

This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because Plaintiffs are residents of this jurisdiction and/or Defendants intentionally conduct substantial business and maintain offices within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

This District Court has jurisdiction over this class action under 18 U.S.C. § 13332(d). The provisions of the Class Action Fairness Act ("CAFA") provide for original jurisdiction of the Federal Courts of this class action. Plaintiffs allege that the total claims of individual class members in this action exceed $5,000,000 in the aggregated, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs allege that the total number of claimant members of the proposed class is over one million consumers and meets the requirements of 28 U.S.S. § 1332(d)(5)(B). Diversity of citizenship exists pursuant to CAFA 28 U.S.C. § 1332(d)(2)(A).

Venue in this District is proper under 28 U.S.C. § 1391. Toyota maintains primary offices in Torrance, California, located within the Central District of California. The Central District of California is believed to have the largest number of recalled Toyota vehicles of any judicial districts in the United States. A substantial part of the acts, events, or omissions giving rise to the claims occurred in the Central District. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

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FACTUAL ALLEGATIONS

Toyota Motor Corporation is the world's largest automobile manufacturer. Toyota reported more than $200 billion in worldwide sales for the fiscal year that ended in March 2009. Toyota manufactures numerous vehicles sold under various brand names including Toyota, Prius, Scion and Lexus. Toyota recently issued massive recalls for accelerator and braking problems. Since the fall of 2009, Toyota has issued 10 million recall notices for problems related to unintended acceleration, with approximately 2 million vehicles subject to more than one recall. The recalls followed consumer reports of numerous crashes of Toyota vehicles causing injury and death and concerns about significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

Toyota initially blamed unintended acceleration on floor mats that could entrap the accelerator. As consumer complaints continued to mount and government officials investigated, Toyota eventually expanded possible factors causing unintended acceleration to include gas pedals that could stick.

On information and belief, Plaintiffs allege that the causes of unintended acceleration are more than mechanical and include unsafe electronic defects in Toyota vehicles. On information and belief, plaintiffs allege Toyota was aware of safety problems with unintended acceleration for a significant period of time and intentionally failed to disclose the full scope of the problems fearing full disclosure and broadened safety recalls might harm Toyota's reputation and hurt its sales.

On information and belief, plaintiffs allege that Toyota failed to properly and timely remedy an unsafe and defective throttle control system known as drive-by-wire accelerator controls or Electronic Throttle Control System with Intelligence ("ETCS-I") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple Toyota models. The unsafe and defective accelerators on the Toyota vehicles can make it difficult and sometimes impossible to stop the vehicle.

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In the last decade, the electronic throttle system in many Toyota vehicles has used sensors, microprocessors and electronic motors instead of mechanical linkage or steel cable to connect the accelerator pedal to the throttle plate. When the ETC system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe back up in the event of a problem with the ETC system. Many newer vehicles made by Toyota have no such failsafe. In addition, although many vehicle manufacturers use a safety feature know as "brake-to-idle override" that enables drivers to override the electronic throttle and control the vehicle in the event of sudden unintended acceleration, Toyota has failed to equip vehicles with this safety feature.

Recently Toyota began a series of product recalls relating to sudden unintended acceleration that have failed to address the problem with the ETC system. Toyota sought to conceal the defect in its electronic throttle controls by publicly stating that sudden unintended acceleration in Toyota vehicles was caused by floor mats. On information and belief, Toyota was aware that floor mats were not the cause of sudden unintended acceleration.

On September 29, 2009, the National Highway Traffic Safety Administration (NHTSA) issued a warning to owners of Toyota and Lexus vehicles that: "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." 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.

The same day, Defendants launched a safety recall on eight Toyota and Lexus vehicles:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra

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- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

Upon information and belief, these reports to NHTSA and the public were false and misleading as Toyota was aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

From September, 2009, Defendants continued to receive numerous consumer reports of vehicles accelerating rapidly after release of the accelerator pedal, many of which were not included in the recall. Defendants continued to falsely claim that the incidents "appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying actual defects leading to the unintended acceleration.

On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota. NHTSA said a press release put out by Toyota earlier that week 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 said: "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."

TOY-RQ-05E-00012343

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 the 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 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

To avoid having to address the real problem with the "drive by wire" ETC system, Defendants said they would reconfigure the accelerator pedal, and in some cases, the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference. Defendants said they would develop replacement pedals for these vehicles. Defendants stated that they would provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

Although it had knowledge of continued reports of accelerator problems in other vehicles, Defendants stated that they would only replace floor mats in those vehicles indentified in their recall and not other vehicles it sold.

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

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confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals were simultaneously applied.

At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a widespread defect in many if not all of its product line thereby leaving drivers of its vehicles at risk for sudden and unexpected acceleration.

While publicly blaming floor mats for their sudden unintended acceleration problem, Defendants have recently indicated that they are considering software changes to the onboard computer systems as a solution to the sudden and unintended acceleration. The considered software change would cause the accelerator to disengage whenever the brakes are engaged.

A former Toyota lawyer responsible for handling safety litigation sued Toyota, disclosing that Toyota perpetrated a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a pattern and practice to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmonds.com have commenced pricing declines in the value of Toyota products. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmonds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. On information and belief, Toyota vehicle owners have been adversely impacted by the recalls in that the value of their vehicles has dropped. The estimated aggregate value loss for impacted Toyota owners exceeds $2 Billion.

On information and belief Plaintiffs allege that Toyota knew its product was susceptible to malfunction that could result in unintended acceleration and braking

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conditions and serious safety issues including injury and death. On information and belief, Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

Plaintiffs have received Toyota recall notices and are unable to safely operate their vehicles due to the safety problems. On information and belief the value of all Toyota vehicles subject to any recall, and possibly other Toyota vehicles as well, have declined.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. According to the *LA Times*, which relied upon statements by Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte located within this Judicial District, dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, place or modify vehicles. While Toyota may be finally addressing some of the colossal safety issues in terms of repairing, replacing, or modifying vehicles, no provision has been made to preserve the defect parts and systems being repaired or altered in the subject Toyota vehicles. With the number of lawsuits against Toyota for fraud, concealment and product liability mounting, the component parts and systems being removed from Toyota vehicles is critical evidence that needs to be preserved, cataloged and examined in ongoing litigation.

CLASS ALLEGATIONS

Plaintiffs repeat and reallege all preceding paragraphs, as fully set forth herein.

Pursuant to F.R.C.P. 23, Plaintiffs brings this action on behalf of themselves, all other consumers who purchased a Toyota vehicle subject to a safety recall for sudden unintended acceleration ("Class") (class is defined as "A" Toyota models and model years subject to recall for unintended acceleration and "B" Toyota models and models

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years with Unintended Throttle Activation Reports that have not been included in any Toyota recall and "C" all persons who suffered economic loss as a result of the Toyota recall including but not limited to those who own or lease a Toyota vehicle). 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 Toyota vehicles for their intended and foreseeable purpose as promoted, marketed, advertised, packaged, labeled and sold by Toyota. The relief sought herein is for the benefit of the Plaintiffs and Members of the putative Class. Plaintiffs allege that the Class of millions of consumers is so numerous that joinder of all members would be impractical.

With millions of vehicles subject to recall joinder is not practical. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members.

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TOYOTA MODEL AND MODEL YEARS SUBJECT TO RECALL

MODEL	MODEL YEARS
Toyota Camry	2002 – 2006
Lexus ES	2002 – 2010
Toyota Tacoma	2003 – 2010
Toyota Prius	2001 – 2010
Toyota Sienna	2004 – 2010
Toyota Rav4	2004 – 2008
Toyota Tundra	2001 – 2006
Toyota Highlander	2004 – 2010
Toyota Solara	2003 – 2008
Toyota Corolla	2005 – 2008
Toyota 4-Runner	2001 – 2010
Lexus IS250	2006 – 2010
Lexus RX	2004 – 2010
Toyota Sequoia	2001 – 2007
Lexus GS 3 Series	2001 – 2010
Lexus IS300 & 350	2002 – 2010

"A"

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MODELS AND MODEL YEARS WITH UNINTENDED THORTTLE ACTIVATION REPORTS THAT ARE NOT INCLUDED IN ANY RECALL

MODEL	MODEL YEARS	ANY RECALL MODEL/MODEL YEAR	NON-RECALL MODEL/MODEL YEAR
Camry	2002 – 2006		344
	2007 – 2010	166	
Lexus ES	2002 – 2006		88
	2007 – 2010	58	
Tacoma	2003 – 2004		11
	2005 – 2010	120	
Prius	2001 – 2003		6
	2004 – 2010	85	
Avalon	2005 – 2010	52	
Sienna	2004 – 2010		45
Rav4	2004 – 2008		41
	2009 – 2010	3	
Tundra	2001 – 2006		21
	2007 – 2010	17	
Highlander	2004 – 2007		31
	2008 – 2010	4	
Solara	2003 – 2008		30
Corolla	2005 – 2008		18
	2009 – 2010	6	
4-Runner	2001 – 2010		23
Lexus IS250	2006 – 2010	16	
Lexus RX	2004 – 2010		15
Sequoia	2001 – 2007		13
	2008 – 2010	1	
Lexus GS 3 Series	2002 – 2005		8
	2006 – 2010	1	

"B"

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The claims asserted by the Plaintiffs in this action are typical of the claims of other Class members as the claims arise from the same tortuous conduct by Toyota. Common relief is sought.

The Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and highly experienced in consumer protection claims and class action litigation.

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 member 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 the claims Absent a class action remedy, it is almost certain that the Plaintiffs and of the Class Members would be unable to protect their interests because of the cost and complexity of litigation. Certification is appropriate as a final relief with respect to the Class as a whole can be achieved and a class action avoids the risk of inconsistent and conflicting adjudications.

A class action is fair and appropriate method for the adjudication of this controversy. Millions of claims will be resolved in a single forum without the unnecessary hardship that will result from prosecution of numerous individual actions, duplication of discovery, expense, and burden on the judicial system. The benefits of proceeding as a class action, including providing a method for obtaining redress for compensation, repair, trade-in and other claims that are not practical to pursue individually outweigh any difficulties that might present with regard to the management of this class action.

CLASS ACTION ALLEGATIONS

The Plaintiffs are Members of the Class they seek to represent and claims are typical of the claims of the other Class Members. The Plaintiffs own or lease a vehicle

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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 or leased a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members.

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.

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.

Plaintiffs seeks 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.

Because the Plaintiffs seeks injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FIRST CAUSE OF ACTION

FRAUDULENT CONCEALMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint. Throughout the Class Period, the Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. Defendants affirmatively concealed the fact that the ETC was defective. The Defendants omitted to inform Class Members that the true defect was in the ETC and in the failure of the Defendants to include safety override controls.

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. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles, but delayed and failed to do so.

Toyota concealed facts relating to the accelerator and braking systems of the vehicles in question when they knew, or had reason to know, the true and correct facts regarding the defects, and Toyota took steps to prevent these facts from becoming known to the public in the marketing, promotion and sale of the vehicles. The concealment of the true facts, from the Plaintiffs and other Member of the Class, was done with the intent to induce the Plaintiffs and Class Members to purchase the vehicles in question.

As a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein, the running statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring. The Plaintiff and Class Members had no knowledge of the Defendants' unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing, until shortly before the Complaint was filed. The reliance by the Plaintiffs and Class members was reasonable and justified in that Toyota appeared to be, and

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represented itself to be, a reputable business. The Plaintiffs and Class Members would not have purchased the vehicles in question had they known the true facts about the vehicles that possible defects could result in potential injury or death.

As a direct and proximate result of the fraud and deceit alleged, the Plaintiffs and Class Members were induced to purchase the vehicles in question, and they used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the vehicles in question as set forth in detail above were defective before it issued a recall. Toyota intended that its customers rely on its representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the vehicles in question, in inducing customers to purchase such vehicles.

Plaintiffs and other Members of the Class, in purchasing or leasing and using the vehicles in question, did rely on Toyota's representations and suppression of facts, and suffered damage as a result. In taking these actions, Toyota was guilty of malice, oppression and fraud, and the Plaintiffs and Class Members are, therefore, entitled to recover punitive damages.

Additionally, or in the alternative, the Plaintiffs and other Members of the Class suffered actual damages, including a diminution of value of their 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), plus further diminution based upon Toyota's actions.

SECOND CAUSE ACTION

BREACH OF IMPLIED WARRANTIES

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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Defendants breached the implied warranties of merchantability. All commercial transactions have an implied warranty of merchantability requiring that products be of reasonable workmanlike quality and free from defects. Defendants gave an implied warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace vehicles after it became apparent they were defective and could be unsafe to drive.

At all times Plaintiffs and the Class relied on the implied warranty of merchantability as well as representations made by Defendants that their vehicles were reliable and of a quality that rendered them suitable for their intended use.

Defendants have breached its implied warranties to Plaintiffs and the Class in that the defective design of Toyota vehicles in question renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

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.

THIRD CAUSE OF ACTION

MISREPRESENTATION

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

The Defendants uniformly misrepresented the true cause of the unintended acceleration of Toyota vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making uniform, written, material misrepresentations that unintended acceleration of Toyota vehicles was caused by floor mats or faulty pedal designs. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles.

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Class Members foreseeably and permissibly relied upon the Defendant's uniform written misrepresentations when making a decision to purchase a vehicle. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Member 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.

Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

FOURTH CAUSE OF ACTION

NEGLIGENCE

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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 Plaintiff and Class Members.

Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its electronic throttle control (ETC) system such that 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 back up for their electronic throttle control system.

Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn that their vehicles were prone to unintended acceleration and/or that it might be difficult to disengage the throttle once the accelerator pedal had been pressed. Defendants also failed to adequately warn the Plaintiffs and Class Members how to disengage the accelerator pedal manually – by shifting to neutral

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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.

As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FIFTH CAUSE OF ACTION

PRODUCTS LIABILITY

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

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, Scion, Prius and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that their vehicles would be sold or leased and operated by consumers, including the Plaintiff and Class Members.

The defects in the Defendants' acceleration and braking equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonable danger for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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.

Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration and braking equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

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SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Defendants obtained monies from the marketing, labeling and/or sale of its vehicles and profited from the payment of the purchase price for Toyota's vehicles when the vehicles in question were not safe as Toyota purported them to be in deceptive, fraudulent and misleading labeling, advertising, marketing and sales.

Defendants have been unjustly enriched to the detriment of Plaintiffs and the Members of the Class by the retention of consumer's purchase.

Consumers conferred this enrichment on Defendants as a direct result of the failures, omissions and deceptive and fraudulent conduct of Defendants. 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. 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

UNFAIR COMPETITION

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Cal. Bus. & Prof. Code § 17200, permits Plaintiffs to remedy unfair, unlawful, or fraudulent practices: "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." Cal. Bus. & Prof. Code § 17203. Moreover, the situation authorizes any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition" to seek such an injunction. Cal. Bus. & Prof. Code § 17204. Toyota has engaged in unlawful, unfair and fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200.

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Toyota has known for many years that its vehicles had safety problems that could result in injury or death. Defendants failed to disclose these problems to the public, and in fact intentionally denied knowledge of safety defects.

Defendants made false or misleading statements and omissions about the safety of its vehicles in advertising, promotional materials and marketing efforts, and other communications with prospective buyers, owners and the public. Defendants concealed adverse information and misrepresented information at a time when they knew, or should have known, because they were in a superior position to know. Alternatively, Defendants made statements or omissions with reckless disregard for their truth or falsity.

The facts misrepresented, concealed or not fully disclosed were material.

Defendants made misrepresentations, failed to disclose information, or actively concealed information with the intention that the public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

Defendants should have reasonably known that consumers were likely to rely on the facts misrepresented or not disclosed.

Plaintiffs and Class Members reasonably relied on and were induced by Defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles. Plaintiffs and the Members of the Class sustained losses as a direct and proximate result of Defendants' misrepresentations or active concealment of information.

EIGHTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Toyota provided the Plaintiffs and other Members of the Class with written express warranties including, but not limited to, that the vehicles in question were safe

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to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

Toyota breached these express warranties, which resulted in damages to the Plaintiffs and other Members of the Class who overpaid for the vehicles, as the vehicles in question were not safe as they may contain defects that could cause serious injury or death, including defects to the accelerator and braking.

As a proximate result of the breach of warranties by Toyota, the Plaintiffs and Class Members suffered damages in an amount to be determined at trial. The Plaintiffs and Class Members paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled. 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.

The Plaintiffs and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Class Members also suffer in that not knowing if any repair made by Toyota will be successful in making their vehicles safe. Additionally, or in alternative, the Plaintiffs 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).

NINTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of its vehicles that they were safe to operate. Plaintiffs and Class Members bought the vehicles in question from Toyota, relying on Toyota's skill and judgment in

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furnishing suitable goods as well as Toyota's representations that the vehicles in question were safe to operate. However, Toyota's vehicles in question were not safe to operate as they may have had defects causing unintended acceleration and/or erratic braking conditions potentially resulting in injury and death.

Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class Members did not receive vehicles that were safe to operate as they possibly contained a defects that could potentially result in injury or death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaging, labeled or sold.

As a proximate result of this breach of warranty by Toyota, the 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 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 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. The Plaintiff and other Member of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

TENTH CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Plaintiffs' agreement with the Defendants includes not only express written provisions, but also terms and conditions, which although not formally expressed, are

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implied by the law. Such terms are as binding as the terms that are actually written in the agreement with the Plaintiff and Class Members.

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 inure the other party or compromise the benefit of the agreement.

The obligation of Defendants to abide by the covenant of good faith and fair dealing is heightened by the imbalance of power between Defendants and the Plaintiffs that allowed Defendants to engage in business as described in this Complaint.

Through the actions and inactions of the Defendants as outlined in this Complaint, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and Class Members.

As a proximate result of the breach of the covenant of good faith and fair dealing by Defendants, the Plaintiffs and Class Members have suffered damages in an amount to be determined at trial in that, among other things, they purchased or leased 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 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. The Plaintifsf and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

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ELEVENTH CAUSE OF ACTION

VIOLATION OF THE LANHAM ACT, 15 USC § 1125 (a))

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

As a result of Toyota's deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the vehicles in question described in detail above, violated the Lanham Act, 15 USC § 1125 (a).

The Defendants through their actions and inactions did deceive the Plaintiffs and Class Members into purchasing the vehicles in question. The Defendants violated this act through the use of advertising and marketing and statements that portrayed the vehicles in question as among other things, safe and reliable. This false and misleading advertising, misstatement of facts regarding the Defendant's products has caused the Plaintiffs and Class Members to purchase the vehicles in question which may actually be unsafe.

The Plaintiffs' use of the vehicles in question may result in injury or death. The vehicles on question would also have sold for and will continue to sell for, a lesser value because of the Defendant's violation of the Lanham Act as described above. As a result, the Plaintiffs and Class Members have been damaged by the acts of the Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follow:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. Compensatory damages in an amount to be determined at trial;

C. Punitive damages in an amount to be determined at trial;

D. Damages for reduced resale value of Toyota vehicles;

E. Damages for lost use of Toyota vehicles during repair;

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F. Damages Plaintiff and Class Members are required to pay from accidents resulting prior to repair of Toyota safety defects;

G. Legal interest;

H. Costs of suit incurred; and

I Such relief as the Court may deem just and proper.

DATED: February 15, 2010 By: _____

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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: February 15, 2010 By: _____

Dana B. Taschner
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Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) **PLAINTIFFS** (Check box if you are representing yourself ☐)	**DEFENDANTS**
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,	TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Dana B. Taschner, Esq., SBN 135494 dbt@lanierlawfirm.com LANIER LAW FIRM 2029 Century Park East, Suite 1400, Los Angeles CA (310)277-5100	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:** $ according 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.)

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

FOR OFFICE USE ONLY: Case Number: **SACV10-00183 JVS(ANX)**

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

TOY-RQ-05E-00012364

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): Wrongful death claims have been filed vs Toyota in various states and JPMDL may include Toyota Product Lit on 3/25/2010 docket.

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
Orange County - Beard Orange County - Nguyen	Honolulu, Hawaii - Salvador

(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
Los Angeles - Toyota Motor Sales	Japan - Toyota Motor Corporation

(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
Orange, Los Angeles	Honolulu, Hawaii

*** 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 2/__/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))

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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 James V. Selna and the assigned discovery Magistrate Judge is Arthur Nakazato.

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

SACV10- 183 JVS (ANx)

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:

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

[X] **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.

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Name & Address:
Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
310/277-5100 dbt@lanierlawfirm.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

PLAINTIFF(S)

v.

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

DEFENDANT(S).

CASE NUMBER

SACV10-00183 JVS(ANX)

SUMMONS

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

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Dana B Taschner, whose address is 2029 Century Park East, Suite 1400 Los Angeles CA 90067. 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: February 16, 2010

By: Nancy Cardo
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)].

TOY-RQ-05E-00012367

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Attorneys for Plaintiffs,
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

FILED
2010 FEB 26 PM 1:13
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
BY:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

V.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC. ; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive,

Defendants.

Case No. SACV10-00183 JVS (RNBx)

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1) **FRADULENT CONCEALMENT**
2) **BREACH OF IMPLIED WARRENTIES**
3) **MISREPRESENTATION**
4) **NEGLIGENCE**
5) **PRODUCTS LIABILITY**
6) **UNJUST ENRICHMENT**
7) **UNFAIR COMPETITION**
8) **BREACH OF EXPRESS WARRANTY**
9) **BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PUPOSE**
10) **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
11) **VIOLATION OF THE LANHAM ACT, 15 USC §1125 (a))**

DEMAND FOR JURY TRIAL

TOY-RQ-05E-00012368

CLASS ACTION COMPLAINT

Plaintiffs T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR ("Plaintiffs"), sue Defendants, TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.; and TOYOTA MOTOR SALES U.S.A., INC., on their own behalf and as representative plaintiffs for other consumers similarly situated submit this First Amended Class Action Complaint and allege as follows:

PARTIES

Plaintiff T. LEIGH BEARD is an individual consumer who purchased or leased a 2010 Toyota Camry SE, and is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff CATHERINE NGUYEN is an individual consumer who purchased or leased a 2009 TC Scion, who is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff MALINA SALVADOR is an individual consumer who purchased or leased a 2009 Toyota Sequoia and is a resident of the city and County of Honolulu, Hawaii.

Defendant, Toyota Motor Corporation, is 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.

Defendant, Toyota Motor North America, Inc., is a corporation organized and existing under the laws of the State of California with USA headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor North America, Inc., is a wholly owned subsidiary of Toyota Motor Corporation and is the holding company for all of its parent's North American operations, covering sales, engineering, and manufacturing subsidiaries.

Defendant, Toyota Motor Engineering & Manufacturing North America, Inc., is a corporation organized and existing under the laws of the state of Kentucky with USA headquarters located at 25 Atlantic Avenue, Erlanger, Kentucky 41018. Toyota Motor

Engineering & Manufacturing North America, Inc. is responsible for Toyota's engineering design, research and development, and manufacturing activities in the U.S., Canada and Mexico. It operates 14 parts and vehicle manufacturing plants across North America, producing vehicles including the Avalon, Camry, Corolla, Matrix, RAV4, Sienna, Sequoia, Tacoma, Tundra, Venza and the Lexus RX 350.

Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with USA headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc., markets, distributes, and sells Toyota, Prius, Scion, and Lexus vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, USA, Inc., are collectively referred herein to as "Toyota."

OVERVIEW & BACKGROUND

JURISDICTION AND VENUE

This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because Plaintiffs are residents of this jurisdiction and/or Defendants intentionally conduct substantial business and maintain offices within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

This District Court has jurisdiction over this class action under 18 U.S.C. § 13332(d). The provisions of the Class Action Fairness Act ("CAFA") provide for original jurisdiction of the Federal Courts of this class action. Plaintiffs allege that the total

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claims of individual class members in this action exceed $5,000,000 in the aggregated, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs allege that the total number of claimant members of the proposed class is over one million consumers and meets the requirements of 28 U.S.S. § 1332(d)(5)(B). Diversity of citizenship exists pursuant to CAFA 28 U.S.C. § 1332(d)(2)(A).

Venue in this District is proper under 28 U.S.C. § 1391. Toyota maintains primary offices in Torrance, California, located within the Central District of California. The Central District of California is believed to have the largest number of recalled Toyota vehicles of any judicial districts in the United States. A substantial part of the acts, events, or omissions giving rise to the claims occurred in the Central District. Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

Toyota Motor Corporation is the world's largest automobile manufacturer. Toyota reported more than $200 billion in worldwide sales for the fiscal year that ended in March 2009. Toyota manufactures numerous vehicles sold under various brand names including Toyota, Prius, Scion and Lexus. Toyota recently issued massive recalls for accelerator and braking problems. Since the fall of 2009, Toyota has issued approximately 9 million recall notices for problems related to unintended acceleration, with approximately 2 million vehicles subject to more than one recall. The recalls followed consumer reports of numerous crashes of Toyota vehicles causing injury and death and concerns about significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

Toyota initially blamed unintended acceleration on floor mats that could entrap the accelerator. As consumer complaints continued to mount and government officials investigated, Toyota eventually expanded possible factors causing unintended acceleration to include gas pedals that could stick.

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On information and belief, Plaintiffs allege that the causes of unintended acceleration are more than mechanical and include unsafe electronic defects in Toyota vehicles. On information and belief, plaintiffs allege Toyota was aware of safety problems with unintended acceleration for a significant period of time and intentionally failed to disclose the full scope of the problems fearing full disclosure and broadened safety recalls might harm Toyota's reputation and hurt its sales.

On information and belief, plaintiffs allege that Toyota failed to properly and timely remedy an unsafe and defective throttle control system known as drive-by-wire accelerator controls or Electronic Throttle Control System with Intelligence (ETCS-I) or Electronic Throttle Control System (ETCS) (collectively ETC) in multiple Toyota models. The unsafe and defective accelerators on the Toyota vehicles can make it difficult and sometimes impossible to stop the vehicle.

For many months Toyota officials firmly denied the possibility that the ETC could be the problem. On February 23, 2010, however, under questioning by the House Energy and Commerce Committee, James E. Lentz III, the president of Toyota Motor Sales U.S.A., finally admitted that the ETCS system might be at fault. Lentz acknowledged that fixing floor mats and sticking pedals under the current recalls would "not totally" solve the problem. Lentz said that 70 percent of complaints about unintended acceleration remained unexplained.

In the last decade, the electronic throttle system in many Toyota vehicles has used sensors, microprocessors and electronic motors instead of mechanical linkage or steel cable to connect the accelerator pedal to the throttle plate. When the ETC system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe back up in the event of a problem with the ETC system. Many other vehicle manufacturers use a "brake-to-idle override" that enables drivers to override the electronic throttle and control the vehicle in the event of sudden unintended acceleration. Toyota has failed to equip recent model vehicles with these safety features.

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Toyota's series of recalls relating to sudden unintended acceleration have failed to address the problem with the ETC system. Toyota sought to conceal the defect in its electronic throttle controls by publicly stating that sudden unintended acceleration in Toyota vehicles was caused by floor mats or by sticking accelerator pedals. On information and belief, Toyota was aware that floor mats or sticking accelerators were not the only cause of sudden unintended acceleration.

Internal Toyota documents turned over to the House Committee on Oversight and Government Reform as a result of congressional subpoenas now show that Toyota persuaded federal regulators to limit, delay, or avoid investigations, recalls, and rules, putting profit ahead of safety. The July 6, 2009, document shows that Toyota "negotiated" a limited recall in 2007 in an effort to avoid a deeper investigation into the acceleration problem, long before the problem became well known outside of the company and federal investigators. In the document, Toyota estimated it saved $100 million by negotiating with regulators for a limited recall of 2007 Toyota Camry and Lexus ES models for sudden acceleration. The estimate was in a confidential presentation listing legislative and regulatory "wins" for the company.

At a House Committee on Oversight and Government Reform on February 24, 2010, Yoshimi Inaba, Toyota's chief operating officer for North America, acknowledged that Toyota was aware of issues with sticking pedals in Europe for a year before accidents in the United States. Toyota executives in the United States have said they found out about sticking pedal issues only in October, 2009. The first reports of sticking pedals surfaced in Britain and Ireland in late 2008. By August 2009, Toyota began a production change on cars sold in Europe that was completed by January, weeks before it recalled millions of vehicles in the United States. Information about the problems in Europe was "not properly shared" Inaba admitted. "We need to do a much better job sharing what we knew in Europe with the United States to see if there is any danger to American consumers," Inaba said.

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On September 29, 2009, the National Highway Traffic Safety Administration (NHTSA) issued a warning to owners of Toyota and Lexus vehicles that: "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." 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.

The same day, Defendants launched a safety recall on eight Toyota and Lexus vehicles:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

Upon information and belief, these reports to NHTSA and the public were false and misleading as Toyota was aware that other vehicles were involved and that floor mats were not the sole cause of the sudden acceleration in many vehicles.

From September 2009, Defendants continued to receive numerous consumer reports of vehicles accelerating rapidly after release of the accelerator pedal, many of which were not included in the recall. Defendants continued to falsely claim that the incidents "appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying actual defects leading to the unintended acceleration.

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On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota. NHTSA said a press release put out by Toyota earlier that week 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 said: "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."

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 the sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Again Defendants incorrectly assured consumers that only certain models were involved:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

To avoid having to address the real problem with the "drive by wire" ETC system, Defendants said they would reconfigure the accelerator pedal, and in some cases, the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference. Defendants said they would develop replacement pedals for these vehicles. Defendants stated that they would provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

Although it had knowledge of continued reports of accelerator problems in other vehicles, Defendants stated that they would only replace floor mats in those vehicles identified in their recall and not other vehicles it sold.

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 were simultaneously applied.

At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a widespread defect in many if not all of its product line thereby leaving drivers of its vehicles at risk for sudden and unexpected acceleration.

A former Toyota lawyer responsible for handling safety litigation sued Toyota, disclosing that Toyota perpetrated a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a pattern and practice to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued another massive recall. As a result of the massive recalls and ongoing crisis, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmonds.com have noted pricing declines in the value of Toyota products. According

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to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmonds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. On information and belief, Toyota vehicle owners have been adversely impacted by the recalls in that the value of their vehicles has dropped. The estimated aggregate value loss for impacted Toyota owners exceeds $2 billion.

On February 24, 2010, at a House Oversight and Government Reform Committee, Akio Toyoda, Toyota's chief executive admitted that the company "pursued growth over the speed at which we were able to develop our people and our organization" and that it resulted in "safety issues described in the recalls we face today." Congressional investigators are now uncovering how Toyota management failed to properly and promptly follow through on early complaints, attempted to sway research and regulatory oversight, failed to disclose pertinent data, and may have attempted to limit the recalls even as it knew lives were at risk. In addition to Congressional investigations, a federal grand jury in New York and the Securities and Exchange Commission have issued a subpoena to Toyota in order to "produce certain documents related to unintended acceleration of Toyota vehicles and the braking system of the Prius." Japan's government said on February 24, 2010, that it would investigate 38 previously reviewed reports of unintended acceleration by Toyota cars in Japan in response to the concerns over the company's safety record. Faith in the company's commitment to those who drive its vehicles has been shaken.

On information and belief Plaintiffs allege that Toyota knew its product was susceptible to malfunction that could result in unintended acceleration and braking conditions and serious safety issues including injury and death. On information and belief, Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

Plaintiffs have received Toyota recall notices and are unable to safely operate their vehicles due to the safety problems. On information and belief the value of all

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Toyota vehicles subject to any recall, and possibly other Toyota vehicles as well, have declined.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. According to the *LA Times*, which relied upon statements by Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte located within this Judicial District, dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, place or modify vehicles. While Toyota may be finally addressing some of the colossal safety issues in terms of repairing, replacing, or modifying vehicles, no provision has been made to preserve the defect parts and systems being repaired or altered in the subject Toyota vehicles. With the number of lawsuits against Toyota for fraud, concealment and product liability mounting, the component parts and systems being removed from Toyota vehicles is critical evidence that needs to be preserved, cataloged and examined in ongoing litigation.

CLASS ALLEGATIONS

Plaintiffs repeat and reallege all preceding paragraphs, as fully set forth herein.

Pursuant to F.R.C.P. 23, Plaintiffs brings this action on behalf of themselves, all other consumers who purchased a Toyota vehicle subject to a safety recall for sudden unintended acceleration ("Class") (class is defined as "A" owners of Toyota models and model years subject to recall for unintended acceleration and "B" owners of Toyota models and models years with unintended throttle activation reports that have not been included in any Toyota recall and "C" all persons who suffered economic loss as a result of the Toyota recalls including but not limited to those who own or lease a Toyota vehicle). 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 Toyota

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vehicles for their intended and foreseeable purpose as promoted, marketed, advertised, packaged, labeled and sold by Toyota. The relief sought herein is for the benefit of the Plaintiffs and Members of the putative Class. Plaintiffs allege that the Class of millions of consumers is so numerous that joinder of all members would be impractical.

With millions of vehicles subject to recall joinder is not practical. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members.

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TOYOTA MODEL AND MODEL YEARS SUBJECT TO RECALL

MODEL	MODEL YEARS
Toyota Camry	2002 – 2006
Lexus ES	2002 – 2010
Toyota Tacoma	2003 – 2010
Toyota Prius	2001 – 2010
Toyota Sienna	2004 – 2010
Toyota Rav4	2004 – 2008
Toyota Tundra	2001 – 2006
Toyota Highlander	2004 – 2010
Toyota Solara	2003 – 2008
Toyota Corolla	2005 – 2008
Toyota 4-Runner	2001 – 2010
Lexus IS250	2006 – 2010
Lexus RX	2004 – 2010
Toyota Sequoia	2001 – 2007
Lexus GS 3 Series	2001 – 2010
Lexus IS300 & 350	2002 – 2010

"A"

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MODELS AND MODEL YEARS WITH UNINTENDED THROTTLE ACTIVATION REPORTS THAT ARE NOT INCLUDED IN ANY RECALL

MODEL	MODEL YEARS	ANY RECALL MODEL/MODEL YEAR	NON-RECALL MODEL/MODEL YEAR
Camry	2002 – 2006		344
	2007 – 2010	166	
Lexus ES	2002 – 2006		88
	2007 – 2010	58	
Tacoma	2003 – 2004		11
	2005 – 2010	120	
Prius	2001 – 2003		6
	2004 – 2010	85	
Avalon	2005 – 2010	52	
Sienna	2004 – 2010		45
Rav4	2004 – 2008		41
	2009 – 2010	3	
Tundra	2001 – 2006		21
	2007 – 2010	17	
Highlander	2004 – 2007		31
	2008 – 2010	4	
Solara	2003 – 2008		30
Corolla	2005 – 2008		18
	2009 – 2010	6	
4-Runner	2001 – 2010		23
Lexus IS250	2006 – 2010	16	
Lexus RX	2004 – 2010		15
Sequoia	2001 – 2007		13
	2008 – 2010	1	
Lexus GS 3 Series	2002 – 2005		8
	2006 – 2010	1	

"B"

The claims asserted by the Plaintiffs in this action are typical of the claims of other Class Members as the claims arise from the same tortuous conduct by Toyota. Common relief is sought.

The Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and highly experienced in consumer protection claims and class action litigation.

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 Member 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 the claims. Absent a class action remedy, it is almost certain that the Plaintiffs and of the Class Members would be unable to protect their interests because of the cost and complexity of litigation. Certification is appropriate as a final relief with respect to the Class as a whole can be achieved, and a class action avoids the risk of inconsistent and conflicting adjudications.

A class action is fair and appropriate method for the adjudication of this controversy. Millions of claims will be resolved in a single forum without the unnecessary hardship that will result from prosecution of numerous individual actions, duplication of discovery, expense, and burden on the judicial system. The benefits of proceeding as a class action, including providing a method for obtaining redress for compensation, repair, trade-in and other claims that are not practical to pursue individually, outweigh any difficulties that might present with regard to the management of this class action.

CLASS ACTION ALLEGATIONS

The Plaintiffs are Members of the Class they seek to represent and claims are typical of the claims of the other Class Members. The Plaintiffs own or lease 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 or leased a vehicle with defects such as a defective throttle control system and the defects have been fraudulently concealed from the Plaintiffs and Class Members.

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.

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.

Plaintiffs seeks 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.

Because the Plaintiffs seeks injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

TOY-RQ-05E-00012383

FIRST CAUSE OF ACTION

FRAUDULENT CONCEALMENT

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint. Throughout the Class Period, the Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. Defendants affirmatively concealed the fact that the ETC was defective. The Defendants omitted to inform Class Members that the true defect was in the ETC and in the failure of the Defendants to include safety override controls.

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. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles, but delayed and failed to do so.

Toyota concealed facts relating to the accelerator and braking systems of the vehicles in question when they knew, or had reason to know, the true and correct facts regarding the defects, and Toyota took steps to prevent these facts from becoming known to the public in the marketing, promotion and sale of the vehicles. The concealment of the true facts, from the Plaintiffs and other Member of the Class, was done with the intent to induce the Plaintiffs and Class Members to purchase the vehicles in question.

As a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein, the running statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring. The Plaintiffs and Class Members had no knowledge of the Defendants' unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing, until shortly before the Complaint was filed. The reliance by the Plaintiffs and Class members was reasonable and justified in that Toyota appeared to be, and

represented itself to be, a reputable business. The Plaintiffs and Class Members would not have purchased the vehicles in question had they known the true facts about the vehicles that possible defects could result in potential injury or death.

As a direct and proximate result of the fraud and deceit alleged, the Plaintiffs and Class Members were induced to purchase the vehicles in question, and they used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the vehicles in question as set forth in detail above were defective before it issued a recall. Toyota intended that its customers rely on its representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the vehicles in question, in inducing customers to purchase such vehicles.

Plaintiffs and other Members of the Class, in purchasing or leasing and using the vehicles in question, did rely on Toyota's representations and suppression of facts, and suffered damage as a result. In taking these actions, Toyota was guilty of malice, oppression and fraud, and the Plaintiffs and Class Members are, therefore, entitled to recover punitive damages.

Additionally, or in the alternative, the Plaintiffs and other Members of the Class suffered actual damages, including a diminution of value of their 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), plus further diminution based upon Toyota's actions.

SECOND CAUSE ACTION

BREACH OF IMPLIED WARRANTIES

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Defendants breached the implied warranties of merchantability. All commercial transactions have an implied warranty of merchantability requiring that products be of reasonable workmanlike quality and free from defects. Defendants gave an implied warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace vehicles after it became apparent they were defective and could be unsafe to drive.

At all times Plaintiffs and the Class relied on the implied warranty of merchantability as well as representations made by Defendants that their vehicles were reliable and of a quality that rendered them suitable for their intended use.

Defendants have breached its implied warranties to Plaintiffs and the Class in that the defective design of Toyota vehicles in question renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

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.

THIRD CAUSE OF ACTION

MISREPRESENTATION

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

The Defendants uniformly misrepresented the true cause of the unintended acceleration of Toyota vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making uniform, written, material misrepresentations that unintended acceleration of Toyota vehicles was caused by floor mats or faulty pedal designs. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles.

TOY-RQ-05E-00012386

Class Members foreseeably and permissibly relied upon the Defendant's uniform written misrepresentations when making a decision to purchase a vehicle. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Member 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.

Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

FOURTH CAUSE OF ACTION

NEGLIGENCE

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Defendants had a duty to the Plaintiffs and Class Members to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA, Plaintiffs and Class Members of the true nature of the defective design of the Defendants' vehicles. Defendants failed to fulfill this duty to the Plaintiffs and Class Members.

Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its electronic throttle control (ETC) system such that 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 back up for their electronic throttle control system.

Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn that their vehicles were prone to unintended acceleration and/or that it might be difficult to disengage the throttle once the accelerator pedal had been pressed. Defendants also failed to adequately warn the Plaintiffs and Class

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Members how to disengage 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.

As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FIFTH CAUSE OF ACTION

PRODUCTS LIABILITY

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

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, Scion, Prius and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that their vehicles would be sold or leased and operated by consumers, including the Plaintiffs and Class Members.

The defects in the Defendants' acceleration and braking equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonable danger for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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.

Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration and braking equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Defendants obtained monies from the marketing, labeling and/or sale of its vehicles and profited from the payment of the purchase price for Toyota's vehicles when the vehicles in question were not safe as Toyota purported them to be in deceptive, fraudulent and misleading labeling, advertising, marketing and sales.

Defendants have been unjustly enriched to the detriment of Plaintiffs and the Members of the Class by the retention of consumer's purchase.

Consumers conferred this enrichment on Defendants as a direct result of the failures, omissions and deceptive and fraudulent conduct of Defendants. 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. 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

UNFAIR COMPETITION

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Cal. Bus. & Prof. Code § 17200, permits Plaintiffs to remedy unfair, unlawful, or fraudulent practices: "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." Cal. Bus. & Prof. Code § 17203. Moreover, the situation authorizes any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition" to

seek such an injunction. Cal. Bus. & Prof. Code § 17204. Toyota has engaged in unlawful, unfair and fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200.

Toyota has known for many years that its vehicles had safety problems that could result in injury or death. Defendants failed to disclose these problems to the public, and in fact intentionally denied knowledge of safety defects.

Defendants made false or misleading statements and omissions about the safety of its vehicles in advertising, promotional materials and marketing efforts, and other communications with prospective buyers, owners and the public. Defendants concealed adverse information and misrepresented information at a time when they knew, or should have known, because they were in a superior position to know. Alternatively, Defendants made statements or omissions with reckless disregard for their truth or falsity.

The facts misrepresented, concealed or not fully disclosed were material.

Defendants made misrepresentations, failed to disclose information, or actively concealed information with the intention that the public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

Defendants should have reasonably known that consumers were likely to rely on the facts misrepresented or not disclosed.

Plaintiffs and Class Members reasonably relied on and were induced by Defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles. Plaintiffs and the Members of the Class sustained losses as a direct and proximate result of Defendants' misrepresentations or active concealment of information.

EIGHTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

TOY-RQ-05E-00012390

Toyota provided the Plaintiffs and other Members of the Class with written express warranties including, but not limited to, that the vehicles in question were safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

Toyota breached these express warranties, which resulted in damages to the Plaintiffs and other Members of the Class who overpaid for the vehicles, as the vehicles in question were not safe as they may contain defects that could cause serious injury or death, including defects to the accelerator and braking.

As a proximate result of the breach of warranties by Toyota, the Plaintiffs and Class Members suffered damages in an amount to be determined at trial. The Plaintiffs and Class Members paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled. 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.

The Plaintiffs and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Class Members also suffer in that not knowing if any repair made by Toyota will be successful in making their vehicles safe. Additionally, or in alternative, the Plaintiffs 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).

NINTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

TOY-RQ-05E-00012391

Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of its vehicles that they were safe to operate. Plaintiffs and Class Members bought the vehicles in question from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the vehicles in question were safe to operate. However, Toyota's vehicles in question were not safe to operate as they may have had defects causing unintended acceleration and/or erratic braking conditions potentially resulting in injury and death.

Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class Members did not receive vehicles that were safe to operate as they possibly contained a defects that could potentially result in injury or death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaging, labeled or sold.

As a proximate result of this breach of warranty by Toyota, the 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 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 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. The Plaintiffs and other Member of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

TOY-RQ-05E-00012392

TENTH CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Plaintiffs' agreement with the Defendants includes not only express written provisions, but also terms and conditions, which although not formally expressed, are implied by the law. Such terms are as binding as the terms that are actually written in the agreement with the Plaintiffs and Class Members.

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 inure the other party or compromise the benefit of the agreement.

The obligation of Defendants to abide by the covenant of good faith and fair dealing is heightened by the imbalance of power between Defendants and the Plaintiffs that allowed Defendants to engage in business as described in this Complaint.

Through the actions and inactions of the Defendants as outlined in this Complaint, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and Class Members.

As a proximate result of the breach of the covenant of good faith and fair dealing by Defendants, the Plaintiffs and Class Members have suffered damages in an amount to be determined at trial in that, among other things, they purchased or leased 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 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. The Plaintiffs and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

ELEVENTH CAUSE OF ACTION

VIOLATION OF THE LANHAM ACT, 15 USC § 1125 (a))

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

As a result of Toyota's deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the vehicles in question described in detail above, violated the Lanham Act, 15 USC § 1125 (a).

The Defendants through their actions and inactions did deceive the Plaintiffs and Class Members into purchasing the vehicles in question. The Defendants violated this act through the use of advertising and marketing and statements that portrayed the vehicles in question as among other things, safe and reliable. This false and misleading advertising, misstatement of facts regarding the Defendant's products has caused the Plaintiffs and Class Members to purchase the vehicles in question, which may actually be unsafe.

The Plaintiffs' use of the vehicles in question may result in injury or death. The vehicles on question would also have sold for and will continue to sell for, a lesser value because of the Defendant's violation of the Lanham Act as described above. As a result, the Plaintiffs and Class Members have been damaged by the acts of the Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follow:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. Compensatory damages in an amount to be determined at trial;

C. Punitive damages in an amount to be determined at trial;

D. Damages for reduced resale value of Toyota vehicles;

E. Damages for lost use of Toyota vehicles during repair;

F. Damages Plaintiffs and Class Members are required to pay from accidents resulting prior to repair of Toyota safety defects;

G. Legal interest;

H. Attorneys' fees allowed by statute including but not limited to the Lanham Act;

I. Costs of suit incurred; and

J. Such relief as the Court may deem just and proper.

DATED: February 26, 2010 By: _____

Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: February 26, 2010 By: _____

Dana B. Taschner
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
Attorneys for Plaintiffs

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)
DANA B. TASCHNER, ESQ., SBN 135494
LANIER LAW FIRM
2029 CENTURY PARK EAST, SUITE 1450
LOS ANGELES, CA 90067
(310)277-5100

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated PLAINTIFF(S), v.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC.; TOYOTA MOTOR SALES U.S.A., INC.; and DOES 1 through 10 inclusive DEFENDANT(S).

CASE NUMBER
SACV10-00183 JVS (RNBx)

PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of LOS ANGELES, State of California, and not a party to the above-entitled cause. On FEBRUARY 26, 20 10, I served a true copy of FIRST AMENDED CLASS ACTION COMPLAINT; NOTICE OF MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES by personally delivering it to the person (s) indicated below in the manner as provided in FRCivP 5(b); by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach additional pages if necessary.) SEE ATTACHMENT

Place of Mailing: ORANGE COUNTY, CALIFORNIA
Executed on FEBRUARY 26, 20 10 at SANTA ANA, California

Please check one of these boxes if service is made by mail:

☐ I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.
☒ I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
☐ I hereby certify under the penalty of perjury that the foregoing is true and correct.

Signature of Person Making Service

ACKNOWLEDGEMENT OF SERVICE

I, _____, received a true copy of the within document on _____.

Signature *Party Served*

CT CORPORATION SYSTEM
818 WEST SEVENTH ST.
LOS ANGELES, CA 90017

REGISTERED AGENT FOR SERVICE OF PROCESS FOR:
TOYOTA MOTOR NORTH AMERICA, INC.,
TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC.
AND TOYOTA MOTOR SALES U.S.A., INC.

CT Corporation

Service of Process Transmittal

02/24/2010
CT Log Number 516205448

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:	T. Leigh Beard, et al., Pltfs vs. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Notice(s), Cover Sheet, Certification and Notice, Class Action Complaint, Initial Order, Order, Supplemental Declaration, Exhibit, Attachment(s), (Proposed) Order, Memorandum
COURT/AGENCY:	California, U.S. District Court, Central District of California, CA Case # SACV1000183JVSANX
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Unintended acceleration on Toyota vehicles
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 02/23/2010 at 14:25
APPEARANCE OR ANSWER DUE:	Within 20 days after service (not counting the day you received it)
ATTORNEY(S) / SENDER(S):	Dana B. Taschner Lanier Law Firm 2029 Century Park East Ste 1450 Los Angeles, CA 90067 310-277-5100
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex Standard Overnight , 792820192328 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

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

2/23/10
2:25pm

Name & Address:
Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
310/277-5100 dbt@lanierlawfirm.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated, PLAINTIFF(S) v. TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC. DEFENDANT(S).	CASE NUMBER **SACV10-00183 JVS(ANX)** **SUMMONS**

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

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Dana B Taschner, whose address is 2029 Century Park East, Suite 1400 Los Angeles CA 90067. 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: February 16, 2010

By: Nancy Cadena
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)].

TOY-RQ-05E-00012399

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 James V. Selna and the assigned discovery Magistrate Judge is Arthur Nakazato.

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

SACV10- 183 JVS (ANx)

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:

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

[X] **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-00012400

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)	DEFENDANTS
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,	TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Dana B. Taschner, Esq., SBN 135494 dbt@lanierlawfirm.com LANIER LAW FIRM 2029 Century Park East, Suite 1400, Los Angeles CA (310)277-5100	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: $ according 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.)

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
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FOR OFFICE USE ONLY: Case Number: **SACV10-00183 JVS(ANX)**

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

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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): Wrongful death claims have been filed vs Toyota in various states and JPMDL may include Toyota Product Lit on 3/25/2010 docket.

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
Orange County - Beard Orange County - Nguyen	Honolulu, Hawaii - Salvador

(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
Los Angeles - Toyota Motor Sales	Japan - Toyota Motor Corporation

(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
Orange, Los Angeles	Honolulu, Hawaii

*** 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 2/__/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))

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NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER
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ATTORNEYS FOR: PLAINTIFFS

FILED
2010 FEB 16 AM 8:39
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T LEGATTEAU, CATHERINE NGUYEN, MARINA SALVADOR

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA, INC.

Defendant(s)

CASE NUMBER
SACV10-00183 JVS(ANX)

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 PLAINTIFF (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
T LEGATTEAU	PLAINTIFF
CATHERINE NGUYEN	PLAINTIFF
MARINA SALVADOR	PLAINTIFF
TOYOTA MOTOR CORPORATION	DEFENDANT
TOYOTA MOTOR SALES USA INC	DEFENDANT
DANA TASHNER	ATTORNEY FOR PLAINTIFF

2/16/2010
Date

Sign

DANA B TASHNER

Attorney of record for or party appearing in pro per

TOY-RQ-05E-00012403

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T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

FILED
2010 FEB 16 AM 8:39
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

V.

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

Defendants.

CASE NO. SACV10-00183 JVS(ANX)

CLASS ACTION COMPLAINT FOR:
1) FRADULENT CONCEALMENT
2) BREACH OF IMPLIED WARRENTIES
3) MISREPRESENTATION
4) NEGLIGENCE
5) PRODUCTS LIABILITY
6) UNJUST ENRICHMENT
7) UNFAIR COMPETITION
8) BREACH OF EXPRESS WARRANTY
9) BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
10) BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PUPOSE
11) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
12) VIOLATION OF THE LANHAM ACT, 15 USC §1125 (a))

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiffs T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR ("Plaintiffs"), sue Defendants, TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., on their own behalf and as representative plaintiffs for other consumers similarly situated and alleges as follows:

PARTIES

Plaintiff T. LEIGH BEARD is an individual consumer who purchased or leased a 2010 Toyota Camry SE, and is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff CATHERINE NGUYEN is an individual consumer who purchased or leased a 2009 TC Scion, who is a resident of Orange County, located in the Central District of California, and the State of California. Plaintiff MALINA SALVADOR is an individual consumer who purchased or leased a 2009 Toyota Sequoia and is a resident of the city and County of Honolulu, Hawaii.

Defendant, Toyota Motor Corporation, is 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.

Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with USA headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc., markets, distributes, and sells Toyota, Prius, Scion, and Lexus vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are collectively referred herein to as "Toyota."

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OVERVIEW & BACKGROUND

JURISDICTION AND VENUE

This Court has jurisdiction over the parties and subject matter of this litigation. This Court has personal jurisdiction over the Parties to this litigation because Plaintiffs are residents of this jurisdiction and/or Defendants intentionally conduct substantial business and maintain offices within this jurisdiction such that they may reasonably anticipate being hailed into court in this jurisdiction.

Venue is proper in this jurisdiction because one or more of the Parties resides in this jurisdiction and many of the acts complained of herein occurred within this jurisdiction.

This District Court has jurisdiction over this class action under 18 U.S.C. § 13332(d). The provisions of the Class Action Fairness Act ("CAFA") provide for original jurisdiction of the Federal Courts of this class action. Plaintiffs allege that the total claims of individual class members in this action exceed $5,000,000 in the aggregated, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiffs allege that the total number of claimant members of the proposed class is over one million consumers and meets the requirements of 28 U.S.S. § 1332(d)(5)(B). Diversity of citizenship exists pursuant to CAFA 28 U.S.C. § 1332(d)(2)(A).

Venue in this District is proper under 28 U.S.C. § 1391. Toyota maintains primary offices in Torrance, California, located within the Central District of California. The Central District of California is believed to have the largest number of recalled Toyota vehicles of any judicial districts in the United States. A substantial part of the acts, events, or omissions giving rise to the claims occurred in the Central District. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

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FACTUAL ALLEGATIONS

Toyota Motor Corporation is the world's largest automobile manufacturer. Toyota reported more than $200 billion in worldwide sales for the fiscal year that ended in March 2009. Toyota manufactures numerous vehicles sold under various brand names including Toyota, Prius, Scion and Lexus. Toyota recently issued massive recalls for accelerator and braking problems. Since the fall of 2009, Toyota has issued 10 million recall notices for problems related to unintended acceleration, with approximately 2 million vehicles subject to more than one recall. The recalls followed consumer reports of numerous crashes of Toyota vehicles causing injury and death and concerns about significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

Toyota initially blamed unintended acceleration on floor mats that could entrap the accelerator. As consumer complaints continued to mount and government officials investigated, Toyota eventually expanded possible factors causing unintended acceleration to include gas pedals that could stick.

On information and belief, Plaintiffs allege that the causes of unintended acceleration are more than mechanical and include unsafe electronic defects in Toyota vehicles. On information and belief, plaintiffs allege Toyota was aware of safety problems with unintended acceleration for a significant period of time and intentionally failed to disclose the full scope of the problems fearing full disclosure and broadened safety recalls might harm Toyota's reputation and hurt its sales.

On information and belief, plaintiffs allege that Toyota failed to properly and timely remedy an unsafe and defective throttle control system known as drive-by-wire accelerator controls or Electronic Throttle Control System with Intelligence ("ETCS-I") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple Toyota models. The unsafe and defective accelerators on the Toyota vehicles can make it difficult and sometimes impossible to stop the vehicle.

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In the last decade, the electronic throttle system in many Toyota vehicles has used sensors, microprocessors and electronic motors instead of mechanical linkage or steel cable to connect the accelerator pedal to the throttle plate. When the ETC system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe back up in the event of a problem with the ETC system. Many newer vehicles made by Toyota have no such failsafe. In addition, although many vehicle manufacturers use a safety feature know as "brake-to-idle override" that enables drivers to override the electronic throttle and control the vehicle in the event of sudden unintended acceleration, Toyota has failed to equip vehicles with this safety feature.

Recently Toyota began a series of product recalls relating to sudden unintended acceleration that have failed to address the problem with the ETC system. Toyota sought to conceal the defect in its electronic throttle controls by publicly stating that sudden unintended acceleration in Toyota vehicles was caused by floor mats. On information and belief, Toyota was aware that floor mats were not the cause of sudden unintended acceleration.

On September 29, 2009, the National Highway Traffic Safety Administration (NHTSA) issued a warning to owners of Toyota and Lexus vehicles that: "Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem." 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.

The same day, Defendants launched a safety recall on eight Toyota and Lexus vehicles:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra

- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

Upon information and belief, these reports to NHTSA and the public were false and misleading as Toyota was aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

From September, 2009, Defendants continued to receive numerous consumer reports of vehicles accelerating rapidly after release of the accelerator pedal, many of which were not included in the recall. Defendants continued to falsely claim that the incidents "appear to be related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition." During the following 60 days Defendants issued false and misleading reports denying actual defects leading to the unintended acceleration.

On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota. NHTSA said a press release put out by Toyota earlier that week 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 said: "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."

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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 the 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 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

To avoid having to address the real problem with the "drive by wire" ETC system, Defendants said they would reconfigure the accelerator pedal, and in some cases, the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference. Defendants said they would develop replacement pedals for these vehicles. Defendants stated that they would provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

Although it had knowledge of continued reports of accelerator problems in other vehicles, Defendants stated that they would only replace floor mats in those vehicles indentified in their recall and not other vehicles it sold.

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

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confidence." The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals were simultaneously applied.

At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problems was a widespread defect in many if not all of its product line thereby leaving drivers of its vehicles at risk for sudden and unexpected acceleration.

While publicly blaming floor mats for their sudden unintended acceleration problem, Defendants have recently indicated that they are considering software changes to the onboard computer systems as a solution to the sudden and unintended acceleration. The considered software change would cause the accelerator to disengage whenever the brakes are engaged.

A former Toyota lawyer responsible for handling safety litigation sued Toyota, disclosing that Toyota perpetrated a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a pattern and practice to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmonds.com have commenced pricing declines in the value of Toyota products. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmonds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. On information and belief, Toyota vehicle owners have been adversely impacted by the recalls in that the value of their vehicles has dropped. The estimated aggregate value loss for impacted Toyota owners exceeds $2 Billion.

On information and belief Plaintiffs allege that Toyota knew its product was susceptible to malfunction that could result in unintended acceleration and braking

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conditions and serious safety issues including injury and death. On information and belief, Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

Plaintiffs have received Toyota recall notices and are unable to safely operate their vehicles due to the safety problems. On information and belief the value of all Toyota vehicles subject to any recall, and possibly other Toyota vehicles as well, have declined.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. According to the *LA Times*, which relied upon statements by Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte located within this Judicial District, dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, place or modify vehicles. While Toyota may be finally addressing some of the colossal safety issues in terms of repairing, replacing, or modifying vehicles, no provision has been made to preserve the defect parts and systems being repaired or altered in the subject Toyota vehicles. With the number of lawsuits against Toyota for fraud, concealment and product liability mounting, the component parts and systems being removed from Toyota vehicles is critical evidence that needs to be preserved, cataloged and examined in ongoing litigation.

CLASS ALLEGATIONS

Plaintiffs repeat and reallege all preceding paragraphs, as fully set forth herein.

Pursuant to F.R.C.P. 23, Plaintiffs brings this action on behalf of themselves, all other consumers who purchased a Toyota vehicle subject to a safety recall for sudden unintended acceleration ("Class") (class is defined as "A" Toyota models and model years subject to recall for unintended acceleration and "B" Toyota models and models

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years with Unintended Throttle Activation Reports that have not been included in any Toyota recall and "C" all persons who suffered economic loss as a result of the Toyota recall including but not limited to those who own or lease a Toyota vehicle). 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 Toyota vehicles for their intended and foreseeable purpose as promoted, marketed, advertised, packaged, labeled and sold by Toyota. The relief sought herein is for the benefit of the Plaintiffs and Members of the putative Class. Plaintiffs allege that the Class of millions of consumers is so numerous that joinder of all members would be impractical.

With millions of vehicles subject to recall joinder is not practical. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members.

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TOYOTA MODEL AND MODEL YEARS SUBJECT TO RECALL

MODEL	MODEL YEARS
Toyota Camry	2002 – 2006
Lexus ES	2002 – 2010
Toyota Tacoma	2003 – 2010
Toyota Prius	2001 – 2010
Toyota Sienna	2004 – 2010
Toyota Rav4	2004 – 2008
Toyota Tundra	2001 – 2006
Toyota Highlander	2004 – 2010
Toyota Solara	2003 – 2008
Toyota Corolla	2005 – 2008
Toyota 4-Runner	2001 – 2010
Lexus IS250	2006 – 2010
Lexus RX	2004 – 2010
Toyota Sequoia	2001 – 2007
Lexus GS 3 Series	2001 – 2010
Lexus IS300 & 350	2002 – 2010

"A"

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MODELS AND MODEL YEARS WITH UNINTENDED THORTTLE ACTIVATION REPORTS THAT ARE NOT INCLUDED IN ANY RECALL

MODEL	MODEL YEARS	ANY RECALL MODEL/MODEL YEAR	NON-RECALL MODEL/MODEL YEAR
Camry	2002 – 2006		344
	2007 – 2010	166	
Lexus ES	2002 – 2006		88
	2007 – 2010	58	
Tacoma	2003 – 2004		11
	2005 – 2010	120	
Prius	2001 – 2003		6
	2004 – 2010	85	
Avalon	2005 – 2010	52	
Sienna	2004 – 2010		45
Rav4	2004 – 2008		41
	2009 – 2010	3	
Tundra	2001 – 2006		21
	2007 – 2010	17	
Highlander	2004 – 2007		31
	2008 – 2010	4	
Solara	2003 – 2008		30
Corolla	2005 – 2008		18
	2009 – 2010	6	
4-Runner	2001 – 2010		23
Lexus IS250	2006 – 2010	16	
Lexus RX	2004 – 2010		15
Sequoia	2001 – 2007		13
	2008 – 2010	1	
Lexus GS 3 Series	2002 – 2005		8
	2006 – 2010	1	

"B"

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The claims asserted by the Plaintiffs in this action are typical of the claims of other Class members as the claims arise from the same tortuous conduct by Toyota. Common relief is sought.

The Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained counsel competent and highly experienced in consumer protection claims and class action litigation.

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 member 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 the claims Absent a class action remedy, it is almost certain that the Plaintiffs and of the Class Members would be unable to protect their interests because of the cost and complexity of litigation. Certification is appropriate as a final relief with respect to the Class as a whole can be achieved and a class action avoids the risk of inconsistent and conflicting adjudications.

A class action is fair and appropriate method for the adjudication of this controversy. Millions of claims will be resolved in a single forum without the unnecessary hardship that will result from prosecution of numerous individual actions, duplication of discovery, expense, and burden on the judicial system. The benefits of proceeding as a class action, including providing a method for obtaining redress for compensation, repair, trade-in and other claims that are not practical to pursue individually outweigh any difficulties that might present with regard to the management of this class action.

CLASS ACTION ALLEGATIONS

The Plaintiffs are Members of the Class they seek to represent and claims are typical of the claims of the other Class Members. The Plaintiffs own or lease a vehicle

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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 or leased a vehicle containing a defective throttle control system and the defect has been fraudulently concealed from the Plaintiffs and Class Members.

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.

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.

Plaintiffs seeks 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.

Because the Plaintiffs seeks injunctive relief and corresponding declaratory relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Members of the Class and would, as a practical matter, be dispositive of the interests of absentee Class Members who are not parties to the adjudication and may impair and impede the absentee Class Members' ability to protect their interests.

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FIRST CAUSE OF ACTION

FRAUDULENT CONCEALMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint. Throughout the Class Period, the Defendants affirmatively misrepresentec that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. Defendants affirmatively concealed the fact that the ETC was defective. The Defendants omitted to inform Class Members that the true defect was in the ETC and in the failure of the Defendants to include safety override controls.

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. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles, but delayed and failed to do so.

Toyota concealed facts relating to the accelerator and braking systems of the vehicles in question when they knew, or had reason to know, the true and correct facts regarding the defects, and Toyota took steps to prevent these facts from becoming known to the public in the marketing, promotion and sale of the vehicles. The concealment of the true facts, from the Plaintiffs and other Member of the Class, was done with the intent to induce the Plaintiffs and Class Members to purchase the vehicles in question.

As a result of the unlawful and fraudulent concealment and course of conduct of the Defendants as alleged herein, the running statute of limitations has been suspended with respect to any claims that the Plaintiffs or Class Members have brought or could bring. The Plaintiff and Class Members had no knowledge of the Defendants' unlawful conduct, or any of the facts that might have lead to the discovery of the Defendants' wrongdoing, until shortly before the Complaint was filed. The reliance by the Plaintiffs and Class members was reasonable and justified in that Toyota appeared to be, and

represented itself to be, a reputable business. The Plaintiffs and Class Members would not have purchased the vehicles in question had they known the true facts about the vehicles that possible defects could result in potential injury or death.

As a direct and proximate result of the fraud and deceit alleged, the Plaintiffs and Class Members were induced to purchase the vehicles in question, and they used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the vehicles in question as set forth in detail above were defective before it issued a recall. Toyota intended that its customers rely on its representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the vehicles in question, in inducing customers to purchase such vehicles.

Plaintiffs and other Members of the Class, in purchasing or leasing and using the vehicles in question, did rely on Toyota's representations and suppression of facts, and suffered damage as a result. In taking these actions, Toyota was guilty of malice, oppression and fraud, and the Plaintiffs and Class Members are, therefore, entitled to recover punitive damages.

Additionally, or in the alternative, the Plaintiffs and other Members of the Class suffered actual damages, including a diminution of value of their 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), plus further diminution based upon Toyota's actions.

SECOND CAUSE ACTION

BREACH OF IMPLIED WARRANTIES

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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Defendants breached the implied warranties of merchantability. All commercial transactions have an implied warranty of merchantability requiring that products be of reasonable workmanlike quality and free from defects. Defendants gave an implied warranted to the Plaintiffs and the Class that their vehicles were of merchantable quality. The Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace vehicles after it became apparent they were defective and could be unsafe to drive.

At all times Plaintiffs and the Class relied on the implied warranty of merchantability as well as representations made by Defendants that their vehicles were reliable and of a quality that rendered them suitable for their intended use.

Defendants have breached its implied warranties to Plaintiffs and the Class in that the defective design of Toyota vehicles in question renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these vehicles.

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.

THIRD CAUSE OF ACTION

MISREPRESENTATION

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

The Defendants uniformly misrepresented the true cause of the unintended acceleration of Toyota vehicles. The Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants breached their duty by making uniform, written, material misrepresentations that unintended acceleration of Toyota vehicles was caused by floor mats or faulty pedal designs. The Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of the Defendants' vehicles.

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Class Members foreseeably and permissibly relied upon the Defendant's uniform written misrepresentations when making a decision to purchase a vehicle. Class Members reasonably believed that they were purchasing vehicles that were free from defects. Class Member 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.

Because of the Defendant's uniform misrepresentations, the Class Members have suffered losses and are entitled to a remedy.

FOURTH CAUSE OF ACTION

NEGLIGENCE

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

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 Plaintiff and Class Members.

Defendants breached the duty owed to the Plaintiffs and Class Members by negligently designing its electronic throttle control (ETC) system such that 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 back up for their electronic throttle control system.

Defendants breached the duty owed to the Plaintiffs and Class Members by failing to adequately warn that their vehicles were prone to unintended acceleration and/or that it might be difficult to disengage the throttle once the accelerator pedal had been pressed. Defendants also failed to adequately warn the Plaintiffs and Class Members how to disengage the accelerator pedal manually – by shifting to neutral

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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.

As a direct and proximate result of the Defendants' negligence, the Plaintiffs and Class Members have been harmed and continue to suffer harm. The Plaintiffs and Class Members have or will suffer the loss of use of their vehicles and other consequential damages.

FIFTH CAUSE OF ACTION

PRODUCTS LIABILITY

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

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, Scion, Prius and Lexus vehicles in the United States including those owned by the Plaintiffs and Members of the Class defined herein. Defendants knew and anticipated that their vehicles would be sold or leased and operated by consumers, including the Plaintiff and Class Members.

The defects in the Defendants' acceleration and braking equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonable danger for expected users such as the Plaintiffs and Class Members, even when used in a reasonable and foreseeable manner.

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.

Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration and braking equipment and ETC would subject the Plaintiffs and Class Members to harm resulting from the defects.

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SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Defendants obtained monies from the marketing, labeling and/or sale of its vehicles and profited from the payment of the purchase price for Toyota's vehicles when the vehicles in question were not safe as Toyota purported them to be in deceptive, fraudulent and misleading labeling, advertising, marketing and sales.

Defendants have been unjustly enriched to the detriment of Plaintiffs and the Members of the Class by the retention of consumer's purchase.

Consumers conferred this enrichment on Defendants as a direct result of the failures, omissions and deceptive and fraudulent conduct of Defendants. 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. 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

UNFAIR COMPETITION

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Cal. Bus. & Prof. Code § 17200, permits Plaintiffs to remedy unfair, unlawful, or fraudulent practices: "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." Cal. Bus. & Prof. Code § 17203. Moreover, the situation authorizes any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition" to seek such an injunction. Cal. Bus. & Prof. Code § 17204. Toyota has engaged in unlawful, unfair and fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200.

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Toyota has known for many years that its vehicles had safety problems that could result in injury or death. Defendants failed to disclose these problems to the public, and in fact intentionally denied knowledge of safety defects.

Defendants made false or misleading statements and omissions about the safety of its vehicles in advertising, promotional materials and marketing efforts, and other communications with prospective buyers, owners and the public. Defendants concealed adverse information and misrepresented information at a time when they knew, or should have known, because they were in a superior position to know. Alternatively, Defendants made statements or omissions with reckless disregard for their truth or falsity.

The facts misrepresented, concealed or not fully disclosed were material.

Defendants made misrepresentations, failed to disclose information, or actively concealed information with the intention that the public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

Defendants should have reasonably known that consumers were likely to rely on the facts misrepresented or not disclosed.

Plaintiffs and Class Members reasonably relied on and were induced by Defendants' misrepresentations and/or active concealment in selecting and using Defendants' vehicles. Plaintiffs and the Members of the Class sustained losses as a direct and proximate result of Defendants' misrepresentations or active concealment of information.

EIGHTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Toyota provided the Plaintiffs and other Members of the Class with written express warranties including, but not limited to, that the vehicles in question were safe

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to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

Toyota breached these express warranties, which resulted in damages to the Plaintiffs and other Members of the Class who overpaid for the vehicles, as the vehicles in question were not safe as they may contain defects that could cause serious injury or death, including defects to the accelerator and braking.

As a proximate result of the breach of warranties by Toyota, the Plaintiffs and Class Members suffered damages in an amount to be determined at trial. The Plaintiffs and Class Members paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled. 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.

The Plaintiffs and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Class Members also suffer in that not knowing if any repair made by Toyota will be successful in making their vehicles safe. Additionally, or in alternative, the Plaintiffs 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).

NINTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of its vehicles that they were safe to operate. Plaintiffs and Class Members bought the vehicles in question from Toyota, relying on Toyota's skill and judgment in

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furnishing suitable goods as well as Toyota's representations that the vehicles in question were safe to operate. However, Toyota's vehicles in question were not safe to operate as they may have had defects causing unintended acceleration and/or erratic braking conditions potentially resulting in injury and death.

Toyota breached the warranty implied at the time of sale in that Plaintiffs and Class Members did not receive vehicles that were safe to operate as they possibly contained a defects that could potentially result in injury or death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaging, labeled or sold.

As a proximate result of this breach of warranty by Toyota, the 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 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 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. The Plaintiff and other Member of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

TENTH CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs repeats each and every allegation contained in the prior paragraphs of this Complaint.

Plaintiffs' agreement with the Defendants includes not only express written provisions, but also terms and conditions, which although not formally expressed, are

implied by the law. Such terms are as binding as the terms that are actually written in the agreement with the Plaintiff and Class Members.

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 inure the other party or compromise the benefit of the agreement.

The obligation of Defendants to abide by the covenant of good faith and fair dealing is heightened by the imbalance of power between Defendants and the Plaintiffs that allowed Defendants to engage in business as described in this Complaint.

Through the actions and inactions of the Defendants as outlined in this Complaint, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and Class Members.

As a proximate result of the breach of the covenant of good faith and fair dealing by Defendants, the Plaintiffs and Class Members have suffered damages in an amount to be determined at trial in that, among other things, they purchased or leased 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 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. The Plaintifsf and other Members of the Class are further harmed in having to spend money on attaining other transportation while the vehicles in question are being fixed. Additionally, or in the alternative, the Plaintiffs 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).

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ELEVENTH CAUSE OF ACTION

VIOLATION OF THE LANHAM ACT, 15 USC § 1125 (a))

Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Complaint.

As a result of Toyota's deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the vehicles in question described in detail above, violated the Lanham Act, 15 USC § 1125 (a).

The Defendants through their actions and inactions did deceive the Plaintiffs and Class Members into purchasing the vehicles in question. The Defendants violated this act through the use of advertising and marketing and statements that portrayed the vehicles in question as among other things, safe and reliable. This false and misleading advertising, misstatement of facts regarding the Defendant's products has caused the Plaintiffs and Class Members to purchase the vehicles in question which may actually be unsafe.

The Plaintiffs' use of the vehicles in question may result in injury or death. The vehicles on question would also have sold for and will continue to sell for, a lesser value because of the Defendant's violation of the Lanham Act as described above. As a result, the Plaintiffs and Class Members have been damaged by the acts of the Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follow:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. Compensatory damages in an amount to be determined at trial;

C. Punitive damages in an amount to be determined at trial;

D. Damages for reduced resale value of Toyota vehicles;

E. Damages for lost use of Toyota vehicles during repair;

F. Damages Plaintiff and Class Members are required to pay from accidents resulting prior to repair of Toyota safety defects;

G. Legal interest;

H. Costs of suit incurred; and

I Such relief as the Court may deem just and proper.

DATED: February 15, 2010 By: _____

Dana B. Taschner, Esq., SBN 135494
LANIER LAW FIRM
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
dbt@lanierlawfirm.com
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: February 15, 2010 By: _____

Dana B. Taschner
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dbt@lanierlawfirm.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, ET AL, Plaintiff(s), v. TOYOTA MOTOR CORPORATION, ET AL, Defendant(s).	CASE NO. SACV 10-183-JVS(ANx) INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA

Important Notice: The Court posts tentative law and motions rulings to the internet. Please see Section P, below.

COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS COURT AFTER BEING REMOVED FROM STATE COURT, THE DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER ON ALL OTHER PARTIES.

Revised January 6, 2010

This case has been assigned to the calendar of Judge James V. Selna. The intent of this Order is to ensure that this case will proceed so as "to secure [a] just, speedy and inexpensive determination." (Fed.R.Civ. P., Rule 1.)

A. THE COURT'S ORDERS

Copies of Judge Selna's orders that may have specific application to this case are available on the Central District of California website. See ¶ N. Those orders include the following:

(1) Order Setting Rule 26(f) Scheduling Conference
(2) Order re Civil Jury Trials
(3) Order re Civil Court Trials
(4) Order re RICO Case Statement

B. SERVICE OF PLEADINGS

Although Fed.R.Civ.P., Rule 4(m) does not require the summons and complaint to be served for as much as 120 days, the Court expects that the initial pleadings will be served much sooner than that, and will require plaintiff to show cause before then if it appears that there is undue delay.

C. ASSIGNMENT TO A MAGISTRATE JUDGE

Under 28 U.S.C. § 636, the parties may consent to have a Magistrate Judge preside over all proceedings, including trial. The Magistrate Judges who accept those designations are identified on the Central District's website, which

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also contains the consent form. See ¶ N.

D. EX PARTE PRACTICE

Ex parte applications are solely for extraordinary relief and should be used with discretion. See Mission Power Engineering Company v. Continental Casualty Co., 883 F. Supp. 488 (C. D. Cal. 1995). The Court will generally decide *ex parte* matters on the papers. Opposition to an *ex parte* application, if any, should be submitted within 24 hours.

E. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS OF TIME

No stipulations extending scheduling requirements or modifying applicable rules are effective until and unless the Court approves them. Both applications and stipulations must set forth:

1. The existing due date or hearing date;

2. Specific, concrete reasons supporting good cause for granting the extension. In this regard, a statement that an extension "will promote settlement" is insufficient. The requesting party or parties must indicate the status of ongoing negotiations: Have written proposals been exchanged? Is counsel in the process of reviewing a draft settlement agreement? Has a mediator been selected?

3. Whether there have been prior requests for extensions, and whether these were granted or denied by the Court.

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F. TRO'S AND INJUNCTIONS

Parties seeking emergency or provisional relief shall comply with F.R.Civ.P., Rule 65 and Local Rule 65. The Court will not rule on any application for such relief for at least 24 hours after the party subject to the requested order has been served; such party may file opposing or responding papers in the interim.

G. CASES REMOVED FROM STATE COURT

All documents filed in state court, including documents appended to the complaint, answers and motions, must be refiled in this Court as a supplement to the Notice of Renewal, if not already included. See 28 U.S.C. § 1447(a),(b). If the defendant has not yet answered or moved, the answer or responsive pleading filed in this Court must comply with the Federal Rules of Civil Procedure and the Local Rules of the Central District. If before the case was removed a motion was pending in state court, it must be re-noticed in accordance with Local Rule 7.

H. STATUS OF FICTITIOUSLY NAMED DEFENDANTS

This Court intends to adhere to the following procedures where a matter is removed to this Court on diversity grounds with fictitiously named defendants. (See 28 U.S.C. §§ 1441(a) and 1447.)

1. Plaintiff is normally expected to ascertain the identity of and serve any fictitiously named defendants within 120 days of the removal of the action to this Court.

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2. If plaintiff believes (by reason of the necessity for discovery or otherwise) that fictitiously named defendants cannot be fully identified within the 120-day period, an *ex parte* application requesting permission to extend that period to effectuate service may be filed with this Court. Such application shall state the reasons therefor, and may be granted upon a showing of good cause. The *ex parte* application shall be served upon all appearing parties, and shall state that appearing parties may comment within seven (7) days of the filing of the *ex parte* application.

3. If plaintiff desires to substitute a named defendant for one of the fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the previously-identified defendants (and counsel for the fictitiously named party, if that party has separate counsel). If consent is withheld or denied, plaintiff may apply *ex parte* requesting such amendment, with notice to all appearing parties. Each party shall have seven calendar days to respond. The *ex parte* application and any response should comment not only on the substitution of the named party for a fictitiously named defendant, but on the question of whether the matter should thereafter be remanded to the Superior Court if diversity of citizenship is destroyed by the addition of the new substituted party. See U.S.C. § 1447(c), (d).

I. BANKRUPTCY APPEALS

Counsel shall comply with the ORDER RE PROCEDURE TO BE FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the appeal is filed in the District Court.

J. MOTIONS UNDER FED.R.CIV.P., Rule 12

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Many motions to dismiss or to strike could be avoided if the parties confer in good faith (as they are required to do under L.R. 7-3), especially for perceived defects in a complaint, answer or counterclaim which could be corrected by amendment. See Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by *any* amendment). Moreover, a party has the right to amend his complaint "once as a matter of course at any time before a responsive pleading is served." Fed.R.Civ.P., Rule 15(a). A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have a right to amend. See Nolen v. Fitzharris, 450 F.2d 958, 958-59 (9th Cir. 1971); St. Michael's Convalescent Hospital v. California, 643 F.2d 1369, 1374 (9th Cir. 1981). And even where a party has amended his Complaint once or a responsive pleading has been served, the Federal Rules provide that leave to amend should be "freely given when justice so requires." F.R.Civ.P., Rule 15(a). The Ninth Circuit requires that this policy favoring amendment be applied with "extreme liberality." Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990).

These principles require that counsel for the plaintiff should carefully evaluate the defendant's contentions as to the deficiencies in the complaint, and that in many instances the moving party should agree to any amendment that would cure a curable defect.

The moving party shall attach a copy of the challenged pleading to the Memorandum of Points and Authorities in support of the motion.

The foregoing provisions apply as well to motions to dismiss a counterclaim, answer or affirmative defense, which a plaintiff might contemplate bringing.

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K. REQUIREMENTS FOR BRIEFS

In addition to the requirements in Local Rule 11, the Court requires the following for all briefs:

1. No footnote shall exceed 5 lines. The Court strongly discourages the use of extensive footnotes as a subterfuge to avoid page limitations in the Local Rules.

2. All footnotes shall be in the same type size as text. See Local Rule 11-3.1.1.

3. Each case cited shall include a jump cite to the page or pages where the relevant authority appears (e.g., United States v. Doe, 500 U. S. 1, **14, 17** (1997)).

Failure to follow these requirements may result in rejection of a brief for correction.

L. LEAD COUNSEL

Lead counsel shall appear on all dispositive motions, scheduling conferences, and settlement conferences. **The Court does not entertain special appearances; only counsel of record may appear.**

M. COURTESY COPIES

A courtesy copy of all electronically filed pleadings shall be delivered to Judge Selna's courtesy copy drop on the tenth floor at the rear of the elevator

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lobby by noon the day following filing. **Failure to make timely delivery of the courtesy copies may result in a delay in hearing a motion or ordering the matter off calendar.**

N. ELECTRONIC COPIES

When the Court requires an electronic copy of a document (*e.g.*, with proposed jury instructions), a copy shall be submitted at time of filing in one the following manners: providing a copy on a disk, CD, or thumb drive in a labeled envelope and lodged with the clerk; or by e-mailing a copy to the Court Room Deputy (JVS_Chambers@cacd.uscourts.gov). Regardless of media, the document should be formatted in WordPerfect9 or higher.

O. WEBSITE

Copies of this Order and other orders of this Court are available on the Central District of California's website, at "www.cacd.uscourts.gov" at Judge Selna's home page located under "Judge's Procedures and Schedules."

P. TENTATIVES–DAY OF HEARING AND WEB POSTING

The Court attempts to issue tentative rulings on each motion. Tentatives will be posted on the Court's website: www.cacd.uscourts.gov/. From the home page, click on "Judges' Procedures and Schedules" in the left column. From the list, click on "Hon. James V. Selna," which will take you to Judge Selna's page. Click on the red notice in the upper left: "Click here to view Tentative Rulings." Then click on the desired ruling which comes up in a .pdf file which can be read with an Adobe Acrobat reader. Judge Selna attempts to post tentatives by late Friday afternoon

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preceding the hearing date. Hard copies of tentatives will also be available from the clerk approximately 15 minutes before the hearing.

The Court thanks counsel and the parties for their anticipated cooperation.

IT IS SO ORDERED.

Dated: February 18, 2010

James V. Selna
United States District Judge

TOY-RQ-05E-00012438

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

vs.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive,

Defendants.

Case No. SACV10-00183JVS(ANX)

ORDER DENYING PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE

JUDGE JAMES V. SELNA

TOY-RQ-05E-00012439

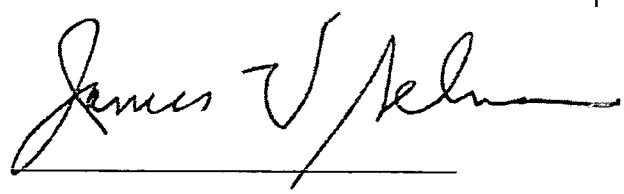
Presently before the Court is Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and for Order to Show Cause Re: Preliminary Injunction to Prevent Further Spoliation of Evidence. Plaintiffs seek the following relief:

1. Defendants and their officers, employees, attorneys and agents, be temporarily enjoined from the spoliation of evidence relevant to the above-captioned case, such that: 1) Defendants shall not dispose of, destroy or alter, any automobile component that they, their officers, their employees, or their agents, permanently remove from a vehicle subject to any recall issued since September 1, 2009; 2) Defendants shall physically retain and preserve each and every automobile component that they, their officers, their employees, or their agents permanently remove, or have permanently removed, from a vehicle subject to any recall issued since September 1, 2009, until such time as Plaintiffs may examine that component during discovery; and 3) Defendants' compliance with this order shall be immediate and free of charge to Plaintiffs.
2. Defendants show cause why a preliminary injunction identical to the TRO described above should not issue.

In view of Toyota Motor Corporation and Toyota Motor Sales. U.S.A., Inc.'s recognition of their discovery and evidentiary retention obligations in this and similar litigation throughout the United States and the lack of any evidence that spoliation of relevant evidence is in fact occurring (Toyota Opposition, pp. 5-6), the Court questions the need for the relief sought, and declines to exercise its discretion to issue the requested temporary restraining order or order to show cause. Plaintiffs are of course free to seek a preliminary injunction on a regularly noticed motion.

The Application is denied.

DATED: February 18, 2010



The Hon. James V. Selna

United States District Court Judge

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T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated, Plaintiffs, vs. TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive, Defendants.	**Case No. SACV10-00183JVS(ANX)** **SUPPLEMENTAL DECLARATION OF DANA B. TASCHNER IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE** **JUDGE** _____ **DEPT.** _____

TOY-RQ-05E-00012441

I, DANA B. TASCHNER, declare as follows:

1. I am an attorney admitted to practice before this Court. I am counsel for Plaintiffs T. Leigh Beard, Catherine Nguyen and Malina Salvador ("Plaintiffs"). I make this declaration based on my own personal knowledge and could and would competently testify to the matters herein if called upon to do so.

On February 15, 2010, I left a telephonic message with the legal department at Motor Sales USA ("Toyota") at their corporate headquarters located in Torrance, CA, telephone (310) 468-8000, providing notice of the Class Action Complaint and *Ex Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence.

At approximately 10:05 a.m. on February 16, 2010, I again called the legal department at Toyota at (310) 468-8000. As was the case on February 15, 2010, I left a telephonic message of the Class Action Complaint and *Ex Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence. In my telephonic message, I included my name and phone number, the caption of the case, the location of the case, the type of relief sought, and read verbatim parts of the Order and Minutes issued by this Court on February 16, 2010. I advised that the Ex *Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence if Toyota could be withdrawn if the parties could stipulate to the relief. .

2. At approximately 2:45 p.m. on February 16, 2010, I again called Toyota at (310) 468-8000 to give notice of the Class Action Complaint and *Ex Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence. I left a message for Kathy Hardy and again proved notice in similar form to the above.

3. On February 16, 2010, I emailed copies of the Class Action Complaint and the and *Ex Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence, along with other documents filed in this matter, to Christopher Reynolds, Group Vice President and General Counsel at Toyota Motor Sales U.S.A., at christopher_reynolds@toyota.com.

4. At 3:54pm, I received a call from Lisa Gilford of the Alston Byrd law firm. Ms. Gilford advised she was outside counsel for Toyota and was calling about the *Ex Parte* Application for TRO. I generally described explained the Class Action and Ex Parte Application for TRO. I

TOY-RQ-05E-00012442

discussed in detail the need for an order to preserve parts being removed from recalled Toyota vehicles as Plaintiffs are alleging defects beyond the safety issued currently acknowledged by Toyota. Ms. Gilford asked if I was referring to "mats" and I elaborated to on preserving all parts removed from recalled Toyota vehicles repaired or modified and specifically mentioned throttle and accelerator wires, brake components, floor mats, rings, sensors, and other parts that are and/or will be required for expert examination and analysis in this action. I specifically discussed that while Toyota has admitted to mechanical defects, Toyota has yet to acknowledge electronic defects and that the parties must preserve and examine parts removed from recalled vehicle for purposes of investigation, analysis, and prosecution of this action.

5. During the cordial call with Ms Gilford, I suggested a stipulated order in lieu of a hearing and she advised she would like to review the pleadings and application. Ms. Gilford provided her email and I promptly email the Complaint, Ex Parte Application, and other documents or papers filed in this action. A true and correct copy of the email to Ms. Gilford is attached as Exhibit A.

6. Ms. Gilford responded via email suggesting Plaintiffs refer to the NHTSA website for information, mentioning the growing number of lawsuits, stating she opposed the TRO. See, Exhibit A.

7. I responded to Ms. Gilford that Plaintiff shall proceed with the TRO in view of the refusal to preserve evidence by Toyota, and the new probe launched yesterday by federal regulators. See, Exhibit A.

8. I have submitted a Notice of Appearance before the Judicial Panel on Multidistrict Litigation (JPMDL) in MDL 2151. The JPMDL clerk today advised that two parties have filed motion re coordination in MDL 2151 (Toyota) and no hearing is on calendar. The Clerk also advised that the motion for transfer in MDL 2215 (Toyota Motor Sales Litigation) has been withdrawn.

9. It is Plaintiffs' current intention to promptly seek certification of this action, and to seek coordination of all federal actions for pretrial proceedings before the Central District of California where Toyota is headquartered and this action is pending.

10. To my knowledge, no case against Toyota for recalled safety defects is substantially advanced, no case has been certified as a class by any court, and no court has ordered Toyota to preserve parts removed from recalled Toyota vehicles.

11. Yesterday, the federal government has launched an expanded probe of Toyota. A true and correct copy of the Los Angeles Times article of February 17, 2010 is attached as hereto as Exhibit B.

12. Yesterday, the government's auto-safety database logged three new deaths bringing the total deaths linked to Toyota safety defects to 37.

13. Yesterday, NHTSA issued a timeliness query (TQ) stating Toyota might have "viewed the underlying defects too narrowly ... without fully considering the broader issue of unintended acceleration and any associated safety-related defects that warrant recalls." The NHTSA website statement posted today states "The auto safety agency is requiring Toyota to provide documents showing when and how it learned of the defects affecting approximately 6 million vehicles in the U.S. alone. The probe will examine how the manufacturer learned of these defects, such as through consumer complaints or factory testing (italics added)" A true and correct copy of the NHTSA Release of February 17, 2010 is attached hereto as Exhibit C. According to news reports, NHTSA sent three TQ letters to Toyota on yesterday, marked overnight delivery, dealing with three recalls.

14. I declare under penalty of perjury that the above is true and correct. Executed February 16, 2010, at Los Angeles, CA.

DANA B. TASCHNER

TOY-RQ-05E-00012444

-----Original Message-----
From: dana@danataschner.com [mailto:dana@danataschner.com]
Sent: Tuesday, February 16, 2010 10:03 PM
To: dana@danataschner.com
Subject: Fw: Beard v Toyota SACV10-00183JVS(ANX)

Sent via BlackBerry by AT&T

-----Original Message-----
From: dana@danataschner.com
Date: Wed, 17 Feb 2010 06:02:16
To: Gilford, Lisa<Lisa.Gilford@alston.com>
Subject: Re: Beard v Toyota SACV10-00183JVS(ANX)

Thanks for your email of this evening.

I am very disappointed to learn that you refuse to agree to preserve critical evidence as requested in plaintiffs' Application and as further detailed in our call of this afternoon. Re your suggestion of a visit to the NHTSA website, an underfunded government website outlining a recall process that does not compel Toyota to keep critical evidence. Moreover, the Transportation Dept has today demanded new documents and information about how Toyota is responding to complaints and handling the massive recall. The pending lawsuits and MDL hearing (where we plan to present oral argument) in late March do not preserve the evidence now being removed from Toyota vehicles at a radically escalated over the last few days at a rate of over 50,000 cars per day.

To plaintiffs' view, Toyota has engaged in a massive safety "cover up" and plaintiffs believe Toyota will trash or destroy critical evidence of electronic and mechanical defects absent an order. The refusal to agree to preserve any items removed from Toyota vehicles underscores our concern and echos the federal government's escalating concern over Toyota actions.

I will advise the court that you have declined to stipulate to preserve evidence as requested by our Application. I appreciate a copy of your opposition to the Application. and a formal response to my inquiry to you are accepting service for Toyota.

Thank you,
Dana Taschner
Sent via BlackBerry by AT&T

-----Original Message-----
From: "Gilford, Lisa" <Lisa.Gilford@alston.com>
Date: Tue, 16 Feb 2010 21:59:56
To: <dana@danataschner.com>
Subject: RE: Beard v Toyota SACV10-00183JVS(ANX)

Mr. Taschner,

Thanks for the courtesy copy of your papers. I have had a chance to review. If necessary, we will file a statement of opposition tomorrow, but I wanted to make you aware of a couple of things which hopefully would make that unnecessary:

I asked you on the phone if you had a request regarding specific materials you wanted to preserve and you indicated that you weren't aware of what repair work is being done and so you wanted everything that will be taken out of the car as part of the recalls preserved. I refer you to the NHTSA website which contains specific information on the work to be done in connection with the recalls. It is publicly available. For example, in

connection with the floor mat recall, the only material that would come

out of the car is a tibia pad, which would be replaced with a thinner pad. The pedal recall work would involve putting in a part, not taking any out. I don't see any claim in your complaint that the tibia pad is defective, rather, it seems to focus on a claim that the ETCS is defective. So it is still unclear to me what you want the court to order preserved and why. Please take a close look at the descriptions of the repair work and get up to speed. Perhaps we can save some of the court's time, and ours, if you give some thought as to what it is you ask be preserved and how that evidence would relate to what you have plead.

There are numerous class actions related to unintended acceleration that have been filed nationwide-- over sixty at last count-- and several of them have been pending since November. Several MDL petitions have been filed and we are set for hearing in front of the JPML in late March. Toyota has been preserving evidence related to UA claims and is mindful of the need to preserve all relevant evidence. We have received ESI and document preservation requests from plaintiffs' counsel and we are meeting our obligations under the Code. We also expect that discovery and preservation issues will be handled in a coordinated fashion by the MDL Judge assigned. We have asked plaintiff's counsel to preserve evidence involving their clients' vehicles and obviously, given the number of putative class reps, there will be a number of vehicles that can be examined by plaintiffs' experts for any claimed defects.

In light of the foregoing, I hope that you would withdraw your request for a TRO. But if not, we will oppose.

Lisa Gilford
Alston + Bird LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, California 90071 USA
www.alston.com
213 576 1114 (w) 213 952 2051 (m)

-----Original Message-----
From: Dana Taschner [mailto:dana@danataschner.com]
Sent: Tuesday, February 16, 2010 4:09 PM
To: Gilford, Lisa
Subject: FW: Beard v Toyota SACV10-00183JVS(ANX)

Thank you for your review. I appreciate your letting me know if you will accept service on behalf of Toyota, and if we may dispense with the TRO hearing via a stipulated order. I look forward to working with you.

Kind regards,

Dana Taschner
****
IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Exhibit A.txt

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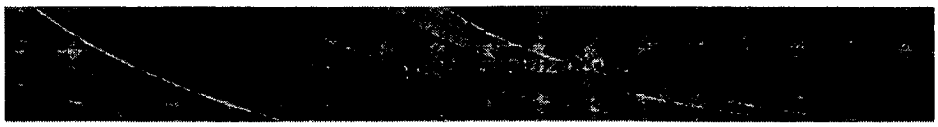

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Toyota gets intense new U.S. scrutiny

Regulators launch three more probes into the timeliness and adequacy of the automaker's recalls for problems that can cause sudden acceleration.

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February 16, 2010 | By Ralph Vartabedian, Ken Bensinger and Jerry Hirsch

Sandy Huffaker / Bloomberg

In an extraordinary challenge to Toyota Motor Corp., federal regulators Tuesday launched three far-reaching investigations into both the timeliness and the adequacy of the company's recalls for problems that can cause sudden acceleration in its vehicles.

The National Highway Traffic Safety Administration demanded a massive volume of Toyota documents, including engineering reports, internal communications and customer complaints involving sudden acceleration. The agency also asked Toyota to identify employees with knowledge of unintended acceleration.

Regulators said they were examining whether Toyota acted promptly in ordering a string of safety recalls and whether the company fully considered other potential causes of sudden acceleration besides interference from floor mats and sticking gas pedals.

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"We are seeking to determine whether Toyota viewed the underlying defects too narrowly . . . without fully considering the broader issue of sudden acceleration and any associated safety-related defects that warrant recalls," said NHTSA in one of three letters to Toyota.

The action represents a significant shift in the agency's approach to the automaker. NHTSA officials opened at least eight investigations into sudden acceleration in Toyota and Lexus vehicles in the last seven years, but closed six of them without any finding of a defect.

Now, with congressional investigators and others looking into both Toyota's and NHTSA's actions, the federal agency is turning up the heat.

"NHTSA is saying it wants to make sure it has all of the information. That is an unprecedented step for the agency," said Ricardo Martinez, who served for six years as NHTSA administrator in the 1990s. "When I was administrator, Toyota was one of the better citizens, but the issues they are dealing with now are very disappointing. They are not acting like the Toyota that built the brand of trust."

In the letters to Chris Tinto, vice president of Toyota Motor North

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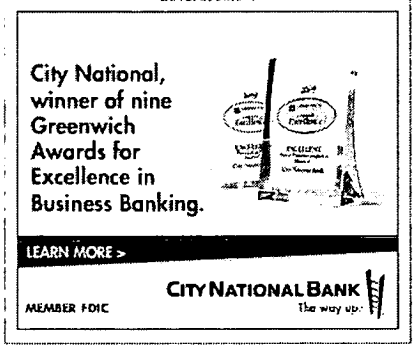

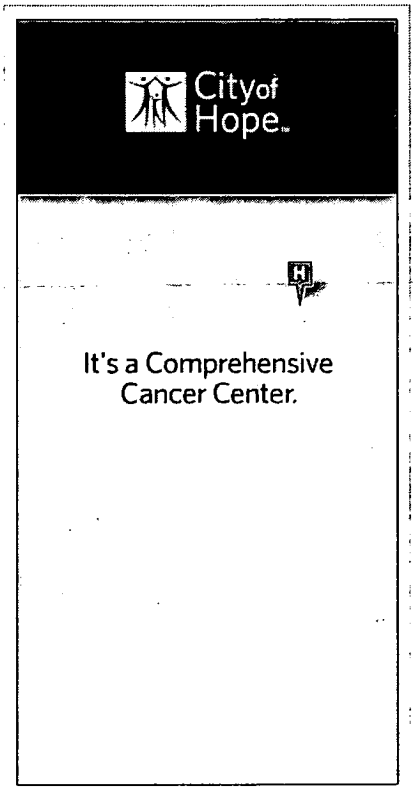

America Inc., the agency asked why the company waited years to address a growing volume of complaints about sudden acceleration crashes in its vehicles.

One of the letters questions whether the unintended acceleration problem extends far beyond floor mats and sticking pedals, "and how Toyota assessed potential electromagnetic interference" as a potential cause.

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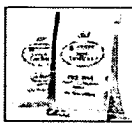
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Toyota gets intense new U.S. scrutiny

Regulators launch three more probes into the timeliness and adequacy of the automaker's recalls for problems that can cause sudden acceleration.

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February 16, 2010 | By Ralph Vartabedian, Ken Bensinger and Jerry Hirsch

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After years of rising motorist complaints, Toyota began its recalls to address sudden acceleration in 200 , but that initial action was limited to two models comprising ,000 cars. Since then, the company has incrementally expanded the list of vehicles and model years sub ect to recall and the reasons for the recalls, starting last September.

The growing size and breadth of the recalls have fueled questions about inconsistencies in the company's position and whether it was fully disclosing everything it knew about the safety problems promptly.

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"Only Toyota knows what they knew and when they knew it," said Nicole Nason, former NHTSA chief at the time of the 200 recall. "Manufacturers have to give NHTSA whatever safety defect information they have as soon as they have it. This seems to be a problem between NHTSA and Toyota."

Toyota spokeswoman Cindy Knight said the company would cooperate with the probe.

"Toyota takes its responsibility to advance vehicle safety seriously and to alert government officials of any safety issue in a timely manner," she said in a statement. "We are reviewing NHTSA's request and will cooperate to provide all the information they have requested."

The new investigation by NHTSA also extends the scope of the probe beyond the U.S., where NHTSA normally focuses its attentions.

"We expect that all manufacturers address automotive safety issues quickly and in a forthright manner," said David Strickland, NHTSA's administrator.

NHTSA has the power to subpoena information from automakers or punish them for compliance failures, but it rarely exercises it. The agency can fine an automaker as much as 16 million for infractions, but the largest fine it ever levied, against eneral Motors in 200 , was for 1 million. That fine was for delaying a recall of windshield wipers.

NHTSA said this month that it would consider civil fines against Toyota for its handling of the unintended acceleration issue and potentially

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dragging its feet on announcing the recalls.

The new investigation is almost certain to deepen Toyota's image problem, which is already causing a steep slide in sales, a sharp drop in its share price and has even threatened its vaunted financial ratings.

Sudden acceleration in Toyota vehicles has been blamed for at least 3 fatalities, according to complaints filed with NHTSA. The safety agency has received more than 2,000 complaints from Toyota owners about their cars lurching and speeding unintentionally.

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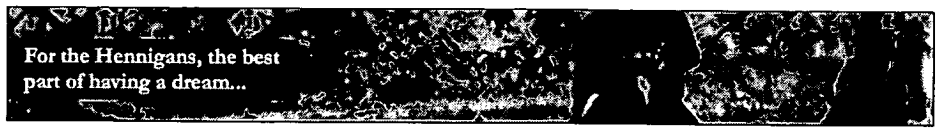

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Toyota gets intense new U.S. scrutiny

Regulators launch three more probes into the timeliness and adequacy of the automaker's recalls for problems that can cause sudden acceleration.

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February 16, 2010 | By Ralph Vartabedian, Ken Bensinger and Jerry Hirsch

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Rebecca Lindland, an analyst at consulting firm IHS lobal Insight, said she didn't remember a time when one automaker was involved in recalls of so many models involving so many issues.

Efraim Levy, a Standard Poor's equity analyst, recently downgraded the company's stock to a "hold" from a "buy" because of the fallout from the recalls.

"Toyota has been blindsided by the explosion of developments in regard to the recall and quality issues," he said.

The NHTSA letters request documents, lists of potentially affected vehicles and chronologies of Toyota's understanding of the sudden acceleration issue, as well as a full accounting of complaints about the problem registered in the company's internal databases.

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"It's a unique situation," said Dale Kardos, who owns a Washington, D.C., consulting firm specializing in auto regulation. "These investigations are usually done very quietly. Usually nobody hears about it until there's a recall."

NHTSA's action comes as Congress plans to hold three hearings that will examine not only Toyota's but also NHTSA's handling of the sudden acceleration issue. On Tuesday, Rep. Darrell Issa R-Vista , the ranking minority member on the House Oversight and overnment Reform Committee, which plans on a hearing next week, sent a letter to the Alliance of Automobile Manufacturers, a trade group to which Toyota belongs, seeking information about NHTSA.

Meanwhile, Toyota said Tuesday that it planned to briefly idle two U.S. auto factories to ad ust to slowing sales caused by its massive recalls in recent months.

Toyota plans to shut a truck factory in San Antonio for the weeks of March 1 and April 12, Toyota spokesman Mike oss said. It also will close a Kentucky plant that makes the Camry and Avalon models Feb. 26 and told workers that it might also not produce vehicles on as many as three more days in coming months.

"We are trying to keep a close eye on inventory and match it to meet sales demand," said Rick Hesterberg, spokesman for Toyota Motor Manufacturing Kentucky.

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The problems are hurting Toyota. Although most carmakers posted year-over-year gains in January, Toyota's sales fell 16 , or 1 , 00 fewer vehicles.

Ford Motor Co. is now expected to replace the Japanese automaker as the second-biggest seller of autos in the U.S. this year, according to Edmunds.com.

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In the News

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DOT 29-10
Tuesday, February 16, 2010

Contact: Olivia Alair
Telephone: (202) 366-4570

NHTSA Launches Probe into Timeliness of Three Toyota Recalls

The National Highway Traffic Safety Administration today announced that it is using its statutory authority to obtain documents from Toyota to determine if the automaker conducted three of its recent recalls in a timely manner. Federal law requires all auto manufacturers to notify NHTSA within five days of determining that a safety defect exists and promptly conduct a recall.

"Safety recalls are very serious matters and automakers are required to quickly report defects," said U.S. Transportation Secretary Ray LaHood.

The auto safety agency is requiring Toyota to provide documents showing when and how it learned of the defects affecting approximately 6 million vehicles in the U.S. alone. The probe will examine how the manufacturer learned of these defects, such as through consumer complaints or factory testing. Investigators are also looking into whether Toyota discovered the problems during pre-production or post-production of the affected vehicles.

Officials are checking whether Toyota has covered all affected models in its recent recalls to ensure Toyota did not miss any problems. The agency will obtain information on production data, incidents, complaints, warranty complaints, copies of tests, dates of meetings, timelines, and supplier information.

The three recalls in question involve various Toyota and Lexus vehicles. Two of the recalls are related to the entrapment of gas pedals by floor mats. The first recall was announced on September 26, 2007, and was followed by a subsequent one on October 6, 2009. The October recall was expanded on January 29, 2010, to include additional vehicles. The third recall, involving sticking gas pedals, was announced on January 21, 2010. Click here for more information.

"Our top priority is safety and we expect that all manufacturers address automotive safety issues quickly and in a forthright manner," said David Strickland, Administrator for the National Highway Traffic Safety Administration.

NHTSA has the authority to seek civil penalties for a variety of violations by manufacturers, equipment suppliers, registered importers and vehicle customizers. If agency officials determine that an auto manufacturer violated its statutory obligations, the manufacturer could be liable for a maximum of $16.4 million in civil penalties.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

vs.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive,

Defendants.

Case No. SACV10-00183JVS(ANX)

[PROPOSED] ORDER GRANTING PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE

JUDGE JAMES V. SELNA

DEPT. _____

TOY-RQ-05E-00012456

Presently before the Court is Plaintiff's *Ex Parte* Application for Temporary Restraining Order and for Order to Show Cause Re: Preliminary Injunction to Prevent Further Spoliation of Evidence. Upon review of the matter, the Court finds good cause to GRANT Plaintiff's application as follows:

1. Defendants and their officers, employees, attorneys and agents, are temporarily enjoined from the spoliation of evidence relevant to the above-captioned case, such that: 1) Defendants shall not dispose of, destroy or alter, any automobile component that they, their officers, their employees, or their agents, permanently remove from a vehicle subject to any recall issued since September 1, 2009; 2) Defendants shall physically retain and preserve each and every automobile component that they, their officers, their employees, or their agents permanently remove, or have permanently removed, from a vehicle subject to any recall issued since September 1, 2009, until such time as Plaintiffs may examine that component during discovery; and 3) Defendants' compliance with this order shall be immediate and free of charge to Plaintiffs;

2. Defendants shall show cause why a preliminary injunction identical to the TRO described above should not issue. Defendants' Opening Brief shall be due February 23, 2010, Plaintiff's Response Brief shall be due March 2, 2010, and Defendants' Reply Brief shall be due March 9, 2010.

3. A hearing on the motion for a preliminary injunction shall be set for March 16, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard, in this Court.

IT IS SO ORDERED.

DATED: February ____, 2010

The Hon. James V. Selna
United States District Court Judge

TOY-RQ-05E-00012457

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Attorneys for Plaintiffs,
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated, Plaintiffs, vs. TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive, Defendants.	**Case No. SACV10-00183JVS(ANX)** **NOTICE OF ERRATA RE: *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE** **JUDGE** _____ **DEPT.** _____

Notice of Errata

TOY-RQ-05E-00012458

Plaintiffs' *Ex Parte* Application for TRO and Injunction to Prevent Spoliation of Evidence, and the documents filed therewith, stated that the proposed TRO and Preliminary Injunction would enjoin Defendants from destroying parts removed from vehicles "subject to any recall issued since *October* 1, 2009" (emphasis added), and that it would require them to preserve parts removed from vehicles "subject to any recall issued since *October* 1, 2009" (emphasis added).

The use of the word "October" was a calendar error. Both of the dates listed in the Proposed Order should read "September 1, 2009," and the Proposed Order has been corrected to reflect the same.

DATED: February 17, 2010 By:

Dana B. Taschner, Esq., SBN 135494
2029 Century Park East, Suite 1450
Los Angeles, CA 90067

Attorneys for Plaintiffs

TOY-RQ-05E-00012459

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Attorneys for Plaintiffs,
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

FILED
2010 FEB 16 AM 8:40
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY: _____

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

SACV10-00183 JVS(ANX)

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE.

JUDGE _____
DEPT. _____

Plaintiffs T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR,

TOY-RQ-05E-00012460

individually and on behalf of a class of those similarly situated, hereby applies *ex parte* to this Court for a temporary restraining order ("TRO") compelling Defendants, and their officers, employees, attorneys and agents, to cease their spoliation of evidence relevant to this class action, such that: 1) Defendants shall not dispose of, destroy or alter, any automobile component that they, their officers, their employees, or their agents, permanently remove from a vehicle subject to any recall issued since October 1, 2009; 2) Defendants shall physically retain and preserve each and every automobile component that they, their officers, their employees, or their agents permanently remove, or have permanently removed, from a vehicle subject to any recall issued since October 1, 2009, until such time as Plaintiffs may examine that component during discovery; and 3) Defendants' compliance with this order shall be immediate and free of charge to Plaintiffs.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

When Plaintiffs purchased their Toyota vehicles, they knew that they were making a solid investment: a safe, environmentally friendly vehicle with low fuel costs and the high resale value that Toyotas have had for decades. But Defendant Toyota Motor Sales U.S.A., Inc. ("Toyota") has issued a series of recalls encompassing more than 20 million vehicles, including 436,000 hybrid vehicles. These recalls, which involve defects ranging from uncontrolled acceleration to floormats that block the brakes, have not only illuminated the problems that plaintiffs have experienced with their vehicles, but shaken Plaintiff's faith in the safety of their Toyota vehicles and imperiled their finances by lowering the vehicle's resale value. Indeed, Toyotas have already lost 2-4% of their resale value—a loss to the average Toyota owner of $350-500—and as the recalls continue, this loss will only increase.

The crucial evidence of Toyota's culpability is the defective parts themselves. But Toyota, well aware of these parts' evidentiary value, is using the recall process to obtain and dispose of them--a flagrant abuse of its consumers' trust and of this Court's rules. If Toyota is allowed to continue its spoliation of evidence, Plaintiffs and the class they represent will suffer irreparable injury. Plaintiffs are highly likely to succeed on the merits and, given the ease with which Toyota could preserve the defective parts, the balance of hardships weighs strongly in

Plaintiffs' favor. For these reasons, Plaintiffs respectfully request that the Court issue a TRO and preliminary injunction halting Toyota's spoliation of evidence.

II. STATEMENT OF FACTS

On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmunds.com have commenced pricing declines in the value of Toyota products. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmunds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. Toyota vehicle owners have been adversely impacted by the recalls in that the recalls have resulted in a current estimated aggregate loss of value of their vehicles exceeding $2 Billion.

Contemporaneous with the filing of this Motion, Plaintiffs have filed a Class Action Complaint alleging, among other things, that Toyota knew its vehicles were susceptible to malfunction that could result in unintended acceleration and braking conditions leading to injury or death. Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

On February 10, 2010 Toyota issued a statement targeting consumers, announcing "dealerships have extended their hours - some of them working 24/7 - to fix your vehicle as quickly as possible...trained technicians have begun making repairs" and that Toyota's "172,000 North American employees and dealership personnel has been mobilized. And we're doubling our quality control efforts across the company." A True and correct copy of the Toyota Recall Notice of February 10, 2010 is attached hereto as Exhibit A.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. Based on Toyota statements disclosed to the news media, more than one million Toyota vehicles may be modified in the coming weeks. *The Los Angeles Times* printed statements from Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte

located within this Judicial District, that dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, replace, or modify vehicles. While Toyota may be finally addressing, in part, the colossal safety issues associated with Toyota vehicles by repairing, replacing, or modifying vehicles, critical evidence in this action is disappearing on an hourly basis when Toyota successfully recovers a defective Toyota vehicle from a consumer and removes and destroys the defective parts.

Critically, Toyota is claiming that the vehicles have only mechanical problems and not electronic defects. The parts removed from the recalled vehicles are critical to investigate and establish whether the electronic parts are defective. Only by preserving the evidence removed by Toyota will plaintiffs have the ability to investigate and examine the parts subject of this action.

III. ARGUMENT

A. STANDARDS FOR GRANTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The purpose of a temporary restraining order (TRO) is to halt ongoing and irreparable injury. Under Federal Rule of Civil Procedure 65(b), this Court may grant a TRO "without written or oral notice to the adverse party or its attorney" if

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Where, as here, the party seeking injunctive relief can show "either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious

questions going to the merits and the balance of hardships tipping in [the movant's] favor," the Court may grant a preliminary injunction. *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990), *quoting Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985) (alteration in original).

B. A TEMPORARY RESTRAINING ORDER IS NECESSARY TO HALT THE IMMEDIATE LOSS AND IRREPARABLE INJURY CAUSED BY TOYOTA'S CONTINUING SPOLIATION OF EVIDENCE.

Toyota's abuse of the recall process is causing Plaintiffs irreparable injury by destroying the evidence upon which their case depends. In order to obtain relief for their vehicles' loss of value, Plaintiffs must establish that the loss was caused by Toyota. Specifically, Plaintiffs must establish that Toyota installed defective parts in vehicles it sold, the discovery of which lowered the resale value of their Toyota vehicles by creating the public perception that Toyotas are unsafe. But in order to establish this, Plaintiffs must show that the parts at issue were in fact defective. For this reason, the crucial evidence of causation—the evidence of Toyota's responsibility that will ultimately allow the Court to rule on the merits of this class action—is the defective parts themselves.

But Toyota, well aware of the evidentiary value of defective parts, is using the recall process to obtain and dispose of them. Millions of defective parts removed from recalled Toyotas have already been destroyed, altered or simply discarded. Millions more pieces of evidence are headed to Toyota dealerships right now, as car owners rightly worried about safety seek to have them replaced with non-defective parts. And if the recalls are successful, *every single defective part at issue will be under Toyota's control*. The destruction of these parts would cause Plaintiffs immediate and irreparable injury by effectively denying them their day in court. *Cf. Unigard Sec. Ins. Co. v. Lakewood Engineering and Mfg. Corp.*, 982 F.2d 363, 370-71 (9th Cir. 1992) (explaining that when a defendant spoliates evidence, "the spoliation damages a right that the other party possesses: the capacity to bring a lawsuit"). Only by granting a TRO can the court prevent this injury.

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C. PLAINTIFFS ARE LIKELY TO PREVAIL.

Plaintiffs' "likelihood of success on the merits," *Diamontiney*, 918 F.2d at 795, is high. The recalls that have decimated Toyota's public image as a maker of safe and reliable cars are a matter of public record. Attached hereto as Exhibit A is a true and correct copy of the updated recall notice issued by Toyota. The loss in value of Plaintiff's vehicle is also a matter of public record. Attached hereto as Exhibit B is a true and correct copy of the February 10, 2010 Newswire report *KBB.com: Toyota... Values Continue to Decline*. Moreover, Plaintiffs have retained skilled counsel with many years of experience in products liability cases and class actions.

All that Plaintiffs need now is evidence that the recalls were caused by Toyota's installation of defective parts. If the Court issues a TRO and preliminary injunction halting Toyota's spoliation of this evidence, Plaintiffs fully expect to prevail.

D. THE BALANCE OF HARDSHIPS STRONGLY FAVORS PLAINTIFF.

Even if the Court entertains doubts about Plaintiffs' likelihood of prevailing, the question of Toyota's responsibility for the financial harm Plaintiffs have suffered through the loss of value of their vehicles is a "serious question going to the merits" of the case. *Diamontiney*, 918 F.2d at 795. And if there is a "balance of hardships" at all, it certainly tips in Plaintiff's favor. *Id.* In the absence of a TRO and preliminary injunction, Toyota's destruction of evidence would deprive Plaintiffs, and hundreds of thousands of similarly situated class members, of the right to seek redress for serious financial harm. If a TRO and preliminary injunction were issued, Toyota would suffer—at worst—the minor inconvenience of finding and clearly marking storage space for the defective parts they remove from recalled vehicles.

But a true accounting of the balance of hardships must also reflect the *benefit to Toyota* of issuing a TRO and preliminary injunction. Willful spoliation of evidence is a serious offense, and perpetrators can face sanctions and even tort liability. *Cf. Leon v. IDX Systems Corp.*, 464 F.3d 951, 957-61 (9th Cir. 2006) (reviewing, and affirming, the district court's grant of "spoliation sanctions" against a party whose "behavior amounted to willful spoliation"); *see also Unigard Sec. Ins. Co.*, 982 F.2d at 370-71 (noting that some states have recognized spoliation of

evidence as an independent tort, and explaining that when a defendant spoliates evidence, "the spoliation damages a right that the other party possesses: the capacity to bring a lawsuit"); *State Farm Fire and Cas. Co. v. Broan Mfg. Co., Inc.*, 523 F.Supp.2d 992 (D. Ariz. 2007) (imposing sanctions against a party, including dismissal of that party's case, for "willful spoliation" of evidence). By sparing Toyota sanctions and liability—at least for the evidence it has not yet destroyed[1]—the court's grant of a TRO would reduce the hardships faced by both parties.

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DECLARATION OF DANA B. TASCHNER

I am a lawyer admitted to practice before this Court. I make this declaration based on my own personal knowledge and could and would competently testify the matter herein if called upon to do so.

On February 15, 2010, I telephoned Toyota Motor Sales USA at their corporate headquarters located in Torrance, CA, telephone (310)468-8000 in an effort to provide notice of the Class Action Complaint and Ex Parte Application for TRO and Injunction to Prevent

[1] Plaintiffs reserve the right to seek sanctions, tort recovery, and all other available remedies for any and all evidence that Toyota has already spoliated.

Spoliation of Evidence. Toyota's recorded telephonic message stated that the Toyota offices are closed in observance of the national holiday. I was unable to speak directly with any individual.

I declare under penalty of perjury that the above is true and correct. Executed February 15, 2010, at Santa Ana, CA.

DANA B. TASCHNER

Recall Information:

We recognize you may have experienced lengthy wait times when calling our Customer Experience Center. We apologize for this. Listed below is all the information our Customer Experience representatives are providing to customers.

For the very latest news:

Is your vehicle involved?

Below are the vehicles involved in the recent recalls. Click on your vehicle for more information:

2005-2010 Avalon	2010 Prius
2007-2010 Camry	2009-2010 RAV4
2009-2010 Corolla	2008-2010 Sequoia
2008-2010 Highlander	2005-2010 Tacoma
2009-2010 Matrix	2007-2010 Tundra
2004-2009 Prius	2009-2010 VENZA

Videos:

2010 Prius Anti-Lock Brake System (ABS)
A remedy to the inconsistent brake feel of the Anti-lock Brake System (ABS) as part of the voluntary safety recall for the 2010 Prius.

An Important Update: 02.11.10
Toyota talks about how dealerships are taking actions for the recalls.

"Commitment" TV Commercial
Watch the Toyota "Commitment" television commercial.

Important Message
From Jim Lentz, President and Chief Operating Officer, Toyota Motor Sales, U.S.A., Inc.

Stopping Procedure
Learn the proper procedure for bringing your vehicle to a safe stop if you experience a sticking accelerator pedal.

Pedal Assembly
A steel reinforcement bar eliminates the excess friction that can cause the pedal to stick.

Floor Mat Entrapment
The potential risk for floor mat entrapment of accelerator pedals in certain Toyota models.

Electronic Throttle Control
Electronic Throttle Control Systems (ETCS) have enhanced vehicle safety by making possible functions such as vehicle skid control and traction control. Learn how they work and the multiple fail-safe systems built into your Toyota's ETCS.

Visit the official Toyota YouTube Channel to watch videos about the recall.

Latest Update:

Read an important message from Jim Lentz, President and Chief Operating Officer of Toyota Motor Sales, U.S.A, Inc. Click here to read Toyota's Pledge To You

- Posted February 10, 2010

Toyota Motor Corporation President Akio Toyoda outlines the company's plans for earning back customer trust in an op-ed in *The Washington Post*. Click here to read the op-ed

Read the latest information on the 2010 Prius

- Posted February 8, 2010

Here's the latest update on the recall:

1. We're starting to send letters this weekend to owners involved in the recall to schedule an appointment at their dealer.
2. Dealerships have extended their hours - some of them working 24/7 - to fix your vehicle as quickly as possible.
3. Trained technicians have begun making repairs.

Our entire organization of 172,000 North American employees and dealership personnel has been mobilized. And we're doubling our quality control efforts across the company.

Ensuring your safety is our highest priority. We will continue to update you with accurate and timely information about the status of the recall in the days and weeks ahead.

- Posted February 8, 2010

What we're doing:

Recently, Toyota announced two safety recalls that cover some of its models. Both recall campaigns address conditions related to the accelerator pedal. The first recall, "Floor Mat Entrapment" regards the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide-open position.

The second recall, "Pedal" is being conducted because there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position.

Is your Toyota subject to one or both of the recalls? Select your model from the list at left to learn whether either or both of these recalls apply to your Toyota vehicle and what you should expect regarding the recall remedies.

If you have additional questions or concerns that have not been addressed here, please contact the Toyota Customer Experience Center at 1-800-331-4331. The Toyota Customer Experience Center hours are: Mon.–Fri. 5:00 am-6:00 pm PST, Sat.–Sun. 7:00 am-4:00 pm PST.

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HOME CONTACT US SITE MAP PRIVACY POLICY LEGAL TERMS TOYOTA OWNERS ONLINE ABOUT TOYOTA
Cars Trucks SUVs Minivans Hybrids Vehicles Fuel Economy Accessories

PRINT THIS

kbb.com: Toyota Brand Consideration, Vehicle Interest, Values Continue to Decline

Study Shows Week-Over-Week, More Consumers Defecting from Toyota, Lexus, Scion Brands

IRVINE, Calif., Feb. 10 /PRNewswire/ -- According to the latest Kelley Blue Book www.kbb.com Market Intelligence data, Toyota consideration and interest has dropped even further in the past week as the company continues to issue massive recall announcements. The latest kbb.com study results show 27 percent of those who said they were considering a Toyota prior to the recall now say they no longer are considering the brand for their next vehicle purchase, an increase of six percent from the 21 percent who indicated they had defected from Toyota the prior week (immediately following the initial recall announcement).

In addition, now 28 percent of those who said they were considering a Scion and 23 percent of those who said they were considering a Lexus prior to the Toyota recalls, now say they are no longer considering those brands.

Now nearly half (49 percent) of the car shoppers who have defected from Toyota say they are not sure if they will consider the brand again, even once Toyota's problems are resolved.

Kelley Blue Book updates its famous Blue Book® Values on a weekly basis, and the values continue to fall for Toyota models affected by the recall announcements. On February 5, 2010, company analysts initially decreased the used-car values of recalled Toyotas by 1 - 3 percent in response to the slowing demand for Toyota models in the marketplace following the consumer recall. This coming Friday, February 12, Kelley Blue Book will once again adjust values for these vehicles downward by an additional 1.5 percent on concerns around the growing supply of unsold Toyotas on both dealer lots and at auctions. The latest announcements about new 2010 Priuses and late-model 2009-2010 Corollas also have affected not just used-car values, but also new-car (transaction) values. After the latest Prius recall news, consumers can pick up a brand-new 2010 Prius closer to dealer invoice price than its suggested retail price, a difference of $1,000 - $1,500.

Kelley Blue Book Values Summary for Toyota

- **All Used Recalled Toyota Models:** Used-car values declined 1-3 percent (depending on the model) on February 5, 2010, and will drop an additional 1.5 percent on Friday, February 12, 2010
- **New 2010 Prius:** New Car Blue Book® Value (transaction price) will drop by $1,000 - $1,500 on February 12, 2010
- **Used Prius, 2009 and older models:** Used-car value dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010
- **Used Corolla, 2009 and older models:** Used-car values dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010

"We are seeing a softening of both used Toyota values and the New Car Blue Book values of new Toyotas this week," said Juan Flores, director of vehicle valuation, Kelley Blue Book. "The softening of values is a product of weakened consumer demand, and the realization that Toyota is going to have to offer lower prices to get some consumers to consider Toyota vehicles again."

In addition to the values decline, site traffic from Kelley Blue Book's kbb.com detailed in the company's Market Watch® report

also shows a continued decline in Toyota interest in the wake of the recall announcements. Toyota models have seen an overall 25 percent decline in page views since the recall news initially broke. Even Toyota models not specifically involved in the recall continue to see a decline in page views, demonstrating the negative impact the recall is having on current interest in all Toyota vehicles, not just the models named in the recall.

"It seems the longer Toyota is the subject of daily headlines with the continuing recall news, the more consumers are reacting negatively by defecting from Toyota, Lexus and Scion. We are seeing shoppers on kbb.com lean more toward competitors, especially the domestics like Ford and Chevy who are offering enticing conquest incentives," said James Bell, executive market analyst for Kelley Blue Book's kbb.com. "Toyota is going to have to work extra hard for quite some time to overcome the 'double-whammy' it is seeing with the continuing drop in values and consumer brand consideration."

When comparing Toyota's perceived safety ratings in Kelley Blue Book Market Intelligence's Brand Watch® survey from the week prior to the recall to the past week, the brand has experienced a drop from 8.4 to 7.0 (on a 10-point scale).

Some of Toyota's primary competitors are benefiting from the negative impact of the recall news. Many car shoppers now indicate they are considering brands they were not considering prior to the Toyota recall news, showing increased interest in Ford (eight percent), Chevrolet (seven percent), Hyundai (five percent) and Honda (five percent).

Of those competing brands offering specific incentives to Toyota owners/shoppers, Ford is garnering the most consumer attention, with 16 percent of car shoppers saying they were not considering a Ford prior to the Toyota recall but now are (due to Ford's Toyota-specific incentives). Chevrolet is in second place with eight percent saying they were not considering a Chevy prior to the recall news, but now are (due to Chevy's Toyota- specific incentives).

Toyota's share of dealer leads submitted by consumers on Kelley Blue Book's kbb.com also have experienced a decline since the recall news was announced, demonstrating the immediate impact the recall is having on Toyota dealers across the United States who are seeing fewer consumers interested in the models they sell.

This Kelley Blue Book Market Intelligence study on the Toyota recall was fielded to a total of 691 in-market car shoppers on Kelley Blue Book's kbb.com from January 29 – February 8, 2010 (Wave One was January 29 – February 1, 2010 with 406 respondents; Wave Two was February 4 – 8, 2010 with 285 respondents). Brand Watch data cited compared Toyota brand consideration from January 12-18, 2010 to February 4-8, 2010. Market Watch data cited compared Toyota model page views on kbb.com from the week of January 18, 2010 to the week of February 1, 2010.

About Kelley Blue Book (www.kbb.com)

Since 1926, Kelley Blue Book, The Trusted Resource®, has provided vehicle buyers and sellers with the new and used vehicle information they need to accomplish their goals with confidence. The company's top-rated Web site, www.kbb.com, provides the most up-to-date pricing and values, including the New Car Blue Book® Value, which reveals what people actually are paying for new cars. The company also reports vehicle pricing and values via products and services, including software products and the famous Blue Book® Official Guide. According to the C.A. Walker Research Solutions, Inc. - 2009 Spring Automotive Web Site Usefulness Study, kbb.com is the most useful automotive information Web site among new and used vehicle shoppers, and half of online vehicle shoppers visit kbb.com. Kelley Blue Book's kbb.com also is a W3 Gold Award winner, sanctioned by the International Academy of Visual Arts. Kbb.com is a leading provider of new car prices, used car Blue Book Values, car reviews, new cars for sale, used cars for sale, and car dealer locations.

SOURCE Kelley Blue Book

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http://www.prnewswire.com/news-releases/kbbcom-toyota-brand-consideration-vehicle-interest-values-continue-to-decline-83999157.html

Check the box to include the list of links referenced in the article.

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ATTORNEYS FOR: PLAINTIFFS

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CENTRAL DIST. OF CALIF.
SANTA ANA
BY:

UNITED STATES DISTRICT COURT
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v.

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA, INC.

Defendant(s)

CASE NUMBER

SACV10-00183 JVS(ANX)

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 (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	CONNECTION
(List the names of all such parties and identify their connection and interest.)	
T LEIGHTBEARD	PLAINTIFF
CATHERINE NGUYEN	PLAINTIFF
MALINA SALVADOR	PLAINTIFF
TOYOTA MOTOR CORPORATION	DEFENDANT
TOYOTA MOTOR SALES USA INC	DEFENDANT
DANA TASCHNER	ATTORNEY FOR PLAINTIFF

2/16/2010
Date

[signature]
Sign

DANA B TASCHNER

Attorney of record for or party appearing in pro per

NOTICE OF INTERESTED PARTIES

CV-30 (12/03)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 10-183 JVS (ANx) Date February 16, 2010

Title Beard v. Toyota Motor Sales, U.S.A. Inc.

Present: The Honorable	James V. Selna	
	Karla J. Tunis	Not Present
	Deputy Clerk	Court Reporter
	Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
	Not Present	Not Present

Proceedings: (IN CHAMBERS) Order re Plaintiff's Ex Parte Application for Temporary Restraining Order

Plaintiffs T. Leigh Beard *et al.* (collectively "plaintiffs") apply to the Court *ex parte* for a temporary restraining order prohibiting Toyota Motor Sales, U.S.A., Inc. ("Toyota") from destroying any automobile component removed from a Toyota vehicle pursuant any recall issued since October 1, 2009.

The Court finds that plaintiffs' efforts to give Toyota notice of this application and to comply with Local Rule 7-19 are inadequate. Plaintiffs shall undertake further efforts, and shall electronically file a declaration detailing those efforts no later than noon February 17, 2010, with a copy to the Court Room Deputy via e-mail. Plaintiffs shall also advise Toyota that it is the Court's practice to wait 24 hours from the filing of any *ex parte* application before acting in order to receive opposition from the defendant.

No later than noon February 17, 2010, plaintiffs shall lodge a proposed order on the application that provides:

- The relief sought by way of temporary restraining order
- An order to show cause why a preliminary injunction should not issue
- A briefing and hearing schedule for the preliminary injunction.

In issuing this order, the Court expresses no opinion whether a temporary restraining order, order to show cause and/or preliminary injunction should be issued.

00 : 00

Initials of Preparer kjt

TOY-RQ-05E-00012473

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JUDGE _____
DEPT. _____

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On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in values. Auto pricing experts Kelley Blue Book and Edmunds.com have commenced pricing declines in the value of Toyota products. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%. Edmunds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. Toyota vehicle owners have been adversely impacted by the recalls in that the recalls have resulted in a current estimated aggregate loss of value of their vehicles exceeding $2 Billion.

Contemporaneous with the filing of this Motion, Plaintiffs have filed a Class Action Complaint alleging, among other things, that Toyota knew its vehicles were susceptible to malfunction that could result in unintended acceleration and braking conditions leading to injury or death. Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales, values, goodwill, and reputation for safety.

On February 10, 2010 Toyota issued a statement targeting consumers, announcing "dealerships have extended their hours - some of them working 24/7 - to fix your vehicle as quickly as possible...trained technicians have begun making repairs" and that Toyota's "172,000 North American employees and dealership personnel has been mobilized. And we're doubling our quality control efforts across the company." A True and correct copy of the Toyota Recall Notice of February 10, 2010 is attached hereto as Exhibit A.

According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. Based on Toyota statements disclosed to the news media, more than one million Toyota vehicles may be modified in the coming weeks. *The Los Angeles Times* printed statements from Toyota services managers including Jose Uribe, service manager at Longo Toyota in El Monte

located within this Judicial District, that dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, replace, or modify vehicles. While Toyota may be finally addressing, in part, the colossal safety issues associated with Toyota vehicles by repairing, replacing, or modifying vehicles, critical evidence in this action is disappearing on an hourly basis when Toyota successfully recovers a defective Toyota vehicle from a consumer and removes and destroys the defective parts.

Critically, Toyota is claiming that the vehicles have only mechanical problems and not electronic defects. The parts removed from the recalled vehicles are critical to investigate and establish whether the electronic parts are defective. Only by preserving the evidence removed by Toyota will plaintiffs have the ability to investigate and examine the parts subject of this action.

III. ARGUMENT

A. STANDARDS FOR GRANTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The purpose of a temporary restraining order (TRO) is to halt ongoing and irreparable injury. Under Federal Rule of Civil Procedure 65(b), this Court may grant a TRO "without written or oral notice to the adverse party or its attorney" if

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Where, as here, the party seeking injunctive relief can show "either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious

questions going to the merits and the balance of hardships tipping in [the movant's] favor," the Court may grant a preliminary injunction. *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990), *quoting Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985) (alteration in original).

B. A TEMPORARY RESTRAINING ORDER IS NECESSARY TO HALT THE IMMEDIATE LOSS AND IRREPARABLE INJURY CAUSED BY TOYOTA'S CONTINUING SPOLIATION OF EVIDENCE.

Toyota's abuse of the recall process is causing Plaintiffs irreparable injury by destroying the evidence upon which their case depends. In order to obtain relief for their vehicles' loss of value, Plaintiffs must establish that the loss was caused by Toyota. Specifically, Plaintiffs must establish that Toyota installed defective parts in vehicles it sold, the discovery of which lowered the resale value of their Toyota vehicles by creating the public perception that Toyotas are unsafe. But in order to establish this, Plaintiffs must show that the parts at issue were in fact defective. For this reason, the crucial evidence of causation—the evidence of Toyota's responsibility that will ultimately allow the Court to rule on the merits of this class action—is the defective parts themselves.

But Toyota, well aware of the evidentiary value of defective parts, is using the recall process to obtain and dispose of them. Millions of defective parts removed from recalled Toyotas have already been destroyed, altered or simply discarded. Millions more pieces of evidence are headed to Toyota dealerships right now, as car owners rightly worried about safety seek to have them replaced with non-defective parts. And if the recalls are successful, *every single defective part at issue will be under Toyota's control*. The destruction of these parts would cause Plaintiffs immediate and irreparable injury by effectively denying them their day in court. *Cf. Unigard Sec. Ins. Co. v. Lakewood Engineering and Mfg. Corp.*, 982 F.2d 363, 370-71 (9th Cir. 1992) (explaining that when a defendant spoliates evidence, "the spoliation damages a right that the other party possesses: the capacity to bring a lawsuit"). Only by granting a TRO can the court prevent this injury.

C. PLAINTIFFS ARE LIKELY TO PREVAIL.

Plaintiffs' "likelihood of success on the merits," *Diamontiney*, 918 F.2d at 795, is high. The recalls that have decimated Toyota's public image as a maker of safe and reliable cars are a matter of public record. Attached hereto as Exhibit A is a true and correct copy of the updated recall notice issued by Toyota. The loss in value of Plaintiff's vehicle is also a matter of public record. Attached hereto as Exhibit B is a true and correct copy of the February 10, 2010 Newswire report *KBB.com: Toyota...Values Continue to Decline*. Moreover, Plaintiffs have retained skilled counsel with many years of experience in products liability cases and class actions.

All that Plaintiffs need now is evidence that the recalls were caused by Toyota's installation of defective parts. If the Court issues a TRO and preliminary injunction halting Toyota's spoliation of this evidence, Plaintiffs fully expect to prevail.

D. THE BALANCE OF HARDSHIPS STRONGLY FAVORS PLAINTIFF.

Even if the Court entertains doubts about Plaintiffs' likelihood of prevailing, the question of Toyota's responsibility for the financial harm Plaintiffs have suffered through the loss of value of their vehicles is a "serious question going to the merits" of the case. *Diamontiney*, 918 F.2d at 795. And if there is a "balance of hardships" at all, it certainly tips in Plaintiff's favor. *Id.* In the absence of a TRO and preliminary injunction, Toyota's destruction of evidence would deprive Plaintiffs, and hundreds of thousands of similarly situated class members, of the right to seek redress for serious financial harm. If a TRO and preliminary injunction were issued, Toyota would suffer—at worst—the minor inconvenience of finding and clearly marking storage space for the defective parts they remove from recalled vehicles.

But a true accounting of the balance of hardships must also reflect the *benefit to Toyota* of issuing a TRO and preliminary injunction. Willful spoliation of evidence is a serious offense, and perpetrators can face sanctions and even tort liability. *Cf. Leon v. IDX Systems Corp.*, 464 F.3d 951, 957-61 (9th Cir. 2006) (reviewing, and affirming, the district court's grant of "spoliation sanctions" against a party whose "behavior amounted to willful spoliation"); *see also Unigard Sec. Ins. Co.*, 982 F.2d at 370-71 (noting that some states have recognized spoliation of

evidence as an independent tort, and explaining that when a defendant spoliates evidence, "the spoliation damages a right that the other party possesses: the capacity to bring a lawsuit"); *State Farm Fire and Cas. Co. v. Broan Mfg. Co., Inc.*, 523 F.Supp.2d 992 (D. Ariz. 2007) (imposing sanctions against a party, including dismissal of that party's case, for "willful spoliation" of evidence). By sparing Toyota sanctions and liability—at least for the evidence it has not yet destroyed[1]—the court's grant of a TRO would reduce the hardships faced by both parties.

DANA B. TASCHNER

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DECLARATION OF DANA B. TASCHNER

I am a lawyer admitted to practice before this Court. I make this declaration based on my own personal knowledge and could and would competently testify the matter herein if called upon to do so.

On February 15, 2010, I telephoned Toyota Motor Sales USA at their corporate headquarters located in Torrance, CA, telephone (310)468-8000 in an effort to provide notice of the Class Action Complaint and Ex Parte Application for TRO and Injunction to Prevent

[1] Plaintiffs reserve the right to seek sanctions, tort recovery, and all other available remedies for any and all evidence that Toyota has already spoliated.

Spoliation of Evidence. Toyota's recorded telephonic message stated that the Toyota offices are closed in observance of the national holiday. I was unable to speak directly with any individual.

I declare under penalty of perjury that the above is true and correct. Executed February 15, 2010, at Santa Ana, CA.

DANA B. TASCHNER

Recall Information:

We recognize you may have experienced lengthy wait times when calling our Customer Experience Center. We apologize for this. Listed below is all the information our Customer Experience representatives are providing to customers.

For the very latest news:

Is your vehicle involved?

Below are the vehicles involved in the recent recalls. Click on your vehicle for more information:

2005-2010 Avalon
2007-2010 Camry
2005-2010 Corolla
2008-2010 Highlander
2009-2010 Matrix
2004-2009 Prius
2010 Prius
2009-2010 RAV4
2008-2010 Sequoia
2005-2010 Tacoma
2007-2010 Tundra
2009-2010 VENZA

Videos:

2010 Prius Anti-Lock Brake System (ABS)
A remedy to the inconsistent brake feel of the Anti-lock Brake System (ABS) as part of the voluntary safety recall for the 2010 Prius.

An Important Update: 02.11.10
Toyota talks about how dealerships are taking actions for the recalls.

"Commitment" TV Commercial
Watch the Toyota "Commitment" television commercial.

Important Message
From Jim Lentz, President and Chief Operating Officer, Toyota Motor Sales, U.S.A., Inc.

Stopping Procedure
Learn the proper procedure for bringing your vehicle to a safe stop if you experience a sticking accelerator pedal.

Pedal Assembly
A steel reinforcement bar eliminates the excess friction that can cause the pedal to stick.

Floor Mat Entrapment
The potential risk for floor mat entrapment of accelerator pedals in certain Toyota models.

Electronic Throttle Control
Electronic Throttle Control Systems (ETCS) have enhanced vehicle safety by making possible functions such as vehicle skid control and traction control. Learn how they work and the multiple fail-safe systems built into your Toyota's ETCS.

Visit the official Toyota YouTube Channel to watch videos about the recall.

Latest Update:

Read an important message from Jim Lentz, President and Chief Operating Officer of Toyota Motor Sales, U.S.A, Inc. Click here to read Toyota's Pledge To You.

- Posted February 10, 2010

Toyota Motor Corporation President Akio Toyoda outlines the company's plans for earning back customer trust in an op-ed in *The Washington Post*. Click here to read the op-ed.

Read the latest information on the 2010 Prius.

- Posted February 8, 2010

Here's the latest update on the recall:

1. We're starting to send letters this weekend to owners involved in the recall to schedule an appointment at their dealer.
2. Dealerships have extended their hours - some of them working 24/7 - to fix your vehicle as quickly as possible.
3. Trained technicians have begun making repairs.

Our entire organization of 172,000 North American employees and dealership personnel has been mobilized. And we're doubling our quality control efforts across the company.

Ensuring your safety is our highest priority. We will continue to update you with accurate and timely information about the status of the recall in the days and weeks ahead.

- Posted February 5, 2010

What we're doing:

Recently, Toyota announced two safety recalls that cover some of its models. Both recall campaigns address conditions related to the accelerator pedal. The first recall, "Floor Mat Entrapment" regards the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide-open position.

The second recall, "Pedal" is being conducted because there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position.

Is your Toyota subject to one or both of the recalls? Select your model from the list at left to learn whether either or both of these recalls apply to your Toyota vehicle and what you should expect regarding the recall remedies.

If you have additional questions or concerns that have not been addressed here, please contact the Toyota Customer Experience Center at 1-800-331-4331. The Toyota Customer Experience Center hours are: Mon.–Fri. 5:00 am–6:00 pm PST, Sat.–Sun. 7:00 am–4:00 pm PST.

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PRINT THIS

kbb.com: Toyota Brand Consideration, Vehicle Interest, Values Continue to Decline

Study Shows Week-Over-Week, More Consumers Defecting from Toyota, Lexus, Scion Brands

IRVINE, Calif., Feb. 10 /PRNewswire/ -- According to the latest Kelley Blue Book www.kbb.com Market Intelligence data, Toyota consideration and interest has dropped even further in the past week as the company continues to issue massive recall announcements. The latest kbb.com study results show 27 percent of those who said they were considering a Toyota prior to the recall now say they no longer are considering the brand for their next vehicle purchase, an increase of six percent from the 21 percent who indicated they had defected from Toyota the prior week (immediately following the initial recall announcement).

In addition, now 28 percent of those who said they were considering a Scion and 23 percent of those who said they were considering a Lexus prior to the Toyota recalls, now say they are no longer considering those brands.

Now nearly half (49 percent) of the car shoppers who have defected from Toyota say they are not sure if they will consider the brand again, even once Toyota's problems are resolved.

Kelley Blue Book updates its famous Blue Book® Values on a weekly basis, and the values continue to fall for Toyota models affected by the recall announcements. On February 5, 2010, company analysts initially decreased the used-car values of recalled Toyotas by 1 - 3 percent in response to the slowing demand for Toyota models in the marketplace following the consumer recall. This coming Friday, February 12, Kelley Blue Book will once again adjust values for these vehicles downward by an additional 1.5 percent on concerns around the growing supply of unsold Toyotas on both dealer lots and at auctions. The latest announcements about new 2010 Priuses and late-model 2009-2010 Corollas also have affected not just used-car values, but also new-car (transaction) values. After the latest Prius recall news, consumers can pick up a brand-new 2010 Prius closer to dealer invoice price than its suggested retail price, a difference of $1,000 - $1,500.

Kelley Blue Book Values Summary for Toyota

- **All Used Recalled Toyota Models:** Used-car values declined 1-3 percent (depending on the model) on February 5, 2010, and will drop an additional 1.5 percent on Friday, February 12, 2010
- **New 2010 Prius:** New Car Blue Book® Value (transaction price) will drop by $1,000 - $1,500 on February 12, 2010
- **Used Prius, 2009 and older models:** Used-car value dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010
- **Used Corolla, 2009 and older models:** Used-car values dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010

"We are seeing a softening of both used Toyota values and the New Car Blue Book values of new Toyotas this week," said Juan Flores, director of vehicle valuation, Kelley Blue Book. "The softening of values is a product of weakened consumer demand, and the realization that Toyota is going to have to offer lower prices to get some consumers to consider Toyota vehicles again."

In addition to the values decline, site traffic from Kelley Blue Book's kbb.com detailed in the company's Market Watch® report

also shows a continued decline in Toyota interest in the wake of the recall announcements. Toyota models have seen an overall 25 percent decline in page views since the recall news initially broke. Even Toyota models not specifically involved in the recall continue to see a decline in page views, demonstrating the negative impact the recall is having on current interest in all Toyota vehicles, not just the models named in the recall.

"It seems the longer Toyota is the subject of daily headlines with the continuing recall news, the more consumers are reacting negatively by defecting from Toyota, Lexus and Scion. We are seeing shoppers on kbb.com lean more toward competitors, especially the domestics like Ford and Chevy who are offering enticing conquest incentives," said James Bell, executive market analyst for Kelley Blue Book's kbb.com. "Toyota is going to have to work extra hard for quite some time to overcome the 'double-whammy' it is seeing with the continuing drop in values and consumer brand consideration."

When comparing Toyota's perceived safety ratings in Kelley Blue Book Market Intelligence's Brand Watch® survey from the week prior to the recall to the past week, the brand has experienced a drop from 8.4 to 7.0 (on a 10-point scale).

Some of Toyota's primary competitors are benefiting from the negative impact of the recall news. Many car shoppers now indicate they are considering brands they were not considering prior to the Toyota recall news, showing increased interest in Ford (eight percent), Chevrolet (seven percent), Hyundai (five percent) and Honda (five percent).

Of those competing brands offering specific incentives to Toyota owners/shoppers, Ford is garnering the most consumer attention, with 16 percent of car shoppers saying they were not considering a Ford prior to the Toyota recall but now are (due to Ford's Toyota-specific incentives). Chevrolet is in second place with eight percent saying they were not considering a Chevy prior to the recall news, but now are (due to Chevy's Toyota- specific incentives).

Toyota's share of dealer leads submitted by consumers on Kelley Blue Book's kbb.com also have experienced a decline since the recall news was announced, demonstrating the immediate impact the recall is having on Toyota dealers across the United States who are seeing fewer consumers interested in the models they sell.

This Kelley Blue Book Market Intelligence study on the Toyota recall was fielded to a total of 691 in-market car shoppers on Kelley Blue Book's kbb.com from January 29 – February 8, 2010 (Wave One was January 29 – February 1, 2010 with 406 respondents; Wave Two was February 4 – 8, 2010 with 285 respondents). Brand Watch data cited compared Toyota brand consideration from January 12-18, 2010 to February 4-8, 2010. Market Watch data cited compared Toyota model page views on kbb.com from the week of January 18, 2010 to the week of February 1, 2010.

About Kelley Blue Book (www.kbb.com)

Since 1926, Kelley Blue Book, The Trusted Resource®, has provided vehicle buyers and sellers with the new and used vehicle information they need to accomplish their goals with confidence. The company's top-rated Web site, www.kbb.com, provides the most up-to-date pricing and values, including the New Car Blue Book® Value, which reveals what people actually are paying for new cars. The company also reports vehicle pricing and values via products and services, including software products and the famous Blue Book® Official Guide. According to the C.A. Walker Research Solutions, Inc. - 2009 Spring Automotive Web Site Usefulness Study, kbb.com is the most useful automotive information Web site among new and used vehicle shoppers, and half of online vehicle shoppers visit kbb.com. Kelley Blue Book's kbb.com also is a W3 Gold Award winner, sanctioned by the International Academy of Visual Arts. Kbb.com is a leading provider of new car prices, used car Blue Book Values, car reviews, new cars for sale, used cars for sale, and car dealer locations.

SOURCE Kelley Blue Book

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Find this article at:
http://www.prnewswire.com/news-releases/kbbcom-toyota-brand-consideration-vehicle-interest-values-continue-to-decline-83999157.html

Check the box to include the list of links referenced in the article.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, ET AL, Plaintiff(s), v. TOYOTA MOTOR CORPORATION, ET AL, Defendant(s).	CASE NO. SACV 10-183-JVS(ANx) INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA

Important Notice: The Court posts tentative law and motions rulings to the internet. Please see Section P, below.

COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS COURT AFTER BEING REMOVED FROM STATE COURT, THE DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER ON ALL OTHER PARTIES.

TOY-RQ-05E-00012486

This case has been assigned to the calendar of Judge James V. Selna. The intent of this Order is to ensure that this case will proceed so as "to secure [a] just, speedy and inexpensive determination." (Fed.R.Civ. P., Rule 1.)

A. THE COURT'S ORDERS

Copies of Judge Selna's orders that may have specific application to this case are available on the Central District of California website. See ¶ N. Those orders include the following:

(1) Order Setting Rule 26(f) Scheduling Conference
(2) Order re Civil Jury Trials
(3) Order re Civil Court Trials
(4) Order re RICO Case Statement

B. SERVICE OF PLEADINGS

Although Fed.R.Civ.P., Rule 4(m) does not require the summons and complaint to be served for as much as 120 days, the Court expects that the initial pleadings will be served much sooner than that, and will require plaintiff to show cause before then if it appears that there is undue delay.

C. ASSIGNMENT TO A MAGISTRATE JUDGE

Under 28 U.S.C. § 636, the parties may consent to have a Magistrate Judge preside over all proceedings, including trial. The Magistrate Judges who accept those designations are identified on the Central District's website, which

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also contains the consent form. See ¶ N.

D. EX PARTE PRACTICE

Ex parte applications are solely for extraordinary relief and should be used with discretion. See Mission Power Engineering Company v. Continental Casualty Co., 883 F. Supp. 488 (C. D. Cal. 1995). The Court will generally decide *ex parte* matters on the papers. Opposition to an *ex parte* application, if any, should be submitted within 24 hours.

E. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS OF TIME

No stipulations extending scheduling requirements or modifying applicable rules are effective until and unless the Court approves them. Both applications and stipulations must set forth:

1. The existing due date or hearing date;

2. Specific, concrete reasons supporting good cause for granting the extension. In this regard, a statement that an extension "will promote settlement" is insufficient. The requesting party or parties must indicate the status of ongoing negotiations: Have written proposals been exchanged? Is counsel in the process of reviewing a draft settlement agreement? Has a mediator been selected?

3. Whether there have been prior requests for extensions, and whether these were granted or denied by the Court.

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F. TRO'S AND INJUNCTIONS

Parties seeking emergency or provisional relief shall comply with F.R.Civ.P., Rule 65 and Local Rule 65. The Court will not rule on any application for such relief for at least 24 hours after the party subject to the requested order has been served; such party may file opposing or responding papers in the interim.

G. CASES REMOVED FROM STATE COURT

All documents filed in state court, including documents appended to the complaint, answers and motions, must be refiled in this Court as a supplement to the Notice of Renewal, if not already included. See 28 U.S.C. § 1447(a),(b). If the defendant has not yet answered or moved, the answer or responsive pleading filed in this Court must comply with the Federal Rules of Civil Procedure and the Local Rules of the Central District. If before the case was removed a motion was pending in state court, it must be re-noticed in accordance with Local Rule 7.

H. STATUS OF FICTITIOUSLY NAMED DEFENDANTS

This Court intends to adhere to the following procedures where a matter is removed to this Court on diversity grounds with fictitiously named defendants. (See 28 U.S.C. §§ 1441(a) and 1447.)

1. Plaintiff is normally expected to ascertain the identity of and serve any fictitiously named defendants within 120 days of the removal of the action to this Court.

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2. If plaintiff believes (by reason of the necessity for discovery or otherwise) that fictitiously named defendants cannot be fully identified within the 120-day period, an *ex parte* application requesting permission to extend that period to effectuate service may be filed with this Court. Such application shall state the reasons therefor, and may be granted upon a showing of good cause. The *ex parte* application shall be served upon all appearing parties, and shall state that appearing parties may comment within seven (7) days of the filing of the *ex parte* application.

3. If plaintiff desires to substitute a named defendant for one of the fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the previously-identified defendants (and counsel for the fictitiously named party, if that party has separate counsel). If consent is withheld or denied, plaintiff may apply *ex parte* requesting such amendment, with notice to all appearing parties. Each party shall have seven calendar days to respond. The *ex parte* application and any response should comment not only on the substitution of the named party for a fictitiously named defendant, but on the question of whether the matter should thereafter be remanded to the Superior Court if diversity of citizenship is destroyed by the addition of the new substituted party. See U.S.C. § 1447(c), (d).

I. BANKRUPTCY APPEALS

Counsel shall comply with the ORDER RE PROCEDURE TO BE FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the appeal is filed in the District Court.

J. MOTIONS UNDER FED.R.CIV.P., Rule 12

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Many motions to dismiss or to strike could be avoided if the parties confer in good faith (as they are required to do under L.R. 7-3), especially for perceived defects in a complaint, answer or counterclaim which could be corrected by amendment. See Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by *any* amendment). Moreover, a party has the right to amend his complaint "once as a matter of course at any time before a responsive pleading is served." Fed.R.Civ.P., Rule 15(a). A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have a right to amend. See Nolen v. Fitzharris, 450 F.2d 958, 958-59 (9th Cir. 1971); St. Michael's Convalescent Hospital v. California, 643 F.2d 1369, 1374 (9th Cir. 1981). And even where a party has amended his Complaint once or a responsive pleading has been served, the Federal Rules provide that leave to amend should be "freely given when justice so requires." F.R.Civ.P., Rule 15(a). The Ninth Circuit requires that this policy favoring amendment be applied with "extreme liberality." Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990).

These principles require that counsel for the plaintiff should carefully evaluate the defendant's contentions as to the deficiencies in the complaint, and that in many instances the moving party should agree to any amendment that would cure a curable defect.

The moving party shall attach a copy of the challenged pleading to the Memorandum of Points and Authorities in support of the motion.

The foregoing provisions apply as well to motions to dismiss a counterclaim, answer or affirmative defense, which a plaintiff might contemplate bringing.

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K. REQUIREMENTS FOR BRIEFS

In addition to the requirements in Local Rule 11, the Court requires the following for all briefs:

1. No footnote shall exceed 5 lines. The Court strongly discourages the use of extensive footnotes as a subterfuge to avoid page limitations in the Local Rules.

2. All footnotes shall be in the same type size as text. See Local Rule 11-3.1.1.

3. Each case cited shall include a jump cite to the page or pages where the relevant authority appears (e.g., United States v. Doe, 500 U. S. 1, **14, 17** (1997)).

Failure to follow these requirements may result in rejection of a brief for correction.

L. LEAD COUNSEL

Lead counsel shall appear on all dispositive motions, scheduling conferences, and settlement conferences. **The Court does not entertain special appearances; only counsel of record may appear.**

M. COURTESY COPIES

A courtesy copy of all electronically filed pleadings shall be delivered to Judge Selna's courtesy copy drop on the tenth floor at the rear of the elevator

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lobby by noon the day following filing. **Failure to make timely delivery of the courtesy copies may result in a delay in hearing a motion or ordering the matter off calendar.**

N. ELECTRONIC COPIES

When the Court requires an electronic copy of a document (*e.g.*, with proposed jury instructions), a copy shall be submitted at time of filing in one the following manners: providing a copy on a disk, CD, or thumb drive in a labeled envelope and lodged with the clerk; or by e-mailing a copy to the Court Room Deputy (JVS_Chambers@cacd.uscourts.gov). Regardless of media, the document should be formatted in WordPerfect9 or higher.

O. WEBSITE

Copies of this Order and other orders of this Court are available on the Central District of California's website, at "www.cacd.uscourts.gov" at Judge Selna's home page located under "Judge's Procedures and Schedules."

P. TENTATIVES–DAY OF HEARING AND WEB POSTING

The Court attempts to issue tentative rulings on each motion. Tentatives will be posted on the Court's website: www.cacd.uscourts.gov/. From the home page, click on "Judges' Procedures and Schedules" in the left column. From the list, click on "Hon. James V. Selna," which will take you to Judge Selna's page. Click on the red notice in the upper left: "Click here to view Tentative Rulings." Then click on the desired ruling which comes up in a .pdf file which can be read with an Adobe Acrobat reader. Judge Selna attempts to post tentatives by late Friday afternoon

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preceding the hearing date. Hard copies of tentatives will also be available from the clerk approximately 15 minutes before the hearing.

The Court thanks counsel and the parties for their anticipated cooperation.

IT IS SO ORDERED.

Dated: February 18, 2010

James V. Selna
United States District Judge

TOY-RQ-05E-00012494

(RNBx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Southern Division - Santa Ana)
CIVIL DOCKET FOR CASE #: 8:10-cv-00183-JVS-RNB

T Leigh Beard et al v. Toyota Motor Corporation et al
Assigned to: Judge James V. Selna
Referred to: Magistrate Judge Robert N. Block
Cause: 28:1332 Diversity-Other Contract

Date Filed: 02/16/2010
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

T Leigh Beard
in their individual capacities and on behalf of all other similarly situated

represented by **Dana B Taschner**
Lanier Law Firm
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ATTORNEY TO BE NOTICED

Plaintiff

Catherine Nguyen
in their individual capacities and on behalf of all others similarly situated

represented by **Dana B Taschner**
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W Mark Lanier
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Malina Salvador
in their individual capacities and on behalf of all others similarly situated

represented by **Dana B Taschner**
(See above for address)
ATTORNEY TO BE NOTICED

W Mark Lanier
(See above for address)
ATTORNEY TO BE NOTICED

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V.

Defendant

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Defendant

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Date Filed	#	Docket Text
02/16/2010	1	COMPLAINT against Defendants Toyota Motor Corporation and Toyota Motor Sales USA Inc. Case assigned to Judge James V. Selna for all further proceedings. Discovery referred to Magistrate Judge Arthur Nakazato.(Filing fee $ 350 Paid) Jury Demanded. Filed by Plaintiffs Catherine Nguyen, T Leigh Beard and Malina Salvador.(lwag) (Entered: 02/16/2010)
02/16/2010	2	CERTIFICATE of Interested Parties filed by Plaintiffs T Leigh Beard, Catherine Nguyen and Malina Salvador. (lwag) (Entered: 02/16/2010)
02/16/2010	3	MEMORANDUM of Points and Authorities in Support of Ex Parte Application for TRO and Preliminary Injunction to Prevent Further Spollation of Evidence filed by Plaintiffs T Leigh Beard, Catherine Nguyen and Malina Salvador. (lwag) (Entered: 02/16/2010)
02/16/2010	4	MINUTES OF IN CHAMBERS ORDER held before Judge James V. Selna: Order re Plaintiffs Ex Parte Application for Temporary Restraining Order. The Court finds that plaintiffs efforts to give Toyota notice of this application and to comply with Local Rule 7-19 are inadequate. Plaintiffs shall undertake further efforts, and shall electronically file a declaration detailing those efforts no later than noon February 17, 2010, with a copy to the Court Room Deputy via e-mail. (ade) (Entered: 02/16/2010)
02/16/2010	8	ORDER RETURNING CASE FOR REASSIGNMENT UPON RECUSAL by Magistrate Judge Arthur Nakazato. ORDER case returned to the Clerk for random reassignment Discovery pursuant to General Order 05-07 and General Order 08-05. Case randomly reassigned from Magistrate Judge Arthur Nakazato to Magistrate Judge Robert N. Block for all further proceedings. The case number will now reflect the initials of the transferee Judge SACV10-00183 JVS (RNBx). (ade) (Entered: 02/18/2010)
02/17/2010	5	DECLARATION of Dana B. Taschner re Memorandum of Points and Authorities in Support (non-motion) 3 *OF PLAINTIFFS EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE:*

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		PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE filed by Plaintiffs T Leigh Beard, Catherine Nguyen, Malina Salvador. (Attachments: # 1 Proposed Order [PROPOSED] ORDER GRANTING PLAINTIFFS EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE, # 2 Supplement NOTICE OF ERRATA RE: EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE)(Taschner, Dana) (Entered: 02/17/2010)
02/17/2010	6	MEMORANDUM of Points and Authorities in Opposition filed by Defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc. *(Statement of Opposition to Plaintiffs' Ex Parte Application)* Re: Memorandum of Points and Authorities in Support (non-motion) 3 (Gilford, Lisa) (Entered: 02/17/2010)
02/17/2010	7	Certificate of Interested Parties filed by Defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, identifying T. Leigh Beard, Catherine Nguyen, Marina Salvador, Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc.. (Gilford, Lisa) (Entered: 02/17/2010)
02/18/2010	9	ORDER by Judge James V. Selna, DENYING PLAINTIFFS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE 3 : (See document for details.) The Application is denied. (rla) (Entered: 02/18/2010)
02/18/2010	10	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA by Judge James V. Selna, (nca) (Entered: 02/18/2010)

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Attorneys for Plaintiffs,
T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, CATHERINE NGUYEN, and MALINA SALVADOR, in their individual capacities, and on behalf of all others similarly situated,

Plaintiffs,

V.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC. ; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ; TOYOTA MOTOR SALES U.S.A., INC., and Does 1 through 10, inclusive,

Defendants.

Case No. SACV10-00183 JVS (RNBx)

NOTICE OF MOTION FOR CLASS CERTIFICATION [FRCP 23]; PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Date: March 29, 2010
Time: 1:30 P.M.

Judge: JAMES V. SELNA
Courtroom: 10C

NOTICE OF MOTION FOR CLASS CERTIFICATION

PLEASE TAKE NOTICE THAT PLAINTIFFS HEREBY MOVE FOR CLASS CERTIFICATION OF SIMILAR CLAIMS PENDING IN THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 23 AND 42, AND AS DEFINED IN PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT FILED CONTEMPORANEOUSLY WITH THIS NOTICE AND MOTION FOR CLASS CERTIFICATION. PLAINTIFFS REQUEST CERTIFICATION OF THE CLASS BASED ON THE PLEADINGS, DOCUMENTS, MOTION, AND OTHER EVIDENTIARY ITEMS TO BE SUBMITTED TO THIS COURT INCLUDING ORAL ARGUMENT.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS CERTIFICATION

Plaintiffs, individually and on behalf of a class of those similarly situated, hereby apply to this Court for certification of the Class described in Class Action Complaint filed in the above-captioned case.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A crisis of confidence in Toyota's commitment to safety has harmed millions vehicles owners who are not only concerned about the safety of driving recalled

vehicles, but also about their lowered resale value. When Plaintiffs purchased their Toyota vehicles, they knew that they were making a solid investment: a safe, environmentally friendly vehicle with low fuel costs and the high resale value that Toyotas have had for decades. But Defendants have issued a flood of recalls encompassing more than 8 million vehicles worldwide, 6 million of which concern vehicles in the U.S. The recalls involve serious defects that can cause uncontrolled acceleration and difficulty braking. The defects have already caused deadly accidents and have the potential to cause more accidents that could kill or seriously injure drivers and passengers of Toyota vehicles as well as those in other vehicles and pedestrians.

The recalls have not only illuminated the problems that Plaintiffs may have experienced with their vehicles, but also shaken Plaintiffs' faith in the safety of their Toyota vehicles and harmed their finances by lowering the vehicle's resale value. Toyotas have already lost 2-4% or more of resale value—a loss to the average Toyota owner of at least $350-$500—and as the safety concerns with Toyota vehicles grow, this loss will only increase.

If Toyota owners are to have any hope of obtaining redress for the financial loss they have suffered as a result of the recalls, they must be certified as a class. Potential Class Members number in the millions, face common issues of law and fact, and are represented by counsel with the extensive experience and legal resources needed to handle such a large class action. The claims of the named Plaintiffs are typical of those of the Class. The cost of filing individual lawsuits would be prohibitive for most Class Members. Individual lawsuits, moreover, could easily lead to varying adjudications that would prejudice the rights of other Class Members. For these reasons, Plaintiffs respectfully request that the Court certify the Class as soon as possible.

II. STATEMENT OF FACTS

Millions of owners of recalled Toyota vehicles face not only risk of a runaway car, but also economic loss in the diminished resell value of their vehicles. The Toyota

recalls encompass a number of different models with myriad possible defects. More than 2,000 complaints, 200 injuries and 34 deaths have been possibly linked to defects causing unintended acceleration and difficulty braking. Toyota has issued multiple recalls on more than 8 million vehicles related to the defects, with about 2 million subject to more than one recall. Toyota vehicles not recalled may have similar defects.

Toyota, which has been criticized for its slow response to consumer complaints, has made conflicting and misleading statements about the defects for years. It has cited driver error, unsecured mats that could trap the gas pedal and hamper the effectiveness of brakes, and sticking gas pedals. Toyota eventually offered repairs on recalled models based on these diagnoses. But conflicting statements, inconclusive investigations, and ongoing concerns raise doubts about whether the real causes of the problems may in fact be more complex, involving computer, electronic, and mechanical systems. Evidence suggests that defects may lie in the electronic throttle control system (ETCS). For many months Toyota officials firmly denied the possibility that the ETCS could be the problem. On February 23, 2010, however, under questioning under oath by the House Energy and Commerce Committee, James E. Lentz III, the president of Toyota Motor Sales U.S.A., finally admitted that the ETCS system might be at fault. Lentz acknowledged that fixing floor mats and sticking pedals under the current recalls would "not totally" solve the problem. Lentz said that 70 percent of complaints about unintended acceleration remained unexplained.

Internal Toyota documents turned over to the House Committee on Oversight and Government Reform as a result of congressional subpoenas now show that Toyota persuaded federal regulators to limit, delay, or avoid investigations, recalls, and rules, putting profit ahead of safety. The July 6, 2009, document shows that Toyota "negotiated" a limited recall in 2007 in an effort to avoid a deeper investigation into the acceleration problem, long before the problem became well known outside of the company and federal investigators. In the document, Toyota estimated it saved $100 million by negotiating with regulators for a limited recall of 2007 Toyota Camry and

Lexus ES models for sudden acceleration. The estimate was in a confidential presentation listing legislative and regulatory "wins" for the company.

At a House Committee on Oversight and Government Reform on February 24, 2010, Yoshimi Inaba, Toyota's chief operating officer for North America, acknowledged that Toyota was aware of issues with sticking pedals in Europe for a year before accidents in the United States. Toyota executives in the United States have said they found out about sticking pedal issues only in October, 2009. The first reports of sticking pedals surfaced in Britain and Ireland in late 2008. By August 2009, Toyota began a production change on cars sold in Europe that was completed by January, weeks before it recalled millions of vehicles in the United States. Information about the problems in Europe was "not properly shared" Inaba admitted. "We need to do a much better job sharing what we knew in Europe with the United States to see if there is any danger to American consumers," Inaba said.

As a result of Toyota's mishandling of the recalls and failure to properly follow through on safety concerns, Many Class Members do not feel safe driving Toyota vehicles even if they have been "fixed" by the Toyota dealer. Class Members may not be able to sell their vehicles, may have to sell them at a much lower price, or may not be comfortable selling them at all when they may be unsafe.

ETCS vehicles designed by other manufacturers and as originally designed by Toyota included a brake override system, a failsafe that enables the onboard computer to detect when both the throttle and the brake are being activated at the same time and immediately return the throttle to idle. Toyota neglected to provide this safety measure in recent ETCS models.

Toyota has announced that it will now install the brake override safety feature on all new Toyota and Lexus vehicles, and retroactively install it on six specific recalled models. However, the company has no plans to install it on all Toyotas with ETCS, leaving thousands of vehicles at risk for sudden unintended acceleration with possible

crashes, injuries, and death. Toyota's current design does not allow drivers to easily put the vehicle in neutral, apply the brakes, or just turn off the ignition.

In addition to the floor mat and sticky accelerator recalls, Toyota recently issued a recall for a possible braking software glitch in some Prius models, a recall for a power steering hose that can rub on the front brake line on some Camrys, and a recall for a possible drive shaft problem on some Tacoma Toyota trucks.

The escalating number of recalls, the dangerous nature of the defects, and the sheer number of vehicles involved has seriously damaged Toyota's reputation for quality and safety. Revelations about Toyota's management, moreover, show that the company not only has a parts problem, but a process problem as well. On February 24, 2010, Akio Toyoda, Toyota's chief executive admitted that the company "pursued growth over the speed at which we were able to develop our people and our organization" and that it resulted in "safety issues described in the recalls we face today." Congressional investigators are now uncovering how Toyota management failed to share information within the company, failed to properly and promptly follow through on early complaints, attempted to sway research and regulatory oversight, failed to disclose pertinent data, and attempted to limit the recalls even as it knew lives were at risk. In addition to Congressional investigations, a federal grand jury in New York and the Securities and Exchange Commission have issued a subpoena to Toyota in order to "produce certain documents related to unintended acceleration of Toyota vehicles and the braking system of the Prius." Japan's government said on February 24, 2010, that it would investigate 38 previously reviewed reports of unintended acceleration by Toyota cars in Japan in response to the concerns over the cornpany's safety record. Faith in the company's commitment to those who drive its vehicles has been shaken.

As the recalls, reports of accidents, lawsuits, complaints, and investigations continue, the resell value of Toyota vehicles has plunged. According to Kelley Blue Book, prices for Toyota vehicles subject to recalls have declined up to 4.5%.

Edmunds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. The drop in value will likely continue as revelations emerge in ongoing investigations. Potential damages for lost value could exceed an estimated $2 billion.

Class Members are faced with economic damages including car payments made on a vehicle that can't be driven, the cost of taking the vehicle to the repair shop, time off of work to get the repairs completed, and the loss of the car's value.

The number, size and complexity of the Toyota recalls demand proper and prompt management of a class action to fairly and efficiently adjudicate the controversy. Toyota's misconduct has created numerous questions of law and fact common to the Class, which will be affected by multiple ongoing government investigations. Competent class action counsel is needed to ensure timely responses on issues critical to preserving the rights of Class Members, such as remedying defects, obtaining evidence, addressing other lawsuits that may affect Class Members' rights, and ensuring fair and adequate compensation to all Members.

III. ARGUMENT

A. STANDARD FOR GRANTING CLASS CERTIFICATION

A class may be certified if "the trial court is satisfied, after a rigorous analysis" that the requirements of Federal Rule of Civil Procedure 23 are met.[1] *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982). The party seeking certification "bears the burden of demonstrating that the requirements of Rules

[1] Plaintiffs anticipate multiple civil filings in the Central District of California concerning the matters and legal issues presented as a result of multiple vehicle recalls by Toyota. Plaintiffs seek certification for convenience, to avoid prejudice and to expedite and economize.

23(a) and (b) are met." *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC v. ConocoPhillips Company*, ____ F.3d ____, 2010 WL 22701, at * 4 (9th Cir. 2010) (reversing order denying class certification). Specifically, the party must establish that the proposed class meets the four requirements of Rule 23(a)—"commonly referred to as 'numerosity,' 'commonality,' 'typicality' and 'adequacy of representation'"—and at least one of the requirements listed in Rule 23(b). *Id.*, at *3. Rule 23(b) provides that:

> A class action may be maintained if Rule 23(a) is satisfied and if:
>
> (1) prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
>
> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Although the Court has wide discretion in applying these requirements, it "may not . . . assume, *arguendo*, that problems will arise, and decline to certify the class on the basis of a mere potentiality that may or may not be realized." Where, as here, the proposed class easily meets the requirements of both Rule 23(a) and Rule 23(b), the Court should grant certification.

B. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23.

1. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(A).

The numerosity, commonality, typicality and adequacy of representation requirements of Rule 23(a) are easily met here. Millions of Toyota owners have suffered financial harm from the same course of illegal conduct. The claims advanced by the named Plaintiffs are thoroughly typical of the Class. And Class counsel has both the experience and the resources to litigate this case.

a. The proposed Class numbers in the millions, making joinder logistically impossible.

The Class is composed of those who own Toyota vehicles of the types subject to recall. Before the recalls, the value of each of these vehicles included a significant premium based on Toyota's reputation for safety and reliability. After several months of recalls and questions about safety, this reputation is gone, and the premium has vanished. The owners whose vehicles have lost this premium—an average loss of $300 to $500 of resale value—potentially number in the millions, rendering joinder of each one logistically impossible. This easily meets the numerosity requirement. *See Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003) ("There is no dispute that the

numerosity requirement is met in this case. The plaintiff class before us is approximately 15,000 in number."); *see also Gay v. Waiters' and Dairy Lunchmen's Union*, 549, F.2d 1330, 1332 n.7 (9th Cir. 1977) (noting, in a case where 184 potential class members had been identified, that "[c]ertification of a class under Rule 23 has been granted many times on lesser numbers than in the present case").

b. Toyota's misconduct has created numerous questions of law and fact common to the Class.

There are numerous "questions of law and fact common to the [C]lass," Fed. R. Civ. P. 23(a)(2), including the following:

1) Whether Defendants knowingly sold Class Members vehicles that were defectively designed, tested, manufactured, assembled or developed;
2) When Defendants became aware of any defects in the design, testing, manufacture, assembly or development of vehicles sold to Class Members;
3) Whether Defendants violated their duty to disclose to Class Members the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles;
4) Whether Defendants breached the warranty of implied merchantability by selling Class Members vehicles that were defectively designed, tested, manufactured, assembled or developed;
5) Whether Defendants misrepresented the true cause of defects in vehicles owned by Class Members once those defects became apparent;
6) Whether Defendants negligently breached duties that they owed to every Class Member, including the duty to provide a safely designed and manufactured product, and the duty to warn of defects of which they were aware;

7) Whether Defendants should reasonably have foreseen that the defects in vehicles that they sold to Class Members would create dangerous conditions, subjecting Class Members to harm as a result;

8) Whether Defendants' sale to Class Members of vehicles that they knew to be defective constituted unjust enrichment;

9) Whether Defendants' conduct, including but not limited to the concealment of defects in vehicles sold to Class Members, violated California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*;

10) Whether Defendants breached express warranties provided to Class Members;

11) Whether Defendants breached the implied warranty that vehicles sold to Class Members would be fit for a particular purpose;

12) Whether Defendants' conduct, including but not limited to the concealment of defects in vehicles sold to Class Members, breached the covenant of good faith and fair dealing;

13) Whether Defendants' deceptive, fraudulent and misleading labeling, statements, advertising, marketing and sales of the vehicles sold to Class Members violated the Lanham Act, 15 U.S.C. § 1125(a); and

14) The extent and amount of damages to which Class Members are entitled, including but not limited to compensation for the reduced resale value of their vehicles.

These questions of law and fact—questions that include virtually all of the major issues in this lawsuit—are more than enough to meet the requirements of Rule 23(a)(2). *Cf. Bouman v. Block*, 940 F.2d 1211, 1232 (9th Cir. 1991) (holding that the requirement had been met where "a common legal issue" and "a common factual problem" had been identified).

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c. The claims of the named Plaintiffs are typical of those of the Class.

Where, as here, the cause of Class Members' injury is the same, "the typicality inquiry involves comparing the injury asserted in the claims raised by the named [P]laintiffs with those of the rest of the class." *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001). T. Leigh Beard, Catherine Nguyen and Malina Salvador each purchased or leased a vehicle that was later included in Toyota's massive recall.[2] Each of these named Plaintiffs was led to believe that he or she was obtaining a vehicle that was safe to drive, and each purchased or leased a vehicle in reliance on this belief. As a result of the defects disclosed in the recalls, each named Plaintiff has suffered harm, including but not limited to a precipitous decline in the resale value of his or her vehicle. Whatever the dollar amount of his or her individual loss, this is the same underlying harm that every other Class Member has suffered. *See id.* at 869 (noting, in the context of prisoners who had been deprived of various services by the defendant's refusal to accommodate their disabilities, that "[a]lthough there are minor differences in the nature of the specific injuries suffered by the various class members, the differences are insufficient to defeat typicality").

Moreover, in order to obtain redress for this harm, each named Plaintiff requires rulings on the same issues of law and fact that affect the rest of the Class, including but not limited to whether Defendants knowingly sold them defective vehicles, and what duties Defendants breached by doing so. The named Plaintiffs do not expect that the answers to these questions will differ among Class Members, or differ between themselves and other Class Members. For this reason, the claims of the named Plaintiffs are "typical of the claims . . . of the [C]lass." Fed. R. Civ. P. 23(a)(3).

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[2] Specifically, Beard purchased or leased a 2010 Toyota Camry SE, Nguyen purchased or leased a 2009 TC Scion, and Salvador purchased or leased a 2009 Toyota Sequoia.

d. The named Plaintiffs will fairly and adequately protect the interests of the Class.

Plaintiffs will "fairly and adequately protect the interests of the [C]lass." Fed. R. Civ. P. 23(a)(4). Each of them has experienced financial harm from his or her vehicle's loss of resale value, and each is willing and able to act as a named Plaintiff in a nationwide class action. Plaintiffs have engaged highly experienced trial counsel with very significant experience litigating complex product liability, mass tort, and consumer claims and class actions, including trial and appeal of such actions. *Cf. Local Joint Executive Bd. Of Culinary / Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001) ("The competence of counsel seeking to represent a class is . . . an appropriate consideration under Rule 23(a)(4).").

2. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(B).

The class easily meets "at least one of the requirements listed in Rule 23(b)." *United Steel*, 2010 WL 22701, at *3. Most obviously, separate lawsuits would likely create "inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). If the factual and legal issues in this case are simultaneously litigated hundreds of thousands of times, conflicting rulings are virtually inevitable. Indeed, there would soon be a vast body of conflicting rulings on every conceivable issue, making it impossible for any party—including Defendants—to know where they stand.

The rulings in individual cases could also come into conflict a second way, making "adjudications with respect to individual class members" practically "dispositive of the interests of the other members not parties to the individual adjudications." Fed. R. Civ. P. 23(b)(1)(B). If enough individual owners are able to obtain relief, including

attorneys' fees for each separate case,[3] their lawsuits may bankrupt Toyota before the remaining owners have the opportunity to litigate their cases. This would not only prevent the slower-to-file Toyota owners from recovering, but compound their injury by further lowering the value of their vehicles.

Moreover, Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The central issue of the case is whether Toyota knowingly sold defective vehicles to the Class Members—not some, or most, but *all* Class Members. If Toyota did, then the nature of its liability is unlike to vary from Class Member to Class Member. Any injunctive or declaratory relief that the Court provides is equally unlikely to vary between class members. For this reason, the requirement of Rule 23(b)(2) is easily met here.

C. COMPLEXITY, SCALE, ECONOMICS, AND PACE MAKE CLASS CERTIFICATION IMPERATIVE AND TIME-SENSITIVE.

Toyota's massive, continuing and escalating recalls demand timely responses on a number of issues that are critical to preserving the rights of Class Members. These issues include remedying defects that imperil Class Members' safety, obtaining evidence to support Class Members' claims, and addressing other lawsuits that may affect Class Members' rights. For example, Toyota continues to expand existing recalls or make new recalls, vastly increasing both the size of the Class and the reputational damage, driving down the resale value of Class Members' vehicles. Additionally, putative class members, including named class representatives in this putative class action are receiving legal notices from Toyota after the filing of this putative class action, including but limited to, new "Warranty and Maintenance Guide[s]." New lawsuits—

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[3] The tremendous expense of redundant attorneys' fees—a separate claim for each of hundreds of thousands of cases—is yet another reason why a class action is superior to individual litigation.

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some of which may affect the rights of Class Members—continue to be filed. *See* Toyota Defendants' Statement of Opposition to Plaintiffs' *Ex Parte* Application 6, n.5 ("To date, Toyota has been served with nineteen federal lawsuits related to the issue of unintended acceleration. . . . In addition, defense counsel is aware of thirty-six related federal lawsuits that have been filed . . . as well as at least twenty-six similar state court cases"). Ongoing federal investigations continue to uncover new information as well. These rapid and complex developments demand prompt class management. For this reason, Plaintiffs respectfully request that the Court consider class certification as soon as possible.

D. BECAUSE OF THE UNIQUE FACTUAL AND LEGAL ISSUES RAISED BY THE CLASS ACTION COMPLAINT, THIS CASE SHOULD NOT BE TRANSFERRED FOR CONSOLIDATION WITH OTHER CASES.

Numerous other cases purporting to sue on behalf of Toyota owners have been filed. See Toyota Defendants' Statement of Opposition to Plaintiffs' *Ex Parte* Application 6, n.5. Plaintiffs are aware that it is this District's practice to transfer similar cases between the same parties for consolidated pretrial proceedings.[4] *See* 28 U.S.C. § 1407 (permitting transfer of, and consolidated pretrial proceedings in, "civil actions involving one or more common questions of fact" where the Judicial Panel on Multidistrict Litigation determines "that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions"). Unfortunately, the unique issues raised by this lawsuit, including claims under both the UCL and the Lanham Act, make consolidation of this case with those previously filed impractical. *Cf. In re: Fotomat Franchisee Litigation*, 394 F.Supp. 798, 798-99 (Jud. Panel on Multidistrict Litigation 1975) (declining to transfer four multidistrict

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[4] Although no motion for consolidation has been filed, Plaintiffs recognize the possibility that one may be filed in the future, and are addressing the issue now to avoid any delay in class certification.

cases and "agree[ing] with plaintiffs' contention that the various complaints raise factual issues predominantly unique to each plaintiff's relationship with defendant"). Moreover, the District containing Toyota Motor Sales U.S.A.'s corporate headquarters and one of the highest concentrations of Class Members of *any* District is the most appropriate venue for this case. For this reason, Plaintiffs respectfully request that the Court refrain from transferring this case for consolidation.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

T. LEIGH BEARD, ET AL. Plaintiff (s) v. **TOYOTA MOTOR CORPORATION, ET AL.** Defendant (s)	**CASE NUMBER: SACV10-00183 JVS (ANx)**
	PROOF OF SERVICE SUMMONS AND COMPLAINT (Use separate proof of service for each person/party served)

1. At the time of service I was at least 18 years of age and not a party to this action and **I served** copies of the *(specify documents):*
   a. ☒ summons ☒ complaint ☐ alias summons ☐ first amended complaint ☐ second amended complaint ☐ third amended complaint
   ☒ other *(specify):* **CIVIL CASE COVER SHEET; NOTICE OF INTERESTED PARTIES; NOTICE OF ASSIGNMENT; INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA; ORDER DENYING PLAINTIFFS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE; SUPPLEMENTAL DECLARATION OF DANA B. TASCHNER IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE; PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO PREVENT FURTHER SPOLIATION OF EVIDENCE**

2. Person served:
   a. ☒ Defendant *(name):* **TOYOTA MOTOR SALES, U.S.A., INC.**
   b. ☒ Other *(specify name and title or relationship to the party/business named):* **MARGARET WILSON, CLERK FOR CT CORPORATION (REGISTERED AGENT FOR SERVICE)**
   c. ☒ Address Where papers were served: **818 W. 7TH ST., SUITE 200 LOS ANGELES, CA 90017**

3. **Manner of service** in compliance with *(the appropriate box **must** be checked):*
   a. ☒ Federal Rules of Civil Procedure
   b. ☐ California Code of Civil Procedure

4. **I served** the person named in item 2:
   a. ☒ By **Personal service.** By personally delivering copies. If the person is a minor, by leaving copies with a parent, guardian, conservator or similar fiduciary and to the minor if at least (12) years of age.
      1. ☒ **Papers were served on** *(date):* **2-23-10** at *(time):* **2:25 PM**
   b. ☐ By **Substituted service.** By leaving copies:
      1. ☐ **(home)** at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household, at least 18 years of age, who was informed of the general nature of the papers.
      2. ☐ **(business)** or a person apparently in charge of the office of place of business, at least 18 years of age, who was informed of the general nature of the papers.
      3. ☐ **Papers were served on** *(date):* _____ at *(time):* _____

4. ☐ **by mailing** (by first-class mail, postage prepaid) copies to the person served in item 2(b) at the place were the copies were left in Item 2(c).

5. ☐ **papers were mailed** on (date): _____

6. ☐ **due diligence.** I made at least three (3) attempts to personally serve the defendant.

c. ☐ **Mail and acknowledgment of service.** By mailing *(by first-class mail or airmail, postage pre-paid)* copies to the person served, with two (2) copies of the form of Waiver of Service of Summons and Complaint and a return envelope, postage prepaid to the sender. **(Attach completed Waiver of Service of Summons and Complaint).**

d. ☐ **Service on domestic corporation, unincorporated association (including partnership), or public entity. (F.R.Civ.P.4(h)) (C.C.P. 416.10)** By delivering, during usual business hours, a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment of by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, a mailing, by first-class mail, postage prepaid, a copy to the defendant.

e. ☐ **Substituted service on domestic corporation, unincorporated association (including partnership), or public entity. (C.C.P. 415.20 only)** By leaving during usual office hours, a copy of the summons and complaint in the office of the person served with the person who apparently was in charge and thereafter by mailing *(by first-class mail, postage prepaid)*copies to the persons at the place where the copies were left in full compliance with C.C.P. 415.20. Substitute service upon the California Secretary of state requires a court order. **(Attach a copy of the order to this proof of service).**

f. ☐ **Service on a foreign corporation.** In any manner prescribed for individuals by FRCP 4(f).

g. ☐ **Certified or registered mail service.** By mailing to an address outside California *(by first-class mail, postage prepaid, requiring a return receipt)* copies to the person served. **(Attach signed return receipt o other evidence of actual receipt by the person served).**

h. ☐ **Other** (specify code section and type of service):

5. Service upon the **United States, and Its Agencies, Corporations or Officers.**

a. ☐ by delivering a copy of the summons and complaint to the clerical employee designated by the U.S. Attorney authorized to accept service, pursuant to the procedures for the Office of the U.S. Attorney for acceptance of service, or by sending a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the U.S. Attorneys Office.

Name of person served:

Title of person served:

Date and time of service: *(date):* _____ at *(time):* _____

b. ☐ By sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C. **(Attached signed return receipt of other evidence of actual receipt by the person served).**

c. ☐ By sending a copy of the summons and complaint by registered or certified mail to the officer, agency or corporation **(Attach signed return receipt or other evidence of actual receipt by the person served).**

6. At the time of service I was at least 18 years of age and not a party to this action.

7. Person serving *(name, address and telephone number):*
EMANUEL LOMELI
800 W. 1st STREET, SUITE 200-B
LOS ANGELES, CA 90012
(213) 607-9000
REG. NO.: 6391
COUNTY: LOS ANGELES
2235(b)

a. Fee for service: $

b. ☐ Not a Registered California Process Server

c. ☐ Exempt from registration under B&P

d. ☒ Registered California Process Server

PROOF OF SERVICE-SUMMONS AND COMPLAINT

CV-1 (04/01)

8. ☐ I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

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

Date: **2-23-10**

(Signature)

FILE START

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012518

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

TOY-RQ-05E-00012519

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

TOY-RQ-05E-00012528

action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012531

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

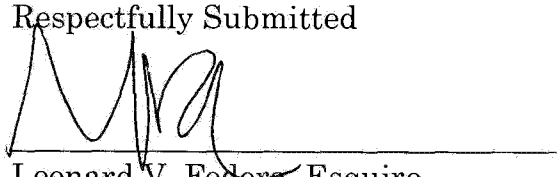
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012533

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
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1835 Market St. – Suite 2600
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File No.: 20590

Attorneys for Plaintiff

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012534

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

TOY-RQ-05E-00012537

SILVERMAN & FODERA, PC
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Attorneys for Plaintiff

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012538

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
JOHN R. TROTMAN, JR.*
ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW

1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

February 25, 2010

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

VIA CERTIFIED MAIL R.R.R.
NO.: 7160 3901 9846 3379 2178
Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

Re: Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Sir or Madam:

Enclosed herewith please find a time stamped copy of a Class Action Complaint that was filed against you in the United States District Court for the District of New Jersey. Please forward this Complaint to your insurance carrier at the time of the alleged incident in the Complaint.

Thank you for your attention to this matter.

Very truly yours,

Rita M. Holt

Rita M. Holt
Paralegal

/rmh
Enclosures

cc: U.S.P.S. First Class Mail (w/ encl.)

TOY-RQ-05E-00012539

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*
Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

JS 44 (Rev. 12/07, NJ 5/08)

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

FRANCINE GUOKAS on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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

Attorneys (If Known)

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

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

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

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

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

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

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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

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

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

DATE

02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

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4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

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8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

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CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

TOY-RQ-05E-00012552

action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012555

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

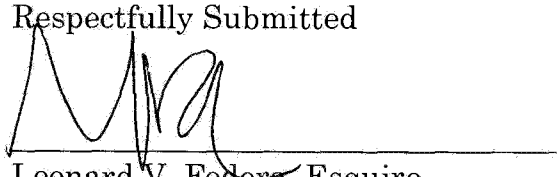
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012557

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
JOHN R. TROTMAN, JR.*
ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW

1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

February 25, 2010

VIA CERTIFIED MAIL R.R.R.
NO.: 7160 3901 9846 3379 2185
Toyota Motor Engineering &
Manufacturing North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

Re: Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Sir or Madam:

Enclosed herewith please find a time stamped copy of a Class Action Complaint that was filed against you in the United States District Court for the District of New Jersey. Please forward this Complaint to your insurance carrier at the time of the alleged incident in the Complaint.

Thank you for your attention to this matter.

Very truly yours,

Rita M. Holt
Paralegal

/rmh
Enclosures

cc: U.S.P.S. First Class Mail (w/ encl.)

TOY-RQ-05E-00012558

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*

Toyota Motor Engineering &
Manufacturing 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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

*JS 44 (Rev. 12/07, NJ 5/08)

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

FRANCINE GUOKAS on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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)

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- ☐ 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
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- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

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

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- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
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- ☐ 510 Motions to Vacate Sentence

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- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
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- ☐ 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

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- ☐ 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

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- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
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- ☐ 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
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- ☐ 891 Agricultural Acts
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- ☐ 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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

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

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:

DATE

02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012561

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

TOY-RQ-05E-00012562

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

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8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

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14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

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> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

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> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

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accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

TOY-RQ-05E-00012568

CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

TOY-RQ-05E-00012569

Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

TOY-RQ-05E-00012570

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

TOY-RQ-05E-00012571

action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

TOY-RQ-05E-00012572

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

TOY-RQ-05E-00012573

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012574

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

TOY-RQ-05E-00012575

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

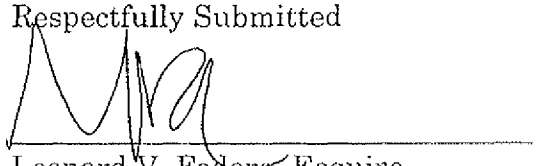
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

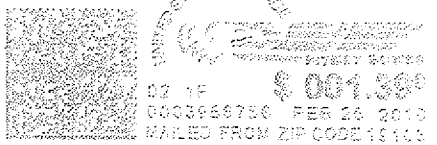
Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012576



First Class Mail

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION
ATTORNEYS-AT-LAW
1835 MARKET ST., SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

FORWARDING AND
ADDRESS CORRECTION REQUESTED

Rita M. Holt
Our File No.: 20590

Toyota Motor Engineering &
Manufacturing North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

TOY-RQ-05E-00012577

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
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ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW

1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

February 25, 2010

VIA CERTIFIED MAIL R.R.R.
NO.: 7160 3901 9846 3379 2185
Toyota Motor Engineering &
Manufacturing North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

Re: Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Sir or Madam:

Enclosed herewith please find a time stamped copy of a Class Action Complaint that was filed against you in the United States District Court for the District of New Jersey. Please forward this Complaint to your insurance carrier at the time of the alleged incident in the Complaint.

Thank you for your attention to this matter.

Very truly yours,

Rita M. Holt
Paralegal

/rmh
Enclosures

cc: U.S.P.S. First Class Mail (w/ encl.)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*

Toyota Motor Engineering &
Manufacturing 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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

*JS 44 (Rev. 12/07, NJ 5/08)

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

FRANCINE GUOKAS on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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

Attorneys (If Known)

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

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

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

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

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

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

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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:

DATE 02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012581

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

TOY-RQ-05E-00012582

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

TOY-RQ-05E-00012583

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

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14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

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> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

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> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

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accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

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CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

TOY-RQ-05E-00012589

Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

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g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

TOY-RQ-05E-00012591

action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

TOY-RQ-05E-00012592

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

TOY-RQ-05E-00012593

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012594

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

TOY-RQ-05E-00012595

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

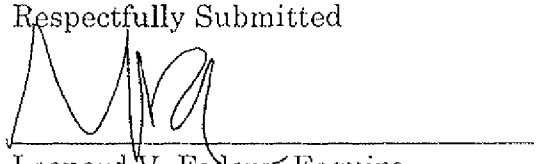
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012596

FOLD AND TEAR HERE

Thank you for using Return Receipt Service

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

1. Article Addressed to:

2. Article Number 7160 3901 9846 3379 2185

3. Service Type CERTIFIED MAIL

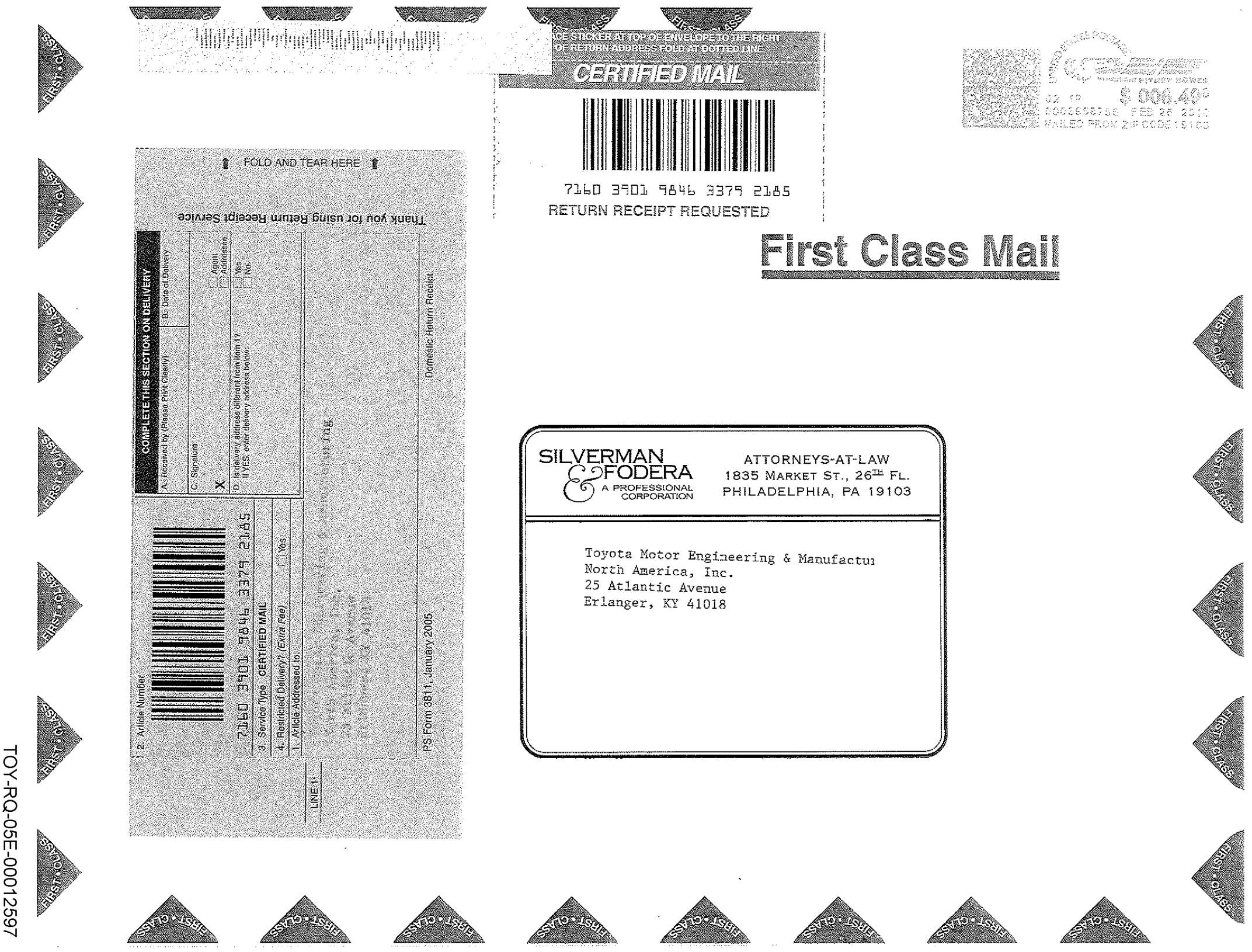
4. Restricted Delivery? (Extra Fee) ☐ Yes

LINE 1

PS Form 3811, January 2005 Domestic Return Receipt

FIRST • CLASS

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



CERTIFIED MAIL

7160 3901 9846 3379 2185

RETURN RECEIPT REQUESTED

UNITED STATES POSTAGE PITNEY BOWES

02 1P $ 008.49⁰

0003968756 FEB 25 2010

MAILED FROM ZIP CODE 19103

First Class Mail

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW
1835 MARKET ST., 26TH FL.
PHILADELPHIA, PA 19103

Toyota Motor Engineering & Manufactu
North America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018

TOY-RQ-05E-00012597

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
JOHN R. TROTMAN, JR.*
ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW

1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

February 25, 2010

VIA CERTIFIED MAIL R.R.R.
NO.: 7160 3901 9846 3379 2178
Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Re: Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Sir or Madam:

Enclosed herewith please find a time stamped copy of a Class Action Complaint that was filed against you in the United States District Court for the District of New Jersey. Please forward this Complaint to your insurance carrier at the time of the alleged incident in the Complaint.

Thank you for your attention to this matter.

Very truly yours,

Rita M. Holt
Paralegal

/rmh
Enclosures

cc: U.S.P.S. First Class Mail (w/ encl.)

TOY-RQ-05E-00012598

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*
Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

%JS 44 (Rev. 12/07, NJ 5/08)

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

FRANCINE GUOKAS on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

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

VIII. RELATED CASE(S)

(See instructions): JUDGE DOCKET NUMBER

Explanation:

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

DATE 02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012601

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

TOY-RQ-05E-00012602

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall. Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

TOY-RQ-05E-00012603

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

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14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

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> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

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> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

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accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

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CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

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Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

TOY-RQ-05E-00012610

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

TOY-RQ-05E-00012611

action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

TOY-RQ-05E-00012612

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

TOY-RQ-05E-00012613

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012614

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

TOY-RQ-05E-00012615

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

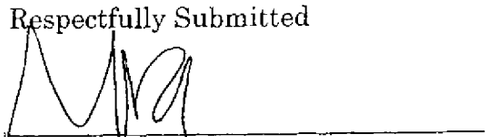
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012616

OF ENVELOPE TO THE RIGHT
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First Class Mail

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW
1835 MARKET ST., 26TH FL.
PHILADELPHIA, PA 19103

Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

Route: HQ
Location: HQ11
HQ11
03/02/10 11:09
1 of 1
03021611 0907

LINE 1

FIRST • CLASS

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
JOHN R. TROTMAN, JR.*
ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

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1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

MAR - 2

February 25, 2010

VIA CERTIFIED MAIL R.R.R.
NO.: 7160 3901 9846 3379 2178
Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

Re: Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Sir or Madam:

Enclosed herewith please find a time stamped copy of a Class Action Complaint that was filed against you in the United States District Court for the District of New Jersey. Please forward this Complaint to your insurance carrier at the time of the alleged incident in the Complaint.

Thank you for your attention to this matter.

Very truly yours,

Rita M. Holt

Rita M. Holt
Paralegal

/rmh
Enclosures

cc: U.S.P.S. First Class Mail (w/ encl.)

TOY-RQ-05E-00012618

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*

Toyota Motor Sales, USA, 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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

JS 44 (Rev. 12/07, NJ 5/08)

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

FRANCINE GUOKAS on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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)

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- ☐ 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

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

TORTS

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- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
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- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
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- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
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- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
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- ☐ 510 Motions to Vacate Sentence

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

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- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
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- ☐ 660 Occupational Safety/Health
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- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

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

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:

DATE

02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

SILVERMAN & FODERA, PC
By: Leonard V. Fodera, PC
Identification No.: 57203
By: Michael P. Lalli, Esquire
Identification No.: 203201
By: Louis T. Silverman, Esquire
Identification No.: 51504
1835 Market St. – Suite 2600
Philadelphia, PA 19103
215.561.2100
File No.: 20590

Attorneys for Plaintiff

Francine Guokas on behalf of herself and all others similarly situated, Plaintiffs, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Case No.: CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, FRANCINE K. GUOKAS, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

TOY-RQ-05E-00012621

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

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4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing at 7 Galena Court, Erial, NJ 08081 who purchased a 2009 Toyota Corolla XRS.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

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8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential

> problems and attempted to blame human error in cases where owners claimed vehicles were defective.
>
> * * *
>
> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles Times* article:

> The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004. But it told regulators that no recall was necessary in the U.S., despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain

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accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Corolla XRS. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On at least one occasion since her purchase, the accelerator on her 2009 Toyota Corolla XRS became stuck for a brief period.

26. Plaintiff is nervous, hesitant, and/or lacks confidence about driving her Toyota, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, she is unable to do so.

27. Although the Plaintiff brought her car in for a repair in accordance with the terms of the recall in February of 2010, Plaintiff remains and will remain nervous, hesitant, and/or lacking confidence about driving her Toyota.

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CLASS ACTION ALLEGATIONS

Numerosity of the Class

28. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All New Jersey residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

29. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

30. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

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Predominance of Common Questions of Law and Fact

31. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

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g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

32. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

33. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

34. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class

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action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

36. At all times relevant and material hereto, the Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*

37. Plaintiff, the putative class members, and the Defendants are "persons" within the meaning of N.J.S.A. 56:8-1.

38. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product or service:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the dale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damanges thereby, is declared to be an unlawful practice...

39. The Defendants' conduct, as described in depth above and including their common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its

intended use, constitutes violations of the CFA.

40. The Defendants' concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Plaintiff and the Class.

41. The Defendants intended, or consciously disregarded, that Plaintiff and class members would rely on their concealment, suppression, omissions, misrepresentations, deceptions and unconscionable and fraudulent practices, so that they would purchase the Recalled Vehicles.

42. Plaintiff and class members would not have purchased the Recalled Vehicles, but not for Defendants violations of the CFA.

43. As a direct and proximate cause of Defendants' wrongful conduct in violation of the CFA, 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
BREACH OF IMPLIED WARRANTY

44. Plaintiff realleges and incorporates all preceding and subsequent Paragraphs as if fully set forth herein.

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

TOY-RQ-05E-00012633

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

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

48. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

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

50. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

51. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, 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.

TOY-RQ-05E-00012634

COUNT II
UNJUST ENRICHMENT

52. Plaintiff realleges and incorporates all previous and subsequent Paragraphs as if fully set forth herein.

53. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

54. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

55. Defendants received these benefits to the detriment of Plaintiff and the Class.

56. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

57. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

TOY-RQ-05E-00012635

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

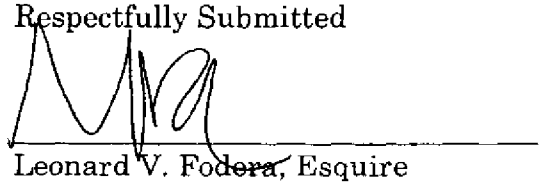
DESIGNATION OF TRIAL COUNSEL

Leonard V. Fodera, Esquire is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

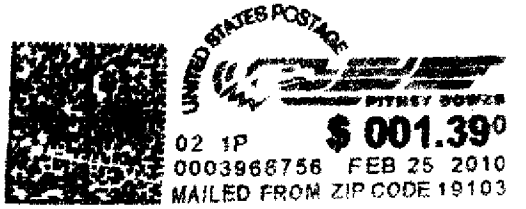
Respectfully Submitted



Leonard V. Fodera, Esquire
Louis T. Silverman, Esquire
Michael P. Lalli, Esquire
Attorneys for Plaintiff

Dated: February 15, 2010

TOY-RQ-05E-00012636



First Class Mail

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION
ATTORNEYS-AT-LAW

1835 MARKET ST., SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

FORWARDING AND
ADDRESS CORRECTION REQUESTED

Rita M. Holt
Our File No.: 20590

Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

EF12

TOY-RQ-05E-00012637

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10-CV-00778-MLC -DEA**

TO: *(Name and address of Defendant):*

Toyota Motor Sales, USA, Inc.
19001 South Western Avenue
Torrance, CA 90501

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

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 office 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:

Leonard V. Fodera, Esquire
Silverman & Fodera, P.C.
1835 Market Street - Suite 2600
Philadelphia, PA 19103

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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010-02-24 11:50:44.0, Clerk
USDC NJD

JS 44 (Rev. 12/07, NJ 5/08)

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(b) County of Residence of First Listed Plaintiff Camden County, NJ

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

SILVERMAN & FODERA, P.C. 1835 Market Street Suite 2600
Philadelphia, PA 19103 (215)561-2100
Email: lfodera@civilrights.com; mlalli@civilrights.com

DEFENDANTS

Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America; Toyota Motor Sales

County of Residence of First Listed Defendant

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Attorneys (If Known)

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(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 U.S.C. Section 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

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

VIII. RELATED CASE(S) (See instructions):

JUDGE DOCKET NUMBER

Explanation:

RECEIVED
MAR - 2 2010
LEGAL DEPARTMENT

DATE
02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

TOY-RQ-05E-00012639

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:10-cv-00778-MLC -DEA

GUOKAS v. TOYOTA MOTOR CORPORATION et al
Assigned to: Judge Mary L. Cooper
Referred to: Magistrate Judge Douglas E. Arpert
Cause: 28:1332 Diversity-Motor Vehicle Product Liability

Date Filed: 02/16/2010
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Diversity

Plaintiff

FRANCINE GUOKAS
on behalf of herself and all others similarly situated

represented by **LEONARD V. FODERA**
SILVERMAN &FODERA, PC
ELEVEN PENN CENTER
STE. 2600
1835 MARKET STREET
PHILADELPHIA, PA 19103
215-561-2100
ATTORNEY TO BE NOTICED

LOUIS TODD SILVERMAN
SILVERMAN &FODERA, P.C.
1835 MARKET STREET
SUITE 2600
PHILADELPHIA, PA 19103
(215) 561-2100
Fax: 215-561-0190
Email: lsilverman@civilrights.com
ATTORNEY TO BE NOTICED

MICHAEL PHILLIP LALLI
SILVERMAN &FODERA PC
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SUITE 2600
PHILADELPHIA, PA 19103
215-561-2100
Email: mlalli@civilrights.com
ATTORNEY TO BE NOTICED

V.

Defendant

TOYOTA MOTOR CORPORATION

Defendant

TOYOTA MOTOR ENGINEERING &MANUFACTURING NORTH AMERICA INC

Defendant

TOYOTA MOTOR SALES U.S.A. INC

Date Filed	#	Docket Text
02/16/2010	1	COMPLAINT against FRANCINE GUOKAS (Filing fee $ 350 receipt number 309471.) JURY DEMANDED. No Summons Attached. Filed by FRANCINE GUOKAS. (Attachments: #1 Civil Cover Sheet)(eaj) (Entered: 02/17/2010)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCINE GUOKAS,
Plaintiff

V. **SUMMONS IN A CIVIL CASE**

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant

CASE NUMBER: **3:10−CV−00778−MLC −DEA**

TO: *(Name and address of Defendant):*

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 office 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.

WILLIAM T. WALSH
CLERK

Sharon D. Syphrett
(By) DEPUTY CLERK

ISSUED ON 2010−02−24 11:50:44.0, Clerk
USDC NJD

RETURN OF SERVICE

Service of the Summons and complaint was made by me(1)	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

_____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

☐ Name of person with whom the summons and complaint were left:_____

☐ Returned unexecuted:_____

_____

_____

☐ Other (specify) :_____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

_____
Address of Server

LOUIS T. SILVERMAN*
LEONARD V. FODERA
DAVID J. ALEXANDER*

ALLISON LONG*
JOHN R. TROTMAN, JR.*
ANDREW SCHNEIDER
MICHAEL P. LALLI*

*ALSO MEMBER NJ BAR

SILVERMAN & FODERA
A PROFESSIONAL CORPORATION

ATTORNEYS-AT-LAW

1835 MARKET STREET, SUITE 2600
PHILADELPHIA, PENNSYLVANIA 19103-2968

INTERNET ADDRESS:
http://www.civilrights.com

REPLY TO:

February 24, 2010

VIA ECF
Clerk, United States Disctrict Court
District of New Jersey – Trenton
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street - Room 2020
Trenton, NJ 08608

Re: Francine Guokas, et al. v. Toyota Motor Corporation, et al.
USDC DNJ No.: 3:10-cv-00778-MLC-DEA
Our File No.: 20590

Dear Clerk:

Kindly issue a Summons in the above referenced matter for each of the following defendants:

- Toyota Motor Corporation, Toyota City, Aichi Prefecture, JAPAN
- Toyota Motor Engineering & Manufacturing North America, Inc. 25 Atlantic Avenue Erlanger, KY 41018
- Toyota Motor Sales, USA, Inc. 19001 South Western Avenue Torrance CA 90501

Thank you for your attention and assistance with regard to this matter.

Very truly yours,

Michael Lalli

ML/rmh

TOY-RQ-05E-00012643

FILE START

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
Electronically Filed

CHRISTOPHER L. LEAVERTON, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC. Defendants.	**CLASS ACTION** DEMAND FOR JURY TRIAL CASE NO.

CLASS ACTION COMPLAINT

Plaintiff, CHRISTOPHER L. LEAVERTON ("Plaintiff"), individually and on behalf of all others similarly situated, and for his Class Action Complaint, by and through undersigned counsel, states and alleges the following:

I. INTRODUCTION

1. This action arises out of Defendants' unlawful and misleading business practices regarding their recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, and were placed into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public.

II. JURISDICTION AND VENUE

2. Jurisdiction in this Court is proper under 28 U.S.C. § 1332(d) because the matter in controversy exceeds the jurisdictional amount exclusive of interest and costs, and the parties are citizens of different States.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(a) because Defendant does business in this District, a substantial part of the events and omissions giving rise to the claims asserted herein occurred in this District, and Defendant is subject to personal jurisdiction in this District because it transacted business and/or sold its products in and throughout the United States, including in this District. Moreover, Plaintiff, CHRISTOPHER L. LEAVERTON, individually and on behalf of all others similarly situated, resides in this District, and his vehicle was purchased in this District.

III. THE PARTIES

4. Plaintiff, CHRISTOPHER L. LEAVERTON, is a citizen and resident of Scott County, in the Commonwealth of Kentucky. Plaintiff is the owner of a 2007 Toyota Tundra model automobile, which is the subject to the recall announced by Toyota Motor Sales, U.S.A., Inc. As a result of the recall, Plaintiff has been injured.

5. Defendant, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), is headquartered in the Commonwealth of Kentucky, and its principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky 41018, within this District.; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TEMA is in charge of Toyota's engineering design, development, research and development, and manufacturing activities in the United States, Canada and Mexico. Defendant TEMA was

created in April 2006 following the consolidation of Toyota Technical Center and Toyota Motor Manufacturing North America. Defendant TEMA operates 14 parts and vehicle manufacturing plants across North America.

6. Defendant, Toyota Motor Sales, USA, Inc. ("TMS"), is a foreign corporation with its principal place of business in Torrance, California; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TMS is in charge of sales, marketing, distribution, manufacture, and service in the United States for Toyota automobiles, SUVs, hybrids, and light trucks.

7. All acts alleged in this Complaint were performed by Defendants, their officers, directors, agents, employees and/or representatives while engaged in the management, direction, control and/or transaction of Defendants' business affairs. Defendants were involved, directly or indirectly, in the manufacture and assembly of the 2007 Toyota Tundra owned by Plaintiff Christopher L. Leaverton, as well as all other vehicles that are the subject of this action.

VI. FACTUAL BACKGROUND

8. Plaintiff, Christopher L. Leaverton, purchased from Green's Toyota of Lexington, Inc., located in Fayette County, Kentucky, and presently owns a 2007 Toyota Tundra automobile vehicle, where it resides in Scott County, Kentucky.

9. Defendants issued their recall because they decided that a defect that relates to motor vehicle safety exists in certain Toyota and Lexus models of automobile vehicles. Defendants first explained that the defect concerns the driver's floor mat, which can

interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle.

10. According to information on their website, Defendants' recall affects the following makes, models, and years of automobiles: Toyota Avalon 2005 – 2010, Toyota Camry 2007 – 2010, Toyota Prius 2004 – 2009, Toyota Tacoma 2005 – 2010, Toyota Tundra 2007 – 2010, Lexus ES350 2007 – 2010, and Lexus IS250 & IS350 2006 – 2010.

11. Defendants have asked that owners of affected Toyota and Lexus models take out any removable driver's floor mat and not replace it with any other floor mat. Defendants also provide instructions for what to do should a vehicle's floor mat become stuck and interfere with the accelerator pedal.

12. Given the potential for unintended acceleration and Defendants' instructions to remove driver's floor mats, said mats are now worthless to Plaintiff and members of the Class. Plaintiff and Class members have suffered damages as a result.

13. Subsequently, the Defendants have indicated that their Toyota or Lexus vehicles containing electronic throttle control systems ("ETCS") or the electronic throttle controls system known as the ETCS-Intelligent System ("ETCS-i") are faulty.

14. On November 25, 2009, Defendants announced details of a remedy, including reconfiguring the shape of the accelerator pedal, providing newly-designed replacement driver and front passenger side all-weather floor mats, and installing a brake override system in certain models. However, the remedy does not fully compensate Plaintiff and Class members for their damages; for example, the remedy announced by Defendants does not provide for alternative transportation while consumers' vehicles are being repaired.

The value of the vehicle diminishes. Class members continue to make lease payments to Defendants while being denied the use and benefit of their vehicle.

15. Defendants have not stated when the newly-designed replacement driver and front passenger side all-weather floor mats will be provided or when the vehicle-based remedy will be provided, except to say that Defendants will start notifying owners of ES350, Camry, and Avalon models by the end of 2009 of the remedy process and will notify owners of the other models on a rolling schedule during 2010. The Defendants have not offered any compensation to Plaintiff and members of the Class for the loss of the use of the driver's floor mat. Additionally, Plaintiff and members of the Class are left with no protection for the carpeting in their automobiles, which, without a floor mat, will become dirty and worn from exposure to water, snow, and dirt.

16. On January 21, 2010, Defendants announced details of a further recall for certain vehicle models, which focused on a sticking accelerator pedal ("sticky pedal"), stating: "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. Consistent with our commitment to the safety of our cars and our customers, we have initiated this voluntary recall action." Then, on February 1, 2010, Defendants announced their solution for the sticky pedal, and informed consumers whose inquiry was "Is my car safe to drive if it has not yet received this solution?" as follows: "To be clear, the condition is rare and generally does not occur suddenly. It 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."

17. The Toyota-manufactured and designed vehicles at risk with the ETCS-i systems include, but are not limited to, the following makes, models, and years of automobiles: Toyota Avalon 2005 – 2009, Toyota Camry 2002 – 2009, Toyota 4Runner 2001 – 2009, Toyota FJ Cruiser 2003 – 2008, Toyota Land Cruiser 2001 – 2009, Toyota RAV4 2005 – 2009, Toyota Sequoia 2001 – 2009, Toyota Sienna 2004 – 2009, Toyota Tacoma 2003 – 2008, Toyota Tundra 2000 – 2009, Lexus models 1998 – 2009. The Toyota-manufactured and designed vehicles at risk tithe the ETCS systems are believed to include an unknown number of models built from 1990s – 2005.

18. Defendants have violated applicable law, as set forth below, by actions and inactions as described herein.

IV. CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action individually, and on behalf of all others similarly situated, pursuant to Fed.R.Civ.P. 23. To that end, Plaintiff seeks to represent a nationwide class, which may be defined as follows:

> All owners or lessees of automobiles or vehicles sold by Toyota Motor Sales, U.S.A., Inc., including models 2005 – 2010 Avalon, 2007 – 2010 Camry, 2004 – 2009 Prius, 2005 – 2010 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350; which are subject to the Voluntary Safety Recall Related to Floor Mats announced by Toyota on November 2, 2009, as well as recalls relating to electronic throttle control systems ("ETCS") or ETCS-Intelligent System ("ETCS-i") in January 2010; and excluding Toyota, its parents, directors and officers of Toyota, directors and officers of its parents, and governmental entities ("Class").

20. Although Plaintiff does not know the exact number of Class members because such information is in the exclusive control of Defendant, due to the nature of the trade and commerce involved, Plaintiff believes that there are, at a minimum, tens of thousands of members in the Class, as defined. Accordingly, the Class is so numerous and geographically dispersed that the joinder of all members is impracticable.

21. There are questions of law and fact common to the Class, including:

a. Whether Defendants issued a recall of certain Toyota-manufactured and designed vehicles;

b. Whether the concerned recall instructs Plaintiff and Class members to suffer loss of use;

c. Whether Defendants have reimbursed or compensated Plaintiff and Class members for the loss of the use of the recalled vehicles;

d. Whether the recalled vehicles are rendered worthless to Plaintiff and Class members as a result of the recall;

e. Whether the vehicle based remedy adequately compensates Plaintiff and Class members for their damages;

f. Whether Defendants have breached their contracts with Plaintiff and Class members;

g. Whether Defendants have breached the implied warranty of merchantability; and

h. Whether Defendants have been unjustly enriched.

As to Residents of Commonwealth of Kentucky:

i. Whether Defendants' conduct regarding the marketing and sale of its vehicles violates Kentucky Consumer Protection Act. *See* KRS 367.110 *et seq.*

22. Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests are entirely consistent with, and not antagonistic to, those of the other members of the Class.

23. Plaintiff is represented by counsel who are competent and experienced in the prosecution of consumer and class action litigations.

24. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy because the named representative has the same interest as other members of the Class and will vigorously prosecute this action on behalf of the Class. The Class is readily definable and is one for which records should exist. Prosecution as a class action will eliminate the possibility of repetitious litigation. In addition, it is desirable to concentrate the litigation in this forum because the damages suffered by individual members of the Class may be relatively small, and the expense and burden of individual litigation make it impracticable for individual members of the Class to pursue separate litigation. Neither Plaintiff nor his counsel is aware of any difficulties in management that would preclude maintenance of this litigation as a class action.

25. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications, establishing incompatible standards of conduct for Defendants.

VI. CAUSES OF ACTION

26. Defendants sold, marketed, advertised, distributed, and otherwise placed the recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public. The Defendants

concealed from consumers that the defects in their recalled vehicles related to motor vehicle safety. Defendants breached their duty and proximately caused damages to Plaintiff and the Class.

COUNT I: Breach of Express and Implied Warranty

27. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

28. By selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public the Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation when, in fact, it was not.

29. As a direct and proximate result of the foregoing, Plaintiff and the Class have suffered economic damages including, but not limited to, diminished value on the resale market, in an amount to be proven at trial.

COUNT II: Violation of Kentucky Consumer Protection Act
(Applicable only to Residents of Commonwealth of Kentucky)

30. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

31. Plaintiff and the Class are natural "persons" within the meaning of Kentucky Consumer Protection Act, K.R.S. § 367.110.

32. The Kentucky Consumer Protection Act, K.R.S. § 367.170, prohibits unfair or deceptive consumer sales practices. Specifically, the Act prohibits "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Id.

33. Defendants' conduct alleged above constitute unfair and/or deceptive consumer sales practices in violation of K.R.S. §367.170 because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the standard, quality or grade of new vehicles.

34. As above described, said violation and/or wrongful conduct of Defendants was willful, wanton, and malicious, and Plaintiff and the Class have been damaged and are entitled to punitive damages in an amount to be proved at trial.

COUNT III: Breach of Lease/Contract

35. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

36. Plaintiff and other members of the Class entered into a lease agreement with Defendants, which inured to the benefit of Defendants. Other members of the Class entered into agreements to purchase Toyota-manufactured and designed vehicles, which also directly or indirectly benefits Defendants.

37. The leases and purchase agreements provided that Class members would make payments and, in return, would receive a new vehicle that would operate properly.

38. Defendants breached their agreements with Plaintiff and other Class members because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

39. Plaintiff and other Class members have fully performed their duties under the purchase and lease agreements.

40. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV: Unjust Enrichment

41. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

42. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of the Plaintiff and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

PRAYER FOR RELIEF

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

1. That the Court determine this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as Class Representatives, and that Plaintiff' counsel be appointed as counsel for the Class;

2. That Plaintiff and the Class be awarded damages for all causes of action alleged herein;

3. That Plaintiff and the Class receive restitution and disgorgement of Defendants' ill-gotten gains resulting from Defendants' unfair business practices;

4. That Defendants be enjoined from engaging in the same or similar unfair business practices alleged herein;

5. For an Order requiring Defendants to immediately cease and desist from selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems;

6. That Plaintiff and the Class recover for all equitable remedies available under Kentucky law;

7. That Plaintiff and the Class recover their costs of the suit, including attorneys' fees, expenses, and costs, as provided by law;

8. That Plaintiff and the Class recover punitive damages against Defendants;

9. That Plaintiff and the Class be awarded pre- and post-judgment interest; and

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

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

Dated: February 16, 2010

Respectfully submitted,

/s/ Mark K. Gray
Mark K. Gray
Matthew L. White
Doris A. Kim
FRANKLIN GRAY & WHITE
505 West Ormsby Avenue
Louisville, Kentucky 40203
(502) 637-6000 Telephone

- and -

Gary M. Weiss
J. Allan Cobb
WEISS & COBB LAW
9420 Bunsen Parkway, Suite 306
Louisville, Kentucky 40220
(502) 493-1394 Telephone
Co-Counsel for Plaintiff and the Class

TOY-RQ-05E-00012658

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

CHRISTOPHER L. LEAVERTON, Individually and on Behalf of All Others Similarly Situated

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark K. Gray, FRANKLIN GRAY & WHITE
The Speed Mansion, 505 West Ormsby Avenue, Louisville, KY 40203
(502) 637-6000

DEFENDANTS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

County of Residence of First Listed Defendant Kenton
(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
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- ☐ 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 U.S.C. Section 1332(d) and 28 U.S.C. Section 1391(a)

Brief description of cause:
Defective product, unfair, false, deceptive representation and marketing

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 100,000,000

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and 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.
SERVE: 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: Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

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):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

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

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

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

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SERVE: 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:

Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

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):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

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-32**

Assigned : Senior Judge William O. Bertelsman
Judge Code : 4307

Assigned on 02/16/2010

Request New Judge .....

TOY-RQ-05E-00012665

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
Electronically Filed

CHRISTOPHER L. LEAVERTON, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC. Defendants.	**CLASS ACTION** DEMAND FOR JURY TRIAL CASE NO.

CLASS ACTION COMPLAINT

Plaintiff, CHRISTOPHER L. LEAVERTON ("Plaintiff"), individually and on behalf of all others similarly situated, and for his Class Action Complaint, by and through undersigned counsel, states and alleges the following:

I. INTRODUCTION

1. This action arises out of Defendants' unlawful and misleading business practices regarding their recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, and were placed into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public.

II. JURISDICTION AND VENUE

2. Jurisdiction in this Court is proper under 28 U.S.C. § 1332(d) because the matter in controversy exceeds the jurisdictional amount exclusive of interest and costs, and the parties are citizens of different States.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(a) because Defendant does business in this District, a substantial part of the events and omissions giving rise to the claims asserted herein occurred in this District, and Defendant is subject to personal jurisdiction in this District because it transacted business and/or sold its products in and throughout the United States, including in this District. Moreover, Plaintiff, CHRISTOPHER L. LEAVERTON, individually and on behalf of all others similarly situated, resides in this District, and his vehicle was purchased in this District.

III. THE PARTIES

4. Plaintiff, CHRISTOPHER L. LEAVERTON, is a citizen and resident of Scott County, in the Commonwealth of Kentucky. Plaintiff is the owner of a 2007 Toyota Tundra model automobile, which is the subject to the recall announced by Toyota Motor Sales, U.S.A., Inc. As a result of the recall, Plaintiff has been injured.

5. Defendant, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), is headquartered in the Commonwealth of Kentucky, and its principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky 41018, within this District.; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TEMA is in charge of Toyota's engineering design, development, research and development, and manufacturing activities in the United States, Canada and Mexico. Defendant TEMA was

created in April 2006 following the consolidation of Toyota Technical Center and Toyota Motor Manufacturing North America. Defendant TEMA operates 14 parts and vehicle manufacturing plants across North America.

6. Defendant, Toyota Motor Sales, USA, Inc. ("TMS"), is a foreign corporation with its principal place of business in Torrance, California; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TMS is in charge of sales, marketing, distribution, manufacture, and service in the United States for Toyota automobiles, SUVs, hybrids, and light trucks.

7. All acts alleged in this Complaint were performed by Defendants, their officers, directors, agents, employees and/or representatives while engaged in the management, direction, control and/or transaction of Defendants' business affairs. Defendants were involved, directly or indirectly, in the manufacture and assembly of the 2007 Toyota Tundra owned by Plaintiff Christopher L. Leaverton, as well as all other vehicles that are the subject of this action.

VI. FACTUAL BACKGROUND

8. Plaintiff, Christopher L. Leaverton, purchased from Green's Toyota of Lexington, Inc., located in Fayette County, Kentucky, and presently owns a 2007 Toyota Tundra automobile vehicle, where it resides in Scott County, Kentucky.

9. Defendants issued their recall because they decided that a defect that relates to motor vehicle safety exists in certain Toyota and Lexus models of automobile vehicles. Defendants first explained that the defect concerns the driver's floor mat, which can

interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle.

10. According to information on their website, Defendants' recall affects the following makes, models, and years of automobiles: Toyota Avalon 2005 – 2010, Toyota Camry 2007 – 2010, Toyota Prius 2004 – 2009, Toyota Tacoma 2005 – 2010, Toyota Tundra 2007 – 2010, Lexus ES350 2007 – 2010, and Lexus IS250 & IS350 2006 – 2010.

11. Defendants have asked that owners of affected Toyota and Lexus models take out any removable driver's floor mat and not replace it with any other floor mat. Defendants also provide instructions for what to do should a vehicle's floor mat become stuck and interfere with the accelerator pedal.

12. Given the potential for unintended acceleration and Defendants' instructions to remove driver's floor mats, said mats are now worthless to Plaintiff and members of the Class. Plaintiff and Class members have suffered damages as a result.

13. Subsequently, the Defendants have indicated that their Toyota or Lexus vehicles containing electronic throttle control systems ("ETCS") or the electronic throttle controls system known as the ETCS-Intelligent System ("ETCS-i") are faulty.

14. On November 25, 2009, Defendants announced details of a remedy, including reconfiguring the shape of the accelerator pedal, providing newly-designed replacement driver and front passenger side all-weather floor mats, and installing a brake override system in certain models. However, the remedy does not fully compensate Plaintiff and Class members for their damages; for example, the remedy announced by Defendants does not provide for alternative transportation while consumers' vehicles are being repaired.

The value of the vehicle diminishes. Class members continue to make lease payments to Defendants while being denied the use and benefit of their vehicle.

15. Defendants have not stated when the newly-designed replacement driver and front passenger side all-weather floor mats will be provided or when the vehicle-based remedy will be provided, except to say that Defendants will start notifying owners of ES350, Camry, and Avalon models by the end of 2009 of the remedy process and will notify owners of the other models on a rolling schedule during 2010. The Defendants have not offered any compensation to Plaintiff and members of the Class for the loss of the use of the driver's floor mat. Additionally, Plaintiff and members of the Class are left with no protection for the carpeting in their automobiles, which, without a floor mat, will become dirty and worn from exposure to water, snow, and dirt.

16. On January 21, 2010, Defendants announced details of a further recall for certain vehicle models, which focused on a sticking accelerator pedal ("sticky pedal"), stating: "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. Consistent with our commitment to the safety of our cars and our customers, we have initiated this voluntary recall action." Then, on February 1, 2010, Defendants announced their solution for the sticky pedal, and informed consumers whose inquiry was "Is my car safe to drive if it has not yet received this solution?" as follows: "To be clear, the condition is rare and generally does not occur suddenly. It 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."

17. The Toyota-manufactured and designed vehicles at risk with the ETCS-i systems include, but are not limited to, the following makes, models, and years of automobiles: Toyota Avalon 2005 – 2009, Toyota Camry 2002 – 2009, Toyota 4Runner 2001 – 2009, Toyota FJ Cruiser 2003 – 2008, Toyota Land Cruiser 2001 – 2009, Toyota RAV4 2005 – 2009, Toyota Sequoia 2001 – 2009, Toyota Sienna 2004 – 2009, Toyota Tacoma 2003 – 2008, Toyota Tundra 2000 – 2009, Lexus models 1998 – 2009. The Toyota-manufactured and designed vehicles at risk tithe the ETCS systems are believed to include an unknown number of models built from 1990s – 2005.

18. Defendants have violated applicable law, as set forth below, by actions and inactions as described herein.

IV. CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action individually, and on behalf of all others similarly situated, pursuant to Fed.R.Civ.P. 23. To that end, Plaintiff seeks to represent a nationwide class, which may be defined as follows:

> All owners or lessees of automobiles or vehicles sold by Toyota Motor Sales, U.S.A., Inc., including models 2005 – 2010 Avalon, 2007 – 2010 Camry, 2004 – 2009 Prius, 2005 – 2010 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350; which are subject to the Voluntary Safety Recall Related to Floor Mats announced by Toyota on November 2, 2009, as well as recalls relating to electronic throttle control systems ("ETCS") or ETCS-Intelligent System ("ETCS-i") in January 2010; and excluding Toyota, its parents, directors and officers of Toyota, directors and officers of its parents, and governmental entities ("Class").

20. Although Plaintiff does not know the exact number of Class members because such information is in the exclusive control of Defendant, due to the nature of the trade and commerce involved, Plaintiff believes that there are, at a minimum, tens of thousands of members in the Class, as defined. Accordingly, the Class is so numerous and geographically dispersed that the joinder of all members is impracticable.

21. There are questions of law and fact common to the Class, including:

a. Whether Defendants issued a recall of certain Toyota-manufactured and designed vehicles;

b. Whether the concerned recall instructs Plaintiff and Class members to suffer loss of use;

c. Whether Defendants have reimbursed or compensated Plaintiff and Class members for the loss of the use of the recalled vehicles;

d. Whether the recalled vehicles are rendered worthless to Plaintiff and Class members as a result of the recall;

e. Whether the vehicle based remedy adequately compensates Plaintiff and Class members for their damages;

f. Whether Defendants have breached their contracts with Plaintiff and Class members;

g. Whether Defendants have breached the implied warranty of merchantability; and

h. Whether Defendants have been unjustly enriched.

As to Residents of Commonwealth of Kentucky:

i. Whether Defendants' conduct regarding the marketing and sale of its vehicles violates Kentucky Consumer Protection Act. *See* KRS 367.110 *et seq.*

22. Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests are entirely consistent with, and not antagonistic to, those of the other members of the Class.

23. Plaintiff is represented by counsel who are competent and experienced in the prosecution of consumer and class action litigations.

24. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy because the named representative has the same interest as other members of the Class and will vigorously prosecute this action on behalf of the Class. The Class is readily definable and is one for which records should exist. Prosecution as a class action will eliminate the possibility of repetitious litigation. In addition, it is desirable to concentrate the litigation in this forum because the damages suffered by individual members of the Class may be relatively small, and the expense and burden of individual litigation make it impracticable for individual members of the Class to pursue separate litigation. Neither Plaintiff nor his counsel is aware of any difficulties in management that would preclude maintenance of this litigation as a class action.

25. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications, establishing incompatible standards of conduct for Defendants.

VI. CAUSES OF ACTION

26. Defendants sold, marketed, advertised, distributed, and otherwise placed the recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public. The Defendants

concealed from consumers that the defects in their recalled vehicles related to motor vehicle safety. Defendants breached their duty and proximately caused damages to Plaintiff and the Class.

COUNT I: Breach of Express and Implied Warranty

27. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

28. By selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public the Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation when, in fact, it was not.

29. As a direct and proximate result of the foregoing, Plaintiff and the Class have suffered economic damages including, but not limited to, diminished value on the resale market, in an amount to be proven at trial.

COUNT II: Violation of Kentucky Consumer Protection Act
(Applicable only to Residents of Commonwealth of Kentucky)

30. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

31. Plaintiff and the Class are natural "persons" within the meaning of Kentucky Consumer Protection Act, K.R.S. § 367.110.

32. The Kentucky Consumer Protection Act, K.R.S. § 367.170, prohibits unfair or deceptive consumer sales practices. Specifically, the Act prohibits "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Id.

33. Defendants' conduct alleged above constitute unfair and/or deceptive consumer sales practices in violation of K.R.S. §367.170 because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the standard, quality or grade of new vehicles.

34. As above described, said violation and/or wrongful conduct of Defendants was willful, wanton, and malicious, and Plaintiff and the Class have been damaged and are entitled to punitive damages in an amount to be proved at trial.

COUNT III: Breach of Lease/Contract

35. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

36. Plaintiff and other members of the Class entered into a lease agreement with Defendants, which inured to the benefit of Defendants. Other members of the Class entered into agreements to purchase Toyota-manufactured and designed vehicles, which also directly or indirectly benefits Defendants.

37. The leases and purchase agreements provided that Class members would make payments and, in return, would receive a new vehicle that would operate properly.

38. Defendants breached their agreements with Plaintiff and other Class members because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

39. Plaintiff and other Class members have fully performed their duties under the purchase and lease agreements.

40. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV: Unjust Enrichment

41. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

42. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of the Plaintiff and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

PRAYER FOR RELIEF

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

1. That the Court determine this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as Class Representatives, and that Plaintiff' counsel be appointed as counsel for the Class;

2. That Plaintiff and the Class be awarded damages for all causes of action alleged herein;

3. That Plaintiff and the Class receive restitution and disgorgement of Defendants' ill-gotten gains resulting from Defendants' unfair business practices;

4. That Defendants be enjoined from engaging in the same or similar unfair business practices alleged herein;

TOY-RQ-05E-00012676

5. For an Order requiring Defendants to immediately cease and desist from selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems;

6. That Plaintiff and the Class recover for all equitable remedies available under Kentucky law;

7. That Plaintiff and the Class recover their costs of the suit, including attorneys' fees, expenses, and costs, as provided by law;

8. That Plaintiff and the Class recover punitive damages against Defendants;

9. That Plaintiff and the Class be awarded pre- and post-judgment interest; and

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

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

Dated: February 16, 2010

Respectfully submitted,

/s/ Mark K. Gray

Mark K. Gray
Matthew L. White
Doris A. Kim
FRANKLIN GRAY & WHITE
505 West Ormsby Avenue
Louisville, Kentucky 40203
(502) 637-6000 Telephone

- and -

Gary M. Weiss
J. Allan Cobb
WEISS & COBB LAW
9420 Bunsen Parkway, Suite 306
Louisville, Kentucky 40220
(502) 493-1394 Telephone
Co-Counsel for Plaintiff and the Class

TOY-RQ-05E-00012677

CT Corporation

Service of Process Transmittal

02/22/2010
CT Log Number 516187305

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

RE: **Process Served in Kentucky**

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:	Christopher L. Leaverton, Pltf. vs. Toyota Motor Engineering & Manufacturing North America, Inc., et al. including Toyota Motor Sales, USA, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Class Action Complaint
COURT/AGENCY:	USDC Eastern District of Covington, . Case # 2-10-CV-32-WOB
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - On or about November 25, 2009
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/22/2010 postmarked: "Not Post Marked"
APPEARANCE OR ANSWER DUE:	Within 21 days
ATTORNEY(S) / SENDER(S):	Mark K. Gray Franklin Gray & White The Speed Mansion 505 West Ormsby Avenue Louisville, KY 40203
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799443555877 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:	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.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

Defendant

Civil Action No. 2-10-cv-32-WOB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR MOTOR SALES, U.S.A., INC.
SERVE: 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:

Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

LINDA TIERNEY

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 .

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
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
Electronically Filed

CHRISTOPHER L. LEAVERTON, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC. Defendants.	**CLASS ACTION** DEMAND FOR JURY TRIAL CASE NO.

CLASS ACTION COMPLAINT

Plaintiff, CHRISTOPHER L. LEAVERTON ("Plaintiff"), individually and on behalf of all others similarly situated, and for his Class Action Complaint, by and through undersigned counsel, states and alleges the following:

I. INTRODUCTION

1. This action arises out of Defendants' unlawful and misleading business practices regarding their recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, and were placed into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public.

II. JURISDICTION AND VENUE

2. Jurisdiction in this Court is proper under 28 U.S.C. § 1332(d) because the matter in controversy exceeds the jurisdictional amount exclusive of interest and costs, and the parties are citizens of different States.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(a) because Defendant does business in this District, a substantial part of the events and omissions giving rise to the claims asserted herein occurred in this District, and Defendant is subject to personal jurisdiction in this District because it transacted business and/or sold its products in and throughout the United States, including in this District. Moreover, Plaintiff, CHRISTOPHER L. LEAVERTON, individually and on behalf of all others similarly situated, resides in this District, and his vehicle was purchased in this District.

III. THE PARTIES

4. Plaintiff, CHRISTOPHER L. LEAVERTON, is a citizen and resident of Scott County, in the Commonwealth of Kentucky. Plaintiff is the owner of a 2007 Toyota Tundra model automobile, which is the subject to the recall announced by Toyota Motor Sales, U.S.A., Inc. As a result of the recall, Plaintiff has been injured.

5. Defendant, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), is headquartered in the Commonwealth of Kentucky, and its principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky 41018, within this District.; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TEMA is in charge of Toyota's engineering design, development, research and development, and manufacturing activities in the United States, Canada and Mexico. Defendant TEMA was

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created in April 2006 following the consolidation of Toyota Technical Center and Toyota Motor Manufacturing North America. Defendant TEMA operates 14 parts and vehicle manufacturing plants across North America.

6. Defendant, Toyota Motor Sales, USA, Inc. ("TMS"), is a foreign corporation with its principal place of business in Torrance, California; and may be served with process through its registered agent, CT CORPORATION SYSTEM, located at 4169 Westport Road, Louisville, Kentucky 40207. Defendant TMS is in charge of sales, marketing, distribution, manufacture, and service in the United States for Toyota automobiles, SUVs, hybrids, and light trucks.

7. All acts alleged in this Complaint were performed by Defendants, their officers, directors, agents, employees and/or representatives while engaged in the management, direction, control and/or transaction of Defendants' business affairs. Defendants were involved, directly or indirectly, in the manufacture and assembly of the 2007 Toyota Tundra owned by Plaintiff Christopher L. Leaverton, as well as all other vehicles that are the subject of this action.

VI. FACTUAL BACKGROUND

8. Plaintiff, Christopher L. Leaverton, purchased from Green's Toyota of Lexington, Inc., located in Fayette County, Kentucky, and presently owns a 2007 Toyota Tundra automobile vehicle, where it resides in Scott County, Kentucky.

9. Defendants issued their recall because they decided that a defect that relates to motor vehicle safety exists in certain Toyota and Lexus models of automobile vehicles. Defendants first explained that the defect concerns the driver's floor mat, which can

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interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle.

10. According to information on their website, Defendants' recall affects the following makes, models, and years of automobiles: Toyota Avalon 2005 – 2010, Toyota Camry 2007 – 2010, Toyota Prius 2004 – 2009, Toyota Tacoma 2005 – 2010, Toyota Tundra 2007 – 2010, Lexus ES350 2007 – 2010, and Lexus IS250 & IS350 2006 – 2010.

11. Defendants have asked that owners of affected Toyota and Lexus models take out any removable driver's floor mat and not replace it with any other floor mat. Defendants also provide instructions for what to do should a vehicle's floor mat become stuck and interfere with the accelerator pedal.

12. Given the potential for unintended acceleration and Defendants' instructions to remove driver's floor mats, said mats are now worthless to Plaintiff and members of the Class. Plaintiff and Class members have suffered damages as a result.

13. Subsequently, the Defendants have indicated that their Toyota or Lexus vehicles containing electronic throttle control systems ("ETCS") or the electronic throttle controls system known as the ETCS-Intelligent System ("ETCS-i") are faulty.

14. On November 25, 2009, Defendants announced details of a remedy, including reconfiguring the shape of the accelerator pedal, providing newly-designed replacement driver and front passenger side all-weather floor mats, and installing a brake override system in certain models. However, the remedy does not fully compensate Plaintiff and Class members for their damages; for example, the remedy announced by Defendants does not provide for alternative transportation while consumers' vehicles are being repaired.

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The value of the vehicle diminishes. Class members continue to make lease payments to Defendants while being denied the use and benefit of their vehicle.

15. Defendants have not stated when the newly-designed replacement driver and front passenger side all-weather floor mats will be provided or when the vehicle-based remedy will be provided, except to say that Defendants will start notifying owners of ES350, Camry, and Avalon models by the end of 2009 of the remedy process and will notify owners of the other models on a rolling schedule during 2010. The Defendants have not offered any compensation to Plaintiff and members of the Class for the loss of the use of the driver's floor mat. Additionally, Plaintiff and members of the Class are left with no protection for the carpeting in their automobiles, which, without a floor mat, will become dirty and worn from exposure to water, snow, and dirt.

16. On January 21, 2010, Defendants announced details of a further recall for certain vehicle models, which focused on a sticking accelerator pedal ("sticky pedal"), stating: "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. Consistent with our commitment to the safety of our cars and our customers, we have initiated this voluntary recall action." Then, on February 1, 2010, Defendants announced their solution for the sticky pedal, and informed consumers whose inquiry was "Is my car safe to drive if it has not yet received this solution?" as follows: "To be clear, the condition is rare and generally does not occur suddenly. It 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."

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17. The Toyota-manufactured and designed vehicles at risk with the ETCS-i systems include, but are not limited to, the following makes, models, and years of automobiles: Toyota Avalon 2005 - 2009, Toyota Camry 2002 - 2009, Toyota 4Runner 2001 - 2009, Toyota FJ Cruiser 2003 - 2008, Toyota Land Cruiser 2001 - 2009, Toyota RAV4 2005 - 2009, Toyota Sequoia 2001 - 2009, Toyota Sienna 2004 - 2009, Toyota Tacoma 2003 - 2008, Toyota Tundra 2000 - 2009, Lexus models 1998 - 2009. The Toyota-manufactured and designed vehicles at risk tithe the ETCS systems are believed to include an unknown number of models built from 1990s - 2005.

18. Defendants have violated applicable law, as set forth below, by actions and inactions as described herein.

IV. CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action individually, and on behalf of all others similarly situated, pursuant to Fed.R.Civ.P. 23. To that end, Plaintiff seeks to represent a nationwide class, which may be defined as follows:

> All owners or lessees of automobiles or vehicles sold by Toyota Motor Sales, U.S.A., Inc., including models 2005 - 2010 Avalon, 2007 - 2010 Camry, 2004 - 2009 Prius, 2005 - 2010 Tacoma, 2007 - 2010 Tundra, 2007 - 2010 ES350, 2006 - 2010 IS250 and IS350; which are subject to the Voluntary Safety Recall Related to Floor Mats announced by Toyota on November 2, 2009, as well as recalls relating to electronic throttle control systems ("ETCS") or ETCS-Intelligent System ("ETCS-i") in January 2010; and excluding Toyota, its parents, directors and officers of Toyota, directors and officers of its parents, and governmental entities ("Class").

20. Although Plaintiff does not know the exact number of Class members because such information is in the exclusive control of Defendant, due to the nature of the trade and commerce involved, Plaintiff believes that there are, at a minimum, tens of thousands of members in the Class, as defined. Accordingly, the Class is so numerous and geographically dispersed that the joinder of all members is impracticable.

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21. There are questions of law and fact common to the Class, including:

a. Whether Defendants issued a recall of certain Toyota-manufactured and designed vehicles;

b. Whether the concerned recall instructs Plaintiff and Class members to suffer loss of use;

c. Whether Defendants have reimbursed or compensated Plaintiff and Class members for the loss of the use of the recalled vehicles;

d. Whether the recalled vehicles are rendered worthless to Plaintiff and Class members as a result of the recall;

e. Whether the vehicle based remedy adequately compensates Plaintiff and Class members for their damages;

f. Whether Defendants have breached their contracts with Plaintiff and Class members;

g. Whether Defendants have breached the implied warranty of merchantability; and

h. Whether Defendants have been unjustly enriched.

As to Residents of Commonwealth of Kentucky:

i. Whether Defendants' conduct regarding the marketing and sale of its vehicles violates Kentucky Consumer Protection Act. *See* KRS 367.110 *et seq.*

22. Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests are entirely consistent with, and not antagonistic to, those of the other members of the Class.

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23. Plaintiff is represented by counsel who are competent and experienced in the prosecution of consumer and class action litigations.

24. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy because the named representative has the same interest as other members of the Class and will vigorously prosecute this action on behalf of the Class. The Class is readily definable and is one for which records should exist. Prosecution as a class action will eliminate the possibility of repetitious litigation. In addition, it is desirable to concentrate the litigation in this forum because the damages suffered by individual members of the Class may be relatively small, and the expense and burden of individual litigation make it impracticable for individual members of the Class to pursue separate litigation. Neither Plaintiff nor his counsel is aware of any difficulties in management that would preclude maintenance of this litigation as a class action.

25. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications, establishing incompatible standards of conduct for Defendants.

VI. CAUSES OF ACTION

26. Defendants sold, marketed, advertised, distributed, and otherwise placed the recalled Toyota-manufactured and designed vehicles, which were defective as to their acceleration and braking systems, into the stream of commerce in an unlawful, unfair, fraudulent and/or deceptive manner that was likely to deceive the public. The Defendants

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concealed from consumers that the defects in their recalled vehicles related to motor vehicle safety. Defendants breached their duty and proximately caused damages to Plaintiff and the Class.

COUNT I: Breach of Express and Implied Warranty

27. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

28. By selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public the Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation when, in fact, it was not.

29. As a direct and proximate result of the foregoing, Plaintiff and the Class have suffered economic damages including, but not limited to, diminished value on the resale market, in an amount to be proven at trial.

COUNT II: Violation of Kentucky Consumer Protection Act
(Applicable only to Residents of Commonwealth of Kentucky)

30. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

31. Plaintiff and the Class are natural "persons" within the meaning of Kentucky Consumer Protection Act, K.R.S. § 367.110.

32. The Kentucky Consumer Protection Act, K.R.S. § 367.170, prohibits unfair or deceptive consumer sales practices. Specifically, the Act prohibits "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Id.

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33. Defendants' conduct alleged above constitute unfair and/or deceptive consumer sales practices in violation of K.R.S. §367.170 because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the standard, quality or grade of new vehicles.

34. As above described, said violation and/or wrongful conduct of Defendants was willful, wanton, and malicious, and Plaintiff and the Class have been damaged and are entitled to punitive damages in an amount to be proved at trial.

COUNT III: Breach of Lease/Contract

35. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

36. Plaintiff and other members of the Class entered into a lease agreement with Defendants, which inured to the benefit of Defendants. Other members of the Class entered into agreements to purchase Toyota-manufactured and designed vehicles, which also directly or indirectly benefits Defendants.

37. The leases and purchase agreements provided that Class members would make payments and, in return, would receive a new vehicle that would operate properly.

38. Defendants breached their agreements with Plaintiff and other Class members because the vehicles sold or leased to the Class members were defective and not of a quality that reasonably would be expected of a new automobile.

39. Plaintiff and other Class members have fully performed their duties under the purchase and lease agreements.

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40. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV: Unjust Enrichment

41. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

42. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of the Plaintiff and Class members. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

PRAYER FOR RELIEF

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

1. That the Court determine this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as Class Representatives, and that Plaintiff' counsel be appointed as counsel for the Class;

2. That Plaintiff and the Class be awarded damages for all causes of action alleged herein;

3. That Plaintiff and the Class receive restitution and disgorgement of Defendants' ill-gotten gains resulting from Defendants' unfair business practices;

4. That Defendants be enjoined from engaging in the same or similar unfair business practices alleged herein;

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5. For an Order requiring Defendants to immediately cease and desist from selling, marketing, advertising, and distributing vehicles that are defective as to their acceleration and braking systems;

6. That Plaintiff and the Class recover for all equitable remedies available under Kentucky law;

7. That Plaintiff and the Class recover their costs of the suit, including attorneys' fees, expenses, and costs, as provided by law;

8. That Plaintiff and the Class recover punitive damages against Defendants;

9. That Plaintiff and the Class be awarded pre- and post-judgment interest; and

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

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

Dated: February 16, 2010

Respectfully submitted,

/s/ Mark K. Gray

Mark K. Gray
Matthew L. White
Doris A. Kim
FRANKLIN GRAY & WHITE
505 West Ormsby Avenue
Louisville, Kentucky 40203
(502) 637-6000 Telephone

- and -

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Co-Counsel for Plaintiff and the Class

TOY-RQ-05E-00012692

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Avenue • Louisville, KY 40203

CT Corporation System
4169 Westport Rd.
Louisville, KY 40207

40207327747

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

CHRISTOPHER L. LEAVERTON, Individually and on Behalf of All Others Similarly Situated

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark K. Gray, FRANKLIN GRAY & WHITE
The Speed Mansion, 505 West Ormsby Avenue, Louisville, KY 40203
(502) 637-6000

DEFENDANTS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

County of Residence of First Listed Defendant Kenton
(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 U.S.C. Section 1332(d) and 28 U.S.C. Section 1391(a)

Brief description of cause:
Defective product, unfair, false, deceptive representation and marketing

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 100,000,000

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/16/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and 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.
SERVE: 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: Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

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):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

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

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

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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: Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

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):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

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-32**

Assigned : Senior Judge William O. Bertelsman
Judge Code : 4307

Assigned on 02/16/2010

Request New Judge .....

TOY-RQ-05E-00012700

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

Defendant

Civil Action No. 2-10-cv-32-WOB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
SERVE: 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:

Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

LINDA TIERNEY

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 .

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-00012702

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

CHRISTOPHER L. LEAVERTON

Plaintiff

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

Defendant

Civil Action No. 2-10-cv-32-WOB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR MOTOR SALES, U.S.A., INC.
SERVE: 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: Mark K. Gray
FRANKLIN GRAY & WHITE
The Speed Mansion
505 West Ormsby Avenue
Louisville, KY 40203

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: 02/16/2010

LINDA TIERNEY

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 .

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:

U.S. District Court
Eastern District of Kentucky (Covington)
CIVIL DOCKET FOR CASE #: 2:10-cv-00032-WOB

Leaverton v. Toyota Motor Engineering & Manufacturing North America, Inc. et al
Assigned to: Judge William O. Bertelsman
Cause: 28:1391 Personal Injury

Date Filed: 02/16/2010
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Federal Question

Plaintiff

Christopher L. Leaverton
Individually and on Behalf of All Others Similarly Situated

represented by **Doris A. Kim**
Franklin Gray & White
505 W. Ormsby
Louisville , KY 40203
502-637-6000
Fax: 502-637-1413
Email: dkim@franklingrayandwhite.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary M. Weiss
Weiss & Cobb Attorneys At Law
9420 Bunsen Parkway
Suite 306
Louisville , KY 40220
502-493-1394
Fax: 502-493-1445
Email: kathleen@weissandcobb.com
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Joseph Allan Cobb
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Fax: 502-493-1445
Email: allancobb@weissandcobb.com
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ATTORNEY TO BE NOTICED

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Franklin Gray & White
505 W. Ormsby
Louisville , KY 40203
502-585-2060
Email: mgray@franklingrayandwhite.com

TOY-RQ-05E-00012705

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew L. White
Franklin Gray & White
505 W. Ormsby
Louisville , KY 40203
502-585-2060
Email: mattwhiteatty@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.

Defendant

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

Date Filed	#	Docket Text
02/16/2010	1	CLASS ACTION COMPLAINT (Filing fee $350; receipt number 1687086), filed by Christopher L. Leaverton. (Attachments: # 1 Civil Cover Sheet, # 2 Proposed summons - TEMA, # 3 Proposed Summons - TME, # 4 Case Assignment)(LST) (Entered: 02/17/2010)
02/16/2010	2	Summons Issued as to Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.; issued summons returned to counsel via U.S. Mail (LST) (Entered: 02/17/2010)
02/17/2010		Conflict Check run. (LST) (Entered: 02/17/2010)

TOY-RQ-05E-00012706

FILE START

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Tel: (310) 207-5055
Fax: (310) 826-3210

Attorneys for Plaintiff

FILED
2010 FEB 16 AM 10: 02
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

KERRI MADDEN, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

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 CORPORATION; and DOES 1 through 10.

Defendants.

Case No. CV10 1094 GAF VBKx

COMPLAINT FOR:
1. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW;
2. VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW;
3. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; AND
4. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

DEMAND FOR JURY TRIAL

CLASS ACTION

Plaintiff Kerri Madden ("Plaintiff"), on behalf of herself and all others similarly situated, alleges the following upon information and belief based upon investigation of counsel, published reports, and personal knowledge:

TOY-RQ-05E-00012708

NATURE OF THE CASE

1. This is a class action brought on behalf of all persons in the United States who presently own a Toyota vehicle equipped with an electronic throttle control system.

JURISDICTION AND VENUE

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

3. This Court also has personal jurisdiction over 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 Corporation ("Toyota" or "Defendants") because Defendants are authorized to do business, and currently do business, in this state.

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

PARTIES

5. Plaintiff Kerri Madden is a resident of Los Angeles County.

6. Defendant Toyota Motor Sales, U.S.A., Inc, ("TMS") is a California corporation and a citizen of California, with its principal place of business in California.

7. Defendant Toyota Motor North America, Inc. ("TMNA") is a California corporation and a citizen of California, with its principal place of business in California.

8. Defendant Toyota Motor Engineering & Manufacturing North

TOY-RQ-05E-00012709

America, Inc. ("TMEMNA") is a Kentucky corporation and a citizen of Kentucky, with its principal place of business in Kentucky. TMEMNA is registered to do business in California.

9. Defendant Toyota Motor Manufacturing, California, Inc. ("TMMC") is a California corporation and a citizen of California, with its principal place of business in California.

10. Defendant Toyota Motor Corporation ("TMC") is a Japanese corporation with its headquarters in Japan. TMC wholly owned and controlled TMS, TMNA, TMEMNA and TMMC at all relevant times, and conducted business in Los Angeles County and is therefore subject to the jurisdiction of this Court.

11. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota" or "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend her Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

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

FACTUAL ALLEGATIONS

13. Plaintiff drives and is the beneficial owner of a 2007 Toyota Camry. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system.

Plaintiff's vehicle has suffered a diminution in resale value due to accidents, press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toyota's reputation for safety and reliability in choosing her vehicle. However, Toyota failed to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus, such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, and Plaintiff would not own her vehicle if such facts had been disclosed.

14. Toyota's cars and trucks have a defect that causes sudden, uncontrolled acceleration to speeds up to 100 m.p.h and more. The defect is deadly. Data compiled by the safety research organization, Safety Research and Strategies, shows that Toyota sudden acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities.

15. Toyota is the world's largest manufacturer of vehicles, with net revenues in 2009 of over $227 billion.

16. Plaintiff's 2007 Toyota Camry is subject to two current safety recalls according to Toyota's website:

i. The "Floor Mat Entrapment" recall states the "potential for an unsecured or incompatible driver's floor mat to interfere with, or entrap, the accelerator pedal in the worst case, in the wide-open position. A vehicle with an entrapped accelerator pedal may be difficult to control and/or stop." Toyota issued a consumer safety advisory on September 29, 2009 with respect to this issue.

ii. The "Pedal" recall is "due to materials used, wear and environmental conditions, these surfaces may, over time, begin to stick and release instead of operating smoothly. In some cases, friction could increase to a point that the pedal is slow to return to the idle position or, in rare cases, the pedal sticks, leaving the throttle partially open."

17. Toyota created an advertising campaign to project an image of quality and safety in order to increase sales of its cars. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

18. Plaintiff is informed and believes and thereon alleges that, out of the public's view, however, Toyota delayed recalls, maintained secrecy on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. Indeed, after Toyota announced its biggest recall in or about September 2009, to address the sudden-acceleration problem, it insisted publicly that no defect existed. The National Highway Traffic Safety Administration ("NHTSA") chastised Toyota for making "inaccurate and misleading statements."

19. Various news reporting agencies, including the Los Angeles Times, noted that: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, Toyota told U.S. regulators that no such recall was necessary here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem since 1992, and should have initiated a recall immediately"

20. At least one former employee, Dimitrios Biller, a Toyota lawyer who handled safety litigation, has sued Toyota, alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to

"prevent evidence of its vehicles' shortcomings from becoming known."

21. Plaintiff's vehicle contains an electronic throttle control system ("ETC"). 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 depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

22. At first, the ETC continued to include a mechanical linkage between the accelerator and the engine throttle control, but beginning with the 2001 model year, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage. Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

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

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

25. Plaintiff is informed, believes and thereon alleges that there have been 19 fatalities and well over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and forward. A 2007 NHTSA survey of 600 Lexus owners found that 10% complained they had experienced sudden acceleration.

26. Plaintiff is informed, believes and thereon alleges that Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds when it reported complaint dates to the NHTSA. Toyota eliminated all reports in five broad categories when responding to NHTSA's request regarding an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

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

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

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

30. In response to the sudden-acceleration debacle, on or around October 30, 2009, Toyota began mailing, to 3.8 million owners[1] of its cars, a notice required by the National Traffic and Motor Vehicle Safety Act.[2] It states: "Toyota has decided that a defect which relates to motor vehicle safety exists" in specified

---

[1] "Owners" also includes and incorporates any leased vehicles by any lessee.

[2] 49 U.S.C. §§ 30101, *et seq.*

TOY-RQ-05E-00012714

Toyota and Lexus vehicles. Toyota claimed on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act."

31. Section 30118 of the National Traffic and Motor Vehicle Safety Act requires that when a manufacturer "decides" that its vehicles have a 'defect . . . related to motor vehicle safety," the manufacturer must send a mailed notice to "the owners [and] purchasers." Section 30119 requires that the notice "shall contain," among other things:

> "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance"
>
> "(3) the measures to be taken to obtain a remedy of the defect or noncompliance"
>
> "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title"
>
> "(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title"

32. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the notice, rather than stating the true risk, contains dangerous instructions[3] about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely sudden acceleration, the car can still be safe, and can safely be stopped at the side of the road. That is dangerously misleading. It is the opposite of a truthful

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[3] On its own website, Toyota called them "instructions."

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"evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to go down and try to "pull back the floor mat," which itself would be dangerous. Toyota then tells the consumer to stop the vehicle by putting the vehicle in neutral or turn off the vehicle. This instruction is also dangerous. Toyota violates the Act by not including all the section 30119 information in its notice, and by using a second notice for a different purpose.

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

34. News reports such as ABC News's Nightline program focused its attention on the unintended acceleration of Toyota vehicles. Significantly, individuals interviewed during the program challenged Toyota's claims that all unintended acceleration problems could be traced back to improper driver's side floor mats. Numerous other articles quoted consumers' problems with acceleration which were clearly not related to the floor mats.

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

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

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

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

39. A vehicle with the throttle stuck in a partially depressed position can

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lead to accidents which can kill or maim not only the drivers and passengers of the defective vehicles, but others whom the vehicles might run into.

40. Despite the many years that Toyota has been receiving consumer complaints, it wasn't until February 1, 2010 that TMC announced its remedy for accelerator pedals on eight Toyota-brand vehicle models[4] subject to a recall in the United States. Details of the remedy were released on February 1, 2010 in the U.S. by Toyota Motor Sales U.S.A., Inc. On or about February 8, 2010, Toyota recalled approximately 133,000 2010 model year Prius vehicles.

41. Prior to the February 1, 2010 remedy press release, Toyota had been admitting that its investigation is incomplete, and that it does not know the origin, cause, failure mechanism, or fix for the defective product.

42. Despite the remedy announced on February 1, 2010, Toyota still does not fully address the facts and circumstances of many of the incidents of unintended acceleration reported in press accounts.

43. Both the September 29, 2009 recall (and/or safety advisory) and the January 21, 2010 recall include vehicles as far back as the 2005 model year. Given the numerous press reports that Toyota had received, and approximately 2,000 complaints of unintended acceleration during that time period, it is clear that Toyota failed to properly and appropriately investigate these incidents and to issue appropriate remedies while being on notice of the defects in its vehicles.

44. Toyota has taken no steps, even to this date, to effectively remedy this dangerous condition. Although Toyota has announced that it will begin installing accelerator-override systems in new vehicles which will reduce engine power to idle at any time the brake pedal is depressed, it has not agreed to recall and retrofit its prior vehicles with such a safety feature. Further, Toyota continues to turn a

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[4] Certain 2009-2010 RAV4s, certain 2009-2010 Corollas, 2009-2010 Matrixes, 2005-2010 Avalons, certain 2007-2010 Camrys, certain 2010 Highlanders, 2007-2010 Tundras and 2008-2010 Sequoias.

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blind eye to the numerous incidents of unintended acceleration which fit neither the floor-mat nor the sticking-accelerator pedal profile.

45. As a result of Toyota's conduct, all owners of the affected vehicles have suffered a loss of value of their vehicles.

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

47. This is a class action against Toyota's United States subsidiaries, all but one of which is a California corporation, for monetary and equitable relief.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action pursuant to Rule 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

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

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

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

50. This action is brought and may be properly maintained as a class action. This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements.

51. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that the Class includes millions of members. Plaintiff alleges that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

52. Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

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

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

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

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

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

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

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

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

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

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

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

53. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein, including the loss of value of the vehicle.

54. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

55. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent,

or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

56. The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

57. The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

58. Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole, pursuant to Federal Rules of Civil Procedure, Rule 23(b)(2).

59. Plaintiff proposes that notice of this class action be provided by individual mailings to class members and/or by publication in national and/or regional publications.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

(By Plaintiff and the Class Against All Defendants)

60. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

61. California Business and Professions Code §§ 17200, *et seq.*, also

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known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

62. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, and/or fraudulent practices:

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

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

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

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

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

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

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

65. Plaintiff respectfully requests that the Court require Defendants to 1) repair and/or replace Plaintiff's and the putative Class' vehicles, at Defendants'

expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; 2) in the interim time period, provide immediate notice to Plaintiff and Class members of the potential for sudden unintended acceleration of their vehicles and provide instructions for how best to mitigate the situation were it to occur; 3) require Defendants to notify all affected persons affected of the Court's injunction; 4) require Defendants to provide restitution to Plaintiff and Class members; 5) award Plaintiff and/or Class members reasonable attorneys' fees and expenses, and 6) award such other relief as the Court may deem just and proper.

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

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAWS

(By Plaintiff and the Class Against All Defendants)

67. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

68. Business and Professions Code § 17500 provides that "[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care

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should be known, to be untrue or misleading . . ."

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

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

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

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

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiff and the Class Against All Defendants)

73. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

74. Defendants impliedly warrant that their vehicles are fit for the ordinary purpose for which the product is sold.

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

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

77. Plaintiff, and every member of the Class alleged herein have been similarly damaged as a result of this breach of warranty.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiff and the Class Against All Defendants)

78. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

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

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

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

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

83. Plaintiff, and every member of the Class alleged herein, have been similarly damaged as a result of this breach of warranty.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for the following relief;

1. An order certifying this action as a plaintiff class action, as set forth herein above;

2. For compensatory damages as to all causes of action where compensatory damages are available;

3. For restitution;

4. For disgorgement of all wrongfully obtained compensation;

5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;

6. For exemplary damages as to all causes of action where exemplary damages are available;

7. For reasonable costs and attorneys' fees as permitted by law; and

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

DATED: February 11, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all claims so triable.

DATED: February 11, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

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

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

KERRI MADDEN, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

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 CORPORATION; and DOES 1 through 10.

Defendants.

Case No. CV10 1094 GAF VBKx

COMPLAINT FOR:
1. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW;
2. VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW;
3. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; AND
4. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

DEMAND FOR JURY TRIAL

CLASS ACTION

Plaintiff Kerri Madden ("Plaintiff"), on behalf of herself and all others similarly situated, alleges the following upon information and belief based upon investigation of counsel, published reports, and personal knowledge:

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NATURE OF THE CASE

1. This is a class action brought on behalf of all persons in the United States who presently own a Toyota vehicle equipped with an electronic throttle control system.

JURISDICTION AND VENUE

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

3. This Court also has personal jurisdiction over 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 Corporation ("Toyota" or "Defendants") because Defendants are authorized to do business, and currently do business, in this state.

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

PARTIES

5. Plaintiff Kerri Madden is a resident of Los Angeles County.

6. Defendant Toyota Motor Sales, U.S.A., Inc, ("TMS") is a California corporation and a citizen of California, with its principal place of business in California.

7. Defendant Toyota Motor North America, Inc. ("TMNA") is a California corporation and a citizen of California, with its principal place of business in California.

8. Defendant Toyota Motor Engineering & Manufacturing North

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America, Inc. ("TMEMNA") is a Kentucky corporation and a citizen of Kentucky, with its principal place of business in Kentucky. TMEMNA is registered to do business in California.

9. Defendant Toyota Motor Manufacturing, California, Inc. ("TMMC") is a California corporation and a citizen of California, with its principal place of business in California.

10. Defendant Toyota Motor Corporation ("TMC") is a Japanese corporation with its headquarters in Japan. TMC wholly owned and controlled TMS, TMNA, TMEMNA and TMMC at all relevant times, and conducted business in Los Angeles County and is therefore subject to the jurisdiction of this Court.

11. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota" or "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend her Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

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

FACTUAL ALLEGATIONS

13. Plaintiff drives and is the beneficial owner of a 2007 Toyota Camry. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system.

Plaintiff's vehicle has suffered a diminution in resale value due to accidents, press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for vehicles is that such cars are reputed to be safe and reliable. Plaintiff relied upon Toyota's reputation for safety and reliability in choosing her vehicle. However, Toyota failed to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus, such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, and Plaintiff would not own her vehicle if such facts had been disclosed.

14. Toyota's cars and trucks have a defect that causes sudden, uncontrolled acceleration to speeds up to 100 m.p.h and more. The defect is deadly. Data compiled by the safety research organization, Safety Research and Strategies, shows that Toyota sudden acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities.

15. Toyota is the world's largest manufacturer of vehicles, with net revenues in 2009 of over $227 billion.

16. Plaintiff's 2007 Toyota Camry is subject to two current safety recalls according to Toyota's website:

i. The "Floor Mat Entrapment" recall states the "potential for an unsecured or incompatible driver's floor mat to interfere with, or entrap, the accelerator pedal in the worst case, in the wide-open position. A vehicle with an entrapped accelerator pedal may be difficult to control and/or stop." Toyota issued a consumer safety advisory on September 29, 2009 with respect to this issue.

ii. The "Pedal" recall is "due to materials used, wear and environmental conditions, these surfaces may, over time, begin to stick and release instead of operating smoothly. In some cases, friction could increase to a point that the pedal is slow to return to the idle position or, in rare cases, the pedal sticks, leaving the throttle partially open."

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17. Toyota created an advertising campaign to project an image of quality and safety in order to increase sales of its cars. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

18. Plaintiff is informed and believes and thereon alleges that, out of the public's view, however, Toyota delayed recalls, maintained secrecy on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. Indeed, after Toyota announced its biggest recall in or about September 2009, to address the sudden-acceleration problem, it insisted publicly that no defect existed. The National Highway Traffic Safety Administration ("NHTSA") chastised Toyota for making "inaccurate and misleading statements."

19. Various news reporting agencies, including the Los Angeles Times, noted that: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, Toyota told U.S. regulators that no such recall was necessary here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem since 1992, and should have initiated a recall immediately"

20. At least one former employee, Dimitrios Biller, a Toyota lawyer who handled safety litigation, has sued Toyota, alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to

"prevent evidence of its vehicles' shortcomings from becoming known."

21. Plaintiff's vehicle contains an electronic throttle control system ("ETC"). 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 depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

22. At first, the ETC continued to include a mechanical linkage between the accelerator and the engine throttle control, but beginning with the 2001 model year, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage. Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

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

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

25. Plaintiff is informed, believes and thereon alleges that there have been 19 fatalities and well over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and forward. A 2007 NHTSA survey of 600 Lexus owners found that 10% complained they had experienced sudden acceleration.

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26. Plaintiff is informed, believes and thereon alleges that Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds when it reported complaint dates to the NHTSA. Toyota eliminated all reports in five broad categories when responding to NHTSA's request regarding an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

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

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

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

30. In response to the sudden-acceleration debacle, on or around October 30, 2009, Toyota began mailing, to 3.8 million owners[1] of its cars, a notice required by the National Traffic and Motor Vehicle Safety Act.[2] It states: "Toyota has decided that a defect which relates to motor vehicle safety exists" in specified

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[1] "Owners" also includes and incorporates any leased vehicles by any lessee.

[2] 49 U.S.C. §§ 30101, *et seq.*

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Toyota and Lexus vehicles. Toyota claimed on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act."

31. Section 30118 of the National Traffic and Motor Vehicle Safety Act requires that when a manufacturer "decides" that its vehicles have a 'defect . . . related to motor vehicle safety," the manufacturer must send a mailed notice to "the owners [and] purchasers." Section 30119 requires that the notice "shall contain," among other things:

> "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance"
>
> "(3) the measures to be taken to obtain a remedy of the defect or noncompliance"
>
> "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title"
>
> "(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title"

32. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the notice, rather than stating the true risk, contains dangerous instructions[3] about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely sudden acceleration, the car can still be safe, and can safely be stopped at the side of the road. That is dangerously misleading. It is the opposite of a truthful

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[3] On its own website, Toyota called them "instructions."

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"evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to go down and try to "pull back the floor mat," which itself would be dangerous. Toyota then tells the consumer to stop the vehicle by putting the vehicle in neutral or turn off the vehicle. This instruction is also dangerous. Toyota violates the Act by not including all the section 30119 information in its notice, and by using a second notice for a different purpose.

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

34. News reports such as ABC News's Nightline program focused its attention on the unintended acceleration of Toyota vehicles. Significantly, individuals interviewed during the program challenged Toyota's claims that all unintended acceleration problems could be traced back to improper driver's side floor mats. Numerous other articles quoted consumers' problems with acceleration which were clearly not related to the floor mats.

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

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

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

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

39. A vehicle with the throttle stuck in a partially depressed position can

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lead to accidents which can kill or maim not only the drivers and passengers of the defective vehicles, but others whom the vehicles might run into.

40. Despite the many years that Toyota has been receiving consumer complaints, it wasn't until February 1, 2010 that TMC announced its remedy for accelerator pedals on eight Toyota-brand vehicle models[4] subject to a recall in the United States. Details of the remedy were released on February 1, 2010 in the U.S. by Toyota Motor Sales U.S.A., Inc. On or about February 8, 2010, Toyota recalled approximately 133,000 2010 model year Prius vehicles.

41. Prior to the February 1, 2010 remedy press release, Toyota had been admitting that its investigation is incomplete, and that it does not know the origin, cause, failure mechanism, or fix for the defective product.

42. Despite the remedy announced on February 1, 2010, Toyota still does not fully address the facts and circumstances of many of the incidents of unintended acceleration reported in press accounts.

43. Both the September 29, 2009 recall (and/or safety advisory) and the January 21, 2010 recall include vehicles as far back as the 2005 model year. Given the numerous press reports that Toyota had received, and approximately 2,000 complaints of unintended acceleration during that time period, it is clear that Toyota failed to properly and appropriately investigate these incidents and to issue appropriate remedies while being on notice of the defects in its vehicles.

44. Toyota has taken no steps, even to this date, to effectively remedy this dangerous condition. Although Toyota has announced that it will begin installing accelerator-override systems in new vehicles which will reduce engine power to idle at any time the brake pedal is depressed, it has not agreed to recall and retrofit its prior vehicles with such a safety feature. Further, Toyota continues to turn a

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[4] Certain 2009-2010 RAV4s, certain 2009-2010 Corollas, 2009-2010 Matrixes, 2005-2010 Avalons, certain 2007-2010 Camrys, certain 2010 Highlanders, 2007-2010 Tundras and 2008-2010 Sequoias.

TOY-RQ-05E-00012737

blind eye to the numerous incidents of unintended acceleration which fit neither the floor-mat nor the sticking-accelerator pedal profile.

45. As a result of Toyota's conduct, all owners of the affected vehicles have suffered a loss of value of their vehicles.

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

47. This is a class action against Toyota's United States subsidiaries, all but one of which is a California corporation, for monetary and equitable relief.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action pursuant to Rule 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

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

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

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

50. This action is brought and may be properly maintained as a class action. This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements.

51. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that the Class includes millions of members. Plaintiff alleges that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

52. Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

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

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

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

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

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

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

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

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

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

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

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

53. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein, including the loss of value of the vehicle.

54. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

55. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent,

or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

56. The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

57. The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

58. Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole, pursuant to Federal Rules of Civil Procedure, Rule 23(b)(2).

59. Plaintiff proposes that notice of this class action be provided by individual mailings to class members and/or by publication in national and/or regional publications.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

(By Plaintiff and the Class Against All Defendants)

60. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

61. California Business and Professions Code §§ 17200, *et seq.*, also

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known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

62. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, and/or fraudulent practices:

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

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

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

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

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

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

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

65. Plaintiff respectfully requests that the Court require Defendants to 1) repair and/or replace Plaintiff's and the putative Class' vehicles, at Defendants'

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expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; 2) in the interim time period, provide immediate notice to Plaintiff and Class members of the potential for sudden unintended acceleration of their vehicles and provide instructions for how best to mitigate the situation were it to occur; 3) require Defendants to notify all affected persons affected of the Court's injunction; 4) require Defendants to provide restitution to Plaintiff and Class members; 5) award Plaintiff and/or Class members reasonable attorneys' fees and expenses, and 6) award such other relief as the Court may deem just and proper.

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

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAWS

(By Plaintiff and the Class Against All Defendants)

67. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

68. Business and Professions Code § 17500 provides that "[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care

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should be known, to be untrue or misleading . . ."

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

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

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

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

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiff and the Class Against All Defendants)

73. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

74. Defendants impliedly warrant that their vehicles are fit for the ordinary purpose for which the product is sold.

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

TOY-RQ-05E-00012744

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

77. Plaintiff, and every member of the Class alleged herein have been similarly damaged as a result of this breach of warranty.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiff and the Class Against All Defendants)

78. Plaintiff hereby incorporates, as if set forth in full, paragraphs 1 through 59, above.

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

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

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

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

83. Plaintiff, and every member of the Class alleged herein, have been similarly damaged as a result of this breach of warranty.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for the following relief;

1. An order certifying this action as a plaintiff class action, as set forth herein above;

2. For compensatory damages as to all causes of action where compensatory damages are available;

3. For restitution;

4. For disgorgement of all wrongfully obtained compensation;

5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;

6. For exemplary damages as to all causes of action where exemplary damages are available;

7. For reasonable costs and attorneys' fees as permitted by law; and

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

DATED: February 11, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

TOY-RQ-05E-00012746

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all claims so triable.

DATED: February 11, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

TOY-RQ-05E-00012747

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Attorneys for Plaintiff

FILED
2010 FEB 16 AM 10:02
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

KERRI MADDEN, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

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 CORPORATION; and DOES 1 through 10.

Defendants.

Case No. CV10 1094 GAF VBKx

CERTIFICATE OF INTERESTED PARTIES

CLASS ACTION

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA:

Pursuant to Local Rule 7.1-1, the undersigned, counsel of record for Plaintiff Kerri Madden, who brings this action on her own behalf and on behalf of all others similarly situated, certifies that the following listed parties 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.

TOY-RQ-05E-00012748

1. Plaintiff Kerri Madden
2. Defendant Toyota Motor Sales, U.S.A., Inc.
3. Defendant Toyota Motor North America, Inc.
4. Defendant Toyota Motor Engineering & Manufacturing North America, Inc.
5. Defendant Toyota Motor Manufacturing, California, Inc.
6. Defendant Toyota Motor Corporation
7. All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

DATED: February 11, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

TOY-RQ-05E-00012749

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
Kerri Madden, on behalf of herself and all others similarly situated

DEFENDANTS
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 Corporation; and Does 1 - 15

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Brian R. Strange, 103252 T: (310) 207-5055
STRANGE & CARPENTER
12100 Wilshire Blvd., Suite 1900, Los Angeles, CA 90025

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

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

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☑ Yes ☐ No ☑ MONEY DEMANDED IN COMPLAINT: $ over $5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
This is a class action against Defendants pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1332(d)(6)

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

FOR OFFICE USE ONLY: Case Number: CV10 1094

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

TOY-RQ-05E-00012750

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): 2:2010cv00710, 2:2010cv00799, 2:2009cv08143

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

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

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

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

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

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

(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	Toyota Motor Engineering & Manufacturing North America, Inc. - Kentucky Toyota Motor Corporation - Japan

* **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 12, 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-00012751

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 Gary A. Feess and the assigned discovery Magistrate Judge is Victor B. Kenton.

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

CV10- 1094 GAF (VBKx)

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-00012752

Brian R. Strange, Bar No. 103252
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Gretchen Carpenter, Bar No. 180525
gcarpenter@strangeandcarpenter.com
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Attorneys for Plaintiff

FILED
2010 FEB 16 AM 10:02
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

KERRI MADDEN, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

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 CORPORATION; and DOES 1 through 10.

Defendants.

Case No. CV10 1094 GAF VBKx

NOTICE OF RELATED CASES

CLASS ACTION

TOY-RQ-05E-00012753

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA:

Pursuant to Local Rule 83-1.3.1, the undersigned counsel for Plaintiff state that this case is related to the following actions currently pending in the Central District: *Schwartz v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. CV10-710-RSWL(FMOx); *Marr, et al. v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. CV10-00799-CAS(SSx) and *Choi, et al. v. Toyota Motor Corporation, et al.*, Case No. CV09-08143-AHM (FMOx). Plaintiff's counsel believe these cases will call for determination of substantially identical questions of law, as they involve very similar substantive allegations and class definitions.

DATED: February 12, 2010

Respectfully submitted,

STRANGE & CARPENTER

By: _____
Brian R. Strange
Attorneys for Plaintiff

TOY-RQ-05E-00012754

(VBKx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10-cv-01094-GAF-VBK

Kerri Madden v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: Judge Gary A. Feess
Referred to: Magistrate Judge Victor B. Kenton
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 02/16/2010
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Kerri Madden
on behalf of herself and all others similarly situated

represented by **Brian R Strange**
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V.

Defendant

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

Defendant

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Toyota Motor North America Inc.

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.

Defendant

Toyota Motor Manufacturing, California, Inc.

Defendant

Toyota Motor Corporation

Defendant

Does
1 through 10

Date Filed	#	Docket Text
02/16/2010	1	CLASS ACTION COMPLAINT against Defendants Does, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc..Case assigned to Judge Gary A. Feess for all further proceedings. Discovery referred to Magistrate Judge Victor B. Kenton. (Filing fee $ 350 PAID.) Jury Demanded., filed by Plaintiff Kerri Madden.(et) (Additional attachment(s) added on 2/17/2010: # 1 Notice of Assignment, # 2 Summons, # 3 Civil Cover Sheet) (ds). (Entered: 02/17/2010)
02/16/2010		21 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendants Does 1 through 10, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc. (et) (Entered: 02/17/2010)
02/16/2010	2	CERTIFICATE of Interested Parties filed by Plaintiff Kerri Madden. (et) (ds). (Entered: 02/17/2010)
02/16/2010	3	NOTICE of Related Case(s) filed by Plaintiff Kerri Madden. Related Case(s): CV 10-0710 RSWL (FMOx); CV 10-0799 CAS (SSx) and CV 09-08143 AHM (FMOx). (et) (ds). (Entered: 02/17/2010)

PACER Service Center			
Transaction Receipt			
02/22/2010 11:08:01			
PACER Login:	wb0242	**Client Code:**	056707-383593
Description:	Docket Report	**Search Criteria:**	2:10-cv-01094-GAF-VBK End date: 2/22/2010
Billable Pages:	2	**Cost:**	0.16

TOY-RQ-05E-00012756

FILE START

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

DAVID HULSEN **6641 Oak Street** **Kansas City, Missouri 64113** **And** **PATRICK MANN** **512 SE Wingate Street** **Lee's Summit, Missouri 64063** **And** **TYSON MARKHAM** **637 E. 72nd Terrace** **Kansas City, Missouri 64131** **On behalf of themselves and** **All others similarly situated,** **Plaintiffs,** **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** **120 South Central Avenue** **Clayton, Missouri, 63105** **Defendants.**	)	**Case No. 4:10-cv-00103-HFS**

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs David Hulsen, Patrick Mann and Tyson Markham, individually and on behalf of all others similarly situated, state and allege as follows:

TOY-RQ-05E-00012758

PARTIES, JURISDICTION AND VENUE

1. Plaintiff David Hulsen is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Hulsen currently owns a 2005 Toyota Tacoma (VIN # 5TEUU42N85Z080886) which he purchased from Molle Toyota in Jackson County, Missouri in 2007.

2. Plaintiff Patrick Mann is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Mann currently owns a 2009 Toyota Prius (VIN # JTDKB20U197869955) which he purchased from Adams Toyota in Jackson County, Missouri in 2009.

3. Plaintiff Tyson Markham is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Markham currently owns a 2008 Toyota Camry (VIN # 4T1BK46K98U568492) which he purchased from Shepherd Team Auto Plaza in 2008.

4. 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.

5. 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, 120 South Central Avenue, Clayton, Missouri 63105.

6. This Court has personal jurisdiction over the Toyota defendants pursuant to R.S.Mo. § 506.500, including, but not limited to, subsections (1), (2) and (3). Furthermore,

Toyota USA is registered to do business in this State and maintains a registered agent for service of process in this State.

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

8. 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.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and Local Rule 3.2.

10. 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 plaintiffs and the defendants.

NATURE OF THE ACTION

ETCS-i and the Danger of Sudden Unintended Acceleration

11. 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").

12. 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.

13. 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.

14. 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

15. 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.

16. 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.

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

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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.

c. In 2006, NHTSA opened a defect petition investigation (DP06003) into 2002-2006 Camry and Camry Solara vehicles for unwanted engine surging.

d. In 2007, NHTSA opened a defect investigation (EA07-010) into 2002-2008 Camrys and Lexus ES350s upon receiving numerous reports of unwanted acceleration from consumers.

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.

18. 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.

19. 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

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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.

20. The above-described material facts were facts which reasonable consumers, such as the plaintiffs, would consider to be important in making a decision to purchase or lease a Toyota or Lexus vehicle.

21. 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, plaintiffs have suffered actual damages, including, but not limited to (1) the amount of the difference in value between what plaintiffs paid for their vehicles and what they 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 their vehicles.

22. 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, plaintiffs would not have purchased their Toyota vehicles or would not have purchased the vehicles for as much they paid or suffered any diminution in the resale value of their vehicles.

CLASS ACTION ALLEGATIONS

23. Pursuant to Rule 23 and R.S.Mo. § 407.025.3, plaintiffs bring this class action on behalf of themselves and a class of similarly situated persons (hereinafter the "Class") defined as follows: All Missouri 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 five years immediately preceding the filing of this Complaint and the date the Court certifies this suit as a class action (hereinafter the "Class Vehicles").

24. 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.

25. 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 Missouri. As a result, joinder of all Class members in a single action is impracticable.

26. 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 Missouri's Merchandising Practices Act, R.S.Mo. § 407.010 *et seq*;

f. Whether defendants' conduct justifies an award of punitive damages and attorneys' fees under Missouri's Merchandising Practices Act, R.S.Mo. § 407.010 *et seq*;

27. 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.

28. 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.

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

30. 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 Missouri Merchandising Practices Act.

31. 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.

32. 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 MISSOURI MERCHANDISING PRACTICES ACT

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

34. Plaintiff and members of the Class purchased and leased the Class Vehicles primarily for personal, family or household purposes.

35. As described above, the Toyota defendants engaged in unlawful acts or practices in violation of R.S.Mo. § 407.020.1 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.

36. The Toyota defendants' unlawful practices in concealment, suppression and/or omission of the material facts described above occurred in connection with the advertisement, sale or lease of the Class Vehicles in the course of trade or commerce.

37. As a result of plaintiffs' purchases Class Vehicles and defendants' unlawful acts and violation of the Missouri Merchandising Practices Act, plaintiffs have suffered ascertainable loss and damages, including but not limited to: (1) the amount of the difference in value between what plaintiffs paid for their vehicles and what they 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 their vehicles.

38. Plaintiffs' and the Class members' damage was proximately caused by the unlawful concealment, suppression and/or omission of the materials facts in that had the Toyota defendants disclosed the above-described material facts, plaintiffs would not have purchased their vehicles or would not have purchased the vehicles for as much they paid.

39. The conduct of the Toyota defendants as described herein was outrageous because of their evil motive and/or reckless indifference to the rights of others, including the plaintiffs and the members of the Class, entitling plaintiff and the Class members to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court enter an Order and/or Judgment against the defendants and in favor of the plaintiffs 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 Plaintiffs 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 plaintiffs paid for their vehicles and what they 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 punitive damages in an amount to be determined at trial;

E. Awarding pre-judgment interest;

F. Awarding post-judgment interest;

G. Awarding attorneys' fees and costs; and

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

Respectfully submitted,

THE KUHLMAN LAW FIRM, LLC

By: /s/ Chad C. Lucas

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Attorneys for Plaintiffs

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Jury Demand

Plaintiffs hereby demand a trial by jury on all issues in the above-captioned case.

Respectfully submitted,

THE KUHLMAN LAW FIRM, LLC

By: /s/ Chad C. Lucas

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TOY-RQ-05E-00012770

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

DAVID HULSEN, on behalf of himself and all others similarly situated **6641 Oak Street** **Kansas City, Missouri 64113** **Plaintiff,**	)	
vs.	)	**Case No. _____** **Division No. _____**
TOYOTA MOTOR CORPORATION **1, Toyota-cho, Toyota-city,** **Aichi-ken, 471-8571, Japan**	)	**JURY TRIAL DEMANDED**
And	)	
TOYOTA MOTOR SALES, U.S.A., INC. **Serve: Registered Agent** **CT Corporation System** **120 South Central Avenue** **Clayton, Missouri 63105**	)	
And	)	
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. **Serve: Registered Agent** **CT Corporation System** **120 South Central Avenue** **Clayton, Missouri 63105** **Defendants.**	)	

CLASS ACTION COMPLAINT

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

TOY-RQ-05E-00012771

PARTIES, JURISDICTION AND VENUE

1. Plaintiff David Hulsen is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff owns a 2005 Toyota Tacoma which he purchased from Molle Toyota in Kansas City, Jackson County, Missouri 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, 120 South Central Avenue, Clayton, Missouri 63105.

4. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Manufacturing") is a Kentucky corporation with its principal place of business in Kentucky. Defendant Toyota USA may be served through its registered agent CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

5. This Court has personal jurisdiction over all both Toyota defendants pursuant to R.S.Mo. § 506.500, including but not limited to subsections (1), (2) and (3). Furthermore, Toyota USA and Toyota Manufacturing are registered to do business in this State and maintain registered agents for service of process in this State.

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

7. Defendant Toyota has purposefully availed itself to the privilege of conducting business within the United States and this State and has 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 defendant Toyota should reasonably anticipate being haled into Court here.

8. Venue is proper in this Court pursuant to Local Rule 3.2.

9. 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

10. The Toyota defendants designed, manufactured, advertised, marketed and/or sold the Toyota and Lexus vehicles which are the subject of this action.

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

12. Toyota vehicles equipped with ETSC-i system, as designed and implemented by the Toyota defendants, are susceptible to incidents of sudden unintended acceleration.

13. The Toyota defendants did not incorporate appropriate failsafe designs into their ETCS-i equipped vehicles to ensure that the driver could safely control his or her Toyota 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.

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

15. 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. Despite their knowledge of these incidents, the Toyota defendants failed to disclose (and in some instances actively concealed and/or hid) information regarding these incidents to Missouri consumers and the National Highway Transportation Safety Association ("NHTSA"), continued to market ETCS-i equipped vehicles without incorporating appropriate failsafe designs and failed to warn Missouri consumers of their vehicles' propensity to sudden and uncontrollably accelerate without warning.

c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving

16. Beginning in 2004, NHTSA launched investigation after investigation into various Toyota vehicles upon receiving numerous reports of sudden unintended acceleration from consumers:

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.

c. In 2006, NHTSA opened a defect petition investigation (DP06003) into 2002-2006 Camry and Camry Solara vehicles for unwanted engine surging.

d. In 2007, NHTSA opened a defect investigation (EA07-010) into 2002-2008 Camrys and Lexus ES350s upon receiving numerous reports of unwanted acceleration from consumers.

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.

17. In response to NHTSA's investigations, the Toyota defendants consistently and repeatedly denied that the numerous reported complaints and incidents of sudden unintended or unwanted acceleration constituted a safety related defect or problem in any of its vehicles.

18. While failing to disclose the above-described information to Missouri consumers of Toyota vehicles, the Toyota defendants also undertook affirmative brand imaging through their marketing and advertising for their vehicles that was intended to create the perception of safety and reliability.

19. According to Safety Research Strategies based in Rehobath, Massachusetts, to date there have been 2,262 reported incidents of unintended acceleration in Toyota vehicles since 1999, which have resulted in 815 crashes, 341 injuries and 19 deaths.

20. Plaintiff first learned of his vehicle's propensity for sudden unintended acceleration and/or or that the Toyota defendants failed to provide appropriate failsafe designs

through the following series of recalls, safety warnings and/or statements issued by the Toyota and NHTSA to vehicle owners and/or the public in late 2009 and early 2010:

a. On or about October 5, 2009, Toyota issued floor mat recall 09V-388 covering 3.8 million vehicles to address unwanted acceleration problems in 2007-2010 Camry, 2005-2010 Avalon, 2004-2009 Prius, 2005-2010 Tacoma, 2007-2010 Tundra, 2007-2010 Lexus ES350 and 2006-2010 Lexus IS250 and IS350;

b. In response to the October 5, 2009 recall, NHTSA closed DP09001 on October 28, 2009. Shortly thereafter, on or about November 3, 2009, Toyota issued a statement characterizing the closing of NHTSA defect investigation petition DP09001 as proof that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."

c. On or about November 4, 2009, NHTSA issued the following statement in response to Toyota's November 3rd statement that NHTSA's investigation was over:

"Toyota has announced a safety recall involving 3.8 million vehicles in which the accelerator pedal may become stuck at high vehicle speeds due to interference by the driver's side floor mat, which is obviously a very dangerous situation. Toyota has written to vehicle owners stating that it has decided that a safety defect exists in their vehicles and asking owners to remove all floor mats while the company is developing a remedy. We believe consumers should follow Toyota's recommendation to address the most immediate safety risk. However, removal of the mats is simply an interim measure, not a remedy of the underlying defect in the vehicles. NHTSA is discussing with Toyota what the appropriate vehicle remedy or remedies will be. This matter is not closed until Toyota has effectively addressed the vehicle defect by providing a suitable remedy."

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d. On or about November 25, 2009, Toyota announced plans to reconfigure the accelerator pedal on 3.8 million vehicles going back to further address unwanted acceleration problems in 2007-2010 Camry, 2005-2010 Avalon, 2004-2009 Prius, 2005-2010 Tacoma, 2007-2010 Tundra, 2007-2010 Lexus ES350 and 2006-2010 Lexus IS250 and IS350.

e. On or about January 21, 2010, Toyota issued accelerator pedal recall 10-V017 covering 2.3 million vehicles to address unwanted acceleration problems in 2009-2010 RAV4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra and 2008-2010 Sequoia.

21. As a result of the Toyota defendants' unlawful and misleading business practices and their concealment, suppression and/or omission of material facts in connection with the marketing, advertising and sale of their vehicles, plaintiff has suffered harm which includes being deprived of the full use, benefit and value of his vehicle, including the difference in value between what plaintiff he paid for his Toyota vehicle and what he would have paid at the time of purchase had the defendants fully disclosed the dangers of sudden unintended acceleration inherent in his and the other Toyota Class Vehicles.

22. Furthermore, one of the Toyota defendants' main selling points for their vehicles is that they are safe and reliable. Plaintiff relied on the Toyota defendants' carefully crafted reputation for reliability and safety, the reputation it had created by its own affirmative brand imaging through its marketing and advertising, in selecting his Toyota vehicle over the competition.

23. Had the Toyota defendants disclosed the danger of serious injury or death as a result of the propensity of their vehicles to suddenly accelerate, the many sudden acceleration complaints they had received, the details of NHTSA's numerous defect investigations and/or the

fact of their incorporation of ETCS-i into the Class Vehicles without appropriate failsafe designs such as a brake override system, plaintiff would not have purchased his vehicle or would not have purchased the vehicle for as much he paid.

CLASS ACTION ALLEGATIONS

24. Pursuant to Rule 23 and R.S.Mo. 407.025.3, plaintiff brings this class action on behalf of himself and a class of similarly situated persons (hereinafter the "Class") defined as follows: All Missouri 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 five years immediately preceding the filing of this Complaint and the date the Court certifies this suit as a class action (hereinafter the "Class Vehicles").

25. 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.

26. 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 Missouri. As a result, joinder of all Class members in a single action is impracticable. Class members may be informed of the pendency of this Class action by published and broadcast notice.

27. 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, in connection with the marketing and/or sale of the Class Vehicles, defendants concealed, suppressed, omitted or failed to disclose material facts, including the dangerous propensity of its vehicles to suddenly and, in some instances uncontrollably, accelerate without warning.

b. Whether defendants falsely and fraudulently misrepresented in its advertisements, marketing materials, promotional materials and other materials, among other things, the safety and reliability of the Class Vehicles;

c. Whether defendants failed to warn adequately of the dangers of the Class Vehicles;

d. Whether defendants designed, manufactured and/or sold Class Vehicles that were dangerously defective because they were prone to suddenly and uncontrollably accelerate without warning and failed to incorporate appropriate failsafe designs;

e. Whether defendants knew or should have known that the Class Vehicles were dangerous and prone to suddenly and uncontrollably accelerate without warning;

f. Whether defendants adequately tested the Class Vehicles prior to distribution and sales in the marketplace;

g. Whether defendants continued to manufacture, market, distribute and sell the Class Vehicles despite their knowledge of the Class Vehicles' dangerous nature;

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h. Whether defendants knowingly omitted, suppressed or concealed material facts about the unsafe and/or defective nature of the Class Vehicles from NHTSA and/or the consuming public;

i. Whether defendants' conduct violated Missouri's Merchandising Practices Act;

j. Whether defendants' conduct justifies an award of punitive damages and attorneys' fees under Missouri's Merchandising Practices Act.

28. 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.

29. 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 defendant, and/or substantially impair or impede the ability of Class Members to protect their interests.

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

31. 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 Missouri Merchandising Practices Act.

32. 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.

33. 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 THE MISSOURI MERCHANDISING PRACTICES ACT

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

35. Plaintiff and members of the Class purchased and leased the Class Vehicles primarily for personal, family or household purposes.

35. The acts and practices engaged in by the Toyota defendants, and described herein, constitute unlawful, unfair and/or fraudulent business practices in violation of the Missouri Merchandising Practices Act, R.S.Mo. § 407.010 *et seq.*

36. The Toyota defendants engaged in unlawful and unfair practices including deception, false promises, misrepresentations and/or the concealment, suppression or omission of material facts in connection with the sale or advertisement of the Class Vehicles in violation of R.S.Mo. § 407.020.

37. As a result of plaintiff's purchase of a Class Vehicle and defendants' unlawful acts and violation of the Missouri Merchandising Practices Act, plaintiff suffered ascertainable loss in the form of economic damages in the amount of the difference in value between what plaintiff and the proposed Class members paid for the Class Vehicles and what they would have paid at the time of purchase or lease had the defendants fully disclosed the dangers of the Class Vehicles.

38. The conduct of the Toyota defendants as described herein was outrageous because of their evil motive and/or reckless indifference to the rights of others, including the plaintiff and members of the Class, entitling the plaintiff and Class members to punitive damages.

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 damages in the amount of the difference in value between what plaintiff and the proposed Class members paid for the Class Vehicles and what they would have paid at the time of purchase or lease had the defendants fully disclosed the dangers of the Class Vehicles and not violated the Missouri Merchandising Practices Act as described herein;

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

E. Awarding pre-judgment interest;

F. Awarding post-judgment interest;

G. Awarding attorneys' fees and costs;

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

Respectfully submitted,

THE KUHLMAN LAW FIRM, LLC

By: /s/ Chad C. Lucas
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Attorneys for Plaintiff

TOY-RQ-05E-00012783

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

DAVID HULSEN **6641 Oak Street** **Kansas City, Missouri 64113** **And** **PATRICK MANN** **512 SE Wingate Street** **Lee's Summit, Missouri 64063** **And** **TYSON MARKHAM** **637 E. 72nd Terrace** **Kansas City, Missouri 64131** **On behalf of themselves and** **All others similarly situated,** **Plaintiffs,** **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** **120 South Central Avenue** **Clayton, Missouri, 63105** **Defendants.**	)	**Case No. 4:10-cv-00103-HFS**

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs David Hulsen, Patrick Mann and Tyson Markham, individually and on behalf of all others similarly situated, state and allege as follows:

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PARTIES, JURISDICTION AND VENUE

1. Plaintiff David Hulsen is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Hulsen currently owns a 2005 Toyota Tacoma (VIN # 5TEUU42N85Z080886) which he purchased from Molle Toyota in Jackson County, Missouri in 2007.

2. Plaintiff Patrick Mann is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Mann currently owns a 2009 Toyota Prius (VIN # JTDKB20U197869955) which he purchased from Adams Toyota in Jackson County, Missouri in 2009.

3. Plaintiff Tyson Markham is, and was at all relevant times, a citizen and resident of Kansas City, Jackson County, Missouri. Plaintiff Markham currently owns a 2008 Toyota Camry (VIN # 4T1BK46K98U568492) which he purchased from Shepherd Team Auto Plaza in 2008.

4. 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.

5. 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, 120 South Central Avenue, Clayton, Missouri 63105.

6. This Court has personal jurisdiction over the Toyota defendants pursuant to R.S.Mo. § 506.500, including, but not limited to, subsections (1), (2) and (3). Furthermore,

Toyota USA is registered to do business in this State and maintains a registered agent for service of process in this State.

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

8. 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.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and Local Rule 3.2.

10. 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 plaintiffs and the defendants.

NATURE OF THE ACTION

ETCS-i and the Danger of Sudden Unintended Acceleration

11. 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").

12. 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.

13. 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.

14. 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

15. 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.

16. 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.

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

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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.

c. In 2006, NHTSA opened a defect petition investigation (DP06003) into 2002-2006 Camry and Camry Solara vehicles for unwanted engine surging.

d. In 2007, NHTSA opened a defect investigation (EA07-010) into 2002-2008 Camrys and Lexus ES350s upon receiving numerous reports of unwanted acceleration from consumers.

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.

18. 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.

19. 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.

20. The above-described material facts were facts which reasonable consumers, such as the plaintiffs, would consider to be important in making a decision to purchase or lease a Toyota or Lexus vehicle.

21. 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, plaintiffs have suffered actual damages, including, but not limited to (1) the amount of the difference in value between what plaintiffs paid for their vehicles and what they 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 their vehicles.

22. 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, plaintiffs would not have purchased their Toyota vehicles or would not have purchased the vehicles for as much they paid or suffered any diminution in the resale value of their vehicles.

CLASS ACTION ALLEGATIONS

23. Pursuant to Rule 23 and R.S.Mo. § 407.025.3, plaintiffs bring this class action on behalf of themselves and a class of similarly situated persons (hereinafter the "Class") defined as follows: All Missouri 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 five years immediately preceding the filing of this Complaint and the date the Court certifies this suit as a class action (hereinafter the "Class Vehicles").

24. 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.

25. 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 Missouri. As a result, joinder of all Class members in a single action is impracticable.

26. 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 Missouri's Merchandising Practices Act, R.S.Mo. § 407.010 *et seq*;

f. Whether defendants' conduct justifies an award of punitive damages and attorneys' fees under Missouri's Merchandising Practices Act, R.S.Mo. § 407.010 *et seq*;

27. 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.

28. 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.

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

30. 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 Missouri Merchandising Practices Act.

31. 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.

32. 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 MISSOURI MERCHANDISING PRACTICES ACT

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

34. Plaintiff and members of the Class purchased and leased the Class Vehicles primarily for personal, family or household purposes.

35. As described above, the Toyota defendants engaged in unlawful acts or practices in violation of R.S.Mo. § 407.020.1 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.

36. The Toyota defendants' unlawful practices in concealment, suppression and/or omission of the material facts described above occurred in connection with the advertisement, sale or lease of the Class Vehicles in the course of trade or commerce.

37. As a result of plaintiffs' purchases Class Vehicles and defendants' unlawful acts and violation of the Missouri Merchandising Practices Act, plaintiffs have suffered ascertainable loss and damages, including but not limited to: (1) the amount of the difference in value between what plaintiffs paid for their vehicles and what they 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 their vehicles.

38. Plaintiffs' and the Class members' damage was proximately caused by the unlawful concealment, suppression and/or omission of the materials facts in that had the Toyota defendants disclosed the above-described material facts, plaintiffs would not have purchased their vehicles or would not have purchased the vehicles for as much they paid.

39. The conduct of the Toyota defendants as described herein was outrageous because of their evil motive and/or reckless indifference to the rights of others, including the plaintiffs and the members of the Class, entitling plaintiff and the Class members to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court enter an Order and/or Judgment against the defendants and in favor of the plaintiffs 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 Plaintiffs 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 plaintiffs paid for their vehicles and what they 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 punitive damages in an amount to be determined at trial;

E. Awarding pre-judgment interest;

F. Awarding post-judgment interest;

G. Awarding attorneys' fees and costs; and

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

Respectfully submitted,

THE KUHLMAN LAW FIRM, LLC

By: /s/ Chad C. Lucas

Bradley D. Kuhlman #42596
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Attorneys for Plaintiffs

Jury Demand

Plaintiffs hereby demand a trial by jury on all issues in the above-captioned case.

Respectfully submitted,

THE KUHLMAN LAW FIRM, LLC

By: /s/ Chad C. Lucas

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Attorneys for Plaintiffs

TOY-RQ-05E-00012796

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

Plaintiff(s): **David Hulsen**

Defendant (s): **Toyota Motor Corporation ; Toyota Motor Sales, U.S.A., Inc. ; Toyota Motor Engineering & Manufacturing North America, Inc.**

County of Residence: Jackson

County Where Claim For Relief Arose: Jackson

County of Residence: Outside State of Missouri

Plaintiff's Atty(s):

Chad Cameron Lucas
The Kuhlman Law Firm
1100 Main Street, Suite 2550
Kansas City, Missouri 64105
816-799-0330

Defendant's Atty(s):

II. Basis of Jurisdiction: **4. Diversity (complete item III)**

III. Citizenship of Principal Parties
(Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**
Defendant:- **2 Citizen of Another State**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **370 Other Fraud**

VI.Cause of Action: **28 U.S.C. § 1332(d)**

VII. Requested in Complaint
Class Action:
Dollar Demand: **over $5,000,000.00**
Jury Demand: **Yes**

Signature: **/s/ Chad C. Lucas**

Date: **2/4/10**

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. Note: You may need to adjust the font size in your browser display to make the

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form print properly. **Revised: 05/09/06**

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

NOTICE OF INCLUSION IN THE EARLY ASSESSMENT PROGRAM IN THE WESTERN DISTRICT OF MISSOURI

Case Number: 10-00103-CV-W-HFS

This case has been selected at random for inclusion in the Early Assessment Program.

Your case has been assigned at random as indicated below:

1. To a United States Magistrate Judge or to a United States Bankruptcy Judge;

2. To the Administrator of the Early Assessment Program;

X 3. **To an outside mediator.**

If your case has been assigned to a judge, you will be notified of the date, time and place of a settlement conference by the judge's office after responsive pleadings are filed.

If your case has been assigned to the Administrator of the Early Assessment Program, you will be notified by the Administrator's office of the date, time and place of the first early assessment meeting after responsive pleadings are filed.

If your case has been assigned to an outside neutral, after responsive pleadings are filed, the parties will be notified that they have 15 days to select an outside neutral of their choice and file a certificate with the Clerk's office stating the name, address and telephone number of the outside neutral selected, and the date, time and place of the first meeting scheduled with the outside neutral. The certificate must be filed within the time stated in the notice to the parties, and must be signed by or on behalf of each party.

A clear understanding should be entered into between the parties and the outside neutral as to the payment of the costs of the outside neutral, and how the costs are to be shared between the parties. Unless a party has been granted leave to proceed in forma pauperis, the parties are to promptly pay for the costs of the services of the outside neutral.

If a certificate is not timely filed, the parties will be provided with a list of potential neutrals as provided in Section VIII.D of the General Order, and the parties will have 10 days from the date on the list of the potential neutrals to:

a. Agree to a neutral on the list and report the selection of the agreed neutral to the Administrator of the Early Assessment Program in writing, or

b. Each party may designate a "strike" of the name of two potential neutrals on the list of potential neutrals. The strike shall be in writing and shall be delivered to the Administrator.

It is expected that cases assigned to the judges will use a settlement conference. It is expected that the cases assigned to the Administrator of the Early Assessment Program will have a mediation with the Administrator; however, if it appears helpful, the parties may discuss with the Administrator whether the case should be

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handled by mediation, early neutral evaluation or other alternative dispute resolution procedures.

It is anticipated that the cases assigned to an outside neutral will proceed with at least one mediation session; however, if agreeable to the parties, the case may be processed with early neutral evaluation or other alternative dispute resolution procedures.

Please read carefully the General Order describing the Early Assessment Program in more detail.

As a party to a lawsuit in this Court, you are entitled to pursue all claims or defenses to claims that you have asserted until a disposition of the claims or defenses is made by the Court or a jury. However, most of the lawsuits filed in this and other courts are resolved by voluntary settlement of the parties before trial. With a settlement, the expense and inconvenience of litigation can be reduced and the uncertainty of the outcome can be eliminated.

In many cases that are settled, the settlement does not take place as early or economically as possible. The purpose of the Early Assessment Program is to provide alternative dispute resolution (ADR) services to assist parties in arriving at a voluntary, early resolution of their dispute.

YOUR OBLIGATIONS IN THIS COURT ARE NOT AFFECTED BY YOUR INCLUSION IN THIS PROGRAM

Good faith participation in the Early Assessment Program and use of one of the alternative dispute resolution (ADR) processes is required, but you are not required to settle the case.

Inclusion in this program does not relieve you of any of the obligations or deadlines that you have in this lawsuit. **IF YOU HAVE BEEN SERVED, YOU MUST FILE A TIMELY RESPONSE IN ORDER TO AVOID THE RISK OF A DEFAULT JUDGMENT.**

The goals of the Assessment are to determine which ADR procedure is most likely to help the parties reach a settlement, and to promptly begin settlement negotiations, if appropriate. Ideally, the parties will mutually decide which ADR option to use. However, if the parties are unable to agree, the decision will be made by the Administrator or by the person conducting the meeting.

It is important that you carefully review and objectively evaluate your case prior to the first meeting. You should come prepared to discuss and negotiate the settlement of your case.

PLEASE NOTE THAT PARTIES ARE REQUIRED TO ATTEND (IN PERSON) ALL MEETINGS UNLESS EXCUSED BY THE PERSON CONDUCTING THE MEETING.

The actions of the person conducting the meeting(s) have no binding effect on discovery, motion practice or other aspects of preparation for trial. Only the assigned judge can control these matters. However, all communications made in connection with the Early Assessment Program are confidential and cannot be used at trial, except as provided in the General Order and Federal Rule of Evidence 408.

Set out below are some of the major ADR options that are available through this program. This list does not preclude the development of some other procedures by the parties, in consultation with the Administrator or the person in charge of the meeting.

MEDIATION

Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

The mediator is a lawyer who possesses the unique skills required to facilitate the mediation process, including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct

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private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render a final decision in the case.

EARLY NEUTRAL EVALUATION (ENE)

Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of their case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute, as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

JUDGE SETTLEMENT CONFERENCE

The purpose of the settlement conference is to permit an informal discussion between the lawyers, parties and the judge of every aspect of the lawsuit, thus permitting the judge privately to express his or her views concerning the actual dollar settlement value or other reasonable disposition of this case.

An oral settlement conference statement of each party will be presented to the judge, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to the settlement conference for presentation to the judge, if reasonably relevant.

The judge may converse with any and all sides of the dispute outside the hearing of the other.

The failure to attend a settlement conference, or the refusal to cooperate fully, may result in the imposition of sanctions by the judge. The judge may issue such other and additional requirements of the parties or persons having an interest in the outcome as he or she will deem proper in order to expedite the amicable resolution of the case. The judge will not discuss the merits of the case with the assigned judge, but may discuss the status of motions and other procedural matters with the assigned judge.

OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS

The Administrator, or the person conducting the meeting, and the parties may decide that a mini-trial, or binding arbitration, or some other form of ADR may be the best way to resolve the case.

The purpose of this program is to help parties save time and money. It will succeed if lawyers and parties make a good faith effort to comply with the spirit of the program.

Early Assessment Program
Charles Evans Whittaker Courthouse
400 E. 9th Street, Room 3238
Kansas City, Missouri 64106
816-512-5080

TOY-RQ-05E-00012801

General Order
Western District of Missouri
EARLY ASSESSMENT PROGRAM
Effective September 13, 2007

I. PURPOSE

The Early Assessment Program is designed to encourage parties to: 1) confront the facts and issues in their case before engaging in expensive and time-consuming discovery procedures, 2) engage in early discussions of the issues, 3) consider the views of the opposing side, 4) consider the projected costs of future proceedings in an effort to settle the case before costs and lawyers' fees have made settlement more difficult, and 5) consider other methods of resolving their disputes. It recognizes that full formal litigation of civil claims can impose large economic and other burdens on parties and can delay the resolution of disputes. It will be administrated by a "Program Administrator" in the Western, Southern and Central Divisions of this Court. All references to "Administrator" shall be deemed to be referring to the "Program Administrator" or his/her designee.

This Program was carefully designed to allow measurement of savings of time and money to litigants. It has proven highly successful on both counts. Additionally, measures of satisfaction by judges, lawyers, participants and clients are reflected in the value and success of the Program.

II. PROGRAM DESCRIPTION AND PROCEDURE

A. Case Selection

1. All nonexcluded civil cases filed in the Western District shall be included in the Early Assessment Program.

2. *Excluded Cases.* The following cases are excluded from the program:

   a. Multi-district cases
   b. Social Security appeals
   c. Bankruptcy appeals
   d. Habeas Corpus actions
   e. Prisoner *pro se* cases and other *pro se* cases where motion for appointment of counsel is pending
   f. Prisoner cases
   g. Student Loan cases
   h. Citizenship or Immigration cases.

3. *Class Actions.* The Administrator may determine in his or her discretion when and how to involve class action cases in the program.

TOY-RQ-05E-00012802

B. **Early Assessment Meeting/Settlement Meeting (Meeting).** A meeting shall normally be held within thirty days after filing of responsive pleadings or as soon thereafter as practical. A meeting will be held at the time set by the Administrator or Designated Individual.

1. The Administrator or designated individual shall notify the lawyers (or *pro se* parties, if applicable) of the date of the meeting or a time frame to set the meeting.

2. At the meeting, the Administrator or designated individual should advise the parties and their lawyers of the various "alternative dispute resolution" (ADR) options available to them for a resolution of their dispute as set out in section VII.

3. If the Administrator or designated individual, in consultation with the parties, determines that additional discovery is needed , the Administrator or designated individual shall, working with the parties, devise a plan for sharing the important information and/or conducting the key discovery that will equip them, as expeditiously as possible, to enter meaningful settlement discussions.

4. Regardless of whether a case enters the ENE program, the Administrator or designated individual shall also help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques. If appropriate, a mediation or early neutral evaluation process may be initiated immediately, or at a later date, with the Administrator or designated individual serving as mediator.

5. Participants in the program must select, with the assistance of the Administrator or designated individual, one of the ADR options. If the parties are unable to agree, the Administrator or designated individual shall select the ADR option. If the Administrator or designated individual determines that a second session is necessary before a decision can be reached on the appropriate ADR process, it may be scheduled as soon as possible.

6. The first session of the ADR process selected should not be held later than forty-five days after the first meeting, unless the Administrator or designated individual, in his or her discretion, determines that a later date is necessary. Additional sessions can be required by the Administrator or Judge.

C. **Opting Out**. Cases will not normally be allowed to opt out of the program. However, there may be cases where good cause can be demonstrated for opting out. All requests to opt out shall be in letter form and shall set forth in detail the reasons for the request. A letter asking to opt out shall be directed to the Administrator within ten days of receiving notice that the case is assigned to the program. Subject to the considerations stated herein, the Administrator may grant or deny the request in his or her discretion. Appeals from the Administrator's decision, while discouraged, may be made by written motion to the judge to whom the case is assigned.

D. **Notice to Parties**. Notice to parties of case selection for the program shall be provided as follows:

1. The Clerk shall provide a copy of the Notice to each lawyer filing an action and to each eligible person filing such action *pro se.*

2. The Notice shall be attached by the Clerk to each summons issued in such action.

3. Each lawyer shall, within twenty days after notice of suit, mail or deliver a copy of the Notice to each party that he or she represents, and shall promptly file a certificate stating:

   (a) client's name, date and address to which the Notice was mailed; or
   (b) client's name and the date and place of delivery of the Notice.

   The certificate may be contained in the answer or other responsive pleading.

III. PROGRAM ADMINISTRATOR (ADMINISTRATOR)

A. **Selection**. A Program Administrator for each Division shall be selected by the Court.

B. **Administrator - Responsibilities**. In addition to any responsibilities or duties noted elsewhere in this General Order, the Administrator shall have the following responsibilities:

1. Administer the program, including developing rules consistent with this General Order and coordination of all activities with the office of the Western District Clerk. The Administrator shall be responsible for the assignment of cases in the Early Assessment Program.

2. Serve as a mediator at the assessment meeting or at any subsequent session in his or her discretion. The Administrator may set and conduct mediation sessions as time permits.

3. Assign cases for mediation or for other appropriate ADR procedure to: United States Magistrate Judges, United States Bankruptcy Judges, outside mediators (sometimes referred to as "designated individual"), the Administrator, and if a United States District Court Judge consents to the assignment, cases may be assigned to a United States District Court Judge.

4. Assist in monitoring the evaluation of the program, including participation in the development, compilation and analysis of questionnaires for lawyers and clients.

5. To require mediators on the list to take selected cases *pro bono*. Such assignment shall be made using a fair process in the sole discretion of the Administrator. The Administrator shall develop guidelines for determining whether a case qualifies for *pro bono* assignment.

6. Report to the Court on the status of the program, making appropriate recommendations for modifications of the program.

7. Decide, in his or her discretion, at any time in the process, to exempt, temporarily suspend, delay the start date or withdraw a case from the program, if for any reason, the case is not suitable for the program.

8. Permit, in his or her discretion, parties to submit written statements, no longer than ten pages, and no sooner than seven days prior to the session, for those ADR processes where written statements are not usually submitted.

9. Develop a policy which will address the collection of files, written statements, and other confidential materials for storage or destruction.

IV. ATTENDANCE AT PROGRAM SESSIONS

A. Parties

1. It is the intent of the Court that the parties attend all program sessions where there will be significant discussion about resolving the case. The parties themselves shall attend all program sessions unless their attendance has been excused in advance by the Administrator, Mediator or Designated Individual. This attendance requirement reflects the Court's view that one

of the principal purposes of the program sessions is to afford litigants an opportunity to articulate their positions and to learn about opposing parties' positions.

2. Where attendance of a party is required, a party other than a person satisfies the attendance requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. In addition, if an insurance company's approval is required by any party to settle a case, a representative of the insurance company with significant settlement authority shall attend the early assessment meeting in person. If it appears to the Administrator, Mediator or Designated Individual that a case is not being reasonably evaluated by the representative present, the Administrator, Mediator or Designated Individual may meet privately with one or both sides to determine the analysis that has gone into the evaluation of the case, including the names and the authority of the individual involved in the analysis. The Administrator, Mediator or Designated Individual may request identified individuals or designate a level of authority to be present if subsequent early assessment meetings or alternative dispute resolution procedures are scheduled under the Early Assessment Program. The Administrator, Mediator or Designated Individual may vary the mandates of this section IV.A.2.

B. **Counsel**. Each party shall be accompanied by the lawyer expected to be primarily responsible for handling the trial of the matter. If an individual is not represented by counsel, that party may appear on his or her own behalf.

C. **Location**. The program sessions shall be held in meeting space at the United States Courthouse, or in some other location selected by the Administrator, Mediator or Designated Individual, or in a location agreed to by the parties and approved by the Administrator, Mediator or Designated Individual.

V. CONFIDENTIALITY

A. General Provision

1. This Court shall treat as confidential all written and oral communications, not under oath, made in connection with or during any Early Assessment Program session except as noted in sections V.B. and D.

2. Any communication not under oath made in connection with this program shall not be disclosed to anybody unrelated to the program by the parties, their counsel, mediators or any other participant in the program and shall not be used for any purpose in any pending or future proceeding in this Court except by consent of the parties or as allowed under the Federal Rules of Evidence or sections V.B. or D. below. Communications made in connection with any proceeding in connection with this program include the comments, assessments, evaluations or recommendations of the Administrator, Mediator or Designated Individual. Mediators shall not discuss any matter communicated to them during any program proceeding except with the permission of the parties or as allowed in sections V.B. or D. below.

B. **Exceptions**

1. The Administrator may attend any program session and may discuss with any Mediator, Designated Individual or party any communication, comment, assessment, evaluation or recommendation.

2. The Administrator may require any attorney or party to provide status reports on any ADR matter.

3. The Administrator, Mediators and Designated Individuals may communicate to the assigned judge or the Court en banc regarding noncompliance by parties or lawyers with this General Order.

4. Nothing in section V.A. above shall prevent any party, the Administrator, Mediator or Designated Individual from discussing with any other participant in the program any communication made in connection with the program.

C. **Information Under Oath**. Any information furnished under oath, whether by affidavit, testimony or otherwise, may be used for impeachment purposes in this Court or elsewhere. Nothing in this Order is intended to provide any protection from the criminal consequences of making a false statement under oath.

D. **Evaluation**. Nothing in section V.A. shall be construed to prevent parties, counsel, the Administrator, Mediator or Designated Individual from responding to inquiries by persons duly authorized by the Court en banc to analyze and evaluate the program. The names of the people responding and any information that could be used to identify specific cases or parties shall be confidential.

E. **No Recording**. No recording shall be made of any of the meetings or sessions held under the program, nor shall parties utilize private reporters or any other type of recording technology during the program meetings or sessions, unless all parties agree, or unless the recording is made under non-binding arbitration, or unless the parties have agreed to binding arbitration.

VI. EVALUATION

If funds are available, the Court may require evaluation of the program to: (a) determine the success of the program in expediting the processing of cases and reducing costs; (b) measure the satisfaction of the parties with the program; and (c) compare components or elements of the program.

VII. ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS AND PROCEDURES

A. Procedures Applicable to Mediation, Early Neutral Evaluation and Any Other ADR Sessions

1. In every case, the Administrator shall:

   (a) designate the method of selection of the individual who will serve as the mediator in accordance with this program; and

   (b) designate the period in which the ADR process shall be conducted if the mediator is not an employee of the court.

2. Not later than ten days after selection of a mediator who is not a court employee, counsel shall file a report with the Administrator stating the agreed-upon meeting date for the ADR process selected. Where a court employee is the mediator, counsel shall work out the schedule with the court employee mediator.

3. Upon failure of counsel either to file the report or to secure a mutually agreeable date, the Administrator or judicial mediator shall fix the date, time and place for the ADR process.

4. Failure to comply with the attendance or settlement authority requirements of sections IV.A. and C. of the General Order may subject a party, and/or the lawyer, to sanctions by the Court.

5. The Mediator who is not an Administrator or Judge may, with the consent of all parties and counsel, reschedule the session to a date certain not later

than ten days after the scheduled date. Any continuance beyond that time must be approved by the Administrator.

6. Subject to approval of the Mediator, the session may proceed in the absence of a party who, after due notice, fails to be present. Upon motion of an attending party or upon the Court's own motion, sanctions may be imposed by the Court on any party or lawyer who, absent good cause shown, failed to attend the meeting.

7. Within ten days following the conclusion of the session, the Mediator and counsel shall file a report with the Administrator stating whether all required parties were present and the outcome of the session, in addition to other information the Administrator may require for evaluation or follow-up purposes. The Administrator may request a status report from the lawyers at any time.

8. If the parties settle the case prior to the ADR session, the Mediator, Administrator and Court shall be advised promptly.

B. **Description of Specific ADR Options and Procedures**

1. **Mediation (including Facilitative Mediation, Evaluative Mediation and Judicial Mediation)**

a. Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

b. The mediator should be a person who possesses the unique skills required to facilitate the mediation process, including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

c. The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

d. The Mediator may also offer a nonbinding, reasoned evaluation of the case on its merits.

TOY-RQ-05E-00012809

e. No Evaluator or Mediator has power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

f. Mediation statements, if required, shall not be filed with the Court, and the Judge assigned to hear the case shall not have access to them.

g. The Mediator may give to any or all parties:

(1) an estimate, where feasible, of the likelihood of liability and the dollar range of damages; and

(2) an opinion of the verdict if he or she were the trier of fact.

2. **Early Neutral Evaluation**. Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of the case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests and main issues in dispute, as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers an opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

3. **Other Options**. The Administrator in his or her discretion, after consultation with the parties, may select some other form of alternative dispute resolution such as mini-trials, summary jury trials, or some hybrid form of alternative dispute resolution. The Administrator may not select binding arbitration unless all parties agree.

VIII. LIST OF NEUTRALS/MEDIATORS

A. **List of Mediators**. The Administrator shall prepare a list of persons who appear to have the minimum requirements to serve as a Mediator, as described below. The Administrator may add or delete persons from the List of Mediators. A copy of the List of Mediators will be furnished upon reasonable request.

A separate list shall be prepared for each of the following: the Western Division, Central Division, and Southern Division.

Being on the List of Mediators is not an indication that a person is a qualified mediator. The Court is not certifying or representing that persons on the List of Mediators are qualified.

B. **Minimum Requirements to be on the List of Mediators**

1. All applicants for the List of Mediators must complete the required application form.

2. A person may be placed on the List of Mediators if:

   (a) the person has been a United States District Judge, a United States Appellate Judge, a United States Magistrate Judge, a United States Bankruptcy Judge, a Missouri Circuit Court Judge, or a Missouri Appellate Judge; and has had arbitration or mediation experience, and has not demonstrated any trait or behavior that is reasonably believed by the Administrator to be contrary to the effective and efficient management of this program; or

   (b) the person is currently admitted to the Bar of this Court, has been a member of a state bar for at least eight consecutive years, has completed 16 hours of Continuing Legal Education training, certified under Missouri Supreme Court Rule 17 or by this Court, or the reasonable equivalent thereof, and has not demonstrated any trait or behavior that is reasonably believed by the Administrator to be contrary to the effective and efficient management of this program.

C. **Removal From List of Mediators.** The Administrator may remove any person from the List of Mediators for any reason consistent with the effective management of the program.

D. **Selection of Neutrals**

1. The parties or their attorneys may, within fifteen days after notice to select a Mediator, select as a Mediator any person on the List of Mediators. If the Administrator approves, in writing and in advance, the parties may select as a neutral a person not on the List of Mediators.

2. If the parties do not agree on a neutral, the Administrator will give the parties a list of potential neutrals selected by the Administrator. The number of potential neutrals on the list will be twice the number of "sides" in the litigation plus one. (For example, in litigation having two "sides," the list will contain five names.) The list of potential neutrals will be dated the date it is delivered to the parties or the date it is mailed to the parties by the Administrator. The parties shall have ten days from the date on the list of potential neutrals to:

   (a) agree as to a neutral on the list and to report the selection of the agreed neutral to the Administrator in writing, or

   (b) designate a "strike" of the names of two potential neutrals on the list of potential neutrals. The strikes shall be in writing and shall be delivered to the Administrator.

   Unless the parties have agreed on a neutral as set out above, the Administrator shall designate one of the persons remaining on the list of potential neutrals and shall promptly notify the parties and the neutral of the designation.

E. **Oath**. Each Mediator shall take and sign the oath or affirmation prescribed by 28 U.S.C. § 453 before acting as a Mediator.

F. **Disqualification**

1. Title 28 U.S.C. § 144 may be utilized to seek the disqualification of a Mediator.

2. No person shall serve as a Mediator in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist and would apply if the mediator were a "judge."

3. Any party who believes that a Mediator has a conflict of interest or should be disqualified shall immediately bring the matter to the attention of the Administrator.

G. **Compensation**

1. a. Normally Mediators shall be compensated no more than the hourly rate listed by them in their application filed with the Administrator and shown on the List of Mediators. However, if agreed in writing

and in advance between the Mediator and the parties, the Mediator may be compensated at the hourly rate stated in such agreement.

b. The Administrator may promulgate additional guidelines for Mediators for allowable charges by nonjudicial Mediators (e.g., for research, preparation, opinion writing, etc.) and expenses.

c. Absent agreement to the contrary, or unless the Administrator determines otherwise, the cost of the Mediator's services shall be borne equally by the parties.

d. A duplicate of all charges for a Mediator's compensation and expenses shall be sent to the Administrator.

e. Except as provided in this section, a Mediator shall not charge or accept anything of value from any source whatsoever for or relating to acting as a Mediator.

2. A party may request the service of a Mediator on a *pro bono* basis, if a party demonstrates to the Administrator an inability to pay the fees of the Mediator. As a condition to inclusion on the List of Mediators maintained by the Administrator, a Mediator shall agree to serve *pro bono* periodically as assigned by the Administrator.

H. **Mediators as Counsel in Other Cases**. Any person who is designated as a Mediator pursuant to this General Order shall not for that reason be disqualified from appearing as counsel in any other unrelated case pending before the Court.

I. **Reports of Violations**. Mediators and attorneys shall promptly report in writing violations of this General Order to the Administrator and the Court.

IX. SANCTIONS

If a party fails to make a good faith effort to participate in the program in accordance with the provisions and spirit of this Order, the assigned Judge or Court may impose appropriate sanctions.

(Adopted effective Jan. 1, 1992, through Dec. 31, 1994; amended April 7, 1992; ending date extended through Sept. 30, 1995, by General Order dated Oct. 27, 1994; ending date extended through Dec. 31, 1996, by General Order dated Nov. 15, 1995; amended by General Order effective Jan. 1, 1999, and extended through the effective date of this

order; amended effective March 1, 2002, by General Order dated Feb. 22, 2002; amended by General Order dated and effective May 9, 2002.)

TOY-RQ-05E-00012814

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE FOR SUMMONS

DAVID HULSEN, et al.
Plaintiff
v.
Case Number: 4:10-cv-00103-HFS
TOYOTA MOTOR SALES, U.S.A., INC.
Defendant

TO: (A) CT Corporation System
as (B) Registered Agent of (C) TOYOTA MOTOR SALES , U.S.A., INC.
A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Western District of Missouri and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service (in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 10 day of February, 19 2010.

_____ Signature of Plaintiff's Attorney or ~~Unrepresented Plaintiff~~

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any
D - District
E - Docket number of action
F - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

:not&waiv.int

TOY-RQ-05E-00012815

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such services unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court if the answer or motion is not served within this time a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

TOY-RQ-05E-00012816

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

David Hulsen, et al.
Plaintiff

v. Case Number: 4:10-cv-00103-HFS

Toyota Motor Corporation, et al.
Defendant

TO: Chad C. Lucas
Name of Plaintiff's Attorney or Unrepresented Plaintiff

I acknowledge receipt of your request that I waive service of a summons in the above action. in the United States District Court for the Western District of Missouri. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____ , or within 90 days after
Date request was sent
that date if the request was sent outside the United States.

_____ _____
Date Signature

_____
Printed/Typed Name

_____
Street Address

_____
City/State/Zip

_____
Party Represented

_____
Telephone Number Bar #

:waivsum.int (See Reverse)

TOY-RQ-05E-00012817

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

DAVID HULSEN, PATRICK MANN, and TYSON MARKHAM, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	CASE NO. 4:10-cv-00103-HFS
TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.,	)	
Defendants.	)	

DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant Toyota Motor Sales, USA, Inc. ("Toyota") respectfully moves this Honorable Court to stay this matter in its entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Western District of Missouri, and this Honorable Court, (2) discovery, (3) all obligations associated with the Early Assessment Program, and (4) the deadline to answer or otherwise respond to Plaintiffs' Amended Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. This action is one of more than seventy-five similar actions pending in various federal courts around the country, and at least two motions and numerous responses seeking consolidation of these actions have been filed with the JPML, including responses that alerted the JPML of the pendency of this action. *See In re Toyota Motor Corp. Defective Gas Pedal Prods. Liab. Litig.*, MDL Docket No. 2151. The JPML has scheduled a

TOY-RQ-05E-00012818

hearing on consolidation of these actions for March 25, 2010. Because consolidation into a Multidistrict Litigation appears highly likely, Toyota moves to stay this action in its entirety pending a ruling by the JPML concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. As discussed in the attached Brief in Support, a stay will promote the efficient resolution of this litigation, preserve judicial resources and limit the potential for inconsistent decisions.

Respectfully submitted, this 26th day of February, 2010,

/s/ Holly Pauling Smith
Robert T. Adams, MO Bar # 34612
Holly Pauling Smith, MO Bar #51340
SHOOK, HARDY & BACONB LLP
2555 Grand Boulevard
Kansas City, MO 64108
Phone: 816.474.6550
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To be admitted pro hac vice:
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Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that I have this day, February 26, 2010, served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing **DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION** by electronically filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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Toyota Motor Sales, USA, Inc.

EXHIBIT A

TOY-RQ-05E-00012821

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FEB 19 2010

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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

SCHEDULE OF ACTIONS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully submit the following schedule of actions in support of their Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of All Pretrial Proceedings Pursuant to 28 U.S.C. §1407.

TOY-RQ-05E-00012822

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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LITIGATION

TOY-RQ-05E-00012823

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

SCHEDULE OF ACTIONS

CASE CAPTIONS	COURT	CASE NO.	JUDGE
Dale Baldiseeri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-09-8478 CAS	Christina A. Snyder
Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
Matthew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799-CAS-SS	Christina A. Snyder
Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-001710-RSWL-FMO	Ronald S.W. Lew
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz

TOY-RQ-05E-00012824

Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	SA CV10-00105 CJC	Cormac J. Carney
Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227-PAB	Philip A. Brimmer
Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006-MGC	Marcia G. Cooke
Jim Heidenreich v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035-RH-WCS	Robert L. Hinkle
Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326-SDM-TGW	Steven D. Merryday
Arlene S. Heilbrunn v. Toyota Motor Corp.	D. Florida, Southern	9:10-cv-80208-WJZ	William J. Zloch
Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	D. Indiana, Southern	1:10-cv-00142-SEB-TAB	Sarah E. Barker

Case 4:10-cv-00103-HFS Document 6-1 Filed 02/26/10 Page 5 of 7

TOY-RQ-05E-00012825

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021-WOB	William O. Bertelsman
Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279-MVL-JCW	Mary A.V. Lemmon
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219-ILRL-SS	Ivan L.R. Lemelle
Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281-ILRL-SS	Ivan L.R. Lemelle
David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs
Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper

Case 4:10-cv-00103-HFS Document 6-1 Filed 02/26/10 Page 6 of 7

TOY-RQ-05E-00012826

Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260-SO	Solomon Oliver, Jr.
Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

Case 4:10-cv-00103-HFS Document 6-1 Filed 02/26/10 Page 7 of 7

TOY-RQ-05E-00012827

EXHIBIT B

TOY-RQ-05E-00012828

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP.	:	
DEFECTIVE GAS PEDAL PRODUCTS	:	MDL No. 2151
LIABILITY LITIGATION	:	

TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Pursuant to Rule 7.2(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML"), 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 Corporation, and New United Motor Manufacturing, Inc. (collectively "Toyota" or the "Toyota Defendants") hereby submit their response to the pending Motions to Transfer and Consolidate Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.[1] Toyota agrees that transfer and consolidation of these cases is appropriate

[1] According to the JPML Docket, as of February 23, 2010, two motions for transfer and eight responses have been filed. On February 4, 2010, Plaintiff Heather A. Lane (*Lane v. Toyota Motor Sales, USA, Inc.*, No. 2:09-cv-09158, C.D. Cal.), filed her Motion for Transfer to the Central District of California. On February 5, 2010, Plaintiffs Daniel

under Section 1407 and respectfully requests that the JPML transfer all cases identified by Toyota on Schedule A (attached hereto as Exhibit 1)[2] to the Central District of California before the Honorable Judge Matz. The Central District of California is the most appropriate transferee court for a number of reasons: (i) the primary defendant in this litigation is headquartered there; (ii) the largest number of cases has been filed in that district; (iii) numerous individual plaintiffs have requested transfer to the Central District of California in separate filings with this Panel; (iv) the first-filed case, *Choi*, was filed in that district, and substantive motion practice is already underway in *Choi*; (v) the judge assigned to *Choi*, Judge Matz, has prior MDL experience, and eleven cases already have been assigned to Judge Matz as related actions; and (vi) the Central

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Weimer, Jr., Colby Wenck, and Ann Cavalier (*Weimer v. Toyota North America, Inc.*, No. 10-219, E.D. La.) filed a "motion" for transfer to the Eastern District of Louisiana, which, pursuant to Panel Rule 7.2(h), is deemed a response to the Lane motion. Plaintiff Jonathan Gellman (*Gellman v. Toyota Motor Sales, USA, Inc.*, No. 1:2010-cv-20006, S.D. Fla.) filed a response on February 18, 2019 seeking transfer to the Southern District of Florida. Plaintiffs Eric Kmetz and Joseph Morris (*Kmetz v. Toyota Motor Sales, USA, Inc.*, No. *Toyota Motor Corp.*, No. 2:09-cv-08478, C.D. Cal.) and Joseph Hauter and Frank Palomares (*Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105, C.D. Cal.) filed their response on February 19, 2010 seeking transfer to the Central District of California. Plaintiff Troy Menssen (*Menssen v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-00260, N.D. Ohio) filed a response on February 19, 2010 seeking consolidation, but did not specify a proposed transferee district. Plaintiff Al Viviano (*Viviano v. Toyota Motor Engineering & Manufacturing North America, Inc.*, No. 2:10-cv-00024, E.D. Ky.) filed a response on February 22, 2010 seeking transfer to the Eastern District of Kentucky. Plaintiffs Zahira Crespo-Bithorn and Milagros Rodriguez Cruz (*Crespo-Bithornv. Toyota Motor North America, Inc.*, No. 3:10-cv-01083, D.P.R.) also filed a response on February 22, 2010 seeking transfer to the District of Puerto Rico. On February 23, 2010, Plaintiff Fred Sander (*Sander v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-01111, S.D.N.Y.) filed a response requesting transfer to the Southern District of New York; Plaintiff Christine Mitchell (*Mitchell v. Toyota Motor North America, Inc.*, No. 3:10-cv-000104, S.D. Miss.) filed a response requesting transfer to the Southern District of Mississippi; Plaintiff Robyn Horn (*Horn v. Toyota Motor Sales U.S.A., Inc.*, No 4:10-cv-00090, E.D. Ark.) and Plaintiff Ani Garzaryan (*Garzaryan v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:10-cv-00849, C.D. Cal.) both filed responses seeking transfer, but did not specify a transferee court; and Plaintiffs Michael Graves and Jeff Mullins (*Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247, S.D.W. Va.) filed a response seeking transfer to the Southern District of West Virginia.

In addition to these motions and responses, two motions have been filed and withdrawn. On February 19, 2010, Plaintiff Maureen Colaberdino (*Colaberdino v. Toyota Motor North America, Inc.*, No. 3:10-cv-00672, D.N.J.) filed a response seeking transfer to the District of New Jersey that was later withdrawn. Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker (*Choi v. Toyota Motor Corp.*, No. 2:09-08143, C.D. Cal.) have filed a motion for transfer to the Central District of California that was later withdrawn.

Toyota has also received a service copy of a "motion" that does not appear on the JPML CM-MDL Docket. Specifically, it appears that Plaintiff Dale Roberts (*Roberts v. Toyota Motor Corp.*, No. 7:10-cv-00281, D.S.C.) will seek to have these cases transferred to the District of South Carolina.

Toyota's Response addresses all of these pending transfer requests.

[2] Schedule A includes (1) actions previously identified in the pending transfer motions and (2) additional actions not already before the Panel and for which Toyota has filed a Notice of Related Actions contemporaneously herewith.

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District of California is significantly better suited geographically for cases anticipated to involve witnesses and evidence from Japan, the location of Toyota's parent corporation.

I. Background[3]

On September 29, 2009, Toyota issued a safety advisory related to the risk of floor mat entrapment of accelerator pedals in certain Toyota models. Toyota determined that an unsecured or incompatible driver's floor mat has the potential to interfere with, or entrap, the accelerator pedal, which may make the vehicle difficult to control or stop. Shortly after issuing the safety advisory, Toyota instituted a voluntary recall of all affected Toyota vehicles (the "Floor Mat Recall"). In January 2010, as part of Toyota's ongoing investigation into possible causes of unintended acceleration, Toyota determined 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, and issued a second voluntary recall related to accelerator pedals (the "Pedal Recall").

Numerous cases stemming from these voluntary recalls have been filed against Toyota. Although the specific theories advanced in these lawsuits may differ, all of the cases relate to the issue of unintended acceleration and are appropriate for consolidation. For example, some actions assert that unintended acceleration is caused by alleged defects in Toyota's floor mats or accelerator pedals, while others claim that unintended acceleration is caused by an alleged defect in Toyota's electronic throttle control systems ("ETCS-i"),[4] and many cases assert all three

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[3] J.P.M.L. Rule 7.1(b) requires responses to averments in motions to be made in numbered paragraphs that correspond to the number of paragraphs of the motion to which the responsive paragraph is directed. Plaintiff Lane, however, did not, as required by J.P.M.L. Rule 7.1(a), make averments in numbered paragraphs in her motion or accompanying brief. Therefore, Toyota is unable to comply with J.P.M.L. Rule 7.1(b).

[4] In vehicles with ETCS-i, electrical sensors detect the position of the accelerator pedal and relay this information to a central computer that regulates the engine's functions (the "Engine Control Module" or "ECM"). The ECM uses this information to determine how much to open the throttle, which, in turn, causes the vehicle to accelerate. Some plaintiffs have alleged that electro-magnetic radiation can interfere with ETCS-i causing the vehicle to suddenly

theories.[5] Through February 23, 2010,[6] Toyota had been served with thirty-nine federal lawsuits related to the issue of unintended acceleration. Thirty-eight of these have been brought as class actions; one of these cases was brought by a plaintiff suing in his individual capacity. In addition, Toyota is aware of thirty-eight related federal lawsuits that have been filed but not yet served, as well as at least forty-two similar state court cases, many of which Toyota expects will be removed to federal court (all suits referred to collectively as the "Unintended Acceleration Cases"). Toyota seeks consolidation of all seventy-seven Federal Unintended Acceleration Cases of which Toyota is currently aware and which are listed on the attached Schedule A.[7]

II. Consolidation and Coordination of Pretrial Proceedings Is Proper.

Pursuant to 28 U.S.C. § 1407, the transfer of actions to a single jurisdiction for coordinated or consolidated pretrial proceedings is proper when the civil actions pending in various districts involve one or more common questions of fact, and transfer and consolidation "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). These statutory requirements are met in this case.

Although there are certain legal and factual differences among the cases that have been filed, all of these cases relate to the issue of unintended acceleration. Accordingly, despite

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accelerate even when the accelerator pedal is not depressed. Toyota denies that its ETCS-i is defective or that it could cause vehicles to accelerate unintentionally.

[5] *Compare Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006 (alleging defective floor mats) *with Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219 (alleging defective pedal) *with Choi v. Toyota Motor Corp.*, No. 2:09-08143 (alleging defective ETCS-i) *with Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105 (combination defect theory).

[6] Throughout this Response, references to the number of cases filed or served reflect those that Toyota is aware of through February 23, 2010. The number of cases filed and served, however, changes on a daily basis.

[7] The JPML has held that it has authority to transfer and consolidate cases that have not yet been served on defendants. *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) ("Restricting transfers to those cases in which all defendants have been served would frustrate the salutory purposes of 1407 without meaningfully advancing any other interest.").

certain differences among these cases, there are common questions of fact[8] relevant to all of the Unintended Acceleration Cases, including the alleged defects in Toyota vehicles subject to the recent recalls and Toyota's handling of the Floor Mat and Pedal Recalls. Consolidation will therefore "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, the vast majority (72 out of 77) of the Unintended Acceleration Cases filed in federal courts are class actions. This Panel has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See, e.g., In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at *2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the class action issues."); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493

[8] For example, while some plaintiffs claim to have experienced an episode of unintended acceleration, many of the plaintiffs do not claim to have experienced any manifestation of the alleged defect. The cases also differ in the type of damages sought: some plaintiffs seek damages for personal injury, but many allege only economic harm. Moreover, the governing law and underlying legal theories of these cases differ to varying degrees as well. Accordingly, while these cases are undoubtedly appropriate for coordinated treatment to promote the efficient resolution of this litigation and to minimize the potential for inconsistent rulings, Toyota disputes any contention that these cases are maintainable as class actions under Fed. R. Civ. P. 23, and nothing in this motion should be interpreted as an indication to the contrary or as an admission on Toyota's part that commonality or any criteria under Rule 23 has been satisfied.

(J.P.M.L. 1968) (holding that transfer was necessary to avoid "pretrial chaos in conflicting class action determinations.").

III. The Central District of California is the Most Appropriate Venue for the Transfer of These Actions.

In deciding the appropriate transferee court, this Panel has often considered (i) where the majority of cases are pending; (ii) where the first-filed and most advanced cases are pending; (iii) where a defendant's headquarters is located; (iv) where relevant documents and witnesses are located; (iv) whether the transferee district is easily accessible to parties and witnesses; and (v) whether the transferee court has the capacity to devote sufficient resources to complex consolidated proceedings. All of these factors decidedly favor the Central District of California.

A. More Cases Have Been Filed in the Central District of California Than In Any Other District, and The California Actions Are Further Advanced Than Cases In Other Districts.

This Panel has repeatedly found that the most appropriate transferee court is the district in which the greatest number of actions is pending. *See, e.g., In re WellPoint, Inc., Out-of-Network UCR Rates Litig.*, 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring to district where three actions already pending); *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004) (noting that "a plurality of the actions is pending in the Central District of California"); *In re Phonometrics, Inc.*, 1996 LEXIS 21909 (J.P.M.L. Dec. 11, 1996) (transferring to district where majority of actions were pending); *In re Dow Chemical Co. Sarabond Prods. Liab. Litig.*, 650 F. Supp. 187, 189 (J.P.M.L. 1986) (transferring to district where six of fourteen actions already pending). Here, more than a third of the cases in which Toyota has been served are pending in the Central District of California (14 out of 39). Additionally, looking at the total number of cases filed (including those in which Toyota has yet to be served), nearly one third of the currently pending actions were filed in the Central District

of California (21 out of 77). The rest of the fifty-six cases, by contrast, are fairly evenly distributed across thirty-six other districts, with no other district presiding over more than four related actions. Accordingly, Section 1407's convenience requirement would be well served by transferring these cases to the district where the greatest number of parties is found. *See In re Napster, Inc.*, 2000 LEXIS 15493 (J.P.M.L. Oct. 11, 1996) (transferring to the district with majority of the parties).

Not only are significantly more actions pending in the Central District of California than in any other district, but the California cases were the also the first to be filed. As a result, litigation in several of the California cases has progressed much further than in the other actions. For example, Toyota has already submitted Motions to Dismiss in *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, *Baldiserri v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09386, *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478, and *Lane v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09158. Moreover, in *Choi*, the first-filed case, plaintiffs have already submitted briefing in support of their motion for preliminary injunction and class certification. In addition to briefing, a number of hearings have been scheduled in the California cases. Judge Matz is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Kmetz* case on March 15, 2010, and will hear oral argument on the pending class certification motion and motion to dismiss in the *Choi* action on March 22, 2010. Judge Feess is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Baldiserri* case on March 8, 2010, and Judge Feess will hear oral argument on Toyota's Motion to Dismiss in the *Lane* case on March 29, 2010.

Because the judges presiding over cases in the Central District of California have had the benefit of reviewing the parties' briefs, they are already familiar with both the basic facts of these cases and the legal issues that will be raised during the consolidated pretrial proceedings.

These judges' familiarity with these cases makes the Central District a particularly appropriate transferee district. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("The Central District of California is an appropriate transferee forum because the first-filed and most procedurally advanced actions are pending there."); *In re Pet Food Prods. Liab. Litig.*, 499 F. Supp. 2d 1346, 1347 (J.P.M.L. 2007) (ordering transfer to a particular venue where "[p]retrial proceedings are advancing well there and about one-third of all pending actions are already in this district."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring cases to the district where litigation had become the most advanced and the judge had the opportunity to become familiar with the litigation).

B. More Relevant Documents and Witnesses Will Likely Be Located in the Central District of California Than in Any Other Proposed Transferee District.

The presence of a defendant's corporate headquarters or other principal place of business in a forum militates strongly in favor of transfer to that forum because it "implies that relevant witnesses and documents are likely to be found there." *In re UICI "Association-Group" Ins. Litig.*, 305 F. Supp. 1360, 1362 (J.P.M.L. 2004); *see also In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, 598 F. Supp. 2d 1366, 1368 (J.P.M.L. 2009) (transferring to the Central District of California where "several defendants are headquartered within the Central District of California and accordingly pertinent documents and witnesses are likely located there"); *In re DirectTV, Inc. Early Cancellation Fee Marketing and Sales Pracs. Litig.*, 655 F. Supp. 2d 1369, 1370-71 (J.P.M.L. 2009) ("DirecTV, Inc., is headquartered in that district and, therefore, relevant documents and witnesses are likely located there."); *In re European Rail Pass Antitrust Litig.*, MDL No. 1386, 2001 WL 587855 (J.P.M.L. 2001); *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984); *In re California Armored Car Antitrust Litig.*, 476 F. Supp. 452,

454 (J.P.M.L. 1979) ('[S]ince Armored Transport's principal place of business is located in the Central District of California, it is likely that other relevant documents as well as key witnesses will also be located in that district.").[9]

Toyota Motor Sales, USA, Inc. ("TMS"), the primary defendant in these cases, is a California corporation with its headquarters located in the Central District of California. TMS serves as Toyota's U.S. sales and marketing headquarters. TMS is also the U.S. entity with primary responsibility for implementing recalls and communicating with customers and dealers concerning recall campaigns.[10] The Corporate Accessory Department of TMS was also a central player in the purchase and procurement of the all weather floor mats that are the subject of the Floor Mat Recall and worked closely with Toyota Motor Corporation on the redesign of the floor mats. Accordingly, TMS is likely to be in possession of a significant number of relevant documents, including but not limited to advertising and marketing materials, warranty data, owner's manuals, service manuals, technical service bulletins, and field contact reports, as well as information on customer complaints and lawsuits, and guidelines, correspondence, drawings and approvals for the all weather floor mats at issue. In addition to documents, individuals with relevant information regarding engineering, manufacturing, and design issues as well as the safety recalls and remedies are also located at TMS. Indeed, it appears that TMS was named as a defendant in 75 out of 77 of the Federal Unintended Acceleration Cases precisely because relevant witnesses and documents are likely to be located there. In addition to TMS's location in California, defendants Toyota Motor Manufacturing, California, Inc. and New United Motor Manufacturing, Inc. are also both located in California. The location of Toyota's U.S.

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[9] *See also In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170-71 (J.P.M.L. 1978); *In re Penn Cent. Sec. Litig.*, 322 F. Supp. 1021, 1023 & n.4 (J.P.M.L. 1971).

[10] With respect to recalls, Toyota Motor North America, Inc., which has headquarters in New York and Washington, D.C., acts as the liaison for the Toyota entities with the federal government.

headquarters and the anticipated evidence located in the Central District of California are additional factors strongly favoring transfer to that district. *In re Air Crash off Long Island, New York on July 17, 1996*, 965 F. Supp. 5 (S.D.N.Y. 1997); *In re Caesar's Palace Secs. Litig.*, 385 F. Supp. 1256, 1258 (J.P.M.L. 1974).

C. The Central District of California Is A Convenient Location For the Parties and Witnesses.

This Panel has repeatedly recognized the benefits of transferring cases to districts in large metropolitan areas. *See, e.g., In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district that "offers an accessible metropolitan location"). "[A] litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002). Los Angeles is such a city and is easily accessible to parties and witnesses nationwide.

Moreover, although there are a number of major U.S. cities that can be easily and quickly reached by air travel from anywhere within the United States, Los Angeles has the added benefit of facilitating transportation to and from Japan. In the Unintended Acceleration Cases, one of the other defendants is Toyota Motor Corporation ("TMC"), the ultimate parent company of all of the other named Toyota Defendants. TMC is the entity primarily responsible for the development and design of many of the vehicles at issue in the Unintended Acceleration Cases. In addition, TMC conducts much of Toyota's pre-production development testing and compliance testing for the vehicles involved in the recalls at issue. TMC is also responsible for making recall decisions. As a result, it is likely that relevant design, engineering and testing documents will be located in Japan. Additionally, business persons and engineers from TMC

will likely be witnesses in these cases and will need to travel back and forth to the United States throughout these consolidated pretrial proceedings. TMC employees are accustomed to traveling to Los Angeles because Toyota Motor Sales, USA, Inc. is headquartered there. Furthermore, there are significantly more direct flights between Japan and Los Angeles than between Japan and any of the other proposed transferee districts, and the flights between Japan and Los Angeles are also less expensive. Thus, although it may be equally burdensome for parties in Los Angeles to travel to Miami (or New Orleans or Lexington) as it is for parties in those districts to travel to Los Angles, the frequency and convenience of flights between Los Angeles and Japan weigh heavily in favor of transfer to the Central District of California.

D. The Central District of California Can Efficiently Handle Large Consolidated Proceedings.

In addition to being a convenient transferee district for parties and witnesses and being the district most familiar with the pending cases, the Central District of California also has the capacity to accommodate these proceedings. *See In re Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1383, 1385 (J.P.M.L. 2004) (deciding to "assign the litigation to a district i) in which half of the actions are pending; and ii) that is presently equipped with the resources likely required by the complex docket."). With a median time from filing to disposition of only 6.9 months, transferring these cases to the Central District of California will ensure that the consolidated pretrial proceedings are resolved in a timely and expeditious manner. *See* http://www.uscourts.gov/judbus2008/appendices/C05Sep08.pdf, attached as Exhibit 2.

E. Judge Matz Is Eminently Qualified to Preside Over These Actions.

The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See, e.g., In re Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel*

Breast Implants Prods. Liab. Litig., 793 F. Supp. 1098, 1101 (J.P.M.L. 1992); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F. Supp. 1204, 1208 (J.P.M.L. 1975); *In re Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970). Judge Matz, who is currently presiding over eleven of the Unintended Acceleration Cases, including the first filed action, is eminently qualified to preside over this litigation.

Judge Matz has served the Central District of California as a federal judge for over twelve years. During that time, he has presided over some of the Central District of California's most influential and publicized cases[11] and has handled numerous cases involving complex legal and factual issues,[12] including complex product liability actions. *See, e.g., In re Silicon Gel Breast Implants Products Liability Litigation*, 318 F. Supp. 2d 879 (C.D. Cal. 2004). Moreover, Judge Matz has successfully presided over consolidated litigation pursuant to a Transfer Order of this Panel in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004). Accordingly, Judge Matz has demonstrated the "time and experience to steer this complex litigation on a prudent course." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district "where a constituent action is pending" and "assigning this litigation to a jurist who has the experience to steer this litigation on a prudent course."); *In*

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[11] *See, e.g., Bryant v. Oxxford Exp. Inc.*, 181 F. Supp. 2d 1045 (C.D. Cal. 2000) (enjoining a licensee from pursuing claim in New Jersey against NBA basketball star Kobe Bryant based on the first-to-file rule), *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076 (C.D. 2000) (enjoining on First Amendment grounds enforcement of a city ordinance making it criminal to display for sale signs), and *Coalition of Clergy v. Bush*, 189 F. Supp. 2d 1036 (C.D. Cal. 2002), *aff'd in part and rev'd in part*, 310 F.3d 1153 (9th Cir. 2002) (dismissing lawsuit brought on behalf of detainees held in Guantanamo Bay due to lack of standing).

[12] *See, e.g., Directors Guild of America v. Harmony Pictures, Inc.*, 32 F. Supp. 2d 1184 (C.D. Cal. 1998) (holding in case of first impression that creditor's endorsement and cashing of check effectuates an accord and satisfaction that discharges debtor from further liability); and *Castaic Lake Water Agency v. Whittake Corp.*, 272 F. Supp. 2d 1053 (C.D. Cal. 2003) (holding that passive migration of a contaminant constitutes a release under CERCLA).

re Commerical Money Ctr., Inc. Equip. Lease Litig., 229 F. Supp. 2d 1379, 1380 (J.P.M.L. 2002) (transferring to an "available transferee judge with prior, successful experience in the management of Section 1407 litigation").

In addition to Judge Matz's experience handling complex cases, Judge Matz is perhaps the judge most familiar with these cases. As an initial matter, eleven of the cases filed in the Central District have already been consolidated before Judge Matz and Toyota anticipates that the rest of the California cases will likewise be transferred to Judge Matz. Accordingly, Judge Matz is currently presiding over more Unintended Acceleration Cases than any other judge in the Central District of California or elsewhere. In addition to the number of Unintended Acceleration Cases already before Judge Matz, two of the most procedurally advanced cases are assigned to him: *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, and *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478. Toyota has filed motions to dismiss in both *Choi* and *Kmetz*. Additionally, plaintiffs in the *Choi* case have also filed motions and accompanying briefs for preliminary injunctive relief and for class certification. As noted above, Judge Matz will hear oral argument on all of these pending motions in March. The fact that Judge Matz has had the opportunity to familiarize himself with the factual and legal issues of these cases makes him an ideal transferee judge. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("[S]ubstantial benefits arise by assigning the litigation to [a judge] who has gained familiarity with this litigation by presiding over some of the actions."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring to the judge that had the opportunity to become familiar with the litigation). Moreover, Judge Matz is not currently handling any MDL actions. *See In re WellPoint, Inc., Out-of-Network UCR Rates*

Litig., 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring cases to "an experienced MDL transferee judge who does not currently have an MDL assignment.").

IV. The Central District of California Is a More Appropriate Venue Than the Other Requested Transferee Courts.

Eleven individual plaintiffs in three separate filings have requested transfer to the Central District of California.[13] Other plaintiffs, however, have requested transfer to the Eastern District of Louisiana, the Southern District of Florida, the Eastern District of Kentucky, and the Southern District of West Virginia.[14] The Central District of California is a better venue for these cases for several reasons.

First, as discussed above, there are significantly more Unintended Acceleration Cases pending in the Central District of California and those cases are procedurally further along. Of the twenty-one cases that have been filed in the Central District of California, Toyota has been served in fourteen cases and has filed dispositive motions in four of them. By contrast, in the Eastern District of Louisiana, three cases have been filed and served (all by the same law firms and all containing nearly identical allegations),[15] but Toyota's responses to those complaints are not yet due. Toyota is aware of three cases that have been filed in the Southern District of

[13] *See supra* at note 2.

[14] As discussed in note 2 *supra*, Plaintiff Colaberdino filed a motion seeking transfer to the District of New Jersey, but that motion has since been withdrawn. Additionally, Plaintiff Sander filed a response seeking transfer to the Southern District of New York, Plaintiff Mitchell filed a response seeking transfer to Southern District of Mississippi, Plaintiff Bilthorn filed a response seeking transfer to the District of Puerto Rico, and Plaintiff Roberts seeks transfer to the district of South Carolina. Transfer to the Central District of California, however, would be more appropriate than any of these. The Southern District of New York, Southern District of Mississippi, District of Puerto Rico, and District of South Carolina do not have any of the qualities that the Panel typically considers in making a venue decision. Indeed, there are very few cases pending in these jurisdictions (one in the Southern District of Mississippi, one in the District of Puerto Rico, two in the District of South Carolina, and three in the Southern District of New York), and all of the cases pending in these districts are in their infancy (Toyota has only been served in one of these six cases). Additionally, it is highly unlikely that any significant quantity of documents or witnesses would be located in any of these four jurisdictions. Moreover, South Carolina has no connection with the Toyota Defendants' headquarters or operations, and the lack of direct flights between Los Angeles and Spartanburg will be burdensome for many plaintiffs and defendants in this case, particularly witnesses traveling from Japan. These responses appear merely to be attempts by Plaintiffs' counsel to secure transfer to a district that will be convenient for them at the expense of the multitude of other parties involved in these cases.

[15] *Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219; *Maillho v. Toyota North America, Inc.*, No. 2:10-cv-00279, and *Brock v. Toyota North America, Inc.*, No. 2:10-cv-00281.

Florida.[16] Only one of those complaints, however, has been served on Toyota,[17] and Toyota's response to that complaint is not yet due. In the Eastern District of Kentucky, Toyota is aware of four cases that have been filed. One of these cases has yet to be served on Toyota.[18] Toyota was not served with the other three eastern District of Kentucky cases until this week.[19] Finally, Toyota is aware of only one case pending in the Southern District of West Virginia, but it is not as far along as some of the California cases.[20] As a result, the judges assigned to Unintended Acceleration Cases in the Central District of California have more familiarity with these cases than the judges proposed by Plaintiffs Weimer, Gellman, Viviano, or Graves.

Second, the Central District of California has a much stronger connection to the underlying cases than any of the other proposed transferee districts. Toyota Motor Sales, USA, Inc. ("TMS"), Toyota Motor Manufacturing, California, Inc., and New United Motor Manufacturing, Inc., all defendants in these cases, are all headquartered in California. With respect to the other proposed transferee districts, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") and Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") are both Kentucky corporations, but TEMA is named as a defendant in just over half of the actions that have been filed, and TMMK has only been named in seven of the currently pending seventy-seven lawsuits. Similarly, Toyota Manufacturing, West Virginia, Inc. ("TMMWV"), which is headquartered in West Virginia, has only been named as a defendant in a single case brought by the plaintiffs seeking transfer to West Virginia. By contrast, TMS has been named in

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[16] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006, *Heilbrunn v. Toyota Motor Corporation*, No. 9:10-cv-80208, and *Rivas-Vigil v. Toyota Motor North America, Inc.*, No. 0:10-cv-60183.
[17] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006.
[18] *Viviano v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00024.
[19] *Poynter v. Toyota Motor North America Inc.*, No. 2:10-cv-00021; *Miller v. Toyota Motor Sales U.S.A., Inc.*, No. 2:10-cv-00031; and *Leaverton v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00032.
[20] *Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247.

75 out of 77 cases and TMC (the Japanese parent company of all of the Toyota Defendants) has been named in 48 out of 77 cases.

In addition, despite the fact that certain Toyota manufacturing facilities (and therefore certain manufacturing subsidiaries) are located in Kentucky and West Virginia, a majority of the relevant documents and witnesses are likely to be located outside of those states. The Unintended Acceleration Cases generally involve allegations of design defects. Both TMMK and TMMWV, however, are primarily involved with manufacturing (as opposed to design) and will likely have fewer documents relating design and/or testing. In addition, TMMWV manufactures components not directly relevant to these lawsuits. Likewise, many of TEMA's relevant documents are likely to be located outside of Kentucky.

As explained above, TMC is the Toyota entity primarily responsible for the design and testing of many of the vehicles involved in this litigation. Though TEMA has design responsibilities for certain Toyota models, it does not have responsibility for many of the vehicles that are subject to the recalls. And with respect to those models for which TEMA has design responsibility, most of TEMA's design documents are likely to be located outside of Kentucky because TEMA's research and development operations are located outside of Kentucky. Moreover, there is an additional nexus to California, in that TEMA maintains a quality control group in its Los Angeles, California office, where other potentially relevant documents are located. By contrast, TEMA's Erlanger, Kentucky office is primarily responsible for procurement, quality control, and administrative issues. Therefore, although some documents or witnesses may be located in Kentucky, a substantial portion of TEMA's relevant documents, particularly those relating to design and testing, are likely to be found in TEMA offices outside of Kentucky. Accordingly, Toyota anticipates that a significant quantity of the

relevant documents in these cases will be located in Los Angeles, with a considerable number of documents and witnesses also potentially located in Japan. In short, the Central District of California is the district with the most significant connection to this litigation in terms of the location of potential evidence.

The Central District of California is also significantly more convenient than the Eastern District of Kentucky or the Southern District of West Virginia for parties and witnesses, particularly Defendant TMC which is located in Japan. This is particularly true for the Southern District of West Virginia, because there are no direct flights from Charleston, West Virginia to California. Given the number of California-based plaintiffs and defendants, as well TMC's location in Japan, the lack of direct flights between Los Angeles and these districts will be inconvenient for many of the parties involved.

Finally, there are significantly more active judges in the Central District of California than in any of the other proposed transferee districts, which will assist in ensuring that the judge assigned to these cases is able to devote sufficient time to case management. The Central District of California has twenty-five active judges, and only eleven currently pending Section 1407 proceedings. The Eastern District of Louisiana, by contrast, has only twelve active judges, but six pending MDL actions. Although the Southern District of Florida has seventeen active judges, it also has ten pending MDLs. Accordingly, the Central District of California is a more appropriate venue. *See In re Teflon Prods. Liab. Litig.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006) (taking into consideration other MDL dockets already pending in that jurisdiction); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (transferring to a district "that is not currently overtaxed with other multidistrict dockets"); *In re Bayol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001) (same). Additionally, although there are fewer MDL actions

currently pending in the Eastern District of Kentucky or the Southern District of West Virginia, that is not necessarily an indication that this litigation would move more quickly in those districts than in the Central District of California. In fact, the median time from filing to disposition in the Central District of California is only 6.9 months compared to 9.4 months in the Eastern District of Kentucky and 9.2 months in the Southern District of West Virginia. Thus, there is no basis to conclude that an experienced judge in the Central District of California cannot oversee this litigation in an effective and efficient manner.

V. Conclusion

Pursuant to Section 1407, centralization of the Unintended Acceleration Cases is appropriate because these cases raise similar factual and legal issues, and because consolidation will result in convenience to the parties and increased judicial efficiency and avoid duplicative discovery and inconsistent pretrial rulings.

The Toyota Defendants join in the request that this Panel transfer these cases to the Central District of California for coordinated pretrial proceedings before the Honorable Judge Matz. On balance, the Central District of California will be the most convenient for all parties and is well equipped to handle litigation of this magnitude. Moreover, the Central District of California is the district where many of the defendants are headquartered and where a significant number of documents and witnesses will likely be located. Furthermore, because significantly more Unintended Acceleration Cases have been filed in the Central District of California than in any other district and because these cases have progressed further than the cases in the other proposed transferee districts, the judges in the Central District of California, and in particular Judge Matz, have had the greatest opportunity to familiarize themselves with these cases.

Respectfully submitted, this 26th day of February.

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EXHIBIT 1

TOY-RQ-05E-00012848

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION
MDL DOCKET NO. 2151

SCHEDULE A: All Unintended Acceleration Cases[1]

No.	Full Case Name	Civ. Action No.	District	Division	Judge
1.	Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	8:10-cv-00105	C.D. Cal.	Western (Los Angeles)	Matz
2.	T. Leigh Beard, Catherine Nguyen, and Valina Salvador, in their individual capacities, and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	8:10-cv-00183	C.D. Cal.	Southern (Santa Anna)	Selna
3.	Adilia Aviles on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	2:10-cv-00706	C.D. Cal.	Western (Los Angeles)	Matz
4.	Roz Schwartz on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-00710	C.D. Cal.	Western (Los Angeles)	Matz

[1] The Toyota Defendants have not been served in many of the cases identified in this Schedule A. 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.

TOY-RQ-05E-00012849

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
5.	Matthew Marr, Luis Fernandez, Sylvia Fernandez, individually and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corp.	2:10-cv-00799	C.D. Cal.	Western (Los Angeles)	Matz
6.	Ani Gazaryan, an individual; Svetlana Abajyan, an individual; Elza Dzhivalegy, and individual; Tamara Harutyunyan, an individual; Nerses Mazmanyan, an individual; Hrayr Okkasian an individual, Christine Aznavour, an individual; Akop Galadzhyan; and individual; Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, v. Toyota Motor sales U.S.A., Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a foreign corporation; and Does 1-10: Inclusive.	2:10-cv-00849	C.D. Cal.	Western (Los Angeles)	Matz
7.	Peter Wisner v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00942	C.D. Cal.	Western (Los Angeles)	Otero
8.	Elaine Byrnes, individually and on behalf of all others similarly situated v. Toyota Motor North America Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a Kentucky corporation; Toyota Motor Sales, U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation	2:10-cv-00947	C.D. Cal.	Western (Los Angeles)	Matz

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
9.	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
10.	Rhonda Talbot, on behalf of herself and all other similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01039	C.D. Cal.	Western (Los Angeles)	Matz
11.	Jacquelyn Donoghue, individually and on behalf of the Estate of John Donoghue, deceased, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing California, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10	2:10-cv-01057	C.D. Cal.	Western (Los Angeles)	Otero
12.	Max L. Lieberman, and Phyllis C. Lieberman, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01073	C.D. Cal.	Western (Los Angeles)	Klausner

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TOY-RQ-05E-0001285

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
13.	Teresa B. Myers, individually and on behalf of the Estate of Steffan David Myers, deceased, and William C. Myers, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, U.S.A. Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10 inclusive	2:10-cv-01078	C.D. Cal.	Western (Los Angeles)	Matz
14.	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
15.	Kerri Madden, on behalf of herself and all others similarly situated, v. 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 Corporation, and Does 1 through 10	2:10-cv-01094	C.D. Cal.	Western (Los Angeles)	Feess
16.	Katy Boyask, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-01153	C.D. Cal.	Western (Los Angeles)	Wu
17.	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

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TOY-RQ-05E-00012852

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
18.	Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, as individuals, and on behalf of themselves and all others similarly situated, v. Toyota Motor Corp., Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	2:09-cv-08143	C.D. Cal.	Western (Los Angeles)	Matz
19.	Eric Kmetz, and Joe Morris, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	2:09-cv-08478	C.D. Cal.	Western (Los Angeles)	Matz
20.	Heather A. Lane, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc. a California corporation	2:09-cv-09158	C.D. Cal.	Western (Los Angeles)	Feess
21.	Dale Baldisseri, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Does 1 through 20	2:09-cv-09386	C.D. Cal.	Western (Los Angeles)	Feess

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TOY-RQ-05E-00012853

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
22.	Ryan Scharrel, Susan Kruschke, and Enrique Moreno, v. Toyota Motor North America, Inc, a California corporation, Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation	1:10-cv-00227	D. Colo.	Denver	Brimmer
23.	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
24.	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
25.	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
26.	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

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TOY-RQ-05E-00012854

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
27.	Margaret Gonzalez, on her own behalf and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595	D.N.J.	Trenton	Cooper
28.	Maureen Colaberdino, on behalf of herself and all others similarly situated, v. Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00672	D.N.J.	Trenton	Cooper
29.	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
30.	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

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
31.	Zahira Crespo-Bithorn and Milagros Rodriguez Cruz et al., on behalf of themselves and all others similarly situated v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and Toyota De Puerto Rico, Corp	3:10-cv-01083	D.P.R.	San Juan	Besosa
32.	Linda Alford Wooten, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; and Denso Manufacturing Tennessee, Inc., a Tennessee corporation	3:10-cv-00229	D.S.C.	Columbia	Perry, Jr.
33.	Dale Roberts, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and does 1 through 10.	7:10-cv-00281	D.S.C.	Spartanburg	Harwell
34.	Robyn Horn, class representative, on behalf of herself and all others similarly situated, 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.	4:10-cv-00090	E.D. Ark.	Little Rock	Holmes

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
35.	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
36.	Al and Jo Anna Viviano, Paul Turner, Kyle Briggs, Shalini Ignatenkov, Charles and Karen Gibbens, Lori S. and Thomas A. Trahan, Erica Thomas, Holly Boyd, Connie and Thomas Kamphaus, Brena and Lee Shonfield, and Alan L. Weller, v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing Kentucky, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Lease Trust.	2:10-cv-00024	E.D. Ky	Northern (Covington)	Bertlesman
37.	Debra and Ron Poynter, Tina and Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, and Lucero and Mark Davidson, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; and Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation.	2:10-cv-00021	E.D. Ky.	Northern (Covington)	Bertelsman

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
38.	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
39.	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
40.	Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00219	E.D. La.	New Orleans	Lemelle
41.	Amanda R. Maillho, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00279	E.D. La.	New Orleans	Lemmon

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
42.	Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00281	E.D. La.	New Orleans	Lemelle
43.	Deborah Baumkel, on behalf of herself and all others situated, v. Toyota Motor North America, Inc., a foreign corporation and Toyota Motor Sales, U.S.A., Inc., a foreign corporation.	2:10-cv-10525	E.D. Mich.	Detroit	Edmunds
44.	Diane Gumble, 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.	5:10-cv-00521	E.D. Pa.	Allentown	Golden
45.	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
46.	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

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
47.	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
48.	Kevin P. Fogarty, Barbara Jackson, and Alex Farrugia, individually and on behalf of all others similarly situated v. Toyota Motor North America, Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, Toyota Motor Sales U.S.A., Inc., a California corporation, and Toyota Motor Corporation, a Japanese corporation	1:10-cv-00542	E.D.N.Y	Brooklyn	Gleeson
49.	Peter Phaneuf, on his own behalf and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	2:10-cv-00487	E.D.N.Y.	Central Islip	Bianco
50.	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
51.	Michelle Lynch on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	8:10-cv-00326	M.D. Fla.	Tampa	Merryday

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
52.	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
53.	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
54.	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
55.	Justin Johnson, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00026	N.D. Fla.	Panama City	Smoak
56.	Jim Heidenreich, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a foreign corporation	4:10-cv-00035	N.D. Fla.	Tallahassee	Hinkle

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
57.	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
58.	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
59.	Troy Menssen, on behalf of himself and all other similarly situated individuals v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	1:10-cv-00260	N.D. Ohio	Cleveland	Oliver
60.	Daniel D. Lee, individually and on behalf of others similarly situated v. Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; New United Motor Manufacturing, Inc., a California Joint Venture, and Toyota Motor Corporation, a Japanese corporation.	3:10-cv-00280	N.D. Ohio	Toledo	Carr

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
61.	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
62.	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
63.	Humberto Rivas-Vigil, individually and on behalf of all others similarly situated, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	0:10-cv-01183	S.D. Fla.	Fort Lauderdale	Cohn
64.	Jonathan Gellman, an individual, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-20006	S.D. Fla.	Miami	Cooke
65.	Arlene S. Heilbrunn, 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	9:10-cv-80208	S.D. Fla.	Miami	Zloch

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
66.	Judith M. Enderle, on behalf of herself all others similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00142	S.D. Ind.	Indianapolis	Barker
67.	Christine Mitchell, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing, North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00104	S.D. Miss.	Jackson	Wingate
68.	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
69.	Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00037	S.D. Tex.	Corpus Christi	Rainey
70.	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

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
71.	Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, v. Toyota Motor Corporation, a Japanese Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Engineering & Manufacturing, N.A., Inc., a Kentucky Corp.; Lexus; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing, Texas, Inc.; Toyota Motor Manufacturing, Kentucky, Inc.; New United Motor Manufacturing, Inc., Subaru of Indiana Automotive, Inc.; CTS Corporation and Doe Defendants 1 through 10	1:10-cv-1014	S.D.N.Y.	Foley Square	Castel
72.	Fred Sander v. Toyota Motor Sales, U.S.A., Inc., Toyota North America Inc., and Toyota Engineering & Manufacturing North America, Inc.	1:10-cv-01111	S.D.N.Y.	Foley Square	Hellerstein
73.	Michael Graves and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated, v. Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia Corporation; Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; and Toyota Motor Corporation, a Japanese corporation.	2:09-cv-01247	S.D.W. Va.	Charleston	Goodwin

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
74.	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
75.	David Hulsen, Patrick Mann, and Tyson Markham, on behalf of themselves and all others similarly situated v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00103	W.D. Mo.	Kansas City	Sachs
76.	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
77.	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

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EXHIBIT 2

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Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending September 30, 2008

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	**175,091**	**8.1**	**43,257**	**5.0**	**105,421**	**7.8**	**22,017**	**13.6**	**4,396**	**32.9**
DC	**1,801**	**8.5**	**643**	**6.2**	**1,090**	**9.4**	**43**	**11.7**	**25**	**36.5**
1ST	**4,809**	**8.9**	**1,922**	**6.5**	**2,056**	**8.5**	**661**	**16.6**	**170**	**25.9**
ME	361	7.0	170	4.6	162	8.8	14	12.1	15	16.9
MA	2,424	8.6	1,267	6.6	784	8.3	292	18.4	81	27.1
NH	335	7.9	78	3.0	109	5.0	142	15.4	6	-
RI	405	8.8	148	7.6	181	8.3	63	11.9	13	28.4
PR	1,284	10.5	259	8.6	820	9.2	150	22.8	55	28.2
2ND	**19,205**	**10.3**	**3,898**	**6.6**	**12,106**	**10.2**	**2,902**	**14.2**	**299**	**29.5**
CT	1,855	10.1	1,166	7.8	574	13.1	66	22.9	49	31.8
NY,N	1,115	13.5	207	4.9	581	15.1	301	16.0	26	29.0
NY,E	5,672	12.6	866	8.7	3,582	13.0	1,126	14.9	98	29.4
NY,S	9,277	8.4	1,502	5.5	6,352	8.0	1,312	12.5	111	27.8
NY,W	1,059	11.9	137	5.1	820	12.1	93	24.4	9	-
VT	227	8.4	20	2.6	197	8.5	4	-	6	-
3RD	**16,674**	**6.6**	**3,386**	**4.3**	**10,027**	**5.5**	**2,995**	**12.3**	**266**	**26.6**
DE	746	11.2	163	5.4	538	12.2	16	31.1	29	31.5
NJ	5,288	7.6	1,562	5.3	2,179	5.1	1,479	14.9	68	33.7
PA,E	6,872	4.8	574	2.3	4,972	3.4	1,221	9.6	105	17.5
PA,M	1,439	7.6	416	4.4	928	8.3	61	17.5	34	31.2
PA,W	1,936	6.9	531	4.1	1,348	7.9	31	24.0	26	33.9
VI	393	19.5	140	18.2	62	25.7	187	18.7	4	-
4TH	**10,852**	**7.1**	**2,743**	**5.8**	**6,938**	**7.0**	**1,005**	**8.6**	**166**	**20.0**
MD	2,423	7.0	902	6.9	1,273	6.0	208	12.8	40	23.0
NC,E	828	8.8	337	8.1	469	9.3	13	11.0	9	-
NC,M	597	8.5	309	6.5	255	11.6	30	12.3	3	-
NC,W	841	7.6	230	7.9	523	5.9	80	14.4	8	-
SC	2,146	8.2	316	3.4	1,669	8.4	115	11.1	46	22.0
VA,E	2,199	4.8	279	2.2	1,363	4.3	520	6.5	37	10.1
VA,W	620	8.7	147	5.5	442	9.5	15	11.1	16	20.5
WV,N	430	10.0	188	8.4	225	10.2	15	23.2	2	-
WV,S	768	9.2	35	3.2	719	9.4	9	-	5	-

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Table C-5. (September 30, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
5TH	**25,552**	**9.5**	**4,500**	**6.8**	**15,751**	**7.6**	**3,452**	**15.4**	**1,849**	**166.4**
LA,E	8,715	8.8	74	3.5	6,119	6.0	2,443	14.9	79	18.9
LA,M	2,148	166.4	294	4.9	393	11.9	25	28.2	1,436	166.4
LA,W	1,600	12.0	400	8.0	1,115	12.5	47	21.2	38	22.3
MS,N	968	16.6	217	8.5	338	10.8	385	48.7	28	27.0
MS,S	1,940	10.6	1,260	10.1	600	10.7	47	21.5	33	21.7
TX,N	2,396	7.4	310	6.6	2,022	7.2	3	-	61	24.0
TX,E	1,842	9.2	260	7.1	1,472	9.0	58	18.5	52	21.1
TX,S	3,883	6.2	1,109	3.0	2,335	6.8	371	9.8	68	20.8
TX,W	2,060	8.3	576	6.8	1,357	8.2	73	14.0	54	18.3
6TH	**17,144**	**9.6**	**4,105**	**5.1**	**8,907**	**9.4**	**3,889**	**14.0**	**243**	**25.2**
KY,E	1,349	9.4	177	5.4	1,133	9.5	31	17.3	8	-
KY,W	1,067	9.2	281	7.3	694	9.2	77	19.0	15	25.9
MI,E	4,242	9.7	999	4.5	1,275	5.8	1,910	14.9	58	25.8
MI,W	919	8.4	117	3.0	769	9.3	14	19.8	19	22.3
OH,N	4,089	8.9	884	3.5	2,293	12.1	874	9.5	38	20.7
OH,S	2,570	10.3	946	6.5	975	10.3	616	14.2	33	27.8
TN,E	980	11.6	187	6.3	442	9.9	324	16.2	27	23.6
TN,M	1,087	9.2	216	5.9	838	9.6	10	16.9	23	18.4
TN,W	841	11.8	298	9.2	488	11.9	33	24.4	22	27.4
7TH	**12,012**	**7.3**	**3,587**	**4.6**	**6,498**	**7.3**	**1,708**	**12.0**	**219**	**25.8**
IL,N	6,625	6.2	2,337	4.8	3,574	6.3	601	11.5	113	25.9
IL,C	611	9.3	222	6.8	374	9.7	6	-	9	-
IL,S	672	9.4	147	4.3	483	9.5	27	31.5	15	23.1
IN,N	1,054	11.0	224	4.3	336	8.7	472	14.5	22	30.0
IN,S	1,748	9.2	462	4.6	853	9.6	407	11.6	26	23.7
WI,E	877	8.0	131	3.2	666	8.3	56	15.6	24	31.9
WI,W	425	4.6	64	2.1	212	3.9	139	6.8	10	12.0
8TH	**13,226**	**6.3**	**5,050**	**2.7**	**6,805**	**9.2**	**1,170**	**17.0**	**201**	**21.4**
AR,E	996	10.9	203	9.5	750	10.8	9	-	34	21.5
AR,W	573	10.0	16	2.2	534	10.0	4	-	19	15.2
IA,N	393	8.9	71	8.2	307	8.7	4	-	11	20.7
IA,S	548	10.6	151	7.4	271	9.5	115	15.9	11	26.3
MN	6,688	3.0	3,058	2.4	2,614	7.6	987	17.0	29	19.4
MO,E	1,586	7.6	675	5.8	874	8.3	8	-	29	20.7
MO,W	1,467	8.1	688	6.7	738	8.9	8	-	33	25.7
NE	541	9.1	20	1.7	482	8.7	22	18.9	17	17.7
ND	220	7.5	97	3.7	116	8.8	3	-	4	-
SD	214	12.5	71	10.8	119	11.0	10	21.0	14	31.1

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Table C-5. (September 30, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	**26,365**	**8.0**	**8,557**	**5.9**	**15,524**	**8.3**	**1,803**	**13.5**	**481**	**23.5**
AK	310	9.9	114	6.4	190	10.7	-	-	6	-
AZ	1,899	9.0	681	7.5	1,163	9.3	15	36.2	40	33.4
CA,N	4,082	7.7	890	4.2	2,054	6.0	1,083	12.4	55	26.2
CA,E	1,920	9.6	678	6.8	1,170	10.7	37	25.9	35	26.3
CA,C	8,889	7.0	3,637	6.0	4,998	7.5	106	18.5	148	21.2
CA,S	1,685	6.2	160	3.2	1,195	5.8	306	10.4	24	28.9
HI	544	11.4	318	9.3	171	12.4	37	21.4	18	26.9
ID	380	11.0	30	4.9	334	11.2	6	-	10	29.6
MT	503	10.6	196	7.1	190	10.0	100	16.4	17	24.5
NV	1,589	9.5	581	7.8	930	9.9	52	13.7	26	29.5
OR	1,708	10.4	491	8.0	1,159	11.2	16	23.9	42	18.6
WA,E	455	8.1	136	4.1	286	8.7	25	17.9	8	-
WA,W	2,338	7.1	616	3.9	1,658	8.1	16	15.8	48	17.4
GUAM	27	17.4	9	-	15	19.2	2	-	1	-
NMI	36	14.0	20	14.2	11	12.9	2	-	3	-
10TH	**7,282**	**8.2**	**1,398**	**4.7**	**4,542**	**8.0**	**1,177**	**11.5**	**165**	**21.3**
CO	2,001	6.9	139	3.0	1,733	6.8	88	15.7	41	25.4
KS	1,096	9.1	364	6.4	610	9.4	100	17.5	22	24.6
NM	971	9.0	195	3.6	351	8.7	399	11.0	26	20.2
OK,N	594	8.9	77	3.1	489	9.6	14	14.9	14	16.4
OK,E	368	8.6	255	9.0	96	6.6	5	-	12	15.3
OK,W	1,089	8.3	287	3.5	358	8.1	422	9.9	22	15.3
UT	934	8.5	56	2.7	822	8.9	38	14.4	18	28.4
WY	229	7.8	25	3.2	83	3.2	111	10.5	10	15.8
11TH	**20,169**	**6.9**	**3,468**	**4.3**	**15,177**	**7.0**	**1,212**	**13.8**	**312**	**19.3**
AL,N	1,979	8.8	491	8.2	1,436	8.7	25	17.6	27	19.5
AL,M	772	8.7	201	7.2	491	8.0	68	17.9	12	19.0
AL,S	616	7.7	124	7.4	460	7.4	17	15.1	15	15.2
FL,N	876	7.7	169	6.4	668	7.9	17	8.0	22	17.6
FL,M	5,781	8.7	365	4.7	5,249	8.8	85	17.0	82	22.4
FL,S	6,142	4.6	1,445	3.7	4,554	4.8	58	14.8	85	14.5
GA,N	2,965	6.7	475	2.5	1,533	5.2	910	12.3	47	24.1
GA,M	631	11.2	136	6.4	474	11.9	9	-	12	25.4
GA,S	407	10.3	62	6.9	312	10.3	23	14.7	10	20.9

NOTE: MEDIAN TIME INTERVALS NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.

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TOY-RQ-05E-00012870

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 TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407 to be served upon all Parties and Counsel identified in the attached service list 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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TOY-RQ-05E-00012872

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EXHIBIT C

TOY-RQ-05E-00012879

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ADILIA AVILES on behalf of herself and all others similarly situated,

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc.,

Defendants.

Case No.: CV10-00706 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

[SUBMITTED CONCURRENTLY WITH STIPULATION TO STAY PROCEEDINGS]

TOY-RQ-05E-00012880

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

TOY-RQ-05E-00012881

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ANI GAZARYAN, an individual; SVETLANA ABAJYAN, an individual; ELZA DZHIVALEGYAN, an individual; TAMARA HARUTYUNYAN, an individual; NERSES MAZMANYAN, an individual; KARINE MAZMANYAN, an individual; HRAYR OKKASIAN, an individual; CHRISTINE AZNAVOU, an individual; AKOP GALADZHYAN; an individual;

Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; TOYOTA MOTOR CORPORATION, a foreign corporation; and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

TOY-RQ-05E-00012882

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

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Attorneys for Defendant TOYOTA MOTOR SALES U.S.A., INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ROZ SCHWARTZ, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORP., and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV10-00710 AHM (FMOx)

PUTATIVE CLASS ACTION

[Honorable A. Howard Matz]

ORDER RE DEFENDANT TOYOTOA MOTOR SALES, U.S.A., INC.'S EX PARTE APPLICATION TO STAY ALL PROCEEDINGS PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

[Filed concurrently with Ex Parte Application and Declaration of Lisa Gilford]

TOY-RQ-05E-00012884

On February 23, 2010, Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") appeared before this Court, on an *ex parte* basis for an Application to Stay All Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation.

The Court, having considered the application, points and authorities, evidence, and arguments offered by counsel, and any opposition thereto filed, and good cause appearing therefore,

HEREBY ORDERS AND ADJUDGES THAT:

(1) Toyota's *ex parte* application for an immediate stay of all proceedings in the action is **GRANTED**; and

(2) No further proceedings in this matter shall take place until the Court issues a further Order lifting this stay or the matter is transferred by the Judicial Panel on Multi-District Litigation.

IT IS SO ORDERED.

DATED: February 25, 2010

A. Howard Matz
Judge of the United States District Court

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-8478 AHM (FMOx)	Date	February 25, 2010
Title	ERIC KMETZ *et al.* v. TOYOTA MOTOR SALES U.S.A. INC., *et al.*		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

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

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Defendants' Motion to Dismiss the First Amended Complaint[1] and Defendants' Motion to Strike all Class Allegations.[2]

Initials of Preparer SMO

[1] Docket No. 18.

[2] Docket No. 22.

Case 4:10-cv-00103-HFS Document 6-3 Filed 02/26/10 Page 9 of 12

TOY-RQ-05E-00012887

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-8143 AHM (FMOx)	Date	February 25, 2010
Title	SEONG BAE CHOI, *et al.* v. TOYOTA MOTOR CORPORATION, *et al.*		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

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

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Plaintiffs' Motion for a Preliminary Injunction,[1] Plaintiffs' Motion to Certify the Class,[2] Defendants' Motion to Dismiss,[3] and Defendants' Motion to Strike all Class Allegations.[4]

Initials of Preparer SMO

[1] Docket No. 22.

[2] Docket No. 39.

[3] Docket No. 41.

[4] Docket No. 45.

Case 4:10-cv-00103-HFS Document 6-3 Filed 02/26/10 Page 10 of 12

TOY-RQ-05E-00012888

LINK: 12, 13

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9158 GAF (FMOx)	Date	February 26, 2010
Title	Heather A. Lane v. Toyota Motor Sales, U.S.A., Inc.		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM PLAINTIFF'S COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from Plaintiff's Complaint. (Docket Nos. 12, 13.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 29, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

Case 4:10-cv-00103-HFS Document 6-3 Filed 02/26/10 Page 11 of 12

TOY-RQ-05E-00012889

LINK: 20, 21

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9386 GAF (FMOx)	Date	February 26, 2010
Title	Dale Baldiseeri v. Toyota Motor Sales, U.S.A., Inc. et al		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM FIRST AMENDED COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from First Amended Complaint. (Docket Nos. 20, 21.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 8, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

TOY-RQ-05E-00012890

EXHIBIT D

TOY-RQ-05E-00012891

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

DAVID HULSEN, PATRICK MANN, and TYSON MARKHAM, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	CASE NO. 4:10-cv-00103-HFS
TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.,	)	
Defendants.	)	

(PROPOSED) ORDER STAYING PROCEEDINGS

Having considered Defendant Toyota Motor Sales, U.S.A., Inc.'s ("Toyota") Motion to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS Toyota's request to stay these proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Western District of Missouri, and this Honorable Court, (2) discovery, (3) all obligations associated with the Early Assessment Program, and (4) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

TOY-RQ-05E-00012892

SO ORDERED, this ___ day of _____, 2010.

_____
Hon. Howard F. Sachs
United States District Court Judge

TOY-RQ-05E-00012893

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

DAVID HULSEN, PATRICK MANN, and TYSON MARKHAM, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	CASE NO. 4:10-cv-00103-HFS
TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, USA, INC.,	)	
Defendants.	)	

DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S
CERTIFICATE OF INTEREST

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Local Rule 3.1, the undersigned counsel for Defendant Toyota Motor Sales, U.S.A., Inc. hereby state:

1. Toyota Motor Sales, U.S.A., Inc. identifies the following publicly traded parent companies: Toyota Motor Corporation.

2. Toyota Motor Sales, U.S.A., Inc. identifies the following publicly traded subsidiaries: None.

3. Toyota Motor Sales, U.S.A., Inc. identifies the following publicly traded affiliates: None.

TOY-RQ-05E-00012894

Respectfully submitted this 26th day of February, 2010,

/s/ Holly Pauling Smith

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CERTIFICATE OF SERVICE

This is to certify that I have this day served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing **DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S CERTIFICATE OF INTEREST** by electronically filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Bradley D. Kuhlman, MO Bar # 42596
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Attorney for Plaintiffs

/s/ Holly Pauling Smith

TOY-RQ-05E-00012895

Attorney for Defendant
Toyota Motor Sales, USA, Inc.

TOY-RQ-05E-00012896

U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:10-cv-00103-HFS

Hulsen v. Toyota Motor Corporation et al
Assigned to: District Judge Howard F. Sachs
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/04/2010
Date Terminated: 02/10/2010
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

David Hulsen

represented by **Bradley D. Kuhlman**
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Plaintiff

Patrick Mann

represented by **Chad Cameron Lucas**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Tyson Markham

represented by **Chad Cameron Lucas**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

Defendant

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

represented by **Holly P. Smith**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

TOY-RQ-05E-00012897

Toyota Motor Engineering &Manufacturing North America, Inc.
TERMINATED: 02/10/2010

Date Filed	#	Docket Text
02/04/2010	1	COMPLAINT against Toyota Motor Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. filed by Chad Cameron Lucas on behalf of David Hulsen. Filing fee $350, receipt number 0866−2277535. Service due by 6/7/2010.(Lucas, Chad) (Additional attachment(s) added on 2/10/2010: #1 Civil Cover Sheet) (Wheeler, LaTandra). (Entered: 02/04/2010)
02/10/2010	2	Notice of EAP assignment to an outside mediator sent via electronic notice to Plaintiff's counsel. (Attachments: #1 General Order for EAP)(Wheeler, LaTandra) (Entered: 02/10/2010)
02/10/2010	3	AMENDED COMPLAINT against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc. filed by Chad Cameron Lucas on behalf of David Hulsen, Patrick Mann, Tyson Markham.(Lucas, Chad) (Entered: 02/10/2010)
02/10/2010	4	REQUEST FOR WAIVER of service sent to Toyota Motor Sales, U.S.A., Inc. on 2/10/10 by David Hulsen, Patrick Mann, Tyson Markham. Waiver of Service due by 3/12/2010. (Lucas, Chad) (Entered: 02/10/2010)
02/11/2010		SUMMONS ISSUED as to Amended Complaint to Toyota Motor Corporation. (Wheeler, LaTandra) (Entered: 02/11/2010)
02/26/2010	5	MOTION to stay *Defendant Toyota Motor Sales USA Inc.'s Motion to Stay Pending Action by the Judicial Panel on Multidistrict Litigation* filed by Holly P. Smith on behalf of Toyota Motor Sales, U.S.A., Inc.. Suggestions in opposition/response due by 3/15/2010 unless otherwise directed by the court. (Smith, Holly) (Entered: 02/26/2010)
02/26/2010	6	SUGGESTIONS in support re 5 MOTION to stay *Defendant Toyota Motor Sales USA Inc.'s Motion to Stay Pending Action by the Judicial Panel on Multidistrict Litigation* filed by Holly P. Smith on behalf of Defendant Toyota Motor Sales, U.S.A., Inc.. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D)(Related document(s) 5) (Smith, Holly) (Entered: 02/26/2010)
02/26/2010	7	DISCLOSURE OF CORPORATE INTERESTS *Defendnt Toyota Motor Sales USA Inc.'s Certificate of Interest* filed by Holly P. Smith on behalf of Defendant Toyota Motor Sales, U.S.A., Inc..(Smith, Holly) (Entered: 02/26/2010)

FILE START

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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BEVERLY IFERGAN,

Plaintiff,

-against-

TOYOTA MOTOR SALES U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC.,

Defendants.

INDEX NO.: 3252/10

VERIFIED COMPLAINT

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Plaintiff, Beverly Ifergan, complains of the Defendants by her attorneys, The Dweck Law Firm, LLP, and respectfully sets forth as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, the Plaintiff Beverly Ifergan (hereinafter "Plaintiff" or "Ifergan") was and still is a resident of the County of Kings, City and State of New York.

2. Upon information and belief, and at all times hereinafter mentioned, the Defendant, Toyota Motor Sales U.S.A., Inc. ("Toyota U.S.A.") was and still is a foreign corporation organized and existing under and by virtue of the laws of the State of California and registered as a foreign corporation licensed to do business in the State of New York with the New York State Department of State, Division of Corporations.

3. Upon information and belief, and at all times hereinafter

mentioned, the Defendant, Toyota Motor North America, Inc. ("Toyota North America") was and still is a foreign corporation organized and existing under and by virtue of the laws of the State of California and registered as a foreign corporation licensed to do business in the State of New York with the New York State Department of State, Division of Corporations.

4. Upon information and belief Defendant, Lexus, A Division of Toyota Motor Sales U.S.A., Inc., is a division of the Defendant Toyota U.S.A. and does business in the State of New York and/or solicits business, and/or engages in any other persistent course of conduct, or derives substantial revenue from goods sold, marketed, or used and services rendered in the State of New York.

5. Upon information and belief, and at all times hereinafter mentioned, and prior to and including the year 2005 and up to the present, the Defendants were and still are engaged in the manufacture, assembly, marketing and sales of automobiles, and, in particular, manufactured the 2005 Lexus vehicle operated by the Plaintiff as hereinafter alleged.

6. Upon information and belief, and at all times hereinafter mentioned, and on or about December 10, 2009, the Plaintiff Beverly Ifergan was the operator of a certain 2005 Lexus ES330 automobile registered in New Jersey bearing New Jersey license plate number YDQ43D and which had vehicle identification number

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JTHBA30G155097299 ("Lexus vehicle").

7. At all times hereinafter mentioned and prior to the year 2005, Ocean Parkway and Avenue S in the County of Kings, City and State of New York, were and still are public thoroughfares in use by the general public.

8. On or about December 10, 2009, at approximately 12:10 p.m. of that day, while the Plaintiff was carefully operating the aforedescribed Lexus vehicle in a Southerly direction, along Ocean Parkway in Brooklyn, New York, at or near its intersection with Avenue S, her vehicle, without prior notice, warning or inclination, unexpectedly and violently accelerated, which caused the Plaintiff to lose control of the vehicle, with the inability to stop or slow down the same to the extent that the vehicle brakes failed to function properly and/or failed to slow down and/or stop the vehicle, thereby causing her vehicle to continue to accelerate, mount the curb and strike several trees, which caused the Plaintiff to sustain serious personal injuries and inflicted major damage to the vehicle as well, all of which was due to the negligence, carelessness and recklessness of the Defendants as hereinafter described.

9. The negligence, carelessness and recklessness of the Defendants consisted of the following without limitation:

a) the failure to use due care in the manufacture and design of the automobile and its working parts, systems,

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accessories and installations;

b) the failure to test the materials installed and used in the automobile to determine whether or not the various parts, and in particular the brakes, accelerator pedal and linkage, control system and mats in the vehicle, were strong enough, durable and safe;

c) carelessly having designed, manufactured and/or installed defective or insufficient brakes in the vehicle;

d) carelessly having designed, manufactured and/or installed a defective accelerator and/or linkage or cable for the pedal in the vehicle;

e) carelessly having designed, manufactured and/or installed a defective control system in the vehicle;

f) carelessly having selected, designed and/or installed defective mats in the vehicle; and

g) in otherwise being negligent, careless, and reckless in their design, manufacture and assembly of the aforedescribed Lexus vehicle and the parts and systems therein.

10. The aforesaid accident, and the injuries to the Plaintiff resulting therefrom, were caused solely by the negligence, carelessness and recklessness of the Defendants, without any negligence on the part of the Plaintiff contributing thereto.

11. Prior to this accident, there had been no material

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alteration and/or substantial change of the characteristics that resulted in the unexpected acceleration and loss of control of this Lexus vehicle from the time it was manufactured, tested, and distributed by the Defendants to and including December 10, 2009, other than any changes made by the Defendants and/or their agents.

12. As a result of the negligence, carelessness and recklessness of the Defendants as aforedescribed, the Plaintiff was rendered sick, sore, lame and disabled and sustained serious and life threatening injuries in and about her body, head and face, including without limitation, a fracture of her right radius, a left clavicle fracture, a compression fracture of L1 vertebral body and L1 left transverse process, a compression fracture of L2 vertebral body, and other internal and external injuries, all of which, upon information and belief, are of a severe and permanent nature. As a result of the foregoing, the Plaintiff suffered severe physical and mental injuries and was unable to follow her usual daily activities, and incurred obligations for medical care and attention, and medically related expenses. Plaintiff suffered and still suffers from great physical and mental pain, all of which are believed to be of a permanent nature.

13. The Plaintiff has sustained serious and permanent injuries as defined in the Insurance Law of the State of New

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York.

14. The limitation on liability set forth in Civil Practice Law and Rules Article 16 does not apply herein, and one or more of the exemptions set forth in CPLR §1602 applies.

15. As a result of the foregoing, Plaintiff suffered, and still suffers great physical and mental pain all to her damage in a sum to be determined at the trial of this action, said sum exceeding the jurisdictional limits of all other Courts.

AS AND FOR A SECOND CAUSE OF ACTION

16. The Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "15", inclusive, with the same force and effect as if more fully set forth at length herein.

17. Upon information and belief, and at all relevant times hereinafter mentioned, the Defendants designed, planned, manufactured, assembled, equipped, tested, serviced and inspected the Lexus vehicle as hereinbefore described, and its component parts.

18. At all relevant times hereinafter mentioned, the Defendants manufactured, designed, planned, assembled, equipped, tested, serviced, inspected, sold and delivered the Lexus vehicle described above, with the knowledge and/or notice that the vehicle was to be used, driven and operated by members of the general public, and that unless the vehicle was properly

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designed, manufactured, serviced and inspected, the Defendants would create an unreasonable dangerous and life threatening risk and danger to any user of the vehicle, or to persons exposed to the vehicle, including the Plaintiff, and the vehicle would constitute an article of extreme and inherent danger to users, occupants and members of the public.

19. The Defendants impliedly warranted to the Plaintiff, purchasers, users, and to members of the general public, and persons the Defendants knew or should have known would be exposed to the vehicle, that the vehicle and all of its component parts, equipment, and accessories were of a merchantable quality and fit for the purpose for which intended.

20. The Plaintiff relied upon Defendants' warranty, and its skill and judgment, as to the quality and safety of the Lexus vehicle, and the Plaintiff believed that the Lexus vehicle was safe and free from all defects.

21. On or about December 10, 2009, at approximately 12:10 p.m. of that day, while the Plaintiff was carefully operating the aforedescribed Lexus vehicle in a Southerly direction, along Ocean Parkway in Brooklyn, New York, at or near its intersection with Avenue S, her vehicle, without prior notice, warning or inclination, unexpectedly and violently accelerated, which caused the Plaintiff to lose control of the vehicle, with the inability to stop or slow down the same to the extent that the vehicle

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brakes failed to function properly and/or failed to slow down and/or stop the vehicle, thereby causing her vehicle to continue to accelerate, mount the curb and strike several trees, which caused the Plaintiff to sustain serious personal injuries and inflicted major damage to the vehicle as well, all of which was due to the negligence, carelessness and recklessness of the Defendants.

22. At the time of the occurrence on or about December 10, 2009, Plaintiff's Lexus vehicle was in a defective condition, so that the accelerator pedal, brakes, control system and mats in the vehicle were not in proper operating condition, and because of faulty design and use of improper materials or parts, contributed to the occurrence of this accident.

23. The Plaintiff's Lexus vehicle, including its accelerator pedal, brakes, control system and mats, were not of a merchantable quality, nor fit for the purpose for which they were intended.

24. As a result of the Defendants' breach of their implied warranties as aforedescribed, the Plaintiff was rendered sick, sore, lame and disabled and sustained serious and life threatening injuries in and about her body, head and face, including without limitation, a fracture of her right radius, a left clavicle fracture, a compression fracture of L1 vertebral body and L1 left transverse process, a compression fracture of L2

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vertebral body, and other internal and external injuries, all of which upon information and belief are of a severe and permanent nature. As a result of the foregoing, the Plaintiff suffered severe physical and mental injuries and was unable to follow her usual daily activities, and incurred obligations for medical care and attention, and medically related expenses. Plaintiff suffered and still suffers from great physical and mental pain, all of which are believed to be of a permanent nature.

25. As a result of the foregoing, Plaintiff suffered, and still suffers great physical and mental pain, all to her damage in a sum to be determined at the trial of this action, said sum exceeding the jurisdictional limits of all other Courts.

AS AND FOR A THIRD CAUSE OF ACTION

26. The Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "25", inclusive, with the same force and effect as if more fully set forth at length herein.

27. As a result of the Defendants' breach of its implied warranties and the resulting accident, Plaintiff's automobile was wrecked and damaged, depriving Plaintiff of its use.

28. As a result of the foregoing, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all other Courts.

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AS AND FOR A FOURTH CAUSE OF ACTION

29. The Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "28", inclusive, with the same force and effect as if more fully set forth at length herein.

30. The Lexus vehicle which the Plaintiff was operating, was in a defective, unsafe condition and unreasonably dangerous to its users, and in particular the Plaintiff.

31. By reason of the foregoing, the Defendants, their agents, servants and employees are strictly liable in tort to the Plaintiff, Beverly Ifergan, for the injuries sustained by her.

32. By reason of the foregoing, the Plaintiff was rendered sick, sore, lame and disabled and sustained serious and life threatening injuries in and about her body, head and face, including without limitation, a fracture of her right radius, a left clavicle fracture, a compression fracture of L1 vertebral body and L1 left transverse process, a compression fracture of L2 vertebral body, and other internal and external injuries, all of which upon information and belief are of a severe and permanent nature. As a result of the foregoing, the Plaintiff suffered severe physical and mental injuries and was unable to follow her usual daily activities, and incurred obligations for medical care and attention, and medically related expenses. Plaintiff suffered and still suffers from great physical and mental pain, all of

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which are believed to be of a permanent nature.

33. Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all other Courts.

AS AND FOR A FIFTH CAUSE OF ACTION

34. The Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "33", inclusive, with the same force and effect as if more fully set forth at length herein.

35. The Defendants' conduct was grossly negligent in that it evidenced an utter indifference to, and a conscious and reckless disregard of, the safety and well being of the Plaintiff Beverly Ifergan and other consumers similarly situated to Plaintiff, thereby entitling her to an award of punitive damages in an amount to be established at the time of trial.

36. As a result of the foregoing, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all other Courts.

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WHEREFORE, Plaintiff prays for judgment as follows: On each of the first through fifth causes of action in a sum to be determined at the trial of this action together with exemplary damages and interest; and with the costs and disbursements of this action.

THE DWECK LAW FIRM, LLP
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