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IN THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO._____

FELICIA R. LEGGIERO and
JOHN R. LEGGIERO, her husband,

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A., INC. , a California corporation, and
SUN AUTOMOTIVE, INC., a Florida corporation,
d/b/a Sun Toyota, f/k/a as Sun Toyota, Inc., a Florida corporation.

Defendants.
_____/

COMPLAINT

COMES NOW, Plaintiffs, FELICIA R. LEGGIERO and JOHN R. LEGGIERO, her husband, by and through their undersigned counsel, bring this action against Defendants, TOYOTA MOTOR SALES, U.S.A., INC., a California corporation, and SUN AUTOMOTIVE, INC., a Florida corporation, doing business as Sun Toyota, and formerly known as Sun Toyota, Inc., a Florida corporation, and allege as follows:

General Allegations

1. Plaintiffs, FELICIA R. LEGGIERO and JOHN R. LEGGIERO, her husband, are residents of Pasco County, Florida.

2. Defendant, TOYOTA MOTOR SALES, U.S.A., INC., is a California corporation (hereinafter called "Defendant TOYOTA"), which fully at all times material hereto designed, manufactured, and assembled motor vehicles for distribution in the State of Florida, and is

TOY-RQ-05E-00005609

authorized to conduct business in the State of Florida.

3. Defendant, SUN AUTOMOTIVE, INC., d/b/a Sun Toyota, and formerly known as Sun Toyota, Inc., d/b/a Sun Toyota Super Store, is a Florida corporation (hereinafter referred to as "Defendant SUN AUTOMOTIVE").

4. At all times material hereto, Plaintiffs were the lessees and possessors of a 2003 Toyota Camry, bearing VIN#4TIBE32KX3U154220 (hereinafter called the "car"), and used the car for its intended purpose and in a reasonably foreseeable manner.

5. On or about November 12, 2005, Plaintiffs were occupants of the car which was operated by Plaintiff, JOHN R. LEGGIERO, when they were involved in a motor vehicle accident (the "accident") involving the car in Pinellas County, Florida. The accident occurred when the car suddenly accelerated as Plaintiff, JOHN R. LEGGIERO, was slowing the car to a stop in front of a supermarket to allow Plaintiff, FELICIA R. LEGGIERO, to exit same. At this time, pedestrians were crossing in front of Plaintiffs' car to avoid crashing into pedestrians, Plaintiff, JOHN R. LEGGIERO, turned the car to the right and unable to stop the car, it crashed into a structural support column in front of the supermarket building.

6. Venue is proper in Pinellas County, Florida, as the accident occurred in Pinellas County, Florida, and Defendant, SUN AUTOMOTIVE has it principal place of business in Pinellas County, Florida.

Count I - Negligent Design - Defendant Toyota

7. This is an action against Defendant TOYOTA for damages in excess of $15,000.00, exclusive of interest, costs, and attorneys' fees.

8. Plaintiffs reallege and incorporate herein by reference Paragraphs 1, 2, 4, 5, and 6 of

TOY-RQ-05E-00005610

the General Allegations above.

9. Prior to November 12, 2005, Defendant TOYOTA was negligent in that it failed to use reasonable care in the plan and design of the acceleration system for the car, which suddenly accelerated, and the acceleration system as defined is defective.

10. Prior to November 12, 2005, Defendant TOYOTA failed to adequately inspect and/or test the acceleration system in this make and model of the car.

11. The car with its defectively designed acceleration system was in a dangerous condition at the time it left the control of Defendant TOYOTA.

12. The car was designed, manufactured and assembled by Defendant, TOYOTA.

13. Prior to November 12, 2005, Defendant TOYOTA was negligent in that it failed to warn Plaintiffs, and/or correct the defectively designed acceleration system in the aforementioned year, make and model of the car.

14. As a result of such negligent design and the accident, Plaintiff, FELICIA R. LEGGIERO, suffered bodily injury and resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff, FELICIA R. LEGGIERO, will suffer the losses in the future. Additionally, as a result, Plaintiff, JOHN R. LEGGIERO, has and will suffer the loss of Plaintiff, FELICIA R. LEGGIERO's services, consortium, and the care and comfort of her society.

WHEREFORE, Plaintiffs demand the following: (A) a judgment for damages against Defendant TOYOTA, (B) an award of court costs, (C) an award of such other relief as this Court deems necessary and proper, and (D) a trial by jury.

TOY-RQ-05E-00005611

Count II - Negligent Manufacture - Defendant TOYOTA

15. This is an action against Defendant TOYOTA for damages in excess of $15,000.00, exclusive of interest, costs, and attorneys' fees.

16. Plaintiffs reallege and incorporate herein by reference Paragraphs 1, 2, 4, 5, and 6 of the General Allegations above.

17. Prior to November 12, 2005, Defendant TOYOTA negligently manufactured an acceleration system for the car which suddenly accelerated without Plaintiff, JOHN R. LEGGIERO, pressing the accelerator's pedal during the operation of the car.

18. The car with its defectively manufactured acceleration system was in a dangerous condition at the time it left the control of Defendant TOYOTA.

19. Prior to November 12, 2005, Defendant TOYOTA was negligent in that it failed to warn Plaintiffs or correct the defectively manufactured acceleration system in the aforementioned year, make and model of the car.

20. As a result of such negligent manufacture and the accident, Plaintiff, FELICIA R. LEGGIERO, suffered bodily injury and resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff, FELICIA R. LEGGIERO, will suffer the losses in the future. Additionally, as a result, Plaintiff, JOHN R. LEGGIERO, has and will suffer the loss of Plaintiff, FELICIA R. LEGGIERO's services, consortium, and the care and comfort of her society.

WHEREFORE, Plaintiffs demand the following: (A) a judgment for damages against Defendant TOYOTA, (B) an award of court costs, (C) an award of such other relief as this Court

TOY-RQ-05E-00005612

deems necessary and proper, and (D) a trial by jury.

Count III - Strict Liability - Defendant TOYOTA

21. This is an action against Defendant TOYOTA for damages in excess of $15,000.00, exclusive of interest, costs, and attorneys' fees.

22. Plaintiffs reallege and incorporate herein by reference Paragraphs 1, 2, 4, 5, and 6 of the General Allegations above.

23. Defendant TOYOTA designed, manufactured and sold the car.

24. The aforementioned year, make, and model of the car was defectively designed and manufactured so as to be unreasonably dangerous to users, such as Plaintiffs, for the reasons set forth below:

A. That the year, make and model of the car stated above was equipped with an acceleration system. As designed and manufactured, the car would automatically and suddenly accelerate without pressure being applied to the acceleration pedal by the driver of the car.

B. It was foreseeable that the car would be operated and that the accelerator would be required to work properly in order to avoid an accident.

C. As designed and manufactured, the car's acceleration system would automatically and suddenly accelerate without pressure being placed on the acceleration pedal causing accident and injury.

25. The defectively designed and manufactured acceleration system was a legal cause of personal injury to Plaintiff, FELICIA R. LEGGIERO, in that, it directly and in natural and continuous sequence produced or contributed sustantially to producing serious injury to Plaintiff, FELICIA R. LEGGIERO.

TOY-RQ-05E-00005613

26. As a result of the defect in the acceleration system in the car and the accident, Plaintiff, FELICIA R. LEGGIERO, suffered bodily injury and resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff, FELICIA R. LEGGIERO, will suffer the losses in the future. Additionally, as a result, Plaintiff, JOHN R. LEGGIERO, has and will suffer the loss of Plaintiff, FELICIA R. LEGGIERO's services, consortium, and the care and comfort of her society.

WHEREFORE, Plaintiffs demand the following: (A) a judgment for damages against Defendant TOYOTA, (B) an award of court costs, (C) an award of such other relief as this Court deems necessary and proper, and (D) a trial by jury.

Count IV - Negligent Repair - Defendant SUN AUTOMOTIVE

27. This is an action against Defendant SUN AUTOMOTIVE for damages in excess of $15,000.00, exclusive of interest, and costs, and attorneys' fees.

28. Plaintiffs reallege and incorporate herein by reference Paragraphs 1, 3, 4, 5, and 6 of the General Allegations above.

29. On or about June 13, 2005, one or both of Plaintiffs took the car for repair to Defendant SUN AUTOMOTIVE's place of business after experiencing a sudden acceleration while driving the car.

30. Defendant SUN AUTOMOTIVE undertook to repair the car for the sudden acceleration defect.

31. Defendant SUN AUTOMOTIVE negligently repaired, failed to repair, and/or inadequately repaired the car.

TOY-RQ-05E-00005614

32. Once Defendant SUN AUTOMOTIVE undertook to repair the car, Defendant SUN AUTOMOTIVE is responsible for the damages or injuries resulting from the faulty or inadequate repair car.

33. As a result of Defendant SUN AUTOMOTIVE's negligence and the accident, Plaintiff, FELICIA R. LEGGIERO, suffered bodily injury and resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff, FELICIA R. LEGGIERO, will suffer the losses in the future. Additionally, as a result, Plaintiff, JOHN R. LEGGIERO, has and will suffer the loss of Plaintiff, FELICIA R. LEGGIERO's services, consortium, and the care and comfort of her society.

WHEREFORE, Plaintiffs demand the following: (A) a judgment for damages against Defendant SUN AUTOMOTIVE, (B) an award of court costs, (C) an award of such other relief as this Court deems necessary and proper, and (D) a trial by jury.

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TOY-RQ-05E-00005615

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.

CASE NO. 06-004661-CI-21

FELICIA LEGGIERO and
JOHN R. LEGGIERO, her husband,

Plaintiff(s),

vs.

TOYOTA MOTOR SALES, U.S.A., INC., a Foreign Corporation, TOYOTA MOTOR CORPORATION, a Foreign Corporation; and SUN AUTOMOTIVE, INC., a Florida Corporation, d/b/a SUN TOYOTA f/k/a SUN TOYOTA, INC., a Florida Corporation,

Defendant(s).
_____/

AMENDED COMPLAINT

COME NOW the Plaintiffs, FELICIA LEGGIERO and JOHN R. LEGGIERO, by and through their undersigned attorneys and sue the Defendants, TOYOTA MOTOR CORPORATION, a foreign corporation ("TMC"); TOYOTA MOTOR SALES, U.S.A., INC., a foreign corporation ("TMS"); and SUN AUTOMOTIVE, INC., a Florida Corporation, d/b/a SUN TOYOTA f/k/a SUN TOYOTA, INC., a Florida Corporation ("SUN TOYOTA"), and allege the following:

JURISDICTIONAL AND VENUE ALLEGATIONS

1. This is an action for damages which exceed the sum of Fifteen Thousand Dollars ($15,000.00).

2. At all times material, Plaintiffs, DEBORAH SIERRA and JOHN SIERRA, were residents of and domiciled in Pasco County, Florida.

3. At all times material, Plaintiffs were married and they were husband and wife.

4. The Defendant, TMC, is a foreign corporation authorized to do business in the State of Florida, and which at all times material hereto, was doing business throughout the State of Florida including Pinellas County. Jurisdiction is appropriate pursuant to section 48.193, Florida Statutes (2007), *et seq.* with respect to TMC because, *inter alia*, the Plaintiffs suffered injuries in the State of Florida while using a product in the ordinary course of commerce, trade or use that was designed, serviced, marketed, and/or manufactured by Defendant TMC.

5. The Defendant, TMC, at all times material hereto, was engaged in the business of designing, manufacturing, testing, inspecting, assembling, maintaining, repairing, selling and distributing motor vehicles outside of the State of Florida, but with the intent through marketing and sales that the motor vehicles would be sold and used within the State of Florida, and more specifically, within Pinellas County, Florida.

6. The Defendant, TMS, is a foreign corporation authorized to do business in the State of Florida, and which at all times material hereto, was doing business throughout the State of Florida including Pinellas County. Jurisdiction is appropriate pursuant to section 48.193, Florida Statutes (2007), *et seq.* with respect to TMS because, *inter alia*, the Plaintiffs suffered injuries in the State of Florida while using a product in the ordinary course of commerce, trade or use that was designed, serviced, marketed, and/or manufactured by Defendant TMS.

7. The Defendant, TMS, at all times material hereto, was engaged in the business of designing, manufacturing, testing, inspecting, assembling, maintaining, repairing, selling and

TOY-RQ-05E-00005617

distributing motor vehicles outside of the State of Florida, but with the intent through marketing and sales that the motor vehicles would be sold and used within the State of Florida, and more specifically, within Pinellas County, Florida.

8. At all times material, SUN TOYOTA, was a Florida corporation with its principal place in Pinellas County, Florida.

ALLEGATIONS COMMON TO ALL COUNTS

9. At all times material hereto, Plaintiffs were the lessees and possessors of a 2003 Toyota Camry, bearing V1N#4TIBE32KX3U 154220 (hereinafter called the "THE VEHICLE"), that was leased from Defendant, SUN TOYOTA, and used the car for its intended purpose and in a reasonably foreseeable manner.

10. THE VEHICLE was designed and/or manufactured and/or distributed by TMC.

11. THE VEHICLE was designed and/or manufactured and/or distributed by TMS.

12. On or about November 12, 2005, Plaintiffs were occupants in THE VEHICLE which was operated by Plaintiff, JOHN R. LEGGIERO, when they were involved in a motor vehicle accident involving THE VEHICLE in Pinellas County, Florida. The accident occurred when THE VEHICLE suddenly accelerated as Plaintiff, JOHN R. LEGGIERO, was slowing THE VEHICLE to a stop in front of a supermarket to allow Plaintiff, FELICIA R. LEGGIERO, to exit same. At this time, pedestrians were crossing in front of Plaintiffs' motor vehicle. To avoid crashing into pedestrians, Plaintiff, JOHN R. LEGGIERO, turned THE VEHICLE to the right, was unable to stop THE VEHICLE, and THE VEHICLE crashed into a structural support column in front of the supermarket building.

13. As a direct and proximate result of the Defendants' defective product and negligence,

TOY-RQ-05E-00005618

FELICIA LEGGIERO sustained serious injuries when THE VEHICLE suddenly, unintentionally and/or unexpectedly accelerated, which resulted in the following damages:

a. Permanent bodily injury and past, present, and future pain and suffering;

b. Past, present and future aggravation of pre-existing conditions and physical defects;

c. Past, present and future disability and physical impairment;

d. Past, present and future scarring and disfigurement;

e. Past, present and future mental anguish;

f. Past, present and future inconvenience;

g. Past, present and future loss of capacity for the enjoyment of life;

h. Past, present and future medical expenses; and

i. Past, present and future loss of earnings and earning capacity.

j. Past, present and future loss of services.

14. As a direct and proximate result of THE VEHICLE's defects and Defendant's negligence, JOHN R. LEGGIERO suffered the following damages:

a. Past, present and future loss of consortium from his wife.

b. Past, present and future loss of attention from his wife.

c. Past, present and future loss of society from his wife.

d. Past, present and future loss of comfort from his wife.

ALLEGATIONS COMMON TO COUNTS AGAINST TMC

15. Defendant, TMC, is a foreign corporation, which at all times material was doing business in Pinellas County, Florida.

16. At all times material, Defendant, TMC, was engaged in the business of designing and

TOY-RQ-05E-00005619

manufacturing motor vehicles outside the State of Florida, but with the intent through marketing and sales that they be sold and utilized within the State of Florida, including within Pinellas County, Florida.

17. Defendant, TMC, designed and/or manufactured THE VEHICLE and then sold and distributed THE VEHICLE within the State of Florida.

18. At all times material, Defendant, TMC, authorized certain motor vehicle dealers within the State of Florida, including SUN TOYOTA, to sell motor vehicles designed and/or manufactured by Defendant, TMC.

19. At all times material, Defendant, TMC, adopted a design and/or manufacturing process for THE VEHICLE and component parts of THE VEHICLE, which were not common, usual, customary, prudent, or in accordance with the established industry standards relating to the design and/or manufacturer of similar motor vehicles of a similar intended and/or reasonable function.

20. At all times material, THE VEHICLE was designed and/or manufactured without consideration for sudden acceleration, unintended acceleration and/or unexpected acceleration while being used under intended and/or reasonably foreseeable conditions and/or in an intended or reasonably foreseeable manner, among other things.

21. At all times material, the Defendant, TMC, failed to perform testing adequate to determine the circumstances under which THE VEHICLE would experience sudden acceleration, unintended acceleration and/or unexpected acceleration and thereby become dangerous or hazardous to occupants within THE VEHICLE while being used under intended and/or reasonably foreseeable conditions and/or in an intended or reasonably foreseeable manner.

TOY-RQ-05E-00005620

22. Defendant, TMC, designed, manufactured, and placed THE VEHICLE into the stream of commerce, intending that it be used in the precise manner that it was being used at the time the above-mentioned collision and injuries occurred.

23. At all times material, THE VEHICLE was maintained and inspected as often as a reasonably prudent person would have done under the same or similar circumstances and at no time material was THE VEHICLE subjected to any unintended and/or unforeseeable conditions.

24. THE VEHICLE was in substantially the same defective conditions at the time of the above-mentioned collision as it was when it left TMC's possession and/or control.

25. Defendant, TMC, owed a duty to the Plaintiffs and other persons similarly situated to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing and/or replacing THE VEHICLE and/or component parts of THE VEHICLE, so that THE VEHICLE could be safely used in a manner and for a purpose for which it was placed into the stream of commerce.

COUNT I STRICT LIABILITY AGAINST TMC
MANUFACTURING DEFECT(S)

26. At the time THE VEHICLE was manufactured and placed into the stream of commerce by the Defendant, TMC, it contained manufacturing defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

27. As a result of the manufacturing defects, THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner.

28. The manufacturing defects in THE VEHICLE were the direct and proximate cause of Plaintiff, FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMC, and further demand trial by jury.

COUNT II- STRICT LIABILITY AGAINST TMC
DESIGN DEFECT(S)

29. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, TMC, it contained design defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

30. As a result of the design defects, THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of THE VEHICLE outweighed the benefits of its design.

31. The design defects in THE VEHICLE were the direct and proximate cause of Plaintiff, FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMC, and further demand trial by jury.

COUNT III - STRICT LIABILITY AGAINST TMC
DEFECTIVE WARNING

32. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, TMC, it lacked and/or contained defective warnings which rendered THE

VEHICLE unreasonably dangerous to persons such as the Plaintiffs who were intended and/or foreseeable users, because, among other things, THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

33. At all times material, THE VEHICLE was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material was THE VEHICLE subjected to any unintended and/or unforeseeable conditions.

34. THE VEHICLE was in substantially the same defective condition at the time of the above-mentioned accident as it was when it left TMC's possession and/or control.

35. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by the Defendant, TMC, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE.

36. At all times material, this danger was known or knowable by the Defendant, TMC, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and/or distribution of THE VEHICLE.

37. At all times material, the Defendant, TMC, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

38. At all times material, the Defendant, TMC, failed to give adequate warning(s) of the dangers associated with THE VEHICLE.

39. As a result of the lack of and/or defective warning(s), THE VEHICLE failed to perform as

safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with THE VEHICLE outweighed the benefits of the warning(s), design, and the use of THE VEHICLE.

40. The lack of and/or defective warning(s) on or with THE VEHICLE were the direct and proximate cause of Plaintiff, FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against the Defendant, TMC, and further demand trial by jury.

COUNT IV - NEGLIGENCE AGAINST TMC MANUFACTURE

41. Defendant, TMC, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

42. The negligent manufacture of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMC, and further demand trial by jury.

COUNT V - NEGLIGENCE AGAINST TMC DESIGN

43. Defendant, TMC, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or

unexpected acceleration during reasonably foreseeable circumstances.

44. The negligent design of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMC, and further demand trial by jury.

COUNT VI - NEGLIGENCE AGAINST TMC WARNING(S)

45. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by Defendant, TMC, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

46. At all times material, this danger(s) was known or knowable by Defendant, TMC, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of THE VEHICLE.

47. At all times material, Defendant, TMC, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

48. At all times material, Defendant, TMC, failed to give adequate warning(s) of the danger associated with THE VEHICLE.

49. The lack of and/or negligent warning(s) on or with THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMC, and further demand trial by jury.

TOY-RQ-05E-00005625

COUNT VII - LOSS OF CONSORTIUM AGAINST TMC

50. At all times material hereto, the Plaintiffs, FELICIA LEGGIERO and JOHN R. LEGGIERO, were married to each other and living together as husband and wife.

51. As a result of Defendant's negligence and the defects in the THE VEHICLE, the Plaintiff, JOHN R. LEGGIERO, has been in the past and will in the future be deprived of the comfort, society and consortium of his wife, FELICIA LEGGIERO .

WHEREFORE, the Plaintiff, JOHN R. LEGGIERO, demands judgment for damages against the Defendant, TMC, and further demands trial by jury.

ALLEGATIONS COMMON TO COUNTS AGAINST TMS

52. Defendant, TMS, is a foreign corporation, which at all times material was doing business in Pinellas County, Florida.

53. At all times material, Defendant, TMS, was engaged in the business of recommending, selling, leasing, distributing, installing, inspecting, maintaining, repairing, and/or replacing motor vehicles and motor vehicle component parts designed and manufactured by the Defendant, TMC.

54. At all times material, Defendant, TMS, was one of Defendant, TMC's, motor vehicle dealers authorized to sell, lease and/or service motor vehicles and component parts manufactured by Defendant, TMC.

55. At all times material, Defendant, TMS, was engaged in the business of recommending, selling, leasing, distributing, installing, inspecting, maintaining, repairing, and/or replacing THE VEHICLE and component parts of THE VEHICLE, which were designed, manufactured, and/or supplied by Defendant, TMC, in such a manner that THE VEHICLE

would be reasonably safe and free from defects and meet the expectations of an ordinary consumer when utilized under intended or reasonably foreseeable conditions.

56. At all times material, Defendant, TMS, acted as the actual and/or implied agent and representative of Defendant, TMC, for the purpose of recommending, selling, leasing, installing, distributing, inspecting, maintaining, repairing, and/or replacing THE VEHICLE and component parts of THE VEHICLE.

57. Defendant, TMS, was the original supplier and seller of THE VEHICLE and placed THE VEHICLE into the stream of commerce in Florida, intending that it be used in the precise manner that it was being used at the time the above-mentioned collision and injuries occurred.

58. THE VEHICLE was in substantially the same defective condition at the time of the above-mentioned collision as it was when it left TMS's possession and/or control.

59. At all times material, TMS had a duty to reasonably maintain, install, repair, replace, inspect, and/or warn about dangers with THE VEHICLE, so it could be safely used in a manner and for a purpose for which it was placed into the stream of commerce.

COUNT VIII - STRICT LIABILITY AGAINST TMS MANUFACTURING DEFECT(S)

60. At the time THE VEHICLE was manufactured and placed into the stream of commerce by Defendant, TMS, it contained manufacturing defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

61. As a result of the manufacturing defects, THE VEHICLE failed to perform as safely as an

ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner.

62. The manufacturing defects in THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and further demand trial by jury.

COUNT IX - STRICT LIABILITY AGAINST TMS
DESIGN DEFECT(S)

63. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, TMS, it contained design defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

64. As a result of the design defects, THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of THE VEHICLE outweighed the benefits of its design.

65. The design defects in THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and further demand trial by jury.

COUNT X - STRICT LIABILITY AGAINST TMS
DEFECTIVE WARNING(S)

66. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, TMS, it lacked and/or contained defective warning(s) which rendered THE VEHICLE unreasonably dangerous to persons such as the Plaintiffs who were intended and/or foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

67. At all times material, THE VEHICLE was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material was THE VEHICLE subjected to any unintended and/or unforeseeable conditions.

68. THE VEHICLE was in substantially the same defective condition at the time of the above-mentioned collision as it was when it left TMS's possession and/or control.

69. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by Defendant, TMS, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE.

70. At all times material, this danger was known or knowable by Defendant, TMS, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and/or distribution of THE VEHICLE.

71. At all times material, Defendant, TMS, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

72. At all times material, Defendant, TMS, failed to give adequate warning(s) of the dangers associated with THE VEHICLE.

73. As a result of the lack of and/or defective warning(s), THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with THE VEHICLE outweighed the benefits of the warning(s), design, and the use of THE VEHICLE.

74. The lack of and/or defective warning(s) on or with THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and further demand trial by jury.

COUNT XI - VICARIOUS LIABILITY AGAINST TMS NEGLIGENT MANUFACTURE

75. The manufacturer of the vehicle breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

76. The negligent manufacture of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and further demand trial by jury.

COUNT XII - VICARIOUS LIABILITY AGAINST TMS NEGLIGENT DESIGN

77. The manufacturer of the vehicle breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a

negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

78. The negligent design of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and further demand trial by jury.

COUNT XIII - NEGLIGENCE AGAINST TMS WARNING(S)

79. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by Defendant, TMS, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

80. At all times material, this danger(s) was known or knowable by Defendant, TMS, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of THE VEHICLE.

81. At all times material, Defendant, TMS, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

82. At all times material, Defendant, TMS, failed to give adequate warning(s) of the danger associated with THE VEHICLE.

83. The lack of and/or negligent warning(s) on or with THE VEHICLE and were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, TMS, and

further demand trial by jury.

COUNT XIV - LOSS OF CONSORTIUM AGAINST TMS

84. At all times material hereto, the Plaintiffs, FELICIA LEGGIERO and JOHN R. LEGGIERO, were married to each other and living together as husband and wife.

85. As a result of Defendant's negligence and the defects in the THE VEHICLE, the Plaintiff, JOHN R. LEGGIERO, has been in the past and will in the future be deprived of the comfort, society and consortium of his wife, FELICIA LEGGIERO .

WHEREFORE, the Plaintiff, JOHN R. LEGGIERO, demands judgment for damages against the Defendant, TMS, and further demands trial by jury.

ALLEGATIONS COMMON TO SUN TOYOTA

86. At all times material hereto, the Defendant, SUN TOYOTA, was engaged in the business of inspecting, selling and distributing motor vehicles within the State of Florida, and more specifically, within Pinellas County, Florida.

87. The Defendant, SUN TOYOTA, marketed, sold, leased and distributed THE VEHICLE within the State of Florida.

88. The Defendant, SUN TOYOTA marketed, sold, leased and distributed THE VEHICLE and placed THE VEHICLE into the stream of commerce, intending that it be used in the precise manner that it was being used at the time of the subject accident.

89. THE VEHICLE was in substantially the same defective condition at the time of the subject automobile accident as it was when it left SUN TOYOTA's possession or control.

90. The Defendant, SUN TOYOTA, was and is one of TMC's vehicle dealers, which was authorized to sell and service motor vehicles and component parts manufactured by TMC.

91. The Defendant, SUN TOYOTA, at all times material hereto, was engaged in the business of recommending, selling, distributing, inspecting, maintaining, repairing and replacing THE VEHICLE and component parts of THE VEHICLE, in such a manner that THE VEHICLE would be reasonably safe and free from defects and meet the expectations of an ordinary consumer when utilized under intended or reasonably foreseeable conditions.

92. At all times material hereto, the Defendant, SUN TOYOTA , acted as the actual and/or implied agent and representative of TMC, for the purpose of recommending, selling, leasing, installing, distributing, inspecting, maintaining, repairing, servicing, and replacing component parts of THE VEHICLE.

93. On or about June 13, 2005 the Plaintiffs took THE VEHICLE to SUN TOYOTA for the purpose of having SUN TOYOTA service, repair, diagnose and remedy a problem with the acceleration system of THE VEHICLE.

94. The Defendant, SUN TOYOTA, owed a duty to the Plaintiffs, and other persons similarly situated to use reasonable care in inspecting, marketing, selling, repairing, servicing and distributing THE VEHICLE and in the testing and inspecting of any component parts made by another, so that THE VEHICLE could be safely used in a manner and in a purpose for which it was made.

95. At all times material, Defendant, SUN TOYOTA, breached such duties by negligently maintaining, installing, repairing, servicing, replacing, and/or inspecting THE VEHICLE in such a negligent manner that the VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

COUNT XV - NEGLIGENCE AGAINST SUN TOYOTA - NEGLIGENT MAINTENANCE, INSTALLATION, REPAIR, REPLACEMENT AND/OR INSPECTION

96. The negligent manner in which THE VEHICLE was serviced, maintained, installed, repaired, replaced, and/or inspected by the Defendant, SUN TOYOTA was the direct and proximate cause of THE VEHICLE, experiencing a sudden acceleration, unintended acceleration and/or unexpected acceleration during the subject accident and reasonably foreseeable circumstances.

97. The negligent service, maintenance, installation, repair, replacement and/or inspection of THE VEHICLE was the direct and proximate cause of Plaintiff, FELICIA LEGGIERO's injuries and damages.

WHEREFORE, Plaintiffs demand judgment for damages against Defendant, SUN TOYOTA, and further demands trial by jury.

COUNT XVI – STRICT LIABILITY AGAINST SUN TOYOTA - MANUFACTURING DEFECTS

98. At the time THE VEHICLE was placed into the stream of commerce by the Defendant, SUN TOYOTA, THE VEHICLE contained manufacturing defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

99. THE VEHICLE was in substantially the same condition at the time of the subject accident as it was when it left the Defendant, SUN TOYOTA's, possession or control.

100. As a result of the manufacturing defects, THE VEHICLE, failed to perform as safely as an

ordinary customer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner.

101. The manufacturing defects in THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant. SUN TOYOTA, and further demand trial by jury.

COUNT XVII - STRICT LIABILITY AGAINST SUN TOYOTA DESIGN DEFECT(S)

102. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, SUN TOYOTA, it contained design defects which were unreasonably dangerous to persons such as the Plaintiffs who were intended and/or reasonably foreseeable users. because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

103. As a result of the design defects, THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of THE VEHICLE outweighed the benefits of its design.

104. The design defects in THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant. SUN TOYOTA, and further demand trial by jury.

COUNT XVIII - STRICT LIABILITY AGAINST SUN TOYOTA DEFECTIVE WARNING(S)

105. At the time THE VEHICLE was designed and placed into the stream of commerce by Defendant, SUN TOYOTA, it lacked and/or contained defective warning(s) which rendered THE VEHICLE unreasonably dangerous to persons such as the Plaintiffs who were intended and/or foreseeable users, because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

106. At all times material, THE VEHICLE was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material was THE VEHICLE subjected to any unintended and/or unforeseeable conditions.

107. THE VEHICLE was in substantially the same defective condition at the time of the above-mentioned collision as it was when it left SUN TOYOTA's possession and/or control.

108. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by Defendant, SUN TOYOTA, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE.

109. At all times material, this danger was known or knowable by Defendant, SUN TOYOTA, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and/or distribution of THE VEHICLE.

110. At all times material, Defendant, SUN TOYOTA, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

111. At all times material, Defendant, SUN TOYOTA, failed to give adequate warning(s) of the

dangers associated with THE VEHICLE.

112. As a result of the lack of and/or defective warning(s), THE VEHICLE failed to perform as safely as an ordinary consumer would expect when utilizing THE VEHICLE in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with THE VEHICLE outweighed the benefits of the warning(s), design, and the use of THE VEHICLE.

113. The lack of and/or defective warning(s) on or with THE VEHICLE were the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, SUN TOYOTA, and further demand trial by jury.

COUNT XIX - VICARIOUS LIABILITY AGAINST SUN TOYOTA NEGLIGENT MANUFACTURE

114. The manufacturer of the vehicle breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

115. The negligent manufacture of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, SUN TOYOTA, and further demand trial by jury.

COUNT XX - VICARIOUS LIABILITY AGAINST SUN TOYOTA NEGLIGENT DESIGN

116. The manufacturer of the vehicle breached such duties by designing, testing, manufacturing.

assembling, inspecting, maintaining, repairing, and/or replacing THE VEHICLE in such a negligent manner that it was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

117. The negligent design of THE VEHICLE was the direct and proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant, SUN TOYOTA, and further demand trial by jury.

COUNT XXI - NEGLIGENCE AGAINST SUN TOYOTA WARNING(S)

118. At all times material, the use of THE VEHICLE in a manner that was intended and/or reasonably foreseeable by Defendant, SUN TOYOTA, involved substantial danger that would not be readily recognized by an ordinary user of THE VEHICLE because THE VEHICLE was likely to experience sudden acceleration, unintended acceleration and/or unexpected acceleration during reasonably foreseeable circumstances.

119. At all times material, this danger(s) was known or knowable by Defendant, SUN TOYOTA, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of THE VEHICLE.

120. At all times material, Defendant, SUN TOYOTA, had a duty to provide adequate warning(s) on how to use, maintain, and recognize and appreciate the dangers inherent within THE VEHICLE.

121. At all times material, Defendant, SUN TOYOTA, failed to give adequate warning(s) of the danger associated with THE VEHICLE.

122. The lack of and/or negligent warning(s) on or with THE VEHICLE and were the direct and

proximate cause of FELICIA LEGGIERO's injuries and damages.

WHEREFORE, the Plaintiffs demand judgment for damages against Defendant. SUN TOYOTA, and further demand trial by jury.

COUNT XXII - LOSS OF CONSORTIUM AGAINST SUN TOYOTA

123. At all times material hereto, the Plaintiffs, FELICIA LEGGIERO and JOHN R. LEGGIERO, were married to each other and living together as husband and wife.

124. As a result of Defendant's negligence and the defects in the THE VEHICLE, the Plaintiff, JOHN R. LEGGIERO, has been in the past and will in the future be deprived of the comfort, society and consortium of his wife, FELICIA LEGGIERO .

WHEREFORE, the Plaintiff, JOHN R. LEGGIERO, demands judgment for damages against the Defendant, SUN TOYOTA, and further demands trial by jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, this 4th day of November 2009, to: Robert L. Blank, Esq., Rumberger. Kirk & Caldwell, P.A., 100 North Tampa Street Suite 2000 P.O. Box 3390, Tampa. FL 33601-3390.

X proposed X

W. Hampton Keen, and
Cyrus S. Niakan, of
Lytal, Reiter, Clark, Fountain & Williams, LLP
515 N. Flagler Drive, Suite 1000
West Palm Beach, FL 33401
Phone: (561) 655-1990
Fax: (561) 832-2932
Attorney for Plaintiff
Florida Bar No. 886041

TOY-RQ-05E-00005639

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.

FELICIA LEGGIERO and
JOHN R. LEGGIERO, her husband,

Plaintiff(s),

vs.

TOYOTA MOTOR SALES, U.S.A., INC., a California Corporation, and SUN AUTOMOTIVE, INC., a Florida Corporation, d/b/a SUN TOYOTA f/k/a SUN TOYOTA, INC., a Florida Corporation,,

Defendant(s).
_____/

CASE NO. 06-004661-CI-21

NOTICE OF PROPOUNDING INTERROGATORIES TO DEFENDANT TOYOTA MOTOR CORPORATION

YOU ARE HEREBY REQUIRED to answer under oath and in writing the attached interrogatories within thirty (30) days of service of them upon you in accordance with the Florida Rules of Civil Procedure.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, this 16th day of February, 2010, to: Robert L. Blank, Esq., Rumberger, Kirk & Caldwell, P.A., P.O. Box 3390, Tampa, FL 33601-3390, and J. R. Bibb, Esquire, Waller, Lansden, et al, 511 Union Street, Suite 2700, Nashville, TN 37219.

Cyrus S. Niakan, of
Lytal, Reiter, Clark, Fountain & Williams, LLP
515 N. Flagler Drive, Suite 1000
West Palm Beach, FL 33401
Telephone: (561) 655-1990
Facsimile: (561) 832-2932
Attorney for Plaintiff
Florida Bar No. 886041

5/17/10
MMG

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PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT, TOYOTA MOTOR CORPORATION

The following terms shall have the following meanings in these Interrogatories:

Definitions

I. The term "Defendant TOYOTA," shall refer to Defendant, TOYOTA MOTOR CORPORATION, and shall be deemed to include its agents and other representatives, where applicable.

II. The term "Plaintiffs" shall refer to Plaintiffs, FELICIA R. LEGGIERO and JOHN R. LEGGIERO.

III. The term "car," shall refer to Plaintiffs' motor vehicle accident as described in the Complaint.

IV. The term "accident," shall refer to Plaintiffs' motor vehicle accident of November 12, 2005, as described in the Complaint.

V. As employed herein, 'you" shall refer to Defendant TOYOTA, your agents, employees, attorneys, representatives, and all other persons acting on your behalf

VI. "Document' includes correspondence, memoranda, contracts, leases, agreements, closing statements, minutes, reports, records, notes, telephone messages, long distance telephone call records, invoices, bills, books, schedules, tabulations, accountants' work papers, diary entries, telegrams, telex communications, accounting, charts, canceled checks, audio or video tapes, films or photographs, press releases, newspaper clippings, advertisements, formal notices, investigations, claims, statements, orders, blueprints, sketches, drawings, test reports, printouts, preparatory or draft materials and all other writing or recordings of whatever nature whether asserted privileged or not. The term documents includes the original, and in the absence of the original, any and all copies of the original as well as drafts and copies which differ in any respect from the original. As to each and every document asserted to be privileged, identify it by stating in response to this request the type of document (e.g. letter, memorandum, telegram, agreement), the date, the author, the person or persons to whom directed, a brief description of the subject matter and a statement of all grounds on which it is asserted to be privileged.

VII. The term "thing" or "item" includes at least documents and all three dimensional objects of any kind, including, but not limited to, samples, prototypes, parts, objects, markups, displays, exhibits, books, advertising, tape cartridges or cassettes or reels, containers, wrappers and representations.

VIII. The term "person" includes both natural persons and corporate (or business) entities and the acts and knowledge of a person include those persons, directors, officers, members, employees, agents and attorneys.

The First Interrogatories

(If answering for another person or entity, answer with respect to that person or entity, unless otherwise stated.)

1. What is the name and address of the person answering these Interrogatories, and, if applicable, the person's official position or relationship with the party to whom the Interrogatories are directed?

2. Describe any and all policies of insurance which you contend cover or may cover you for the allegations set forth in Plaintiffs' Complaint, detailing as to such policies the name of the insurer, the number of the policy, the effective dates of the policy, the available limits of liability, and the name and address of the custodian of the policy.

3. Describe in detail how the incident described in the Complaint happened.

4. Describe in detail each act or omission on the part of any party to this lawsuit that you contend constituted negligence that was a contributing legal cause of the incident in question.

5. State the facts upon which you rely for each Affirmative Defense in your Answer to the Complaint.

6. Do you contend any person or entity other than you is, or may be, liable in whole or part for the claims asserted against you in this lawsuit? If so, state the full name and address of each such person or entity, the legal basis for this contention, the facts or evidence upon which this contention is based, and whether or not you have notified each such person or entity of this contention.

7. List the names and addresses of all persons who are believed or known by you to have any knowledge concerning any of the issues in this lawsuit; and specify the subject matter about which the witness has knowledge.

8. Have you heard or do you know about any statement or remark made by or on behalf of any party to this lawsuit, other than you, concerning any issue in this lawsuit? If so, state the name and address of each person who made the statement or statements, the name and address of each person who heard it, and the date, time, place, and substance of each statement.

9. State the name and address of every person known to you who has knowledge about, or possession, custody, or control of, any model, plat, map. drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

10. Do you intend to call any expert witnesses at the trial of this case? If so, state as to each such witness the name arid business address of the witness, the witness's qualifications as an expert, the subject matter upon which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

11. Have you made an agreement with anyone that would limit that party's liability to anyone for any of the damages sued upon in this case? If so, state the terms of the agreement and the parties to it.

12. State the facts upon which you rely for the denials in the Answer to the allegations in Plaintiffs' Complaint.

13. Please state whether your name as it appears in the Plaintiffs' Complaint is correct, and if not, please state the correct and complete name, as it was when the incident occurred and as it is now.

14. Describe in detail all efforts undertaken by you before the incident occurred to design, manufacture, service, and/or repair the car's acceleration system and components thereof, to avoid, prevent, and/or repair any problem with sudden acceleration or unexpected acceleration experienced by operators thereof.

16. Have there been any other accidents in connection with 2003 Toyota Camry motor vehicles or with similar makes and models, either before or after the incident? If so, please state the type and nature of accident, where the accident occurred, the names, addresses, and telephone numbers of the injured party or parties (and their respective

legal counsel), and whether there has been any litigation instituted as a result of such other accidents, the parties named in such lawsuits, and the date and court in which such suits were filed. Please limit your response to accidents wherein is it claimed by the plaint~ff(s~, at least in part, that there has been a sudden acceleration, an unexpected acceleratjol7 or a similar problem with a Toyota Camry motor vehicle or with similar makes and models.

17. As between you and Defendant, SUN AUTOMOTIVE inc., a Florida corporation, d/b/a Sun Toyota, f/k/a as Sun Toyota, Inc., a Florida corporation ("Defendant SUN AUTOMOTIVE") please identify and provide the location of the following: all documents, things, and items concerning communications regarding the car, Plaintiffs, and any of the issues set forth in the Complaint.

18. Please state whether you provided any written instructions as to the use of the car. If so, please identify the written instructions; the name, business and residence address, and telephone number of the person(s) who drafted the wording of said instruction; and, each and every writing relating to the composition of all printed matter distributed with or affixed to the product.

19. Identify any facts known to you indicating that the car had been altered or modified between the time of manufacture and the time the product leased to Plaintiffs.

20. Identify any facts known to you indicating that the car had been altered or modified after its lease to Plaintiffs.

21. Identify any facts or circumstances known to you indicating that either one or both of Plaintiffs were not using the car in a manner reasonably foreseeable.

_____

STATE OF FLORIDA)

ss.

COUNTY OF)

The foregoing document was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this ___ day of _____, 20__, by _____, who:

[ ] is personally known to me; or

[ ] has produced _____
as identification; and who:

[ ] did or

[ ] did not, take an oath,

and who executed the within document, and who acknowledged the within document to be freely and voluntarily executed for the purposes therein recited.

_____
Notary Public

My Commission Expires:

IN THE CIRCUIT COURT OF THE SIXTH JUDICAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.

FELICIA LEGGIERO and
JOHN R. LEGGIERO, her husband,

Plaintiff(s),

vs.

TOYOTA MOTOR SALES, U.S.A., INC., a California Corporation, and SUN AUTOMOTIVE, INC., a Florida Corporation, d/b/a SUN TOYOTA f/k/a SUN TOYOTA, INC., a Florida Corporation,

Defendant(s).
_____/

CASE NO. 06-004661-CI-21

PLAINTIFF'S REQUEST TO PRODUCE TO DEFENDANT, TOYOTA MOTOR CORPORATION

COMES NOW the Plaintiff by and through their undersigned attorneys, pursuant to the requirements of Rule 1.350, Fla.R.Civ.P., and request the Defendant, **TOYOTA MOTOR CORPORATION**, (hereinafter referred to as **TMC**), to produce and permit the Plaintiff to inspect and copy each of the following documents:

DEFINITIONS

DOCUMENT or DOCUMENTS means a writing or writings and includes the original or a copy of handwriting, typewriting, printing, photostating, photocopying, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, videos, or symbols, or combinations of them. **DOCUMENTS** means more than one **DOCUMENT** and means all writings and other printed matter of every kind, including, but not limited to books, records, manuals, statements, minutes, letters, correspondence, memorandum reports, lists, studies, surveys, directives, agreements, contracts, print-outs, telegrams, teletype, telexes, telefax, pamphlets, notes, messages, bulletins, e-mail, diary and calendar entries, maps charts, brochures, graphics, tabulations, press releases, address books, ledgers, invoices, bills, work sheets, trip reports, receipts returns, prospectuses, financial statements, tax returns, schedules, affidavits, applications, resumes, canceled checks, checkbooks, check stubs, check ledgers,

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transcripts, statistics, magazine or newspaper articles or advertisements, releases, test reports and record of meetings, conferences, telephone conversations or other conversation or communication (including any and all drafts, alterations, modifications, changes and amendments of any of the foregoing). The term "**DOCUMENT(S)**" shall also include non-printed matter such as voice records and reproductions, film impressions, photographs, negatives, slides, videos, microfilms, microfiches, e-mail, and other things that further includes all punch cards, tapes, disks, or records used in electronic data processing, together with the programming instructions and other written materials necessary to understand or use such punch cards, tapes, disks, or other recordings, and further includes data or data compilation in electronic or other form that can be printed through proper programming or decoding of the electronic or mechanical data storage facility.

ACCELERATION SYSTEM means the Acceleration System and all related component parts, including but not limited to the engine control computer system and/or engine control unit (ECU), that was present in the Toyota Camry involved in the subject accident, as well as any Acceleration System, regardless of the configuration or date of manufacture, or plant of manufacture, utilized in any Toyota Camry from 1997 through the present, as well as any substantially similar Acceleration System.

SUBJECT VEHICLE means the 2003 Toyota Camry that was involved in the subject accident on November 12, 2005, which vehicle has been inspected by all parties.

TRANSMISSION means the Transmission that was present in the Toyota Camry involved in the subject accident, as well as any Transmission regardless of the configuration or date of manufacture, or plant of manufacture, utilized in any Toyota Camry from 1997 through the present, as well as any substantially similar transmission.

THROTTLE BODY means the throttle body and all related component parts, that was present in the Toyota Camry involved in the subject accident, as well as any throttle body regardless of configuration or date of manufacture, or plant of manufacture, utilized in any Toyota Camry from 1997 through present, as well as any substantially similar throttle body.

1. All **DOCUMENTS** pertaining to the design, specifications, design changes, modifications, reason or rationale for design changes, manufacturing, manufacturing changes, reason or rationale for manufacturing changes, and testing of the **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY, AND TRANSMISSION .**

2. All **DOCUMENTS** comprising or relating to Customer Complaints, claims, or Warranty Records, on All the Parts Referenced Above.

3. All **DOCUMENTS** referring to, comprising, or otherwise relating to any actions by TMC or by any other entity or person(s) to replace parts on the **ACCELERATION SYSTEM** from 1997 through the present.

4. All Testing referring to, comprising, or otherwise relating to any actions by TMC or by any other entity or person(s) to replace parts on any **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY and TRANSMISSION** and specifically including, but not limited to, any recall or campaign bulletin relating to or involving the **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY, AND TRANSMISSION** or any parts or components from 1997 through the present.

5. All correspondence, records, charts, or any other **DOCUMENTS** comprising or relating in any manner whatsoever to any investigation, action, analysis, design changes, manufacturing changes, or recommendations made by or to any persons or entity relating in any manner to avoiding or preventing any type of repeat of issues, defects, problems, consumer complaints, claims, warranty claims or any other failure of any **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY, AND TRANSMISSION** .

6. All correspondence, records, charts, or any other **DOCUMENTS** comprising or relating in any manner whatsoever to any investigation, action, analysis, design changes, manufacturing changes, or recommendations made by or to any persons or entity relating in any manner to avoiding or preventing any type of unintended movement of a vehicle installed with a **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY, AND TRANSMISSION**.

7. All correspondence, records, charts, or any other **DOCUMENTS** comprising or relating in any manner whatsoever to any investigation, action, analysis, design changes, manufacturing changes, or recommendations made by or to any persons or entity relating in any manner to avoiding or preventing any type of unintended acceleration of a Toyota Camry.

8. All correspondence, records, charts, or any other **DOCUMENTS** comprising or relating in any manner whatsoever to any investigation, action, analysis, design changes, manufacturing changes, or recommendations made by or to any persons or entity relating in any manner to avoiding or preventing any type of vehicle crash due to unintended acceleration of a vehicle installed with any **ACCELERATION SYSTEM, ENGINE CONTROL COMPUTER SYSTEM, THROTTLE BODY, AND TRANSMISSION.**

9. All correspondence, records, charts, or any other **DOCUMENTS** comprising or relating in any manner whatsoever to any investigation, action, analysis, design changes, manufacturing changes, or recommendations made by or to any persons or entity relating in any manner to avoiding or preventing any type of vehicle crash due to unintended acceleration of any vehicle substantially similar to the subject Toyota Camry involved in the accident.

Cyrus S. Niakan, of
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515 N. Flagler Drive, Suite 1000
West Palm Beach, FL 33401
Phone: (561) 655-1990
Fax: (561) 832-2932
Attorney for Plaintiff
Florida Bar No. 886041

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FILE START

Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

FRANCIS P. COYLE AND KATHRYN S. COYLE 1782 Brandywine Drive Southampton, PA 18966 v. TOYOTA MOTOR SALES, U.S.A., INC. 19001 South Western Avenue Torrance, CA 90501	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

LEGAL SERVICES
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COMPLAINT
CODE: 1900

1. Plaintiffs, Francis P. Coyle and Kathryn S. Coyle, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania, 1782 Brandywine Drive, Southampton, PA 18966.

2. Defendant, Toyota Motor Sales, U.S.A., Inc., is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at Attention: Legal Department, 19001 South Western Avenue, Torrance, CA 90501, and can be served at this address.

BACKGROUND

3. On or about July 29, 2009, Plaintiffs purchased a new 2009 Toyota RAV-4, manufactured and warranted by Defendant, bearing the Vehicle Identification Number JTMZF33VX95010582.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $21,691.00. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: Sudden Accceleration and Vehicle Surges at Idle. True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

12. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

13. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

14. Team Toyota is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

15. On or about July 29, 2009, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

16. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

17. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

18. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

19. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

20. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

21. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

22. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

23. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

24. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

26. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

27. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver that Defendant's warranty was not provided to Plaintiff until after the vehicle was delivered, making any and all limitations, disclaimers and/or alternative dispute provisions ineffective for a failure of consideration.

42. Plaintiffs aver Defendant's Dispute Resolution Program was not in compliance with 16 CFR 703 for the model year of the subject vehicle.

43. Plaintiffs aver that Defendant's warranty did not require Plaintiffs to first resort to a Dispute Resolution Program before filing suit.

44. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

45. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

47. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

48. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

49. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

30. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach

50. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

51. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

52. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

53. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

54. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By:*/S/*

ROBERT A. RAPKIN, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

V E R I F I C A T I O N

Robert A. Rapkin, states that they are the attorney for the Plaintiffs herein; that they are acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.

/S/
ROBERT A. RAPKIN, ESQUIRE
Attorney for Plaintiffs

Case ID: 091105308

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1860 JFK Blvd. 5th fl. at 09:30 AM - 07/30/2010
You must file comply with the notice below. USTED TIENE QUE CUMPLIR CON EL AVISO DE ABAJO O PERDERA EL CASO
This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the satisfaction of the court without the absent party or parties. There is no right to a trial denovo on appeal from a decision entered by a Judge.

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PROTHONOTARY
Bucks County, Pa.
Recorded 2009-18315
M. MURPHY

SALESPERSON	VINCENT T MCNULTY	DEAL	134613	DEAL DATE	12/29/2009
BUYER	FRANK COYLE			DELIV. DATE	12/31/2009
CO-BUYER	KATHRYN S COYLE			TITLE BOTH?	YES / NO
ADDRESS	1782 BRANDYWINE DR	E-MAIL	FPCOYLE@VERIZON.NET		
CITY	SOUTHAMPTON	STATE	PA	ZIP	18966
PHONE #	(215)355-9464	BUS. PHONE #	(215)355-6711	EXT.	
STOCK #	86891	ID. #	JTMZF33VX95010582	SS #	201-32-4915
		CELL #	(215)801-8422	SS #	197-36-4346

☒ NEW ☐ USED ☐ DEMO YEAR 2009 MAKE TOYOTA MODEL RAV4 TYPE 2WD5DRSUVL
COLOR SAND BEA TRIM OAK CLOTH CYCL. TRANS. ODOMETER 34

FACTORY INSTALLED OPTIONS	DEALER INSTALLED OPTIONS

PRICE INCLUDES ALL REBATES AND INCENTIVES TO DEALER UNLESS OTHERWISE INDICATED

DESCRIPTION OF TRADE IN

YR.	MAKE	MODEL	TYPE
2006	HONDA	CR-V	5DR 4WD

COLOR | TRIM: EX | MILEAGE: 28589

VIN: S H S R D 7 8 8 2 6 U 4 3 1 5 8 5

DESCRIPTION OF TRADE IN #2

YR. | MAKE | MODEL | TYPE

COLOR | TRIM | MILEAGE

VIN

WARRANTY INFORMATION

☐ FACTORY WARRANTY - The manufacturer's warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

☐ USED CAR WARRANTY - Used car is covered by a limited warranty detailed in a separate document. You may obtain a full copy of any applicable warranty from us.

☐ AS IS - THIS MOTOR VEHICLE IS SOLD "AS IS" WITHOUT ANY WARRANTY EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECT THAT PRESENTLY EXISTS OR THAT MAY OCCUR IN THE VEHICLE.

PURCHASER'S SIGNATURE X Kathryn Coyle

USED CAR BUYERS GUIDE: THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THE CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

GUÍA PARA COMPRADORES DE VEHÍCULOS USADOS. LA INFORMACIÓN QUE VE EN EL FORMULARIO DE LA VENTANILLA PARA ESTE VEHÍCULO FORMA PARTE DEL PRESENTE CONTRATO. LA INFORMACIÓN DEL FORMULARIO DE LA VENTANILLA DEJA SIN EFECTO TODA DISPOSICIÓN EN CONTRARIO CONTENIDA EN EL CONTRATO DE VENTA.

If you cancel this purchase agreement or refuse to take delivery of the vehicle

PURCHASE INFORMATION

1. CASH PRICE (INCL. ALL FACTORY EQPT.)	21691.00
2. LESS FACTORY REBATE / INCENTIVE	N/A
3. DEALER INSTALLED OPTIONS	N/A
4. ADJUSTED CASH PRICE	21691.00
5. LESS GROSS ALLOWANCE FOR TRADE	15000.00
6. SUB TOTAL (4 MINUS 5)	6691.00
7. GAP COVERAGE	N/A
8. SERVICE CONTRACT	N/A
9. MAINTENANCE PLAN	N/A
10. TAXABLE TOTAL	6691.00
11. SALES TAX	401.46
12. CREDIT INSURANCE	N/A
13. PA TIRE TAX	5.00
14. DOCUMENTARY FEE	120.00
15. NOTARY FEE	N/A
16. MESSENGER FEE	N/A
17. ON-LINE SERVICE FEE	15.45
18. DEALER ON-LINE SERVICE FEE	N/A
19. LICENSE, TITLE: NEW ☐ TRANS. ☐	33.50
20. ADD PAYOFF ON TRADE	8434.14
21. TOTAL DUE (LINES 10 THRU 20)	15700.55
22. LESS NON-REFUNDABLE DEPOSIT	N/A
23. CASH / CERTIFIED	N/A
24. BALANCE TO FINAN	15700.55

ALL-STATE LEGAL® PLAINTIFF'S EXHIBIT 4

Case ID: 091105308

TOY-RQ-05E-00005661

ordered, except as permitted by law, you shall, at our option, forfeit as damages the amount of $

PURCHASER'S SIGNATURE X _____

Purchaser hereby acknowledges to the above clause.

THANK YOU!

Buyer agrees that this Agreement includes all of the terms and conditions on the front and back side hereof, that this Agreement cancels an supersedes any prior agreement including oral agreements, and as of the date below comprises, with any retail installment sale contrac the complete and exclusive statement of the terms of the agreement relating to the subject matters covered by this Agreement. Buyer, b signing this Agreement, acknowledges that he has read its terms and has received a true copy of this Agreement.

If Buyer is buying the Vehicle for cash (this includes a Buyer arranging Buyer's own financing from a party other than dealer), this Agreeme is not binding upon either Dealer or Buyer until signed by an authorized Dealer representative. YOU, THE BUYER, MAY CANCEL THI AGREEMENT AND RECEIVE A FULL REFUND ANY TIME BEFORE RECEIPT OF A COPY OF THE AGREEMENT SIGNED BY AN AUTHORIZED DEALE REPRESENTATIVE BY GIVING WRITTEN NOTICE OF CANCELLATION TO DEALER.

If Buyer is buying the Vehicle in a credit sale transaction with Dealer evidenced by a signed retail installment sale contract, this Agreeme is binding when the retail installment sale contract is signed, but will not remain binding if a third party finance source does not agree purchase the retail installment sale contract executed by Buyer and Dealer based on this Agreement. See paragraph 13 on the other side this Agreement. YOU, THE BUYER, MAY CANCEL THIS AGREEMENT AND RECEIVE A FULL REFUND ANY TIME BEFORE A THIRD PARTY FINANC SOURCE AGREES TO PURCHASE THE RETAIL INSTALLMENT SALE CONTRACT BY GIVING WRITTEN NOTICE OF CANCELLATION TO DEALER

☒ BUYER ACKNOWLEDGES THAT IF THIS BOX IS CHECKED, THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE.

BUYER HAS READ ALL PAGES OF THIS AGREEMENT AND AGREES TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

BUYER SIGNS X _____ **DATE** 07/29/2009

CO-BUYER SIGNS X _____ **DATE** 07/29/2009

MANAGER'S APPROVAL _____ **(Must Be Accepted By An Authorized Representative of the Deal**

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THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

ADDITIONAL TERMS AND CONDITIONS

1. These definitions apply to this Agreement.

- "Dealer" "us" "our" and "we" mean or refer to the authorized Dealer named on the face of this Agreement and who becomes a party to this Agreement by accepting it.
- "Buyer" and "you" mean or refer to the party executing this Agreement as such.
- "Manufacturer" means the corporation that manufactured the Vehicle.
- "Vehicle" is the vehicle or chassis that is the subject of this Agreement.
- "Trade-in" is the used vehicle that Buyer intends to use as part of the consideration for the purchase price of the vehicle or otherwise is to be transferred to Dealer.

We are not the Manufacturer's agent. You and we are the sole parties to this Agreement. References in this Agreement to Manufacturer are for the purpose of describing certain contractual relationships between the Manufacturer and us relating to new vehicles.

2. We may change the cash delivered price of the Vehicle before it is delivered to you. We may only do this if the increase is because a law or regulation of the United States or Pennsylvania is passed which (a) requires the addition of new equipment to vehicles of the series and body type of the Vehicle; (b) changes transportation costs or existing tax rates; or (c) if the Vehicle is a foreign-made vehicle is due to a revaluation of the United States dollar vis-à-vis the currency of the country of manufacture. If we do, you may cancel this Agreement; if you cancel, we will return any Trade-in you, unless we have sold it. You agree to pay reasonable storage and repair charges, if we have sold the Trade-in, we will pay you the sales price, less a sales commission of 15% and any expense in storing, insuring, conditioning or advertising it for sale.

3. [illegible] will be the allowance for the Trade-in, if the recognized value is lower than the allowance, you have the right to cancel this Agreement. You must exercise your right to cancel before we deliver the Vehicle to you and you surrender the Trade-in to us.

4. [illegible] Trade-in to us. [illegible] that the Trade-in has no encumbrances, and that the Trade-in has no [illegible] or security interest. You warrant that the Trade-in [illegible] that the Trade-in's mileage shown in this Agreement is the actual mileage on the Trade-in unless you have noted other mileage on this Agreement. You authorize us to pay on this representation in obtaining title to the Trade-in. If you provide false information, you will reimburse the retailer-in from us for the full price allowed to you plus all costs we incur in resolving this matter including but not limited to recommencing costs, legal fees, court and collection costs.

5. If you fail or refuse to accept delivery of the Vehicle or comply with the Agreement, we may keep as liquidated damages any cash deposit you made, to the extent not prohibited by law. We may reimburse ourselves for any expenses and costs we incur or suffer as a result of your failure or refusal. Such expenses and losses may include our reasonable attorneys' fees. This section doesn't apply if you cancel this agreement under section 2 or 3.

6. The Manufacturer may change the design or any model, chassis, accessories, or parts at any time without notice and without obligation. The Manufacturer may also make the same or any similar change upon any vehicle, chassis, accessories, or parts already bought by or shipped to us or being manufactured or sold in accordance with our orders. If the Manufacturer makes such a change, we have no obligation to you to make the same or any similar change in the Vehicle or its parts either before or after we deliver the Vehicle to you.

7. We aren't liable for failure to deliver or delay in delivering the Vehicle when such failure or delay is due, in whole or in part, to any cause beyond our control or without our fault or negligence.

8. The Vehicle price includes conveyance by Pennsylvania sales taxes. The Vehicle price doesn't include sales taxes, use taxes or occupational taxes based on sales, rental, leasing, use or local, unless expressly so stated. You agree to pay promptly by law any such taxes imposed on or that apply to the transaction referred to in this Agreement, regardless of who is liable for the tax.

[illegible] to this Agreement we apply if such insurance is sold or paid. Unless you agree to pay, we will deduct the applicable part of the premium charge [illegible] of this Agreement and the related finance charge from the total time balance if such insurance does not become effective. We will notify you of that fact. This agreement and any related documents constitute the entire agreement between us and you. Any change in this Agreement must be in writing.

Thanks for Being Part of the Team!

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CUSTOMER NO. 155381	ADVISOR HARRY SONDBERG 2250	TAG NO. 739	INVOICE DATE 08/26/09	INVOICE NO. TOCS602483
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966	LABOR RATE / LICENSE NO. / MILEAGE 614		COLOR SAND BEACH	STOCK NO. 86891
	YEAR/MAKE (MODEL) 09/TOYOTA/RAV4/2WD5DRSUVL4 5SPD		DELIVERY DATE 07/29/09	DELIVERY MILES 34
	VEHICLE I.D. NO. J T M Z F 3 3 V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO. / P.O. NO.		R.O. DATE 08/26/09	
RESIDENCE PHONE 215-395-9464 / BUSINESS PHONE 215-395-6711	COMMZAR0118109			MO: 619

JOB# 1 CHARGES

LABOR----------
J# 1 01TOZ ENGINE MECHANICAL HOURS: TECH(S):1521 0.00

CUST STATES HE WAS IN A PARKING LOT AND THE ENGINE STARTED
RACING. THE ONLY WAY TO STOP IT WAS HE SHUT THE CAR OFF.
CUSTOMER STATES 2 TIRES SINCE DELIVERY WHEN SLOWING DOWN
DURING DE-ACCELERATION HEARD A GRINDING NOISE A COUPLE OF
TIMES FROM UNDERCARRIDGE AREA TOWARDS REAR OF VEHICLE
TEST DRIVE VEHICLE, HOOK UP SCAN TOOL TO CHECK FOR STORED
CODES, NONE FOUND AT THIS TIME, ALL CHECKS OK
UNABLE TO DUPLICATE ABNORMAL CONDITION AT THIS TIME
CUSTOMER TO MONITOR CONCERN AND WILL RETURN AT A LATER DATE
IF NEEDED
VEHICLE OPERATING AS DESIGNED

JOB# 1 TOTALS----------

JOB# 1 JOURNAL PREFIX TOCS JOB# 1 TOTAL 0.00

COMMENTS----------
WAIT JS

TOTALS----------

****
* [ ] CASH [ ] CHECK No ..... [ ] CHARGE A/R *
* [ ] MC / VISA [ ] AMERICAN EXPRESS *
* RECV'D BY JC ..... DATE 8-26-09 *
****

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

CUSTOMER SIGNATURE

YOUR STATE INSPECTION

EXPIRES _____

TIRES BRAKES

ANTIFREEZE PROTECTION

YOUR VEHICLE IS PARKED IN SPOT

#_____

PLAINTIFF'S EXHIBIT B

ALL-STATE LEGAL®

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 05:27pm

Case ID: 091105308

SEE REVERSE SIDE FOR WARRANTY

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SATURDAY 8:00 - 5:00

1-800-826-7971 | 215-741-4200 | Fax: 215-741-6261 | CELL: 215-801-8422

CUSTOMER NO 155381	ADVISOR GARY CHASE 2046	TAG NO. 221	INVOICE DATE 10/22/09	INVOICE NO TOCS611806
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966	LABOR RATE / LICENSE NO. / MILEAGE 2,221		COLOR SAND BEACH	STOCK NO 86891
	YEAR/MAKE/MODEL 09/TOYOTA/RAV4/2WD5DRSUVL4 5SPD		DELIVERY DATE 07/29/09	DELIVERY MILES 34
	VEHICLE I.D. NO. J T M Z F 3 3 V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO.	P.O. NO.	RO OPENED 10/20/09	
RESIDENCE PHONE 215-355-9464	BUSINESS PHONE 215-355-6711	CSM/ZAR0118109		MO: 2238

JOB# 1 CHARGES

LABOR----------
J# I 01TOZ ENGINE MECHANICAL HOURS: 1.20 TECH(S):1880 WARRANTY
CUST STATES:ENGINE REVS AND FEELS LIKE ITS RACING
WHILE STOPPED WAITING FOR TRAFFIC
PER MIKE EVELAND AND TECNICAL ASSISTANCE 110991Z 1.2
T1-87 T2-99 PERFORMED SYSTEM SCAN NO CODES,CHECKED
THROTTLES POPSITIONNSENSOR IN SPEC'S CHECKED VVT-I DRUM
FOR CRACKS AND LOOSE BOLTS ,NONE FOUND
ROADTESTED 3 TIMES 36 MILES COULD NOT REPRODUCE
CONCERN TECH CASE # 092930251
THANKS GARY

SUBLET-----PO#--------VEND INV#-INV.DATE-DESCRIPTION----------
149685 10/22/09 LOANER COYLE WARRANTY
TOTAL - SUBLET 0.00

JOB# 1 TOTALS----------

JOB# 1 JOURNAL PREFIX TOCS JOB# 1 TOTAL 0.00

COMMENTS----------
DROP/RENTAL

TOTALS----------

[ ] CASH [ ] CHECK No ..... [ ] CHARGE A/R
[ ] MC / VISA [ ] AMERICAN EXPRESS
RECV'D BY ..... DATE 10/22/09

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

CUSTOMER SIGNATURE

YOUR STATE INSPECTION

EXPIRES_____

TIRES BRAKES

ANTIFREEZE PROTECTION

YOUR VEHICLE IS PARKED IN SPOT

#_____

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 04:04pm

Case ID: 091105308

SEE REVERSE SIDE FOR WARRANTY

TOY-RQ-05E-00005664

Thompson Toyota – Scion

122 W. Swamp Road, Doylestown, PA 18901
Phone: (215) 345-9460 * www.1800THOMPSON.COM
Hours of Operation: Monday - Friday: 7:30 AM-9:00 PM
Saturday: 8:00 AM-6:00 PM

TOYOTA SCION LEXUS BMW

0101ITOCS469746

CELL: 215-801-8422

CUSTOMER NO. 103977	ADVISOR G BORNEMAN 2401	TAG NO. 6471	INVOICE DATE 11/23/09	INVOICE NO. 0101ITOCS469746
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966	LICENSE NO.	MILEAGE 2,885	COLOR/	STOCK NO.
	YEAR/MAKE/MODEL TOYOTA/RAV4/4DR 2WD 4CYL		DELIVERY DATE	DELIVERY MILES
	VEHICLE ID NO. 2 F 3 S V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO.	P.O. NO.	R.O. DATE 11/23/09	
RESIDENCE PHONE 215-355-9464	BUSINESS PHONE 215-355-6711	COMMENTS		MO: 2906

JOB# 1 CHARGES

LABOR

J# 1 13TOZ *DRIVEABILITY TECH(S): SLOO 0.00

CUSTOMER STATES ENGINE ACCELERATES ON ITS OWN. HAPPENS IN ANY DRIVING CONDITION
ROAD TESTED VEHICLE FOR 9 MILES AND COULD NOT DUPLICATE CUSTOMER'S CONCERN. SCANNED COMPUTER WITH TECHSTREAM AND FOUND NO FAULT CODES STORED OR PENDING. ROAD TESTED VEHICLE A SECOND TIME FOR 12 MILES AND ALL OKAY. VEHICLE IS OPERATING AS DESIGNED.

JOB# 1 TOTALS

JOB# 1 JOURNAL PREFIX TOCS JOB# 1 TOTAL 0.00

TOTALS

[ ] DEBIT [ ] CASH [ ] CHECK CHECK#
[ ] VISA/MC [ ] AM/EXPRESS [ ] DISCOVER
Date Cashier

Items covered by Thompson's Parts and Service Guarantee that fail due to damage, accident or lack of proper maintenance as described by your vehicles' manufacturer, will be excluded from the warranty guarantee. You must provide supporting documents and receipts indicating dates and mileage of maintenance performed. Your signature below is your acknowledgement of this notice.

TOTAL LABOR	0.00
TOTAL PARTS	0.00
TOTAL SUBLET	0.00
TOTAL G.O.G.	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX	0.00
TOTAL INVOICE $	**0.00**

THANK YOU FOR CHOOSING THOMPSON TOYOTA!

Customer called Date and Time

CUSTOMER SIGNATURE

The seller hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale.

PAGE 1 OF 1 CUSTOMER COPY END OF INVOICE 02:11pm

Case ID: 091105308

TOY-RQ-05E-00005665

Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

FRANCIS P. COYLE AND KATHRYN S. COYLE 1782 Brandywine Drive Southampton, PA 18966 v. TOYOTA MOTOR SALES, U.S.A., INC. 19001 South Western Avenue Torrance, CA 90501	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

LEGAL SERVICES
DEC 2 2 2009
GROUP RECEIVED

COMPLAINT
CODE: 1900

1. Plaintiffs, Francis P. Coyle and Kathryn S. Coyle, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania, 1782 Brandywine Drive, Southampton, PA 18966.

2. Defendant, Toyota Motor Sales, U.S.A., Inc., is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at Attention: Legal Department, 19001 South Western Avenue, Torrance, CA 90501, and can be served at this address.

BACKGROUND

3. On or about July 29, 2009, Plaintiffs purchased a new 2009 Toyota RAV-4, manufactured and warranted by Defendant, bearing the Vehicle Identification Number JTMZF33VX95010582.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $21,691.00. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: Sudden Accceleration and Vehicle Surges at Idle. True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

12. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

13. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

14. Team Toyota is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

15. On or about July 29, 2009, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

16. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

17. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

18. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

19. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

20. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

21. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

22. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

23. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

24. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

26. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

27. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver that Defendant's warranty was not provided to Plaintiff until after the vehicle was delivered, making any and all limitations, disclaimers and/or alternative dispute provisions ineffective for a failure of consideration.

42. Plaintiffs aver Defendant's Dispute Resolution Program was not in compliance with 16 CFR 703 for the model year of the subject vehicle.

43. Plaintiffs aver that Defendant's warranty did not require Plaintiffs to first resort to a Dispute Resolution Program before filing suit.

44. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

45. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

47. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

48. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

49. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

30. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach

50. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

51. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

52. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

53. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

54. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: /S/

ROBERT A. RAPKIN, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

V E R I F I C A T I O N

Robert A. Rapkin, states that they are the attorney for the Plaintiffs herein; that they are acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.

/S/
ROBERT A. RAPKIN, ESQUIRE
Attorney for Plaintiffs

USTED ESTA ORDENADO COMPARECER EN Arbitration hearing 1880 JFK Blvd. 5th fl. at 09:30 AM - 07/30/2010
You must fully comply with the notice below. USTED TODAVIA DEBE CUMPLIR CON EL AVISO A CONTINUACION.
The matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the same time and place by a judge of the court without the absent party or parties.
There is no right to a trial denovo on appeal from a decision entered by a Judge.

TEAM TOYOTA
TOYOTA·SCION
746 E. Lincoln Highway
Langhorne, PA 19047
www.teamtoyota.net

Tel: 215-741-4200 **Fax: 215-741-6261**

Filed and Attested by the PROTHONOTARY OF BUCKS COUNTY 2009-12-31 12:01:12 J. MURPHY

SALESPERSON	VINCENT T MCNULTY	DEAL	134613	DEAL DATE	12/31/2009
BUYER	FRANK COYLE			DELIV. DATE	12/31/2009
CO-BUYER	KATHRYN S COYLE			TITLE BOTH?	YES / NO
ADDRESS	1782 BRANDYWINE DR	E-MAIL	FPCOYLE@VERIZON.NET		
CITY	SOUTHAMPTON	STATE	PA	ZIP	18966
PHONE #	(215)355-9464	BUS. PHONE #	(215)355-6711	EXT.	
STOCK #	86891	ID. #	JTMZF33VX95010582	SS #	201-32-4915
		CELL #	(215)801-8422	SS #	197-36-4346

☒ NEW ☐ USED ☐ DEMO YEAR 2009 MAKE TOYOTA MODEL RAV4 TYPE 2WDSDRSOVL
COLOR SAND BEA TRIM OAK CLOTH CYCL. TRANS. ODOMETER 34

FACTORY INSTALLED OPTIONS | **DEALER INSTALLED OPTIONS**

PRICE INCLUDES ALL REBATES AND INCENTIVES TO DEALER UNLESS OTHERWISE INDICATED

DESCRIPTION OF TRADE IN

YR.	MAKE	MODEL	TYPE
2006	HONDA	CR-V	5DR 4WD

COLOR | TRIM: EX | MILEAGE: 28589
VIN: S H S R D 7 8 8 2 6 U 4 3 1 5 8 5

DESCRIPTION OF TRADE IN #2

YR. MAKE MODEL TYPE
COLOR TRIM MILEAGE
VIN

WARRANTY INFORMATION

☐ FACTORY WARRANTY - The manufacturer's warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.
☐ USED CAR WARRANTY - Used car is covered by a limited warranty detailed in a separate document. You may obtain a full copy of any applicable warranty from us.
☐ AS IS - THIS MOTOR VEHICLE IS SOLD "AS IS" WITHOUT ANY WARRANTY EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECT THAT PRESENTLY EXISTS OR THAT MAY OCCUR IN THE VEHICLE.

PURCHASER'S SIGNATURE X Kathryn S Coyle

USED CAR BUYERS GUIDE: THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THE CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

GUÍA PARA COMPRADORES DE VEHÍCULOS USADOS. LA INFORMACIÓN QUE VE EN EL FORMULARIO DE LA VENTANILLA PARA ESTE VEHÍCULO FORMA PARTE DEL PRESENTE CONTRATO. LA INFORMACIÓN DEL FORMULARIO DE LA VENTANILLA DEJA SIN EFECTO TODA DISPOSICIÓN EN CONTRARIO CONTENIDA EN EL CONTRATO DE VENTA.

If you cancel this purchase agreement or refuse to take delivery of the vehicle

PURCHASE INFORMATION

1. CASH PRICE (INCL. ALL FACTORY EQPT.)	21691.00
2. LESS FACTORY REBATE / INCENTIVE	N/A
3. DEALER INSTALLED OPTIONS	N/A
4. ADJUSTED CASH PRICE	21691.00
5. LESS GROSS ALLOWANCE FOR TRADE	15000.00
6. SUB TOTAL (4 MINUS 5)	6691.00
7. GAP COVERAGE	N/A
8. SERVICE CONTRACT	N/A
9. MAINTENANCE PLAN	N/A
10. TAXABLE TOTAL	6691.00
11. SALES TAX	401.46
12. CREDIT INSURANCE	N/A
13. PA TIRE TAX	5.00
14. DOCUMENTARY FEE	120.00
15. NOTARY FEE	N/A
16. MESSENGER FEE	N/A
17. ON-LINE SERVICE FEE	15.45
18. DEALER ON-LINE SERVICE FEE	N/A
19. LICENSE, TITLE: NEW ☐ TRANS. ☐	35.50
20. ADD PAYOFF ON TRADE	8434.14
21. TOTAL DUE (LINES 10 THRU 20)	15700.55
22. LESS NON-REFUNDABLE DEPOSIT	N/A
23. CASH / CERTIFIED C	N/A
24. BALANCE TO FINAN	15700.55

ALL-STATE LEGAL® PLAINTIFF'S EXHIBIT A

Case ID: 091105308

ordered, except as permitted by law, you shall, at our option, forfeit as damages the amount of $

PURCHASER'S SIGNATURE X _____

Purchaser hereby acknowledges to the above clause.

THANK YOU!

Buyer agrees that this Agreement includes all of the terms and conditions on the front and back side hereof, that this Agreement cancels an supersedes any prior agreement including oral agreements, and as of the date below comprises, with any retail installment sale contrac the complete and exclusive statement of the terms of the agreement relating to the subject matters covered by this Agreement. Buyer, t signing this Agreement, acknowledges that he has read its terms and has received a true copy of this Agreement.

If Buyer is buying the Vehicle for cash (this includes a Buyer arranging Buyer's own financing from a party other than dealer), this Agreeme is not binding upon either Dealer or Buyer until signed by an authorized Dealer representative. YOU, THE BUYER, MAY CANCEL THI AGREEMENT AND RECEIVE A FULL REFUND ANY TIME BEFORE RECEIPT OF A COPY OF THE AGREEMENT SIGNED BY AN AUTHORIZED DEALE REPRESENTATIVE BY GIVING WRITTEN NOTICE OF CANCELLATION TO DEALER.

If Buyer is buying the Vehicle in a credit sale transaction with Dealer evidenced by a signed retail installment sale contract, this Agreeme is binding when the retail installment sale contract is signed, but will not remain binding if a third party finance source does not agree purchase the retail installment sale contract executed by Buyer and Dealer based on this Agreement. See paragraph 13 on the other side this Agreement. YOU, THE BUYER, MAY CANCEL THIS AGREEMENT AND RECEIVE A FULL REFUND ANY TIME BEFORE A THIRD PARTY FINANC SOURCE AGREES TO PURCHASE THE RETAIL INSTALLMENT SALE CONTRACT BY GIVING WRITTEN NOTICE OF CANCELLATION TO DEALER

☒ BUYER ACKNOWLEDGES THAT IF THIS BOX IS CHECKED, THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE.

BUYER HAS READ ALL PAGES OF THIS AGREEMENT AND AGREES TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

BUYER SIGNS X _____ DATE 07/29/2009

CO-BUYER SIGNS X _____ DATE 07/29/2009

MANAGER'S APPROVAL _____ (Must Be Accepted By An Authorized Representative of the Deal

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THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

ADDITIONAL TERMS AND CONDITIONS

1. These definitions apply to this Agreement.

- "Dealer" "us" "our" and "we" mean or refer to the authorized Dealer named on the face of this Agreement and who becomes a party to this Agreement by accepting it.
- "Buyer" and "you" mean or refer to the party executing this Agreement as such.
- "Manufacturer" means the corporation that manufactured the Vehicle.
- "Vehicle" is the vehicle or chassis that is the subject of this Agreement.
- "Trade-in" is the used vehicle that Buyer intends to use as part of the consideration for the purchase price of the vehicle or otherwise is to be transferred to Dealer.

We are not the Manufacturer's agent. You and we are the sole parties to this Agreement. References in this Agreement to Manufacturer are for the purpose of describing certain contractual relationships between the Manufacturer and us relating to new vehicles.

2. We may change the cash delivered price of the Vehicle before it is delivered to you. We may only do this if the increase is because a law or regulation of the United States or Pennsylvania is passed which (a) requires the addition of new equipment to vehicles of the series and body type of the Vehicle; (b) changes transportation costs or existing tax rates; or (c) if the Vehicle is a foreign-made vehicle, is due to a fluctuation of the United States dollar vis-à-vis the currency of the country of manufacture. If we do, you may cancel this Agreement. If you cancel, we will return any Trade-in you have traded to us, unless we have sold it. You agree to pay reasonable storage and repair charges if we have sold the Trade-in. We will pay you the sales price less a sales commission of 15% and any expense in storing, moving, conditioning or advertising it for sale.

3. [illegible] will be the amount by which the required cash value is higher than the actually [illegible] in this Agreement. You must provide your right to cancel before we deliver the Vehicle to you and you surrender the Trade-in to us.

[illegible] Trade-in to be your property. You represent that the Trade-in has [illegible] and that the Trade-in is free of liens and encumbrances. You represent that the Trade-in meets the [illegible] on the Trade-in unless you have noted other defects on this Agreement. You authorize us to pay on this representation in entering into this transaction. If you provide false information, you will reimburse the retail seller-in-term us for the full price allowed to you plus all costs we incur in resolving this matter including but not limited to recommencing costs, legal fees, court and collection costs.

4. If you fail or refuse to accept delivery of the Vehicle or comply with this Agreement, we may keep as liquidated damages any cash deposit you made, to the extent not prohibited by law. We may nevertheless enforce any expenses and costs we incur or suffer as a result of your failure or refusal. Such expenses and losses may include our reasonable attorneys' fees. This section doesn't apply if you cancel this Agreement under section 2 or 6.

5. The Manufacturer may change the design or any article, chassis, accessories, or parts at any time without notice and without obligation. The Manufacturer may also make the same or any similar change upon any vehicle, chassis, accessories, or parts already bought or shipped to us or being manufactured or sold in accordance with our orders. If the Manufacturer makes such a change, we have no obligation to you to make the same or any similar change in the Vehicle or its parts either before or after we deliver the Vehicle to you.

6. We aren't liable for failure to deliver or delay in delivering the Vehicle when such failure or delay is due, in whole or in part, to any cause beyond our control or without our fault or negligence.

7. The Manufacturer may change the design of any article, chassis, accessories, or parts at any time without notice and without obligation. The Manufacturer may also make the same or any similar change upon any vehicle, chassis, accessories, or parts already bought or shipped to us or being manufactured or sold in accordance with our orders. If the Manufacturer makes such a change, we have no obligation to you to make the same or any similar change in the Vehicle or its parts either before or after we deliver the Vehicle to you.

8. We aren't liable for failure to deliver or delay in delivering the Vehicle when such failure or delay is due, in whole or in part, to any cause beyond our control or without our fault or negligence.

9. The Vehicle price includes consumer or federal excise taxes. The Vehicle price doesn't include sales, use taxes or occupational taxes based on sales volume, license or fees, unless expressly so stated. You agree to pay promptly by law any such taxes imposed on or that apply to the transaction referred to this Agreement, regardless of who has primary liability for the tax.

10. If we assign this Agreement we may give a copy of any credit insurance policy we obtain for the applicable part of the credit insurance charge to this Agreement and the related finance charge from the date the Dealer becomes obligated to us. We may notify you of that assignment and any related assignment of your credit insurance cases that become effective. We are not liable for any credit insurance cases that become effective after the date of assignment.

Thanks for Being Part of the Team!

TEAM TOYOTA SCION

Service Center
407 East Lincoln Highway
Langhorne, PA 19047
www.teamtoyota.net

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SATURDAY 8:00 - 5:00

1-800-826-7971 215-741-4200 Fax: 215-741-6261 CELL: 215-801-8422

CUSTOMER NO. 155381	ADVISOR HARRY SONDBERG 2250	TAG NO. 739	INVOICE DATE 08/26/09	INVOICE NO. TOCS602483
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966	LABOR RATE / LICENSE NO. / MILEAGE 614		COLOR SAND BEACH	STOCK NO. 86891
	YEAR/MAKE/MODEL 09/TOYOTA/RAV4/2WD5DRSUVL4 5SPD		DELIVERY DATE 07/29/09	DELIVERY MILES 34
	VEHICLE I.D. NO. J T M Z F 3 3 V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO. / P.O. NO.		R.O. DATE 08/26/09	
RESIDENCE PHONE 215-395-9464 / BUSINESS PHONE 215-395-6711	CONTRACT 0118109			MO: 619

JOB# 1 CHARGES

LABOR----------
J# 1 01TOZ ENGINE MECHANICAL HOURS: TECH(S):1521 0.00

CUST STATES HE WAS IN A PARKING LOT AND THE ENGINE STARTED
RACING. THE ONLY WAY TO STOP IT WAS HE SHUT THE CAR OFF.
CUSTOMER STATES 2 TIRES SINCE DELIVERY WHEN SLOWING DOWN
DURING DE-ACCELERATION HEARD A GRINDING NOISE A COUPLE OF
TIMES FROM UNDERCARRIDGE AREA TOWARDS REAR OF VEHICLE
TEST DRIVE VEHICLE. HOOK UP SCAN TOOL TO CHECK FOR STORED
CODES. NONE FOUND AT THIS TIME. ALL CHECKS OK
UNABLE TO DUPLICATE ABNORMAL CONDITION AT THIS TIME
CUSTOMER TO MONITOR CONCERN AND WILL RETURN AT A LATER DATE
IF NEEDED
VEHICLE OPERATING AS DESIGNED

JOB# 1 TOTALS----------

JOB# 1 JOURNAL PREFIX TOCS JOB# 1 TOTAL 0.00

COMMENTS----------
WAIT JS

TOTALS----------

****
* [ ] CASH [ ] CHECK No ..... [ ] CHARGE A/R *
* [ ] MC / VISA [ ] AMERICAN EXPRESS *
* RECV'D BY JC ..... DATE 8-26-09 *
****

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

YOUR STATE INSPECTION

EXPIRES _____

TIRES BRAKES

ANTIFREEZE PROTECTION

YOUR VEHICLE IS PARKED IN SPOT

_____

CUSTOMER SIGNATURE

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL®

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 05:27pm

Case ID: 091105308

SEE REVERSE SIDE FOR WARRANTY

Thanks for Being Part of the Team!

TEAM TOYOTA SCION

Service Center
407 East Lincoln Highway
Langhorne, PA 19047
www.teamtoyota.net

NEW & USED CAR SALES

TOYOTA | *moving forward*

PARTS & SERVICE HOURS
MONDAY - FRIDAY 7:30 - 9:00
SATURDAY 8:00 - 5:00

1-800-826-7971 215-741-4200 Fax: 215-741-6261 CELL: 215-801-8422

CUSTOMER NO 155381	ADVISOR GARY CHASE 2046	TAG NO. 221	INVOICE DATE 10/22/09	INVOICE NO. TOCS611806
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966	LABOR RATE / LICENSE NO. / MILEAGE 2,221		COLOR SAND BEACH	STOCK NO. 86891
	YEAR / MAKE / MODEL 09/TOYOTA/RAV4/2WD5DRSUVL4 5SPD		DELIVERY DATE 07/29/09	DELIVERY MILES 34
	VEHICLE I.D. NO. J T M Z F 3 3 V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO. / P.O. NO.		R.O. DATE 10/20/09	
RESIDENCE PHONE 215-355-9464 / BUSINESS PHONE 215-355-6711	COMM. 2# 2AR0118109			MO: 2238

JOB# 1 CHARGES

LABOR----------
J# 1 01TOZ ENGINE MECHANICAL HOURS: 1.20 TECH(S):1880 WARRANTY
CUST STATES:ENGINE REVS AND FEELS LIKE ITS RACING
WHILE STOPPED WAITING FOR TRAFFIC
PER MIKE EVELAND AND TECNICAL ASSISTANCE 110991Z 1.2
T1-87 T2-99 PERFORMED SYSTEM SCAN NO CODES,CHECKED
THROTTLES POPSITIONNSENSOR IN SPEC'S CHECKED VVT-I DRUM
FOR CRACKS AND LOOSE BOLTS ,NONE FOUND
ROADTESTED 3 TIMES 36 MILES COULD NOT REPRODUCE
CONCERN TECH CASE # 092930251
THANKS GARY

SUBLET-----PO#--------VEND INV#-INV.DATE-DESCRIPTION----------
149685 10/22/09 LOANER COYLE WARRANTY
TOTAL - SUBLET 0.00

JOB# 1 TOTALS----------

JOB# 1 JOURNAL PREFIX TOCS JOB# 1 TOTAL 0.00

COMMENTS----------
DROP/RENTAL

TOTALS----------

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

[ ] CASH [ ] CHECK No ..... [ ] CHARGE A/R
[ ] MC / VISA [ ] AMERICAN EXPRESS
RECV'D BY ..... DATE 10/22/09

CUSTOMER SIGNATURE

YOUR STATE INSPECTION

EXPIRES _____

TIRES BRAKES

ANTIFREEZE PROTECTION

YOUR VEHICLE IS PARKED IN SPOT

#_____

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 04:04pm

Case ID: 091105308

SEE REVERSE SIDE FOR WARRANTY

Thompson Toyota – Scion
122 W. Swamp Road, Doylestown, PA 18901
Phone: (215) 345-9460 * www.1800THOMPSON.COM
Hours of Operation: Monday - Friday: 7:30 AM-9:00 PM
Saturday: 8:00 AM-6:00 PM

TOYOTA SCION LEXUS BMW

0101ITOCS469746

CELL: 215-801-8422

CUSTOMER NO. 103977	ADVISOR G BORNEMAN 2401	TAG NO. 6471	INVOICE DATE 11/23/09	INVOICE NO. 0101ITOCS469746
FRANK COYLE 1782 BRANDYWINE DR SOUTHAMPTON, PA 18966		LICENSE NO. / MILEAGE 2,885	COLOR SAND/	STOCK NO.
	YEAR/MAKE/MODEL TOYOTA/RAV4/4DR 2WD 4CYL		DELIVERY DATE	DELIVERY MILES
	VEHICLE ID NO. 2 F 3 3 V X 9 5 0 1 0 5 8 2		SELLING DEALER NO.	PRODUCTION DATE
FPCOYLE@VERIZON.NET	F.T.E. NO.	P.O. NO.	R.O. DATE 11/23/09	
RESIDENCE PHONE 215-355-9464	BUSINESS PHONE 215-355-6711	COMMENTS		MO: 2906

JOB# 1 CHARGES.....

LABOR.....
J# 1 13TOZ *DRIVEABILITY TECH(S): SLOO 0.00
CUSTOMER STATES ENGINE ACCELERATES ON ITS OWN. HAPPENS IN
ANY DRIVING CONDITION
ROAD TESTED VEHICLE FOR 9 MILES AND COULD NOT DUPLICATE
CUSTOMER'S CONCERN. SCANNED COMPUTER WITH TECHSTREAM AND
FOUND NO FAULT CODES STORED OR PENDING. ROAD TESTED VEHICLE
A SECOND TIME FOR 12 MILES AND ALL OKAY. VEHICLE IS
OPERATING AS DESIGNED.

JOB# 1 TOTALS.....

JOB# 1 JOURNAL PREFIX TGCS JOB# 1 TOTAL 0.00

TOTALS.....

[ ] DEBIT [ ] CASH [ ] CHECK CHECK#.....
[ ] VISA/MC [ ] AM/EXPRESS [ ] DISCOVER
Date Cashier

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

Items covered by Thompson's Parts and Service Guarantee that fail due to damage, accident or lack of proper maintenance as described by your vehicles' manufacturer, will be excluded from the warranty guarantee. You must provide supporting documents and receipts indicating dates and mileage of maintenance performed. Your signature below is your acknowledgement of this notice.

THANK YOU FOR CHOOSING THOMPSON TOYOTA!

Customer called..... Date and Time .....

CUSTOMER SIGNATURE

The seller hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale.

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 02:11pm

Case ID: 091105308

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

CERTIFIED MAIL™

7009 0960 0000 3396 9100

FIRST CLASS MAIL

KIMMEL & SILVERMAN
P.C.

30 East Butler Pike, Ambler, PA 19002

Route: HQ
Location: HQ11
HQ11
12/22/09 10:27
1 of 1
1222171027 02

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

TOY-RQ-05E-00005680

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☑ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7009 0960 0000 3396 9100

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

DuPont™ Tyvek® Protect What's Inside.™ HDPE 2

Columbian. ITEM NO. C0806

TOY-RQ-05E-00005681

ROBERT M. SILVERMAN
CRAIG THOR KIMMEL

Member, PA Bar
Member, NJ Bar
Member, DE Bar
Member, NY Bar
Member, MA Bar
Member, MD Bar
Member, OH Bar
Member, MI Bar
Member, NH Bar
Member, CT Bar

KIMMEL & SILVERMAN
P.C.

1-800-LEMON LAW
www.lemonlaw.com

CORPORATE HEADQUARTERS
30 E. Butler Pike
Ambler, PA 19002
P (215) 540-8888
F (215) 540-8817

WESTERN PA OFFICE, 210 Grant Street, Suite 202, Pittsburgh, PA 15219, P (412) 566-1001, F (412) 566-1005
NEW JERSEY OFFICE, Executive Quarters, 1930 E. Marlton Pike, Suite Q29, Cherry Hill, NJ 08003, P (856) 429-8334, F (856) 216-7344
DELAWARE OFFICE, 501 Silverside Road, Suite 118, Wilmington, DE 19809, P (302) 791-9373, F (302) 791-9476
CONNECTICUT OFFICE, 60 Hartford Pike, P.O. Box 325, Dayville, CT 06241, P (860) 866-4380, F (860) 263-0919
NEW YORK OFFICE, 1001 Avenue of the Americas, 12th Floor, New York, NY 10018, P (212) 719-7543, F (877) 617-2515
PLEASE REMIT ALL CORRESPONDENCE TO THE AMBLER OFFICE

JACQUELINE C. HERRITT
ROBERT A. RAPKIN
MELISSA K. FIALA
ANGELA K. TROCCOLI
FRED DAVIS
AMY L. BENNECOFF
CHRISTINA GILL ROSEMAN
RICHARD A. SCHOLER
KATE G. SHUMAKER
TARA L. PATTERSON

December 3, 2009

LEGAL SERVICES
DEC 22 2009
GROUP RECEIVED

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

RE: Francis P. Coyle v. Toyota Motor Sales, U.S.A., Inc.
November Term 2009, No. 005308

Dear Sir/Madam:

Enclosed please find a copy of the Complaint which has been filed against Toyota Motor Sales, U.S.A., Inc. in the Court of Common Pleas, Philadelphia County, Pennsylvania. You are being served pursuant to the Pennsylvania Rules of Civil Procedure, Rule 403.

Please refer the attached to the legal department. **Note**: A responsive pleading is due 20 days after the receipt of the Complaint.

Very truly yours,

Robert A. Rapkin

Robert A. Rapkin

RAR\jh

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)
NOVEMBER 2009 005308
E-Filing Number: 0912005228

PLAINTIFF'S NAME FRANCIS P. COYLE	DEFENDANT'S NAME TOYOTA MOTOR SALES, USA, INC.
PLAINTIFF'S ADDRESS 1782 BRANDYWINE DRIVE SOUTHAMPTON PA 18966	DEFENDANT'S ADDRESS 19001 SOUTH WESTERN AVENUE TORRANCE CA 90501
PLAINTIFF'S NAME KATHRYN S. COYLE	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS 1782 BRANDYWINE DRIVE SOUTHAMPTON PA 18966	DEFENDANT'S ADDRESS LEGAL SERVICES DEC 2 2 2009 RECEIVED
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS

TOTAL NUMBER OF PLAINTIFFS	TOTAL NUMBER OF DEFENDANTS	COMMENCEMENT OF ACTION
2	1	[X] Complaint [ ] Petition Action [ ] Notice of Appeal [ ] Writ of Summons [ ] Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY	COURT PROGRAMS			
[X] $50,000.00 or less [ ] More than $50,000.00	[X] Arbitration [ ] Jury [ ] Non-Jury [ ] Other:	[ ] Mass Tort [ ] Savings Action [ ] Petition	[ ] Commerce [ ] Minor Court Appeal [ ] Statutory Appeals	[ ] Settlement [ ] Minors [ ] W/D/Survival

CASE TYPE AND CODE
10 - CONTRACTS OTHER

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

FILED
PRO PROTHY
DEC 03 2009
J. MURPHY

IS CASE SUBJECT TO COORDINATION ORDER?
YES NO

TO THE PROTHONOTARY:
Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: FRANCIS P COYLE , KATHRYN S COYLE
Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY ROBERT A. RAPKIN	ADDRESS 30 EAST BUTLER PIKE AMBLER PA 19002
PHONE NUMBER (215)540-8888 / FAX NUMBER (215)540-8817	
SUPREME COURT IDENTIFICATION NO. 61628	E-MAIL ADDRESS rarphillyefile@lemonlaw.com
SIGNATURE OF FILING ATTORNEY OR PARTY *ROBERT RAPKIN*	DATE SUBMITTED Thursday, December 03, 2009, 12:13 pm

FINAL COPY (Approved by the Prothonotary Clerk)

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1880 JFK Blvd. 5th fl. at 09:30 AM - 07/30/2010
You must still comply with the notice below. USTED TODAVIA DEBE CUJPLIR CON EL AVISO PARA DEFENDERSE.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but if one party is not present at the hearing the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge.

Robert A. Kaplan, Esquire
Identification No. 51628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING REQUESTED.

PROTHONOTARY
03 DEC 2009 12:13 pm
J. MURPHY

FRANCIS P. COYLE AND
KATHRYN S. COYLE
1782 Brandywine Drive
Southampton, PA 18966

v.

TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90501

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

LEGAL SERVICES
DEC 22 2009
GROUP RECEIVED

NOTICE TO DEFEND
CODE: 1900

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL & INFORMATION SERVICE
ONE READING CENTER
PHILADELPHIA, PA 19107
TELEPHONE: 215-238-1701

AVISO

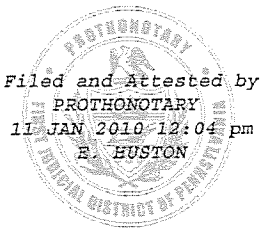
Le han demandado a usted en la corte. Si usted quiere defenderse de estas de estas demandas expuestas an las paginas signientes, usted tiene veinte (20) dias de plazo al partir de ia fecha de la demanda y ia notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, le corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u ostros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL
ONE READING CENTER
FILADELFIA, PA 19107
TELEFONO: 215-238-1701

Case ID: 091105308

P



TO: **Plaintiffs**
You are hereby notified to plead to the enclosed New Matter pursuant to Pa. R.C.P. 1030 within twenty (20) days of service thereof or a default judgment may be entered against you.

BY: _____
Attorney for Defendant,
Toyota Motor Sales, U.S.A., Inc.

ECKERT SEAMANS CHERIN & MELLOTT, LLC
BY: DENNIS P. ZIEMBA, ESQUIRE
HEATHER RUSSELL FINE, ESQUIRE
Attorney I.D. Nos.: 76098/88020
dziemba@eckertseamans.com
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102-1909
(215) 851-8400
Attorney for Defendant, Toyota Motor Sales, U.S.A., Inc.

FRANCIS P. COYLE and KATHRYN S. COYLE, *Plaintiffs*	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	Civil Action
TOYOTA MOTOR SALES, USA, INC., *Defendant*	No. 005308 November Term, 2009

ANSWER WITH NEW MATTER OF DEFENDANT,
TOYOTA MOTOR SALES, U.S.A., INC., TO PLAINTIFFS' COMPLAINT

Defendant, Toyota Motor Sales, U.S.A., Inc. through its counsel, Eckert Seamans Cherin & Mellott, LLC, responds to Plaintiffs' Complaint as follows:

1. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

2. Denied as stated. It is admitted only that answering defendant is a California corporation with offices at 19001 S. Western Avenue, Torrance, California 90501.

BACKGROUND

3. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

4. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

5. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied. Answering defendant admits that a copy of what appears to be a purchase contract is attached to plaintiffs' Complaint as Exhibit "A." No admissions are intended or made regarding Exhibit "A."

6. Denied as stated. If plaintiffs purchased the subject vehicle as alleged, there would have been delivered with the vehicle a New Vehicle Limited Warranty. Answering defendant pleads the terms, conditions and limitations contained in that warranty.

7. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

Case ID: 091105308

TOY-RQ-05E-00005686

8. Denied as stated. If plaintiffs purchased the subject vehicle as alleged, there would have been delivered with the vehicle a New Vehicle Limited Warranty. Answering defendant pleads the terms, conditions and limitations contained in that warranty.

9. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

10. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and thus these allegations are denied with strict proof demanded at trial. Answering defendant admits that copies of what appear to be repair invoices are attached to plaintiffs' Complaint as Exhibit "B." No admissions are intended or made regarding Exhibit "B."

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Answering defendant incorporates by reference its response to the allegations of plaintiffs' Complaint, as though said answers were fully set forth herein.

12. Denied as a conclusion of law to which no affirmative response is required.

13. Denied as a conclusion of law to which no affirmative response is required.

14. Denied as a conclusion of law to which no affirmative response is required.

15. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

Case ID: 091105308

TOY-RQ-05E-00005687

16. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

17. Denied as a conclusion of law to which no affirmative response is required.

18. Denied as a conclusion of law to which no affirmative response is required.

19. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

20. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

21. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

22. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

Case ID: 091105308

TOY-RQ-05E-00005688

23. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

24. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

25. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

26. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

27. Denied as a conclusion of law to which no affirmative response is required.

WHEREFORE, Defendant, Toyota Motor Sales, U.S.A., Inc., demands judgment in its favor and against plaintiffs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Answering defendant incorporates by reference its response to the allegations of plaintiffs' Complaint, as though said answers were fully set forth herein.

Case ID: 091105308

TOY-RQ-05E-00005689

29. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint, and thus these allegations are denied with strict proof demanded at trial.

30. Denied as a conclusion of law to which no affirmative response is required.

31. Denied as a conclusion of law to which no affirmative response is required.

32. Denied as a conclusion of law to which no affirmative response is required.

33. Denied as a conclusion of law to which no affirmative response is required.

34. Denied as stated. If plaintiff purchased the subject vehicle as alleged, there would have been delivered with the vehicle a New Vehicle Limited Warranty. Answering defendant pleads the terms, conditions and limitations contained in that warranty.

35. Denied as a conclusion of law to which no affirmative response is required.

36. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

37. Denied as a conclusion of law to which no affirmative response is required.

38. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

39. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation,

Case ID: 091105308

TOY-RQ-05E-00005690

answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

40. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

41. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

42. Denied as a conclusion of law to which no affirmative response is required.

43. Denied as stated. If plaintiff purchased the subject vehicle as alleged, there would have been delivered with the vehicle a New Vehicle Limited Warranty. Answering defendant pleads the terms, conditions and limitations contained in that warranty.

44. Denied as a conclusion of law to which no affirmative response is required.

WHEREFORE, Defendant, Toyota Motor Sales, U.S.A., Inc., demands judgment in its favor and against plaintiffs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

45. Answering defendant incorporates by reference its response to the allegations of plaintiffs' Complaint, as though said answers were fully set forth herein.

46. Denied as a conclusion of law to which no affirmative response is required.

47. Denied as a conclusion of law to which no affirmative response is required.

Case ID: 091105308

TOY-RQ-05E-00005691

48. Denied as a conclusion of law to which no affirmative response is required.

49. Denied as a conclusion of law to which no affirmative response is required.

50. Denied as a conclusion of law to which no affirmative response is required.

51. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

52. Denied as a conclusion of law to which no affirmative response is required.

53. Denied as a conclusion of law to which no affirmative response is required. To the extent that a further affirmative response is required, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph and, therefore, said averments are denied.

54. Denied as a conclusion of law to which no affirmative response is required.

WHEREFORE, Defendant, Toyota Motor Sales, U.S.A., Inc., demands judgment in its favor and against plaintiffs.

NEW MATTER

55. Plaintiffs' claims may be barred by the applicable statute(s) of limitations.

56. Plaintiffs' Complaint fails to set forth a cause of action upon which relief can be granted.

57. Plaintiffs may have failed to give timely notice of any alleged breach of warranty as required by law.

58. The alleged nonconformities do not substantially impair the use, value or safety of the vehicle in question.

Case ID: 091105308

TOY-RQ-05E-00005692

59. If plaintiffs purchased the subject vehicle as alleged, there would have been delivered with the vehicle a New Vehicle Limited Warranty. This warranty speaks for itself and defendant pleads the terms and limitations in said warranty.

60. Plaintiffs may have failed to provide answering defendant, its agents, or authorized dealers a reasonable number of attempts to repair or correct the alleged nonconformities.

61. The allegations contained in plaintiffs' Complaint do not give rise to the imposition of discretionary damages pursuant to the Pennsylvania Unfair Trade Practices Act.

62. Plaintiffs are barred by the doctrines of waiver and estoppel in asserting this claim.

63. Answering defendant reserves the right to interpose such other defenses as a continuing investigation may disclose.

WHEREFORE, Defendant, Toyota Motor Sales, U.S.A., Inc., demands judgment in its favor and against plaintiffs.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

BY: _____

DENNIS P. ZIEMBA, ESQUIRE
HEATHER RUSSELL FINE, ESQUIRE
Attorney for Defendant, Toyota Motor Sales, U.S.A., Inc.

Dated: January 11, 2009

Case ID: 091105308

TOY-RQ-05E-00005693

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FRANCIS P. COYLE and KATHRYN S. COYLE, *Plaintiffs*	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	:	Civil Action
TOYOTA MOTOR SALES, USA, INC., *Defendant*	:	No. 005308 November Term, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer with New Matter of Defendant, Toyota Motor Sales, U.S.A., Inc. to Plaintiffs' Complaint, was served upon all interested counsel in the manner indicated below on January 11, 2009.

Service electronically and by FIRST CLASS MAIL
Addressed as follows:

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 East Butler Pike
Ambler, PA 19002

ECKERT SEAMANS CHERIN & MELLOTT, LLC

BY: _____
HEATHER RUSSELL FINE, ESQUIRE
Attorney for Defendant, Toyota Motor Sales, U.S.A., Inc.

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COYLE, FRANCIS

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated and the general public, Plaintiff, 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 Defendants.	Case No. CV 09-9386 GAF(FMOx) CLASS ACTION Assigned to Hon. Gary A. Feess **FIRST AMENDED COMPLAINT** **DEMAND FOR JURY TRIAL**

ORIGINAL

TOY-RQ-05E-00005698

I. INTRODUCTORY FACTS

1. Toyota's vehicles have a defective condition that causes uncontrolled acceleration to speeds up to 100 m.p.h and more. The defective condition is deadly. Data compiled by the safety research organization, Safety Research and Strategies, shows that since 2001, Toyota uncontrolled acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities. This summer, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control and crashed.

2. Toyota has known about the uncontrolled acceleration in its vehicles, and the crashes, injuries, and deaths since 2001. Since 2002, these incidents have resulted in at least eight investigations into uncontrolled acceleration in Toyota vehicles by the National Highway Traffic Safety Administration (NHTSA).

3. Toyota continued to manufacture, sell, advertise, and market the vehicles in which high incidence of uncontrolled acceleration was occurring, without warning buyers about this life-threatening uncontrolled acceleration peril, but instead concealed it.

4. Toyota also knew of an important measure against unintended acceleration, "smart pedal" software that overrides the throttle when the brake pedal is pressed. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

5. Toyota has had a reputation for safety for decades, and knows people buy its vehicles because of that reputation. Toyota markets and advertises safety. In a national Toyota Camry television commercial Toyota says, "It's OK to be overprotective. We are."

6. In August, 2009, after a widely reported unintended acceleration crash that killed a California highway patrol officer and his family, Akio Toyoda, president of the Japanese parent corporation, issued a public apology saying, "Customers bought our cars because they thought they were the safest but now we have given them cause for grave

TOY-RQ-05E-00005699

concern. I can't begin to express my remorse." But Toyota's actions have not matched the words of its president. For years Toyota continued to sell its dangerous vehicles without modification to address the danger, without admitting the defect, and continued to do so even after the president's statement.

7. Finally, after more than eight years of abnormal and unacceptable incidence of unintended acceleration, in September 2009, Toyota admitted there is a defect in its vehicles that causes unintended acceleration. But Toyota limited its admission only to some of its models that have had unintended acceleration and resulting crashes, not all that have had the problem. Also, Toyota claimed the defect "does not exist in vehicles in which the driver's side floor mat is compatible with the vehicle and properly secured."

8. On October 30, 2009, Toyota began mailing a letter to owners[1] of only some of its models that have experienced high incidence of unintended acceleration, not to owners of all Toyota models that have experienced it. Toyota calls the letter an "Interim Notice." The letter contains the statement about "compatible, properly secured" floor mats quoted above.

9. Even though Toyota has made a limited admission of a defect in a limited number of its models, Toyota continues to manufacture and sell even those models without making the changes it announced in the October 30, 2009 "Interim Notice," and without installing "smart pedal" software.

10. Even though Toyota knows about the high incidence of unintended acceleration in **other** Toyota models, Toyota denies there is any defect in them. Instead, Toyota still continues to manufacture, sell, advertise, and market them, leading buyers to believe they are free of defects. And Toyota is not making any changes in those vehicles to address unintended acceleration, and is not installing "smart pedal" software on those vehicles or any others.

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[1] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

TOY-RQ-05E-00005700

II. SOME DEFINITIONS

11. In this pleading:

a. "**Toyota**" and "**Defendants**" both mean all the defendants, jointly and individually.

b. "**2009 Notice Vehicles**" means the Toyota and Lexus vehicles referred to in Toyota's notice October 30, 2009 "Interim Notice". They are, according to Toyota's website: 2007 – 2010 Camry, 2005 – 2010 Avalon, 2004 – 2009 Prius, 2005 – 2010 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350.

c. "**2002 - 2010 Vehicles**" means all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles" includes cars, trucks, SUVs, and crossovers.)

d. "**Subject Vehicles**" means the 2009 Notice Vehicles together with the 2002 - 2010 Vehicles.

12. The allegations in this pleading are made without any admission that, as to any particular allegation, plaintiff bears the burden of pleading, proof, or persuasion. plaintiff reserves all rights to plead in the alternative.

III. JURISDICTION AND VENUE

13. This Court also has original diversity jurisdiction under 28 U.S.C. § 1332 (d)(2), as amended by the Class Action Fairness Act of 2005, because this is a class action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and:

a. the majority of class members are citizens of states different from all defendants;

b. and less than one-third of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the state in which the action was originally filed, namely California;

c. and all class members are citizens of states and one defendant is a citizen or subject of a foreign state.

14. Also, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under the laws of the United States federal law. Rights to relief for plaintiff and the class depend on the resolution of substantial questions of federal law.

15. Also, this Court has supplemental jurisdiction over the state law claims. The state law claims are so related to the claims in the action within the original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

16. Venue is proper in this district because a substantial part of the events and omissions giving rise to the claims occurred in this district, including Defendants' headquarters in Torrance, Los Angeles County. Venue is proper in this district also because there is personal jurisdiction in this district over all Defendants. Presently and at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles County.

IV. PARTIES

17. Plaintiff, Mr. Baldisseri, is a citizen of California.

18. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California.

19. Defendant Toyota Motor North America, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

20. Defendant Toyota Motor Manufacturing, California, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

21. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of

TOY-RQ-05E-00005702

business in Kentucky. It is registered[2] to do business in California.

22. The true names of defendants Does 1 through 20 are unknown. Those defendants are sued by said fictitious names, and the complaints will be amended as necessary to obtain relief against defendants Does 1 through 20 when the true names and capacities are ascertained, or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court.

23. On information and belief: Each defendant is a wholly owned subsidiary of the Japanese parent company, Toyota Motor Corporation. Each defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this complaint. Each defendant is under common control and management.

24. On information and belief, at all relevant times, directly or indirectly, or through agents or other persons, each defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged below. On information and belief, it is alleged that each defendant acted pursuant to and within the scope of these relationships, that each defendant knew or should have known about the conduct of all other defendants, and that each defendant authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants.

[2] "Qualified" is the technically correct term

V. FACTS IN MORE DETAIL

A. Toyota Has Known for Years its Vehicles Have High, Unacceptable Incidence of Unintended Acceleration, But Did Nothing About It. Instead, Toyota Denied and Concealed It, and Did Not Install a Protection Widely Used by Other Manufacturers.

25. Since 2001, more than 1,000 Toyota and Lexus owners have reported that their vehicles suddenly accelerated on their own, in many cases crashing.

26. NHTSA issued a statement during the first week of November, 2009, indicating that the seven recalled Toyota models do indeed have an "underlying defect." NHTSA reports that its records show that a total of 15 people died in crashes related to possible sudden acceleration in Toyota vehicles from the 2002 model year and newer, compared with 11 such deaths in vehicles made by all other automakers. The *Los Angeles Times* located federal and other records of 19 fatalities involving Toyota and Lexus vehicles from those model years, fatalities in which sudden or unintended acceleration may have been a factor. The *Times* also located more than 1,000 reports by owners that their vehicles had suddenly accelerated. The *Times* also reported that a nationally known safety expert identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001. The *Times* further reported that other experts say the numbers may be far higher, pointing to a 2007 NHTSA survey of 600 Lexus owners that found 10% complained they had experienced sudden acceleration. In the first week of November, 2009, NHTSA called the issue a "very dangerous problem" and said the remedy remains to be determined.

27. The *Times* has reported the following examples:

a. According to one lawsuit, a woman was killed when a 2005 Camry accelerated and plunged off a cliff in Pismo Beach, California. However, that vehicle is not included in Toyota's recall, which affects only 2007 and later Camrys.

b. A San Diego woman said she was unable to stop her 2008 Toyota

Tacoma pickup from accelerating through the back wall of her garage, destroying a bathroom on the other side. She reports that both her dealer and Toyota's national sales division told her the vehicle had no defects.

c. A woman in Medford, Oregon reported three frightening incidents of unintended acceleration, including one with her 15-year-old daughter behind the wheel. She took her 2007 Prius to the dealership. But mechanics and a Toyota field representative told her that they believed the problem lay in the pedal, which was replaced. Not trusting this explanation, she traded in her Prius for a 2008 BMW 5-series.

d. In October 2009, a man was stopped at a busy Long Beach intersection when he said his 2008 Toyota Tacoma pickup unexpectedly started accelerating, forcing him to stand on the brakes to keep the bucking truck from plowing into oncoming cars. Toyota said the gas pedal design in the truck and more than 4 million other Toyota and Lexus vehicles makes the gas pedal vulnerable to being trapped open by floor mats. But the man said he removed the mats in his truck months earlier on the advice of his Toyota dealer after his truck suddenly accelerated and rear-ended a BMW. He said he will not drive the truck anymore, and does not want anyone else to.

e. A woman awoke in an Oklahoma hospital a month after a crash in her 2005 Camry. She said the car sped out of control on a freeway, then smashed into an embankment after she swerved it onto an exit ramp, leaving behind long skid marks from attempts to stop the vehicle with her brakes and emergency brake. She reports she sustained permanent memory loss, and her best friend died.

f. A Long Beach, California woman , a former science teacher, said she was taken on an 8-mile high-speed ride by her 2007 Prius while she was following her husband in a group bicycle tour in Wisconsin. She said her Prius accelerated from 45 mph to 75 mph on a winding, two-lane highway crowded with 100 cyclists. She reported standing on the brakes with both feet and seeing fire from

her car.

g. A San Dimas emergency room physician said he was driving his Lexus with the cruise control on a Central California on Highway in 2008, not touching the accelerator, when suddenly the vehicle accelerated to 100 mph. He reported that the brakes did not release the cruise control or slow down the vehicle. He said he hasn't used the car since.

h. In 2004, NHTSA began a probe into a defect petition filed by a registered nurse who was then director of health services for the Montgomery County, Md., school system. She reported that she had her foot on the brake of her 2002 Lexus ES when it took off and hit a tree.

i. A Texas man, who has a mechanical engineering degree and spent 15 years as an engineer at General Motors, Chrysler and other auto and truck makers reports that in July, 2008, his wife was driving her 2006 Lexus ES 330 with four grandchildren near Houston when it accelerated out of control. To avoid a wreck, she crossed four lanes of traffic before smashing into a masonry sign, totaling the car and deploying the air bags. No one was seriously injured.

j. The driver of a 2007 Lexus ES 350 reported that the sedan accelerated into a building, bounced backward, struck another vehicle and ended up on top of a snowbank.

k. At least five other lawsuits filed against Toyota in the last few years before 2009 alleged a defect causing unintended acceleration. One, involved a runaway 2007 Toyota Camry that crashed and killed a man near San Jose, California

l. Another suit alleges that the two men experienced repeated incidents of unintended acceleration in their vehicles, a 2008 Toyota FJ Cruiser and a 2004 Toyota Camry. No allegations of crashes or injury were made. Neither vehicle is included in the current recall.

m. The wife of a Torrance, California woman experienced a runaway

acceleration incident in 2009, in her 2007 Lexus IS. She traded it for a Buick.

28. Owner complaints helped trigger at least eight investigations into sudden acceleration in Toyota and Lexus vehicles by the NHTSA since 2002.[3]

29. The *Times* reports: Toyota first installed electronic throttles in 2002 model year Lexus ES and Camry sedans. Total complaints of sudden acceleration for the Lexus and Camry in the 2002-2004 model years averaged 132 a year, up from an average of 26 annually for the 1999-2001 models. The average number of sudden-acceleration complaints involving the Toyota Tacoma jumped more than 20 times, on average, in the three years after Toyota's introduction of drive-by-wire in these trucks in 2005. Increases were also found on the hybrid Prius, among other models. Although Toyota said it knows of no electronic defects that would cause a vehicle to surge out of control, it issued at least three technical service bulletins to its dealers warning of problems with the new electronic throttles in the 2002 and 2003 Camry. According to one of the bulletins that was published by Alldata, a vehicle information company, the throttle systems on six-cylinder engines can cause the vehicle to "exhibit a surging during light throttle input at speeds between 38 mph and 42 mph." The solution provided to dealers was to reprogram the engine control module. A NHTSA test found that a Toyota throttle exhibited unusual behavior when researchers applied a magnetic field to the device's sensitive electronics. Engine speed surged by 1,000 revolutions per minute, according to a 2008 report by the agency's Vehicle Research and Test Center. Nonetheless, the lab concluded that the system "showed no vulnerabilities to electric signal activities." The details of the experiment were not explained in the lab report, and the agency never explained the apparent contradiction.

30. In the NHTSA investigation of the 2004 unintended acceleration incident

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[3] The *Times* reports the following about those investigations. Federal officials systematically excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had suddenly accelerated, which sharply narrowed the scope of the probes. Federal officials eliminated broad categories of sudden-acceleration complaints, including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem.

TOY-RQ-05E-00005707

reported by the Alabama registered nurse, NHTSA and Toyota both winnowed down other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models. When NHTSA asked Toyota to disgorge all of the reports it knew about, Toyota eliminated an unknown number in five broad categories, including cases in which drivers said they were unable to control a runaway engine by applying the brakes. Federal investigators said only 20 cases were considered relevant. But The *Times'* examination of consumer complaints and a sampling of reports from Toyota dealers found more than 400 reports of sudden acceleration involving those models. And federal records show that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

31. As for Toyota's position that brakes can always overcome a vehicle's engine, Toyota and NHTSA now acknowledge that a braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. This is shown by a number of Toyota actions, one of which is its announcement that some of its cars will be modified so that the brake overrides the accelerator if both pedals are pressed at the same time.

32. In 2005, a Phoenix man who had experienced a minor accident he blamed on sudden acceleration, filed a defect petition with the NHTSA that included nearly 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority should be eliminated because they dealt "with two completely different issues."

33. The *Times* reports that when owners said the "vehicle unintentionally or suddenly 'accelerated,'" Toyota claimed that represented a different issue than when they said "the vehicle 'surged' or 'lurched.'" On information and belief, the truth is, wile the vocabulary used in the complaints have differences, the issues were the same.

34. According to the complaint in *Choi v Toyota*, pending in this Court, an initial Toyota design for the Subject Vehicles called for "an electronic throttle control and a redundant mechanical linkage between the gas pedal and the engine throttle control as a failsafe in the event of a sudden unintended acceleration"; this feature would disconnect the electronic throttle control and allow a driver to stop the vehicle, but

TOY-RQ-05E-00005708

Toyota began selling vehicles without this feature around 2001; Toyota failed to include another "failsafe measure" that would "automatically reduce the engine to idle when the brakes are being applied while the throttle is in an open position".

35. Until recently, Toyota maintained that its vehicles have no defect and that runaway accelerations were caused by incorrectly installed floor mats wedging the accelerator pedal into a wide-open position. Toyota's insistence that the vehicles had no defect drew a sharp rebuke from NHTSA, saying Toyota made "inaccurate and misleading" statements about the nature of the problem.

36. Toyota continues its advertising and public statements touting "safety." Toyota's video of November, 2009, placed on its website, states that NHTSA "thoroughly investigated" Toyota uncontrolled acceleration and used "stringent safety testing. . . . Toyota and Lexus take public safety very seriously. We believe our vehicles are among the safest on the road. Your best source of information can be found at Toyota.com and Lexus.com." The video also states that Toyota's November 2009 "recall" is "voluntary." The video is at:
http://pressroom.toyota.com/pr/tms/electronic.aspx?fid=84801

37. Toyota website statement dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality. [¶] "In 2009, Toyota won more IIHS Top Safety Pick (TSP) awards than any other manufacturer. Toyota continues to improve vehicle passive and active safety, including improvement of past winners of IIHS TSP". The statement is at:
http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2273.

B. Toyota's So-Called "Recall"

38. Toyota's "Interim Notice," published in the press and on the Internet, has caused serious misinformation and misunderstanding about what to do about the problem.

39. On October 30, 2009, Toyota announced what it termed a "recall" of some models that have experienced uncontrolled acceleration, but not all models. Toyota states the "recall" covers 3.86 million vehicles in the United States.

40. Plaintiff places quotes around "recall" because the term is misleading. Toyota has not told anyone to bring their vehicles in yet. Toyota has said it plans to have dealers ready to do the "recall" work possibly as early as January, 2010, but on a "rolling" basis, starting with some models and model years then moving to others. That is part of the problem – these dangerous vehicles will still be on the road for months, and the drivers have in mind Toyota's dangerous "advice" to stall them, unless a corrective notice is sent.

41. Toyota states that to reduce the risk of the mat snagging the gas pedal, technicians will cut off about three-quarters of an inch from the bottom of the pedal. On Toyota Camry and Avalon and Lexus ES models, they also will replace thick foam padding under the carpeting with thinner pads to allow more clearance between the pedal and floor.

42. At an even later unspecified time, Toyota will modify software in the vehicles' engine control systems that, says Toyota, will override the throttle any time the brake is applied. The remedy will be made initially only in the Camry, Avalon, Lexus ES and Lexus IS sedans, only later in all models.

43. That software, often called a smart pedal, has been is in use for years by many other manufacturers as a protection against unintended acceleration, such as Volkswagen, Audi, Porsche, BMW, Nissan and Chrysler. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

C. Toyota's "Interim Notice" Instructions to Owners.

44. In connection with what Toyota refers to as a "recall," beginning October 30, 2009, Toyota mailed the "Interim Notice," and put it on Toyota's website. On

TOY-RQ-05E-00005710

November 2, 2009, Toyota distributed a press release announcing the letter campaign.

45. Toyota's uncontrolled acceleration problem causes cars to rush to speeds of 100 m.p.h. and faster. Toyota's "Interim Notice" only compounds the problem. The critical fact is this: Toyota's "Interim Notice" gives the following misguided, misguiding, terrifying directions [words in brackets are added by plaintiff, as is the bolding]:

> "What should you do if you experience accelerator pedal interference?
>
> "Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:
>
> "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it from the accelerator pedal *[while the vehicle is accelerating]***; then pull over and stop the vehicle.
>
> "If the floor mat cannot be dislodged, them firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.
>
> "**Shift the transmission gear selector to the Neutral (N) position *[eliminating any possibility of accelerating in a controlled manner in order to pull over safely]*** and use the brakes to make a controlled stop at the side of the road and turn off the engine.
>
> "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC *[engine will be off, but there will be power to some accessories]***. This will not cause loss of steering or braking, but **the power assist to these systems will be lost *[i.e., there will be no power steering or power brakes]***."

46. These instructions are extremely dangerous. When cars suddenly accelerate out of control, these instructions might be better than nothing, but that is the point – Toyota should disclose to people that because these maneuvers are not safe, it might be better to do nothing with the vehicles, i.e. not drive them. Instead, Toyota suggests that its instructions are safe, vested with Toyota's expertise, and that people should continue driving these defective vehicles.

a. If a driver pulls back on the floor mat while the vehicle is moving, her attention is taken away from driving, and her vision away from the road. Doing that while the car is accelerating, probably wildly accelerating, is inviting a crash.

TOY-RQ-05E-00005711

b. "Pull back." Toyota means the driver should bend down to move the floor mat. A driver doing that cannot effectively use the steering wheel, apply the brakes, or use anything else on the car, probably cannot do any of these things at all.

c. Putting the car in neutral is just as bad or worse. You are driving on a freeway or in street traffic. If you put the car in neutral, you completely lose the ability to accelerate in order to move the car to the side safely. It is the same as stalling. Cars have been recalled because of stalling problems. Tendency to stall is a defect. A stalled car in traffic is a safety hazard.

d. In the same breath, Toyota's instructions say, "make a controlled stop at the side of the road and turn off the engine". When the car is put in neutral, it slows down. The other cars on the road do not. In order to make a "controlled stop at the side of the road," a driver has to be able to accelerate out of the way of cars coming up from the right. But Toyota's driver cannot do that.

e. Turning off the engine is worse yet. Now we have a stalled car that has no power steering and no power brakes. Cars designed with power steering are not designed to be steered without it. Steering them without the power is extremely difficult. The same is true of power brakes.

f. For example, older cars designed without power steering had much larger steering wheels than today's cars. Why? Because the driver needed lots of leverage in order to steer. When a modern car loses its power steering, the little steering wheel and other design features in the car make it very hard to steer.

D. The Risks and Dangers Caused By Toyota's "Interim Notice" Instructions

47. The risks caused by Toyota's "Interim Notice" are unacceptable for many reasons, including these and others:

a. The actions recommended by Toyota create a new and different set of hazards (1) loss of vehicle control and (2) disabling/stalling of the vehicle in

traffic."

b. Loss of vehicle control by drivers has been repeatedly recognized as a cause of serious and fatal crashes. As recently as September of this year, the National Highway Traffic Administration [NHTSA] noted the role of driver distraction and loss of control in crash causation. "Distraction from the primary task of driving could present a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report." NHTSA urges drivers: "Avoid conditions that lead to a loss of control."

c. Toyota's recommendations could lead to out-of-control, distracted driving situations that present 'serious and potentially deadly danger' to occupants of the involved Toyota vehicle and those of other vehicles on the highways. as well as bicyclists and pedestrians

d. Toyota's instructions to "pull back the floor mat and dislodge it from the accelerator pedal" could not possibly be accomplished without a diversion of the driver's vision and attention for at least several seconds, totaling even into minutes if the driver has to try more than once, which is likely under the stress of this emergency. This is a forced diversion away from the driving task and attention to the stream of traffic. NHTSA has found that glances away from the roadway totaling "more than 2 seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving."

e. The dangers presented to occupants of vehicles disabled in traffic or along the sides of busy highways have been long recognized.

f. A California court found that "stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise." (October 11, 2000 Alameda Superior Court

statement of decision after trial, stating intention to order recall of 23 million vehicles because of defects causing stalling.)

g. Following the recommendations in the "Interim Notice" would cause the vehicle to stall. A stalled or disabled vehicle is one which, due to loss of power, is no longer able to maintain its travel speed. In the case of a Toyota suddenly afflicted by an uninvited power surge due to its "uncontrolled acceleration" defect, the vehicle may be traveling at a dangerously high rate of speed while its driver attempts to carry out Toyota's recommendations.

h. As the vehicle slows, it increasingly presents a hazard to itself and to other vehicles, which are traveling at highway rates of speed. Even if the driver is able to successfully maneuver the disabled vehicle out of the road's traffic lanes and onto the roadside – a difficult and dangerous undertaking -- it continues to present a hazard, since it is now a 'fixed object' subject to impact by other vehicles. If the incident occurs on a stretch of highway that has no shoulder, the disabled vehicle is forced to a stop in a lane of traffic.

i. Drivers of these vehicles thus are caught between the devil of the uncorrected, uncontrolled acceleration defect and the deep blue sea of Toyota's recommendations. Toyota should advise owners of these vehicles to not drive them until its 'campaign remedy' has been accomplished.

E. Plaintiff's Damages, Injuries and Losses

48. As a result of Toyota's reputation for safety and quality, which has been advertised and marketed by Toyota, and as a result of Toyota's concealments and misrepresentations and other conduct described in this complaint, above and below, plaintiff suffered injury in fact and lost money and property, and plaintiff conferred benefits on Toyota, in a number of ways, including but not limited to the following:

a. Plaintiff bought a new 2009 Toyota Camry from a Toyota dealership. He would not have bought it otherwise. He would not have bought it if Toyota

had not concealed and the facts about unintended acceleration, described above.

b. Plaintiff paid the purchase price and continued to make payments.

c. Plaintiff remained loyal to Toyota and returned to the Toyota dealer for repairs and maintenance. He purchased parts manufactured by Toyota, such as a replacement undercarriage part, and replacement wipers.

d. Plaintiff lost money and property, consisting of the difference in value between a vehicle free of defects the value of the vehicles he bought, with a defective condition, and reduced resale value as a result of having it.

e. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," he called Toyota and asked that Toyota supply him with a substitute car. Toyota refused.

f. Instead, Toyota told him to take out the floor mat, and he did. The car is now being driven without the mat, and there will be extra wear and tear on the carpet that otherwise would be covered by the floor mat. The purpose of the floor mat is to protect the carpet beneath it.

g. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," use of the Camry was lost for a time, because of the danger of using the car. Plaintiff spent money to rent a substitute car. But plaintiff could not rent a substitute car for long. Use of the car remains less than it would be without the unintended acceleration defect.

VI. CLASS ACTION ALLEGATIONS

49. This action is brought and is properly be maintained as a class action under Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of those who fall within the following CLASS DEFINITIONS. In these definitions, "Owners" includes those who lease the vehicles. The classes do not include any individual who has suffered any bodily, emotional or psychological injury as a result of any crash that resulted from sudden or uncontrolled acceleration of any of the vehicles mentioned in

this complaint, or the successors of any individuals who died as a result of any such crash. The claims in this action do not include any claims for bodily, emotional or psychological injury or for physical injury to property. Also, the classes do not include any judge who handles any aspect of this case, or any defendant or executive of any defendant, or their family members.

A. Definition of California 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2009 Notice Vehicles are: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

B. Definition of California 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the 2002 - 2010 Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2002 - 2010 Vehicles are all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles includes cars, trucks, SUVs, and crossovers.)

C. Definition of National 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

D. Definition of National 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the

2002 - 2010 Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

a. Numerosity: The class is so numerous that individual joinder of all members is impracticable. There are approximately 3.86 million class members.

b. **Ascertainability:** The class members are specific individuals, entities, and organizations whose identity can easily be ascertained from Defendants' records.

c. Existence and Predominance of Common Questions of Law and Fact: Common questions of law and fact exist as to all Class members, and predominate over any questions that affect only individual members of the Class. The common questions of law and fact include, but are not limited to:

i. What is the extent of the implied warranty of fitness Toyota gave on the Subject Vehicles.

ii. What is the extent of the implied warranty of merchantability Toyota gave on the Subject Vehicles.

iii. What express warranty did Toyota give on the Subject Vehicles?

iv. Did Toyota fail to comply with its implied warranty of fitness on the Subject Vehicles?

v. Did Toyota fail to comply with its implied warranty of merchantability on the Subject Vehicles?

vi. Did Toyota fail to comply with its express warranty on the Subject Vehicles?

vii. Did Toyota violate the Song-Beverly Consumer Warranty Act?

viii. What is the proper measure of damages for the class for breach of the implied warranty of fitness?

ix. What is the proper measure of damages for the class for breach of the implied warranty of merchantability?

x. What is the proper measure of damages for the class for breach of the express warranty?

TOY-RQ-05E-00005717

xi. What is the proper measure of damages for the class for breach of the Song-Beverly Consumer Warranty Act?

xii. Does Toyota's conduct satisfy any of the tests for punitive damages to the class?

xiii. If so, what punitive damages should be awarded the class?

d. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff and other class members sustained damages, losses, and injuries in fact arising out of the propensity for unintended acceleration of the vehicles, and arising out of Defendants' common misrepresentations, practices, and violations of law referred to in each claim for relief. Plaintiff seeks recoveries for the same types of damages, losses, and injuries in fact as were sustained by the other class members. Each class member, as well as plaintiff, purchased and owned at least one of the Subject Vehicles Plaintiffs and the members of the Class sustained the same types of damages, losses and injuries in fact.

e. Adequacy: will fairly and adequately protect the interests of the class. The attorneys for plaintiff and the potential class are qualified and competent and very experienced in class action litigation. Plaintiff is not disqualified by any interests antagonistic to the rest of the class.

f. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Also, because the losses, injuries and damages suffered by each of the class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public of adjudication of individual litigation and claims

would be very substantial, and substantially more than if the claims are treated as class action. Individual litigation and claims would also present the potential for inconsistent or contradictory results. The issues in this lawsuit can be decided by means of common, classwide proof. In addition, if appropriate, the court can, and is empowered to, fashion methods to efficiently manage this lawsuit as a class action. There is no administrative remedy available to the class members for the relief sought here.

g. F.R.Civ.P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.

FIRST CLAIM FOR RELIEF

(Class Action Against All Defendants for Breach of Warranty and Violation of the California Song-Beverly Consumer Warranty Act)

50. Plaintiff incorporates paragraphs 1 through 49.

51. When the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for the ordinary purposes for which such vehicles are used.

52. Also, when the Subject Vehicles were purchased or leased, Toyota had reason to know the Subject Vehicles were required for safe transportation, and that plaintiff and the other class members were relying on the skill and judgment of Toyota to select and furnish vehicles suitable for that purpose. Therefore when the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for that purpose.

53. Toyota gave express warranties along with the purchases and leases of the Subject Vehicles by plaintiff and the other class members that, among other things, the

vehicles were "built to exceptional standards." Along with the purchases and leases, Toyota also expressly warranted the powertrain, engine, transmission/transaxle, and other components of the powertrain for 60 months/60,000 miles.

54. As a result of the unintended acceleration defective condition and the conduct of Toyota described in this complaint, Toyota failed to comply with these warranties and breached them, and plaintiff and the other class members have been damaged by the failures. The failures and breaches were and are willful.

55. The damages include, but are not limited to, these:

a. The difference in value between a vehicle free of defects the value of the vehicles they bought, with a defective condition, and reduced resale value as a result of having it.

b. Extra wear and tear on the carpet that otherwise would be covered by the floor mat.

c. Lost of use of the vehicle and payments for substitute vehicles.

d. The cost to correct the defective condition, and loss of use of the vehicles while the corrections are made.

e. Payments of the purchase price and lease payments.

56. This claim for relief is limited to those class members who are individuals. The Song-Beverly Consumer Warranty Act violations are limited to those class members who purchased or leased new Subject Vehicles primarily for personal, family, or household purposes.

57. Plaintiff and the class gave Toyota all notices and demands required to recover under this claim for relief.

58. By its conduct described above, at all relevant times, Toyota has been aware of the unintended acceleration defective condition, and has consciously disregarded the rights and safety of plaintiff and the other class members. The misconduct by Toyota was done with malice, fraud, and oppression and in willful and conscious disregard of the rights and safety of plaintiff and others. Toyota's conduct is despicable conduct

carried on by the Toyota with a willful and conscious disregard of the rights or safety of others. It is despicable conduct that subjects persons to cruel and unjust hardship in conscious disregard of their rights. It was intentional misrepresentation, deceit, or concealment of a material fact known to Toyota, with the intention on the part of Toyota of thereby depriving persons of property or legal rights. Plaintiff and the class are entitled to punitive damages.

SECOND CLAIM FOR RELIEF

(Class Action Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

59. Plaintiff incorporates paragraphs 1 through 58.

60. On information and belief, all the conduct by Toyota described in this complaint took place, originated, or emanated at the headquarters of Toyota in Los Angeles County, California.

61. Plaintiff owns a 2009 Camry, which he purchased in California approximately in February, 2009.

62. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

63. Toyota's conduct is unlawful because, among other things, it constitutes breach of warranty and violation of the Song-Beverly Consumer Warranty Act.

64. Toyota's conduct is fraudulent within the meaning of the Unfair Competition Law because, among other things, as stated more particularly above, it is and has been likely to deceive the class members and members of the public about the safety of the Subject Vehicles, the unintended acceleration and its risks, what can and has been done about it, and the safety of the instructions in the "Interim Notice," all as stated in above.

65. Toyota's conduct is unfair within the meaning of the Unfair Competition

TOY-RQ-05E-00005721

Law (UCL) because, among other things, as the facts above show:

a. The gravity of the harm to the class members and the public far outweighs the utility of Toyota's conduct. The risk and actuality of crashes, injuries, and deaths far outweigh any legitimate reasons or utility Toyota could have had in not correcting the unintended acceleration long ago, in not recalling all the Subject Vehicles, in not manufacturing them with the smart pedal, in not installing the smart pedal on all the Subject Vehicles years ago, certainly by now, in not sending the class members a new notice correcting the "Interim Notice." conduct is unfair within the meaning of the Unfair Competition Law (UCL)

b. Toyota's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to the class members.

c. Toyota's conduct violates the policy or spirit of one of the various antitrust laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition, because, among other things, Toyota has, for many years, for many years Toyota has sold the Subject Vehicles without devoting to them the necessary cost and effort to sufficiently protect against unintended acceleration, and without the smart pedal and other technology that would sufficiently protect against it.

66. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

a. Do the Subject Vehicles have a defective condition that causes unintended acceleration?

b. What did Toyota know about the defective condition, and when did Toyota know it?

c. What did Toyota conceal or fail to disclose regarding the defective

condition?

d. What did Toyota fail to do that would have ameliorated the defective condition?

e. What did Toyota fail to do that would have ameliorated the number or severity of the crashes, injuries, and deaths that have resulted from defective condition?

f. What is the proper injunctive and declaratory relief for Toyota's violation of the Unfair Competition Law?

g. What are the proper measures of restitution for Toyota's violation of the Unfair Competition Law?

h. What would have been the cost to Toyota to manufacture the Subject Vehicles so as to sufficiently protect against unintended acceleration?

i. What would have been the cost to Toyota to manufacture the Subject Vehicles with smart pedal technology?

THIRD CLAIM FOR RELIEF

(Additional Class Action Claim Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

67. Plaintiff incorporates paragraphs 1 through 49.

69. NHTSA has a legislative mandate to issue motor vehicle safety standards. Toyota, like all manufacturers of motor vehicles, is required to adhere to the standards. The purpose of the standards is to protect the public against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles.

70. Toyota, like all motor vehicle manufacturers, is required to certify that its vehicles comply with all the standards, and must place on its vehicles a manufacturer's certificate of compliance with all the standards. A motor vehicle manufacturer may not issue the certificate if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading in a material respect. Toyota placed the

TOY-RQ-05E-00005723

certificate on plaintiff's Camry and all the Subject Vehicles. They are representations that the vehicles comply with all the standards, but the representations are false, and they were false when they were made, as Toyota knew.

68. Standard 124, in 49 C.F.R. 571.124, states:

"S5.1 There shall be at least two sources of energy **capable of returning the throttle to the idle position** within the time limit specified by S5.3 from any accelerator position or speed **whenever the driver removes the opposing actuating force.** In the event of failure of one source of energy by a single severance or disconnection, **the throttle shall return to the idle position** within the time limits specified by S5.3, from any accelerator position or speed whenever the driver removes the opposing actuating force.

"S5.2 The throttle shall return to the idle position from any accelerator position or any speed of which the engine is capable whenever any one component of the accelerator control system is disconnected or severed at a single point. The return to idle shall occur within the time limit specified by S5.3, measured either from the time of severance or disconnection or from the first removal of the opposing actuating force by the driver.

"S5.3 Except as provided below, maximum time to return to idle position shall be 1 **second** for vehicles of 4536 kilograms or less GVWR, and **2 seconds** for vehicles of more than 4536 kilograms GVWR. **Maximum time to return to idle position shall be 3 seconds for any vehicle** that is exposed to ambient air at −18 degrees Celsius to −40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

69. The Subject Vehicles do not meet this standard. The vehicles do not have a source of energy capable of returning the throttle to the idle position within specified times, maximum 3 seconds, **whenever** the driver removes the opposing actuating force. Instead, in the Subject Vehicles, the throttle does not return to the idle position at all

when there is unintended acceleration. This is shown by the enormously higher incidence of uncontrolled acceleration in the Subject Vehicles than in all other vehicles combined.

70. A notice to owners is required by the National Traffic and Motor Vehicle Safety Act[4] whenever a manufacturer "decides" there is a defect that relates to vehicle safety. On October 30, 2009, Toyota began mailing a notice, although the notice does not comply with the Act. Toyota calls it an "Interim Notice." The "Interim Notice" is Exhibit A to this complaint.[5] It states:

"Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

71. 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"

72. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the "Interim Notice," rather than stating the true

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[4] 49 U.S.C. 30101 *et seq.*

[5] Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners, the top states the model name and model years that apply to the particular owners receiving the notice. For example, Mr. Baldisseri's owns a 2009 Camry. The top of his notice states, "Certain 2007 through 2010 Model Year Camry". His notice is Exhibit B to this complaint.

risk, contains horribly dangerous instructions[6] about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and that in fact add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled 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 "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of control:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat;

b. If that doesn't work, instructs Toyota, then stall the car right on the road. Do so regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral or turn off the engine. The car necessarily slows to a stop. The wheels cannot receive power to move out of the way of traffic on the right or behind. And with the engine off, the power steering and power brakes do not work. Nevertheless, the notice instructs the impossible: after putting the car in neutral, or turning off the engine, "make a controlled stop at the side of the road."

73. As to items (3), (4) or (5), the "Interim Notice" states that this information will be given in a later notice, but it doesn't say now much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

(e) Second Notification.— If the Secretary decides that a notification sent by a

[6] On its own website, Toyota calls them "instructions".

> manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d[7] notification in the way the Secretary prescribes by regulation."

Toyota violates the Act by not including all the section 30119 information in its "Interim Notice," and by using a second notice for a different purpose.

74. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

75. As stated above, Toyota has mailed a notice that violates the National Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful conduct because:

a. Toyota's notice violates the National Traffic and Motor Vehicle Safety Act.

b. Any conduct that violates any law, federal or state, also violates the Unfair Competition Law, under its unlawful "prong."

c. Therefore, Toyota's "Interim Notice" violates the Unfair Competition Law.

76. On information and belief, the "Interim Notice" was devised and written at the headquarters of Toyota in Los Angeles County, California, and all of Defendants' conduct described in this complaint emanated from there.

77. The "Interim Notice" is required by the National Traffic and Motor Vehicle Safety Act[8] whenever a manufacturer "decides" there is a defect that relates to vehicle safety.

78. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably

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[7] "2d" is how the statute reads

[8] 49 U.S.C. 30101 *et seq.*

TOY-RQ-05E-00005727

related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled acceleration, the car can still be safe, and can safely be stopped at the side of the road?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(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" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

PRAYER

WHEREFORE, Plaintiff prays judgment for himself and all others on whose behalf this suit is brought, against Defendants, jointly and severally:

a. For preliminary injunction and permanent injunctions, including but not limited to the following:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do when unintended acceleration occurs in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same vehicles[9] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration

[9] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

TOY-RQ-05E-00005729

problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

b. For restitution and disgorgement in amounts exceeding $5 million.

c. For claims other than those under the Unfair Competition Law, for damages in amounts exceeding $5 million, and punitive damages in an amounts to be determined.

d. For claims other than those under the Unfair Competition Law, for attorneys' fees.

e. For costs of suit.

f. For such other relief as the Court deems proper.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the class on any claims and issues that are triable by jury.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

TOY-RQ-05E-00005730

PROOF OF SERVICE
Baldisseri v. Toyota
United States District Court Case No. CV 09-9386 GAF(FMOx)

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP. On the date set forth below I served the document(s) described as **First Amended Complaint** on all the interested parties in this action, by placing: [ ] the original [xx] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP:

Toyota Motor Sales, U.S.A., Inc. Toyota Motor North America, Inc. Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017	

[X] **BY MAIL**: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[ ] **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

[ ] **(BY FAX)** On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456.

[ ] **(BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS)**: I personally served said document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California on December 28, 2009.

Jeanette Kerr

Name & Address:
Ira Spiro (SBN 67641)
J. Mark Moore (SBN 180473)
H. Scott Leviant (SBN 200834)
SPIRO MOSS LLP
11377 W. Olympic Blvd., 5th Fl., L.A., CA 90064

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, and the General Public PLAINTIFF(S) 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 DEFENDANT(S).	CASE NUMBER CV 09-9386 GAF (FMOx) **SUMMONS**

FOR OFFICE USE ONLY

TO: DEFENDANT(S): Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Ira Spiro, whose address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, CA 90064. 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: 28 DEC 2009

By: MARILYN DAVIS
Deputy Clerk

(Seal of the Court)

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

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Attorneys for Plaintiff DALE BALDISSERI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, 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., Defendants.	Case No. CLASS ACTION **COMPLAINT** **DEMAND FOR JURY TRIAL**

TOY-RQ-05E-00005733

INTRODUCTION

1. 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. This summer, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control. In response to the sudden-acceleration debacle, on 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] The notice is Exhibit A to this complaint[3] It states:

"Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

2. 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

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[1] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

[2] 49 U.S.C. 30101 *et seq.*

[3] Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners, the top states the model name and model years that apply to the particular owners receiving the notice. For example, Mr. Baldisseri's owns a 2009 Camry. The top of his notice states, "Certain 2007 through 2010 Model Year Camry". His notice is Exhibit B to this complaint.

TOY-RQ-05E-00005734

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"

3. 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 horribly dangerous instructions[4] 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, can safely be stopped at the side of the road. That is dangerously misleading. It is the opposite of a truthful "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of control:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat

b. If that doesn't work, instructs Toyota, then stall the car right on the road. Regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral or turn off the engine. The car necessarily slows to a stop. The wheels cannot receive power to move out of the way of traffic on the right or behind. And with the engine off, the power steering and power brakes do not work. Nevertheless, the notice instructs the impossible: after putting the car in neutral, "make a controlled stop at the side of the road."

4. As to items (3), (4) or (5), the notice states that this information will be given in a later notice, and it doesn't say now much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some

[4] On its own website, Toyota calls them "instructions". (Spiro decl., ¶ +; Exh. +)

TOY-RQ-05E-00005735

in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

> (e) Second Notification.— If the Secretary decides that a notification sent by a manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d[5] notification in the way the Secretary prescribes by regulation."

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.

5. This is an action against Toyota's United States subsidiaries, all but one California corporations, for equitable relief under the California Unfair Competition Law, to require them to correct this notice and comply with the Act.

SOME DEFINITIONS

6. In this pleading:

a. "Toyota" means all the defendants, as a group and individually.

b. "Covered Cars" means the Toyota and Lexus cars and trucks referred to in Toyota's notice. They are, according to Toyota's website:

- 2007 – 2010 Camry
- 2005 – 2010 Avalon
- 2004 – 2009 Prius
- 2005 – 2010 Tacoma
- 2007 – 2010 Tundra
- 2007 – 2010 ES350
- 2006 – 2010 IS250 and IS350

7. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiffs bears the burden of pleading, proof, or persuasion.

[5] "2d" is how the statute reads

TOY-RQ-05E-00005736

Plaintiff reserves all rights to plead in the alternative.

JURISDICTION AND VENUE

8. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under the laws of the United States federal law. Rights to relief for plaintiff and the class depend on the resolution of substantial questions of federal law. This Court has supplemental jurisdiction over the state law claims. The state law claims are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is proper in this district because a substantial part of the events and omissions giving rise to the claims occurred in this district, including Defendants' headquarters in Torrance, Los Angeles County. Venue is proper in this district also because there is personal jurisdiction in this district over all Defendants. Presently and at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles County.

PARTIES

10. Plaintiff is a citizen of California.

11. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California.

12. Defendant Toyota Motor North America, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

13. Defendant Toyota Motor Manufacturing, California, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of

TOY-RQ-05E-00005737

business in Kentucky. It is registered[6] to do business in California.

15. On information and belief: Each defendant is a wholly owned subsidiary of the Japanese company, Toyota Motor Corporation. Each defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this complaint. Each defendant is, in the last resort, under common control and management.

FIRST CLAIM FOR RELIEF

(Against All Defendants for Injunction and Declaratory Relief for Unlawful Practices in Violation of the California Unfair Competition Law)

16. Plaintiff incorporates paragraphs 1 through 15.

17. Plaintiff owns a 2009 Camry, which he purchased in California. Plaintiff lost money or property as a result of Defendants' unfair competition. For example, plaintiff continued to make payments on his Camry, and rented a substitute car for a period of time.

18. As we state in paragraphs 1 - 4, Toyota has mailed a notice that violates the National Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful conduct because:

a. Toyota's notice violates the National Traffic and Motor Vehicle Safety Act.

b. Any conduct that violates any law, federal or state, also violates the Unfair Competition Law, under its unlawful "prong."

c. Therefore, Toyota's notice violates the Unfair Competition Law.

19. On information and belief, the notices were devised and written at the headquarters of Toyota in Los Angeles County, California, and all of defendants' conduct described in this complaint emanated from there.

[6] "Qualified" is the technically correct term

TOY-RQ-05E-00005738

CLASS ACTION ALLEGATIONS

20. This action is brought and is properly be maintained as a class action under Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of these classes:

A. California Class Definition

All individuals, entities, and organizations who are residents of California who are owners of any of the following: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. "Owners" includes those who lease the vehicles. The class does not include any judge who handles any aspect of this case, or any defendant or executive of any defendant.

B. National Class Definition

All individuals, entities, and organizations who are residents of the United States who are owners of any of the following: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. "Owners" includes those who lease the vehicles. The class does not include any judge who handles any aspect of this case, or any defendant or executive of any defendant.

a. Numerosity: The class is so numerous that individual joinder of all members is impracticable. There are approximately 3.8 million class members.

b. Common Questions of Law and Fact: There are questions of law and fact common to the class. They include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

TOY-RQ-05E-00005739

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice 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?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(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" and/or by using a second notice to do so, and using a second notice for a different purpose

TOY-RQ-05E-00005740

other than permitted by section 30119(e)?

c. Typicality: Plaintiff's claims are typical of the claims of the class. Among other things, plaintiff, like all the class members, is entitled to a statement in compliance with section 30119 of the Act.

d. Adequacy: Plaintiff will fairly and adequately protect the interests of the class. The attorneys for plaintiff and the potential class are qualified and competent and very experienced in class action litigation. Plaintiff is not disqualified by any interests antagonistic to the rest of the class.

e. F.R.Civ..P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.

PRAYER

WHEREFORE, Plaintiff prays judgment for himself and all others on whose behalf this suit is brought, against Defendants, jointly and severally:

a. For a temporary restraining order, preliminary injunction and permanent injunctions as follows:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do acceleration problems occur in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same

TOY-RQ-05E-00005741

vehicles[7] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

b. For costs of suit and attorneys' fees.

c. For such other relief as the Court deems proper.

Dated: December 21, 2009

Ira Spiro
of Spiro Moss LLP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the class on any claims and issues that are triable by jury.

Dated: December 21, 2009

Ira Spiro
of Spiro Moss LLP

[7] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

TOY-RQ-05E-00005742

EXHIBIT A

Certain [Model Year] through [Model Year] Model Year [model]
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign (*Interim Notice*)

[VIN]
Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 200_ through certain 200_ model year [name of model] vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim

What is the risk?
A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?
We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?
We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

What should you do if you experience accelerator pedal interference?
Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

SAMPLE

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

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

SAMPLE

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

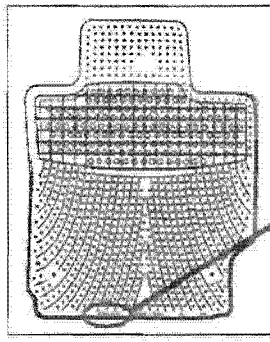
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the attached Application Information Chart to verify mat-to-vehicle application.



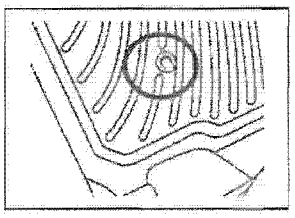
Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

Part Number	Model	Type
PT206-32100 - 45	Camry / Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

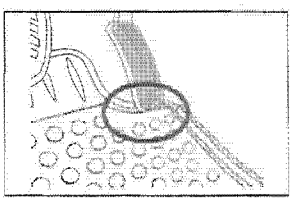
The last 2 digits on the part number indicate the color code

SAMPLE



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

2005 – 2010 Model Year Toyota Avalon Vehicles
Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'05	'06	'07	'08	'09	'10	Color
PT206-07090-02	Avalon	Carpeted					x	x	Ivory
PT206-07090-16	Avalon	Carpeted					x	x	Graphite
PT206-07090-17	Avalon	Carpeted					x	x	Lt Gray
PT206-07090-18	Avalon	Carpeted					x	x	Dk Charcoal
PT208-07000-08	Avalon	Carpeted	x						Ivory
PT208-07000-15	Avalon	Carpeted	x						Taupe
PT208-07000-23	Avalon	Carpeted	x						Stone
PT208-07040-04	Avalon	Carpeted	x						Taupe
PT208-07040-10	Avalon	Carpeted	x						Ivory
PT208-07040-21	Avalon	Carpeted	x						Stone
PT548-07050-10	Avalon	Carpeted	x	x	x	x	x	x	Ivory
PT548-07050-11	Avalon	Carpeted	x	x	x	x	x	x	Lt Gray
PT548-07050-12	Avalon	Carpeted	x	x	x	x	x	x	Dk Charcoal
PT548-07050-22	Avalon	Carpeted	x	x	x	x	x	x	Graphite
PT548-07070-10	Avalon	Carpeted			x	x	x	x	Ivory
PT548-07070-11	Avalon	Carpeted			x	x	x	x	Lt Gray
PT548-07070-12	Avalon	Carpeted			x	x	x	x	Dk Charcoal
PT548-07070-22	Avalon	Carpeted			x	x	x	x	Graphite
PT908-07050-02	Avalon	All Weather	x	x	x	x	x	x	Black
PT908-07050-14	Avalon	All Weather	x	x	x	x	x	x	Brown

(Please note: Sample chart shown)

SAMPLE

EXHIBIT B

TOYOTA

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
P.O. Box 2991
Torrance, CA 90509-2991

CMD

Dale Baldisseri
324 Rolling Hills Ave.
San Mateo, CA 94403-4321

Certain 2007 through 2010 Model Year Camry
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign *(Interim Notice)*

VIN: 4T1BE46K59U867308

Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 2007 through certain 2010 model year Camry vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim.

What is the risk?

A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?

We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?

We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

Spanish translation on back side
Traducción en español en el reverso

010-19464-000048608-T000000182-P000004

What should you do if you experience accelerator pedal interference?

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

- If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.
- If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

Sincerely,

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

Spanish translation on back side
Traducción en español en el reverso

010-19464-000048608-T000000182-P000004

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

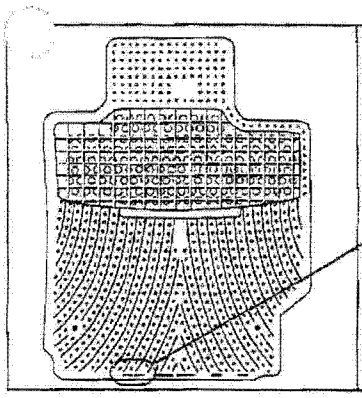
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the front driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the Application Information Chart to verify mat-to-vehicle application.

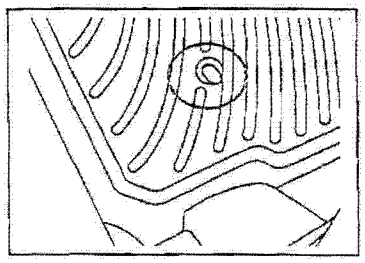


Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

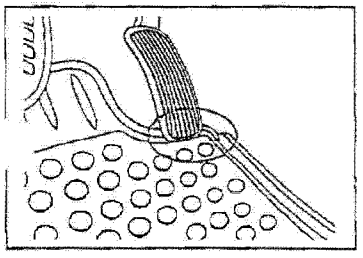
Part Number	Model	Type
PT206-32100 - 45	Camry/Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

The last 2 digits on the part number indicate the color code



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

Spanish translation on back side
Traducción en español en el reverso

TOYOTA CAMRY

2007 – 2010 Model Year Toyota Camry Vehicles Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'07	'08	'09	'10	Color
PT206-32060-11	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Ash
PT206-32060-12	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Dk Charcoal
PT206-32060-14	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Bisque
PT206-32078-40	Camry Hybrid	Carpeted	✔				Bisque
PT206-32100-12	Camry / Camry Hybrid	Carpeted				✔	Gray
PT206-32100-45	Camry / Camry Hybrid	Carpeted				✔	Brown
PT908-03071-02	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Black
PT908-03071-14	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Brown
PT908-0307F-02	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Black
PT908-0307F-14	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Brown
PT908-32070-02*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Black
PT908-32070-14*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Brown

*These mats were recalled in 2007. Please place them in your trunk until further notice.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, 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., Defendants.	Case No. CLASS ACTION **COMPLAINT** **DEMAND FOR JURY TRIAL**

TOY-RQ-05E-00005753

INTRODUCTION

1. 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. This summer, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control. In response to the sudden-acceleration debacle, on 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] The notice is Exhibit A to this complaint[3] It states:

"Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

2. 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

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[1] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

[2] 49 U.S.C. 30101 *et seq.*

[3] Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners, the top states the model name and model years that apply to the particular owners receiving the notice. For example, Mr. Baldisseri's owns a 2009 Camry. The top of his notice states, "Certain 2007 through 2010 Model Year Camry". His notice is Exhibit B to this complaint.

TOY-RQ-05E-00005754

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"

3. 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 horribly dangerous instructions[4] 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, can safely be stopped at the side of the road. That is dangerously misleading. It is the opposite of a truthful "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of control:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat

b. If that doesn't work, instructs Toyota, then stall the car right on the road. Regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral or turn off the engine. The car necessarily slows to a stop. The wheels cannot receive power to move out of the way of traffic on the right or behind. And with the engine off, the power steering and power brakes do not work. Nevertheless, the notice instructs the impossible: after putting the car in neutral, "make a controlled stop at the side of the road."

4. As to items (3), (4) or (5), the notice states that this information will be given in a later notice, and it doesn't say now much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some

[4] On its own website, Toyota calls them "instructions". (Spiro decl., ¶ +; Exh. +)

TOY-RQ-05E-00005755

in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

> (e) Second Notification.— If the Secretary decides that a notification sent by a manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d[5] notification in the way the Secretary prescribes by regulation."

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.

5. This is an action against Toyota's United States subsidiaries, all but one California corporations, for equitable relief under the California Unfair Competition Law, to require them to correct this notice and comply with the Act.

SOME DEFINITIONS

6. In this pleading:

a. "Toyota" means all the defendants, as a group and individually.

b. "Covered Cars" means the Toyota and Lexus cars and trucks referred to in Toyota's notice. They are, according to Toyota's website:

- 2007 – 2010 Camry
- 2005 – 2010 Avalon
- 2004 – 2009 Prius
- 2005 – 2010 Tacoma
- 2007 – 2010 Tundra
- 2007 – 2010 ES350
- 2006 – 2010 IS250 and IS350

7. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiffs bears the burden of pleading, proof, or persuasion.

[5] "2d" is how the statute reads

TOY-RQ-05E-00005756

Plaintiff reserves all rights to plead in the alternative.

JURISDICTION AND VENUE

8. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under the laws of the United States federal law. Rights to relief for plaintiff and the class depend on the resolution of substantial questions of federal law. This Court has supplemental jurisdiction over the state law claims. The state law claims are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is proper in this district because a substantial part of the events and omissions giving rise to the claims occurred in this district, including Defendants' headquarters in Torrance, Los Angeles County. Venue is proper in this district also because there is personal jurisdiction in this district over all Defendants. Presently and at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles County.

PARTIES

10. Plaintiff is a citizen of California.

11. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California.

12. Defendant Toyota Motor North America, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

13. Defendant Toyota Motor Manufacturing, California, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of

TOY-RQ-05E-00005757

business in Kentucky. It is registered[6] to do business in California.

15. On information and belief: Each defendant is a wholly owned subsidiary of the Japanese company, Toyota Motor Corporation. Each defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this complaint. Each defendant is, in the last resort, under common control and management.

FIRST CLAIM FOR RELIEF

(Against All Defendants for Injunction and Declaratory Relief for Unlawful Practices in Violation of the California Unfair Competition Law)

16. Plaintiff incorporates paragraphs 1 through 15.

17. Plaintiff owns a 2009 Camry, which he purchased in California. Plaintiff lost money or property as a result of Defendants' unfair competition. For example, plaintiff continued to make payments on his Camry, and rented a substitute car for a period of time.

18. As we state in paragraphs 1 - 4, Toyota has mailed a notice that violates the National Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful conduct because:

a. Toyota's notice violates the National Traffic and Motor Vehicle Safety Act.

b. Any conduct that violates any law, federal or state, also violates the Unfair Competition Law, under its unlawful "prong."

c. Therefore, Toyota's notice violates the Unfair Competition Law.

19. On information and belief, the notices were devised and written at the headquarters of Toyota in Los Angeles County, California, and all of defendants' conduct described in this complaint emanated from there.

[6] "Qualified" is the technically correct term

TOY-RQ-05E-00005758

CLASS ACTION ALLEGATIONS

20. This action is brought and is properly be maintained as a class action under Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of these classes:

A. California Class Definition

All individuals, entities, and organizations who are residents of California who are owners of any of the following: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. "Owners" includes those who lease the vehicles. The class does not include any judge who handles any aspect of this case, or any defendant or executive of any defendant.

B. National Class Definition

All individuals, entities, and organizations who are residents of the United States who are owners of any of the following: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. "Owners" includes those who lease the vehicles. The class does not include any judge who handles any aspect of this case, or any defendant or executive of any defendant.

a. Numerosity: The class is so numerous that individual joinder of all members is impracticable. There are approximately 3.8 million class members.

b. Common Questions of Law and Fact: There are questions of law and fact common to the class. They include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

TOY-RQ-05E-00005759

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice 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?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(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" and/or by using a second notice to do so, and using a second notice for a different purpose

TOY-RQ-05E-00005760

other than permitted by section 30119(e)?

c. Typicality: Plaintiff's claims are typical of the claims of the class. Among other things, plaintiff, like all the class members, is entitled to a statement in compliance with section 30119 of the Act.

d. Adequacy: Plaintiff will fairly and adequately protect the interests of the class. The attorneys for plaintiff and the potential class are qualified and competent and very experienced in class action litigation. Plaintiff is not disqualified by any interests antagonistic to the rest of the class.

e. F.R.Civ..P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.

PRAYER

WHEREFORE, Plaintiff prays judgment for himself and all others on whose behalf this suit is brought, against Defendants, jointly and severally:

a. For a temporary restraining order, preliminary injunction and permanent injunctions as follows:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do acceleration problems occur in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same

TOY-RQ-05E-00005761

vehicles[7] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

b. For costs of suit and attorneys' fees.

c. For such other relief as the Court deems proper.

Dated: December 21, 2009

Ira Spiro
of Spiro Moss LLP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the class on any claims and issues that are triable by jury.

Dated: December 21, 2009

Ira Spiro
of Spiro Moss LLP

[7] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

TOY-RQ-05E-00005762

EXHIBIT A

Certain [Model Year] through [Model Year] Model Year [model]
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign (*Interim Notice*)

[VIN]
Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 200_ through certain 200_ model year [name of model] vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim

What is the risk?
A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?
We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?
We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

What should you do if you experience accelerator pedal interference?
Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

SAMPLE

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

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

SAMPLE

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

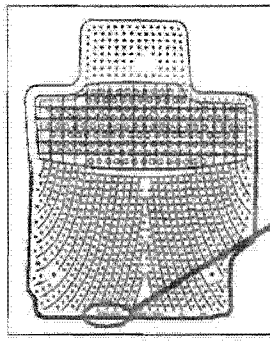
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the attached Application Information Chart to verify mat-to-vehicle application.



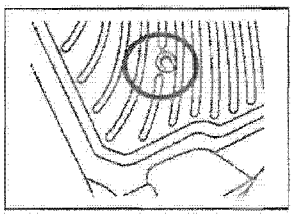
Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

Part Number	Model	Type
PT206-32100 - 45	Camry / Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

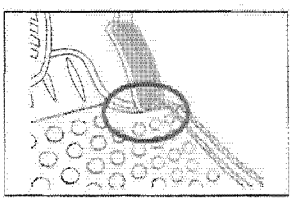
The last 2 digits on the part number indicate the color code

SAMPLE



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

2005 – 2010 Model Year Toyota Avalon Vehicles
Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'05	'06	'07	'08	'09	'10	Color
PT206-07090-02	Avalon	Carpeted					x	x	Ivory
PT206-07090-16	Avalon	Carpeted					x	x	Graphite
PT206-07090-17	Avalon	Carpeted					x	x	Lt Gray
PT206-07090-18	Avalon	Carpeted					x	x	Dk Charcoal
PT208-07000-08	Avalon	Carpeted	x						Ivory
PT208-07000-15	Avalon	Carpeted	x						Taupe
PT208-07000-23	Avalon	Carpeted	x						Stone
PT208-07040-04	Avalon	Carpeted	x						Taupe
PT208-07040-10	Avalon	Carpeted	x						Ivory
PT208-07040-21	Avalon	Carpeted	x						Stone
PT548-07050-10	Avalon	Carpeted	x	x	x	x	x	x	Ivory
PT548-07050-11	Avalon	Carpeted	x	x	x	x	x	x	Lt Gray
PT548-07050-12	Avalon	Carpeted	x	x	x	x	x	x	Dk Charcoal
PT548-07050-22	Avalon	Carpeted	x	x	x	x	x	x	Graphite
PT548-07070-10	Avalon	Carpeted			x	x	x	x	Ivory
PT548-07070-11	Avalon	Carpeted			x	x	x	x	Lt Gray
PT548-07070-12	Avalon	Carpeted			x	x	x	x	Dk Charcoal
PT548-07070-22	Avalon	Carpeted			x	x	x	x	Graphite
PT908-07050-02	Avalon	All Weather	x	x	x	x	x	x	Black
PT908-07050-14	Avalon	All Weather	x	x	x	x	x	x	Brown

(Please note: Sample chart shown)

SAMPLE

EXHIBIT B

TOYOTA

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
P.O. Box 2991
Torrance, CA 90509-2991

CMD

Dale Baldisseri
324 Rolling Hills Ave.
San Mateo, CA 94403-4321

Certain 2007 through 2010 Model Year Camry
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign *(Interim Notice)*

VIN: 4T1BE46K59U867308

Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 2007 through certain 2010 model year Camry vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim.

What is the risk?

A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?

We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?

We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

Spanish translation on back side
Traducción en español en el reverso

010-19464-000048608-T000000182-P000004

What should you do if you experience accelerator pedal interference?

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

- If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.
- If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

Sincerely,

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

Spanish translation on back side
Traducción en español en el reverso

010-19464-000048608-T000000182-P000004

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

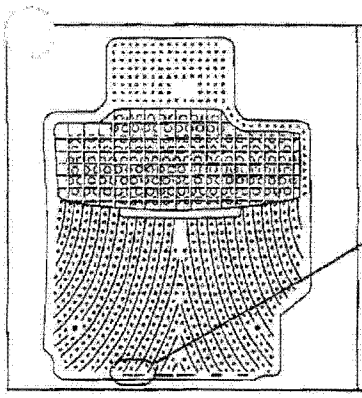
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the front driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the Application Information Chart to verify mat-to-vehicle application.

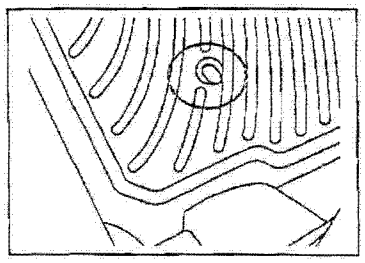


Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

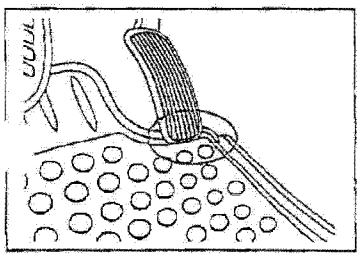
Part Number	Model	Type
PT206-32100 - 45	Camry/Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

The last 2 digits on the part number indicate the color code



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

Spanish translation on back side
Traducción en español en el reverso

TOYOTA CAMRY

2007 – 2010 Model Year Toyota Camry Vehicles Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'07	'08	'09	'10	Color
PT206-32060-11	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Ash
PT206-32060-12	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Dk Charcoal
PT206-32060-14	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Bisque
PT206-32078-40	Camry Hybrid	Carpeted	✔				Bisque
PT206-32100-12	Camry / Camry Hybrid	Carpeted				✔	Gray
PT206-32100-45	Camry / Camry Hybrid	Carpeted				✔	Brown
PT908-03071-02	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Black
PT908-03071-14	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Brown
PT908-0307F-02	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Black
PT908-0307F-14	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Brown
PT908-32070-02*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Black
PT908-32070-14*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Brown

*These mats were recalled in 2007. Please place them in your trunk until further notice.

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FILED
2009 DEC 23 PM 3:47

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated and the general public,

Plaintiff,

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

Defendants.

Case No. CV 09-9386 GAF(FMOx)

CLASS ACTION

Assigned to Hon. Gary A. Feess

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

ORIGINAL

TOY-RQ-05E-00005773

I. INTRODUCTORY FACTS

1. Toyota's vehicles have a defective condition that causes uncontrolled acceleration to speeds up to 100 m.p.h and more. The defective condition is deadly. Data compiled by the safety research organization, Safety Research and Strategies, shows that since 2001, Toyota uncontrolled acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities. This summer, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control and crashed.

2. Toyota has known about the uncontrolled acceleration in its vehicles, and the crashes, injuries, and deaths since 2001. Since 2002, these incidents have resulted in at least eight investigations into uncontrolled acceleration in Toyota vehicles by the National Highway Traffic Safety Administration (NHTSA).

3. Toyota continued to manufacture, sell, advertise, and market the vehicles in which high incidence of uncontrolled acceleration was occurring, without warning buyers about this life-threatening uncontrolled acceleration peril, but instead concealed it.

4. Toyota also knew of an important measure against unintended acceleration, "smart pedal" software that overrides the throttle when the brake pedal is pressed. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

5. Toyota has had a reputation for safety for decades, and knows people buy its vehicles because of that reputation. Toyota markets and advertises safety. In a national Toyota Camry television commercial Toyota says, "It's OK to be overprotective. We are."

6. In August, 2009, after a widely reported unintended acceleration crash that killed a California highway patrol officer and his family, Akio Toyoda, president of the Japanese parent corporation, issued a public apology saying, "Customers bought our cars because they thought they were the safest but now we have given them cause for grave

TOY-RQ-05E-00005774

concern. I can't begin to express my remorse." But Toyota's actions have not matched the words of its president. For years Toyota continued to sell its dangerous vehicles without modification to address the danger, without admitting the defect, and continued to do so even after the president's statement.

7. Finally, after more than eight years of abnormal and unacceptable incidence of unintended acceleration, in September 2009, Toyota admitted there is a defect in its vehicles that causes unintended acceleration. But Toyota limited its admission only to some of its models that have had unintended acceleration and resulting crashes, not all that have had the problem. Also, Toyota claimed the defect "does not exist in vehicles in which the driver's side floor mat is compatible with the vehicle and properly secured."

8. On October 30, 2009, Toyota began mailing a letter to owners[1] of only some of its models that have experienced high incidence of unintended acceleration, not to owners of all Toyota models that have experienced it. Toyota calls the letter an "Interim Notice." The letter contains the statement about "compatible, properly secured" floor mats quoted above.

9. Even though Toyota has made a limited admission of a defect in a limited number of its models, Toyota continues to manufacture and sell even those models without making the changes it announced in the October 30, 2009 "Interim Notice," and without installing "smart pedal" software.

10. Even though Toyota knows about the high incidence of unintended acceleration in **other** Toyota models, Toyota denies there is any defect in them. Instead, Toyota still continues to manufacture, sell, advertise, and market them, leading buyers to believe they are free of defects. And Toyota is not making any changes in those vehicles to address unintended acceleration, and is not installing "smart pedal" software on those vehicles or any others.

[1] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

TOY-RQ-05E-00005775

II. SOME DEFINITIONS

11. In this pleading:

a. "**Toyota**" and "**Defendants**" both mean all the defendants, jointly and individually.

b. "**2009 Notice Vehicles**" means the Toyota and Lexus vehicles referred to in Toyota's notice October 30, 2009 "Interim Notice". They are, according to Toyota's website: 2007 – 2010 Camry, 2005 – 2010 Avalon, 2004 – 2009 Prius, 2005 – 2010 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350.

c. "**2002 - 2010 Vehicles**" means all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles" includes cars, trucks, SUVs, and crossovers.)

d. "**Subject Vehicles**" means the 2009 Notice Vehicles together with the 2002 - 2010 Vehicles.

12. The allegations in this pleading are made without any admission that, as to any particular allegation, plaintiff bears the burden of pleading, proof, or persuasion. plaintiff reserves all rights to plead in the alternative.

III. JURISDICTION AND VENUE

13. This Court also has original diversity jurisdiction under 28 U.S.C. § 1332 (d)(2), as amended by the Class Action Fairness Act of 2005, because this is a class action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and:

a. the majority of class members are citizens of states different from all defendants;

b. and less than one-third of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the state in which the action was originally filed, namely California;

TOY-RQ-05E-00005776

c. and all class members are citizens of states and one defendant is a citizen or subject of a foreign state.

14. Also, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under the laws of the United States federal law. Rights to relief for plaintiff and the class depend on the resolution of substantial questions of federal law.

15. Also, this Court has supplemental jurisdiction over the state law claims. The state law claims are so related to the claims in the action within the original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

16. Venue is proper in this district because a substantial part of the events and omissions giving rise to the claims occurred in this district, including Defendants' headquarters in Torrance, Los Angeles County. Venue is proper in this district also because there is personal jurisdiction in this district over all Defendants. Presently and at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles County.

IV. PARTIES

17. Plaintiff, Mr. Baldisseri, is a citizen of California.

18. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California.

19. Defendant Toyota Motor North America, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

20. Defendant Toyota Motor Manufacturing, California, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

21. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of

TOY-RQ-05E-00005777

business in Kentucky. It is registered[2] to do business in California.

22. The true names of defendants Does 1 through 20 are unknown. Those defendants are sued by said fictitious names, and the complaints will be amended as necessary to obtain relief against defendants Does 1 through 20 when the true names and capacities are ascertained, or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court.

23. On information and belief: Each defendant is a wholly owned subsidiary of the Japanese parent company, Toyota Motor Corporation. Each defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this complaint. Each defendant is under common control and management.

24. On information and belief, at all relevant times, directly or indirectly, or through agents or other persons, each defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged below. On information and belief, it is alleged that each defendant acted pursuant to and within the scope of these relationships, that each defendant knew or should have known about the conduct of all other defendants, and that each defendant authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants.

[2] "Qualified" is the technically correct term

TOY-RQ-05E-00005778

V. FACTS IN MORE DETAIL

A. Toyota Has Known for Years its Vehicles Have High, Unacceptable Incidence of Unintended Acceleration, But Did Nothing About It. Instead, Toyota Denied and Concealed It, and Did Not Install a Protection Widely Used by Other Manufacturers.

25. Since 2001, more than 1,000 Toyota and Lexus owners have reported that their vehicles suddenly accelerated on their own, in many cases crashing.

26. NHTSA issued a statement during the first week of November, 2009, indicating that the seven recalled Toyota models do indeed have an "underlying defect." NHTSA reports that its records show that a total of 15 people died in crashes related to possible sudden acceleration in Toyota vehicles from the 2002 model year and newer, compared with 11 such deaths in vehicles made by all other automakers. The *Los Angeles Times* located federal and other records of 19 fatalities involving Toyota and Lexus vehicles from those model years, fatalities in which sudden or unintended acceleration may have been a factor. The *Times* also located more than 1,000 reports by owners that their vehicles had suddenly accelerated. The *Times* also reported that a nationally known safety expert identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001. The *Times* further reported that other experts say the numbers may be far higher, pointing to a 2007 NHTSA survey of 600 Lexus owners that found 10% complained they had experienced sudden acceleration. In the first week of November, 2009, NHTSA called the issue a "very dangerous problem" and said the remedy remains to be determined.

27. The *Times* has reported the following examples:

a. According to one lawsuit, a woman was killed when a 2005 Camry accelerated and plunged off a cliff in Pismo Beach, California. However, that vehicle is not included in Toyota's recall, which affects only 2007 and later Camrys.

b. A San Diego woman said she was unable to stop her 2008 Toyota

TOY-RQ-05E-00005779

Tacoma pickup from accelerating through the back wall of her garage, destroying a bathroom on the other side. She reports that both her dealer and Toyota's national sales division told her the vehicle had no defects.

c. A woman in Medford, Oregon reported three frightening incidents of unintended acceleration, including one with her 15-year-old daughter behind the wheel. She took her 2007 Prius to the dealership. But mechanics and a Toyota field representative told her that they believed the problem lay in the pedal, which was replaced. Not trusting this explanation, she traded in her Prius for a 2008 BMW 5-series.

d. In October 2009, a man was stopped at a busy Long Beach intersection when he said his 2008 Toyota Tacoma pickup unexpectedly started accelerating, forcing him to stand on the brakes to keep the bucking truck from plowing into oncoming cars. Toyota said the gas pedal design in the truck and more than 4 million other Toyota and Lexus vehicles makes the gas pedal vulnerable to being trapped open by floor mats. But the man said he removed the mats in his truck months earlier on the advice of his Toyota dealer after his truck suddenly accelerated and rear-ended a BMW. He said he will not drive the truck anymore, and does not want anyone else to.

e. A woman awoke in an Oklahoma hospital a month after a crash in her 2005 Camry. She said the car sped out of control on a freeway, then smashed into an embankment after she swerved it onto an exit ramp, leaving behind long skid marks from attempts to stop the vehicle with her brakes and emergency brake. She reports she sustained permanent memory loss, and her best friend died.

f. A Long Beach, California woman , a former science teacher, said she was taken on an 8-mile high-speed ride by her 2007 Prius while she was following her husband in a group bicycle tour in Wisconsin. She said her Prius accelerated from 45 mph to 75 mph on a winding, two-lane highway crowded with 100 cyclists. She reported standing on the brakes with both feet and seeing fire from

her car.

g. A San Dimas emergency room physician said he was driving his Lexus with the cruise control on a Central California on Highway in 2008, not touching the accelerator, when suddenly the vehicle accelerated to 100 mph. He reported that the brakes did not release the cruise control or slow down the vehicle. He said he hasn't used the car since.

h. In 2004, NHTSA began a probe into a defect petition filed by a registered nurse who was then director of health services for the Montgomery County, Md., school system. She reported that she had her foot on the brake of her 2002 Lexus ES when it took off and hit a tree.

i. A Texas man, who has a mechanical engineering degree and spent 15 years as an engineer at General Motors, Chrysler and other auto and truck makers reports that in July, 2008, his wife was driving her 2006 Lexus ES 330 with four grandchildren near Houston when it accelerated out of control. To avoid a wreck, she crossed four lanes of traffic before smashing into a masonry sign, totaling the car and deploying the air bags. No one was seriously injured.

j. The driver of a 2007 Lexus ES 350 reported that the sedan accelerated into a building, bounced backward, struck another vehicle and ended up on top of a snowbank.

k. At least five other lawsuits filed against Toyota in the last few years before 2009 alleged a defect causing unintended acceleration. One, involved a runaway 2007 Toyota Camry that crashed and killed a man near San Jose, California

l. Another suit alleges that the two men experienced repeated incidents of unintended acceleration in their vehicles, a 2008 Toyota FJ Cruiser and a 2004 Toyota Camry. No allegations of crashes or injury were made. Neither vehicle is included in the current recall.

m. The wife of a Torrance, California woman experienced a runaway

acceleration incident in 2009, in her 2007 Lexus IS. She traded it for a Buick.

28. Owner complaints helped trigger at least eight investigations into sudden acceleration in Toyota and Lexus vehicles by the NHTSA since 2002.[3]

29. The *Times* reports: Toyota first installed electronic throttles in 2002 model year Lexus ES and Camry sedans. Total complaints of sudden acceleration for the Lexus and Camry in the 2002-2004 model years averaged 132 a year, up from an average of 26 annually for the 1999-2001 models. The average number of sudden-acceleration complaints involving the Toyota Tacoma jumped more than 20 times, on average, in the three years after Toyota's introduction of drive-by-wire in these trucks in 2005. Increases were also found on the hybrid Prius, among other models. Although Toyota said it knows of no electronic defects that would cause a vehicle to surge out of control, it issued at least three technical service bulletins to its dealers warning of problems with the new electronic throttles in the 2002 and 2003 Camry. According to one of the bulletins that was published by Alldata, a vehicle information company, the throttle systems on six-cylinder engines can cause the vehicle to "exhibit a surging during light throttle input at speeds between 38 mph and 42 mph." The solution provided to dealers was to reprogram the engine control module. A NHTSA test found that a Toyota throttle exhibited unusual behavior when researchers applied a magnetic field to the device's sensitive electronics. Engine speed surged by 1,000 revolutions per minute, according to a 2008 report by the agency's Vehicle Research and Test Center. Nonetheless, the lab concluded that the system "showed no vulnerabilities to electric signal activities." The details of the experiment were not explained in the lab report, and the agency never explained the apparent contradiction.

30. In the NHTSA investigation of the 2004 unintended acceleration incident

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[3] The *Times* reports the following about those investigations. Federal officials systematically excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had suddenly accelerated, which sharply narrowed the scope of the probes. Federal officials eliminated broad categories of sudden-acceleration complaints, including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem.

TOY-RQ-05E-00005782

reported by the Alabama registered nurse, NHTSA and Toyota both winnowed down other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models. When NHTSA asked Toyota to disgorge all of the reports it knew about, Toyota eliminated an unknown number in five broad categories, including cases in which drivers said they were unable to control a runaway engine by applying the brakes. Federal investigators said only 20 cases were considered relevant. But The *Times'* examination of consumer complaints and a sampling of reports from Toyota dealers found more than 400 reports of sudden acceleration involving those models. And federal records show that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

31. As for Toyota's position that brakes can always overcome a vehicle's engine, Toyota and NHTSA now acknowledge that a braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. This is shown by a number of Toyota actions, one of which is its announcement that some of its cars will be modified so that the brake overrides the accelerator if both pedals are pressed at the same time.

32. In 2005, a Phoenix man who had experienced a minor accident he blamed on sudden acceleration, filed a defect petition with the NHTSA that included nearly 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority should be eliminated because they dealt "with two completely different issues."

33. The *Times* reports that when owners said the "vehicle unintentionally or suddenly 'accelerated,'" Toyota claimed that represented a different issue than when they said "the vehicle 'surged' or 'lurched.'" On information and belief, the truth is, wile the vocabulary used in the complaints have differences, the issues were the same.

34. According to the complaint in *Choi v Toyota*, pending in this Court, an initial Toyota design for the Subject Vehicles called for "an electronic throttle control and a redundant mechanical linkage between the gas pedal and the engine throttle control as a failsafe in the event of a sudden unintended acceleration"; this feature would disconnect the electronic throttle control and allow a driver to stop the vehicle, but

Toyota began selling vehicles without this feature around 2001; Toyota failed to include another "failsafe measure" that would "automatically reduce the engine to idle when the brakes are being applied while the throttle is in an open position".

35. Until recently, Toyota maintained that its vehicles have no defect and that runaway accelerations were caused by incorrectly installed floor mats wedging the accelerator pedal into a wide-open position. Toyota's insistence that the vehicles had no defect drew a sharp rebuke from NHTSA, saying Toyota made "inaccurate and misleading" statements about the nature of the problem.

36. Toyota continues its advertising and public statements touting "safety." Toyota's video of November, 2009, placed on its website, states that NHTSA "thoroughly investigated" Toyota uncontrolled acceleration and used "stringent safety testing. . . . Toyota and Lexus take public safety very seriously. We believe our vehicles are among the safest on the road. Your best source of information can be found at Toyota.com and Lexus.com." The video also states that Toyota's November 2009 "recall" is "voluntary." The video is at:
http://pressroom.toyota.com/pr/tms/electronic.aspx?fid=84801

37. Toyota website statement dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality. [¶] "In 2009, Toyota won more IIHS Top Safety Pick (TSP) awards than any other manufacturer. Toyota continues to improve vehicle passive and active safety, including improvement of past winners of IIHS TSP". The statement is at:
http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2273.

B. Toyota's So-Called "Recall"

38. Toyota's "Interim Notice," published in the press and on the Internet, has caused serious misinformation and misunderstanding about what to do about the problem.

TOY-RQ-05E-00005784

39. On October 30, 2009, Toyota announced what it termed a "recall" of some models that have experienced uncontrolled acceleration, but not all models. Toyota states the "recall" covers 3.86 million vehicles in the United States.

40. Plaintiff places quotes around "recall" because the term is misleading. Toyota has not told anyone to bring their vehicles in yet. Toyota has said it plans to have dealers ready to do the "recall" work possibly as early as January, 2010, but on a "rolling" basis, starting with some models and model years then moving to others. That is part of the problem – these dangerous vehicles will still be on the road for months, and the drivers have in mind Toyota's dangerous "advice" to stall them, unless a corrective notice is sent.

41. Toyota states that to reduce the risk of the mat snagging the gas pedal, technicians will cut off about three-quarters of an inch from the bottom of the pedal. On Toyota Camry and Avalon and Lexus ES models, they also will replace thick foam padding under the carpeting with thinner pads to allow more clearance between the pedal and floor.

42. At an even later unspecified time, Toyota will modify software in the vehicles' engine control systems that, says Toyota, will override the throttle any time the brake is applied. The remedy will be made initially only in the Camry, Avalon, Lexus ES and Lexus IS sedans, only later in all models.

43. That software, often called a smart pedal, has been is in use for years by many other manufacturers as a protection against unintended acceleration, such as Volkswagen, Audi, Porsche, BMW, Nissan and Chrysler. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

C. Toyota's "Interim Notice" Instructions to Owners.

44. In connection with what Toyota refers to as a "recall," beginning October 30, 2009, Toyota mailed the "Interim Notice," and put it on Toyota's website. On

TOY-RQ-05E-00005785

November 2, 2009, Toyota distributed a press release announcing the letter campaign.

45. Toyota's uncontrolled acceleration problem causes cars to rush to speeds of 100 m.p.h. and faster. Toyota's "Interim Notice" only compounds the problem. The critical fact is this: Toyota's "Interim Notice" gives the following misguided, misguiding, terrifying directions [words in brackets are added by plaintiff, as is the bolding]:

> "What should you do if you experience accelerator pedal interference?
>
> "Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:
>
> "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it from the accelerator pedal** ***[while the vehicle is accelerating]***; then pull over and stop the vehicle.
>
> "If the floor mat cannot be dislodged, them firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.
>
> "**Shift the transmission gear selector to the Neutral (N) position** ***[eliminating any possibility of accelerating in a controlled manner in order to pull over safely]*** and use the brakes to make a controlled stop at the side of the road and turn off the engine.
>
> "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC** ***[engine will be off, but there will be power to some accessories]***. This will not cause loss of steering or braking, but **the power assist to these systems will be lost** ***[i.e., there will be no power steering or power brakes]***."

46. These instructions are extremely dangerous. When cars suddenly accelerate out of control, these instructions might be better than nothing, but that is the point – Toyota should disclose to people that because these maneuvers are not safe, it might be better to do nothing with the vehicles, i.e. not drive them. Instead, Toyota suggests that its instructions are safe, vested with Toyota's expertise, and that people should continue driving these defective vehicles.

a. If a driver pulls back on the floor mat while the vehicle is moving, her attention is taken away from driving, and her vision away from the road. Doing that while the car is accelerating, probably wildly accelerating, is inviting a crash.

TOY-RQ-05E-00005786

b. "Pull back." Toyota means the driver should bend down to move the floor mat. A driver doing that cannot effectively use the steering wheel, apply the brakes, or use anything else on the car, probably cannot do any of these things at all.

c. Putting the car in neutral is just as bad or worse. You are driving on a freeway or in street traffic. If you put the car in neutral, you completely lose the ability to accelerate in order to move the car to the side safely. It is the same as stalling. Cars have been recalled because of stalling problems. Tendency to stall is a defect. A stalled car in traffic is a safety hazard.

d. In the same breath, Toyota's instructions say, "make a controlled stop at the side of the road and turn off the engine". When the car is put in neutral, it slows down. The other cars on the road do not. In order to make a "controlled stop at the side of the road," a driver has to be able to accelerate out of the way of cars coming up from the right. But Toyota's driver cannot do that.

e. Turning off the engine is worse yet. Now we have a stalled car that has no power steering and no power brakes. Cars designed with power steering are not designed to be steered without it. Steering them without the power is extremely difficult. The same is true of power brakes.

f. For example, older cars designed without power steering had much larger steering wheels than today's cars. Why? Because the driver needed lots of leverage in order to steer. When a modern car loses its power steering, the little steering wheel and other design features in the car make it very hard to steer.

D. The Risks and Dangers Caused By Toyota's "Interim Notice" Instructions

47. The risks caused by Toyota's "Interim Notice" are unacceptable for many reasons, including these and others:

a. The actions recommended by Toyota create a new and different set of hazards (1) loss of vehicle control and (2) disabling/stalling of the vehicle in

TOY-RQ-05E-00005787

traffic."

b. Loss of vehicle control by drivers has been repeatedly recognized as a cause of serious and fatal crashes. As recently as September of this year, the National Highway Traffic Administration [NHTSA] noted the role of driver distraction and loss of control in crash causation. "Distraction from the primary task of driving could present a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report." NHTSA urges drivers: "Avoid conditions that lead to a loss of control."

c. Toyota's recommendations could lead to out-of-control, distracted driving situations that present 'serious and potentially deadly danger' to occupants of the involved Toyota vehicle and those of other vehicles on the highways. as well as bicyclists and pedestrians

d. Toyota's instructions to "pull back the floor mat and dislodge it from the accelerator pedal" could not possibly be accomplished without a diversion of the driver's vision and attention for at least several seconds, totaling even into minutes if the driver has to try more than once, which is likely under the stress of this emergency. This is a forced diversion away from the driving task and attention to the stream of traffic. NHTSA has found that glances away from the roadway totaling "more than 2 seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving."

e. The dangers presented to occupants of vehicles disabled in traffic or along the sides of busy highways have been long recognized.

f. A California court found that "stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise." (October 11, 2000 Alameda Superior Court

statement of decision after trial, stating intention to order recall of 23 million vehicles because of defects causing stalling.)

g. Following the recommendations in the "Interim Notice" would cause the vehicle to stall. A stalled or disabled vehicle is one which, due to loss of power, is no longer able to maintain its travel speed. In the case of a Toyota suddenly afflicted by an uninvited power surge due to its "uncontrolled acceleration" defect, the vehicle may be traveling at a dangerously high rate of speed while its driver attempts to carry out Toyota's recommendations.

h. As the vehicle slows, it increasingly presents a hazard to itself and to other vehicles, which are traveling at highway rates of speed. Even if the driver is able to successfully maneuver the disabled vehicle out of the road's traffic lanes and onto the roadside – a difficult and dangerous undertaking -- it continues to present a hazard, since it is now a 'fixed object' subject to impact by other vehicles. If the incident occurs on a stretch of highway that has no shoulder, the disabled vehicle is forced to a stop in a lane of traffic.

i. Drivers of these vehicles thus are caught between the devil of the uncorrected, uncontrolled acceleration defect and the deep blue sea of Toyota's recommendations. Toyota should advise owners of these vehicles to not drive them until its 'campaign remedy' has been accomplished.

E. Plaintiff's Damages, Injuries and Losses

48. As a result of Toyota's reputation for safety and quality, which has been advertised and marketed by Toyota, and as a result of Toyota's concealments and misrepresentations and other conduct described in this complaint, above and below, plaintiff suffered injury in fact and lost money and property, and plaintiff conferred benefits on Toyota, in a number of ways, including but not limited to the following:

a. Plaintiff bought a new 2009 Toyota Camry from a Toyota dealership. He would not have bought it otherwise. He would not have bought it if Toyota

TOY-RQ-05E-00005789

had not concealed and the facts about unintended acceleration, described above.

b. Plaintiff paid the purchase price and continued to make payments.

c. Plaintiff remained loyal to Toyota and returned to the Toyota dealer for repairs and maintenance. He purchased parts manufactured by Toyota, such as a replacement undercarriage part, and replacement wipers.

d. Plaintiff lost money and property, consisting of the difference in value between a vehicle free of defects the value of the vehicles he bought, with a defective condition, and reduced resale value as a result of having it.

e. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," he called Toyota and asked that Toyota supply him with a substitute car. Toyota refused.

f. Instead, Toyota told him to take out the floor mat, and he did. The car is now being driven without the mat, and there will be extra wear and tear on the carpet that otherwise would be covered by the floor mat. The purpose of the floor mat is to protect the carpet beneath it.

g. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," use of the Camry was lost for a time, because of the danger of using the car. Plaintiff spent money to rent a substitute car. But plaintiff could not rent a substitute car for long. Use of the car remains less than it would be without the unintended acceleration defect.

VI. CLASS ACTION ALLEGATIONS

49. This action is brought and is properly be maintained as a class action under Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of those who fall within the following CLASS DEFINITIONS. In these definitions, "Owners" includes those who lease the vehicles. The classes do not include any individual who has suffered any bodily, emotional or psychological injury as a result of any crash that resulted from sudden or uncontrolled acceleration of any of the vehicles mentioned in

TOY-RQ-05E-00005790

this complaint, or the successors of any individuals who died as a result of any such crash. The claims in this action do not include any claims for bodily, emotional or psychological injury or for physical injury to property. Also, the classes do not include any judge who handles any aspect of this case, or any defendant or executive of any defendant, or their family members.

A. Definition of California 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2009 Notice Vehicles are: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

B. Definition of California 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the 2002 - 2010 Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2002 - 2010 Vehicles are all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles includes cars, trucks, SUVs, and crossovers.)

C. Definition of National 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

D. Definition of National 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the

TOY-RQ-05E-00005791

2002 - 2010 Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

a. Numerosity: The class is so numerous that individual joinder of all members is impracticable. There are approximately 3.86 million class members.

b. **Ascertainability:** The class members are specific individuals, entities, and organizations whose identity can easily be ascertained from Defendants' records.

c. Existence and Predominance of Common Questions of Law and Fact: Common questions of law and fact exist as to all Class members, and predominate over any questions that affect only individual members of the Class. The common questions of law and fact include, but are not limited to:

i. What is the extent of the implied warranty of fitness Toyota gave on the Subject Vehicles.

ii. What is the extent of the implied warranty of merchantability Toyota gave on the Subject Vehicles.

iii. What express warranty did Toyota give on the Subject Vehicles?

iv. Did Toyota fail to comply with its implied warranty of fitness on the Subject Vehicles?

v. Did Toyota fail to comply with its implied warranty of merchantability on the Subject Vehicles?

vi. Did Toyota fail to comply with its express warranty on the Subject Vehicles?

vii. Did Toyota violate the Song-Beverly Consumer Warranty Act?

viii. What is the proper measure of damages for the class for breach of the implied warranty of fitness?

ix. What is the proper measure of damages for the class for breach of the implied warranty of merchantability?

x. What is the proper measure of damages for the class for breach of the express warranty?

TOY-RQ-05E-00005792

xi. What is the proper measure of damages for the class for breach of the Song-Beverly Consumer Warranty Act?

xii. Does Toyota's conduct satisfy any of the tests for punitive damages to the class?

xiii. If so, what punitive damages should be awarded the class?

d. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff and other class members sustained damages, losses, and injuries in fact arising out of the propensity for unintended acceleration of the vehicles, and arising out of Defendants' common misrepresentations, practices, and violations of law referred to in each claim for relief. Plaintiff seeks recoveries for the same types of damages, losses, and injuries in fact as were sustained by the other class members. Each class member, as well as plaintiff, purchased and owned at least one of the Subject Vehicles Plaintiffs and the members of the Class sustained the same types of damages, losses and injuries in fact.

e. Adequacy: will fairly and adequately protect the interests of the class. The attorneys for plaintiff and the potential class are qualified and competent and very experienced in class action litigation. Plaintiff is not disqualified by any interests antagonistic to the rest of the class.

f. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Also, because the losses, injuries and damages suffered by each of the class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public of adjudication of individual litigation and claims

would be very substantial, and substantially more than if the claims are treated as class action. Individual litigation and claims would also present the potential for inconsistent or contradictory results. The issues in this lawsuit can be decided by means of common, classwide proof. In addition, if appropriate, the court can, and is empowered to, fashion methods to efficiently manage this lawsuit as a class action. There is no administrative remedy available to the class members for the relief sought here.

g. F.R.Civ.P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.

FIRST CLAIM FOR RELIEF

(Class Action Against All Defendants for Breach of Warranty and Violation of the California Song-Beverly Consumer Warranty Act)

50. Plaintiff incorporates paragraphs 1 through 49.

51. When the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for the ordinary purposes for which such vehicles are used.

52. Also, when the Subject Vehicles were purchased or leased, Toyota had reason to know the Subject Vehicles were required for safe transportation, and that plaintiff and the other class members were relying on the skill and judgment of Toyota to select and furnish vehicles suitable for that purpose. Therefore when the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for that purpose.

53. Toyota gave express warranties along with the purchases and leases of the Subject Vehicles by plaintiff and the other class members that, among other things, the

TOY-RQ-05E-00005794

vehicles were "built to exceptional standards." Along with the purchases and leases, Toyota also expressly warranted the powertrain, engine, transmission/transaxle, and other components of the powertrain for 60 months/60,000 miles.

54. As a result of the unintended acceleration defective condition and the conduct of Toyota described in this complaint, Toyota failed to comply with these warranties and breached them, and plaintiff and the other class members have been damaged by the failures. The failures and breaches were and are willful.

55. The damages include, but are not limited to, these:

a. The difference in value between a vehicle free of defects the value of the vehicles they bought, with a defective condition, and reduced resale value as a result of having it.

b. Extra wear and tear on the carpet that otherwise would be covered by the floor mat.

c. Lost of use of the vehicle and payments for substitute vehicles.

d. The cost to correct the defective condition, and loss of use of the vehicles while the corrections are made.

e. Payments of the purchase price and lease payments.

56. This claim for relief is limited to those class members who are individuals. The Song-Beverly Consumer Warranty Act violations are limited to those class members who purchased or leased new Subject Vehicles primarily for personal, family, or household purposes.

57. Plaintiff and the class gave Toyota all notices and demands required to recover under this claim for relief.

58. By its conduct described above, at all relevant times, Toyota has been aware of the unintended acceleration defective condition, and has consciously disregarded the rights and safety of plaintiff and the other class members. The misconduct by Toyota was done with malice, fraud, and oppression and in willful and conscious disregard of the rights and safety of plaintiff and others. Toyota's conduct is despicable conduct

TOY-RQ-05E-00005795

carried on by the Toyota with a willful and conscious disregard of the rights or safety of others. It is despicable conduct that subjects persons to cruel and unjust hardship in conscious disregard of their rights. It was intentional misrepresentation, deceit, or concealment of a material fact known to Toyota, with the intention on the part of Toyota of thereby depriving persons of property or legal rights. Plaintiff and the class are entitled to punitive damages.

SECOND CLAIM FOR RELIEF

(Class Action Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

59. Plaintiff incorporates paragraphs 1 through 58.

60. On information and belief, all the conduct by Toyota described in this complaint took place, originated, or emanated at the headquarters of Toyota in Los Angeles County, California.

61. Plaintiff owns a 2009 Camry, which he purchased in California approximately in February, 2009.

62. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

63. Toyota's conduct is unlawful because, among other things, it constitutes breach of warranty and violation of the Song-Beverly Consumer Warranty Act.

64. Toyota's conduct is fraudulent within the meaning of the Unfair Competition Law because, among other things, as stated more particularly above, it is and has been likely to deceive the class members and members of the public about the safety of the Subject Vehicles, the unintended acceleration and its risks, what can and has been done about it, and the safety of the instructions in the "Interim Notice," all as stated in above.

65. Toyota's conduct is unfair within the meaning of the Unfair Competition

TOY-RQ-05E-00005796

Law (UCL) because, among other things, as the facts above show:

a. The gravity of the harm to the class members and the public far outweighs the utility of Toyota's conduct. The risk and actuality of crashes, injuries, and deaths far outweigh any legitimate reasons or utility Toyota could have had in not correcting the unintended acceleration long ago, in not recalling all the Subject Vehicles, in not manufacturing them with the smart pedal, in not installing the smart pedal on all the Subject Vehicles years ago, certainly by now, in not sending the class members a new notice correcting the "Interim Notice." conduct is unfair within the meaning of the Unfair Competition Law (UCL)

b. Toyota's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to the class members.

c. Toyota's conduct violates the policy or spirit of one of the various antitrust laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition, because, among other things, Toyota has, for many years, for many years Toyota has sold the Subject Vehicles without devoting to them the necessary cost and effort to sufficiently protect against unintended acceleration, and without the smart pedal and other technology that would sufficiently protect against it.

66. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

a. Do the Subject Vehicles have a defective condition that causes unintended acceleration?

b. What did Toyota know about the defective condition, and when did Toyota know it?

c. What did Toyota conceal or fail to disclose regarding the defective

TOY-RQ-05E-00005797

condition?

d. What did Toyota fail to do that would have ameliorated the defective condition?

e. What did Toyota fail to do that would have ameliorated the number or severity of the crashes, injuries, and deaths that have resulted from defective condition?

f. What is the proper injunctive and declaratory relief for Toyota's violation of the Unfair Competition Law?

g. What are the proper measures of restitution for Toyota's violation of the Unfair Competition Law?

h. What would have been the cost to Toyota to manufacture the Subject Vehicles so as to sufficiently protect against unintended acceleration?

i. What would have been the cost to Toyota to manufacture the Subject Vehicles with smart pedal technology?

THIRD CLAIM FOR RELIEF

(Additional Class Action Claim Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

67. Plaintiff incorporates paragraphs 1 through 49.

69. NHTSA has a legislative mandate to issue motor vehicle safety standards. Toyota, like all manufacturers of motor vehicles, is required to adhere to the standards. The purpose of the standards is to protect the public against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles.

70. Toyota, like all motor vehicle manufacturers, is required to certify that its vehicles comply with all the standards, and must place on its vehicles a manufacturer's certificate of compliance with all the standards. A motor vehicle manufacturer may not issue the certificate if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading in a material respect. Toyota placed the

TOY-RQ-05E-00005798

certificate on plaintiff's Camry and all the Subject Vehicles. They are representations that the vehicles comply with all the standards, but the representations are false, and they were false when they were made, as Toyota knew.

68. Standard 124, in 49 C.F.R. 571.124, states:

"S5.1 There shall be at least two sources of energy **capable of returning the throttle to the idle position** within the time limit specified by S5.3 from any accelerator position or speed **whenever the driver removes the opposing actuating force.** In the event of failure of one source of energy by a single severance or disconnection, **the throttle shall return to the idle position** within the time limits specified by S5.3, from any accelerator position or speed whenever the driver removes the opposing actuating force.

"S5.2 The throttle shall return to the idle position from any accelerator position or any speed of which the engine is capable whenever any one component of the accelerator control system is disconnected or severed at a single point. The return to idle shall occur within the time limit specified by S5.3, measured either from the time of severance or disconnection or from the first removal of the opposing actuating force by the driver.

"S5.3 Except as provided below, maximum time to return to idle position shall be 1 **second** for vehicles of 4536 kilograms or less GVWR, and **2 seconds** for vehicles of more than 4536 kilograms GVWR. **Maximum time to return to idle position shall be 3 seconds for any vehicle** that is exposed to ambient air at −18 degrees Celsius to −40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

69. The Subject Vehicles do not meet this standard. The vehicles do not have a source of energy capable of returning the throttle to the idle position within specified times, maximum 3 seconds, **whenever** the driver removes the opposing actuating force. Instead, in the Subject Vehicles, the throttle does not return to the idle position at all

when there is unintended acceleration. This is shown by the enormously higher incidence of uncontrolled acceleration in the Subject Vehicles than in all other vehicles combined.

70. A notice to owners is required by the National Traffic and Motor Vehicle Safety Act[4] whenever a manufacturer "decides" there is a defect that relates to vehicle safety. On October 30, 2009, Toyota began mailing a notice, although the notice does not comply with the Act. Toyota calls it an "Interim Notice." The "Interim Notice" is Exhibit A to this complaint.[5] It states:

"Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

71. 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"

72. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the "Interim Notice," rather than stating the true

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[4] 49 U.S.C. 30101 *et seq.*

[5] Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners, the top states the model name and model years that apply to the particular owners receiving the notice. For example, Mr. Baldisseri's owns a 2009 Camry. The top of his notice states, "Certain 2007 through 2010 Model Year Camry". His notice is Exhibit B to this complaint.

TOY-RQ-05E-00005800

risk, contains horribly dangerous instructions[6] about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and that in fact add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled 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 "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of control:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat;

b. If that doesn't work, instructs Toyota, then stall the car right on the road. Do so regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral or turn off the engine. The car necessarily slows to a stop. The wheels cannot receive power to move out of the way of traffic on the right or behind. And with the engine off, the power steering and power brakes do not work. Nevertheless, the notice instructs the impossible: after putting the car in neutral, or turning off the engine, "make a controlled stop at the side of the road."

73. As to items (3), (4) or (5), the "Interim Notice" states that this information will be given in a later notice, but it doesn't say now much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

(e) Second Notification.— If the Secretary decides that a notification sent by a

[6] On its own website, Toyota calls them "instructions".

> manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d[7] notification in the way the Secretary prescribes by regulation."

Toyota violates the Act by not including all the section 30119 information in its "Interim Notice," and by using a second notice for a different purpose.

74. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

75. As stated above, Toyota has mailed a notice that violates the National Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful conduct because:

a. Toyota's notice violates the National Traffic and Motor Vehicle Safety Act.

b. Any conduct that violates any law, federal or state, also violates the Unfair Competition Law, under its unlawful "prong."

c. Therefore, Toyota's "Interim Notice" violates the Unfair Competition Law.

76. On information and belief, the "Interim Notice" was devised and written at the headquarters of Toyota in Los Angeles County, California, and all of Defendants' conduct described in this complaint emanated from there.

77. The "Interim Notice" is required by the National Traffic and Motor Vehicle Safety Act[8] whenever a manufacturer "decides" there is a defect that relates to vehicle safety.

78. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably

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[7] "2d" is how the statute reads

[8] 49 U.S.C. 30101 *et seq.*

TOY-RQ-05E-00005802

related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled acceleration, the car can still be safe, and can safely be stopped at the side of the road?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(5) the earliest date on which the defect or noncompliance will be

TOY-RQ-05E-00005803

remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

PRAYER

WHEREFORE, Plaintiff prays judgment for himself and all others on whose behalf this suit is brought, against Defendants, jointly and severally:

a. For preliminary injunction and permanent injunctions, including but not limited to the following:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do when unintended acceleration occurs in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same vehicles[9] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration

[9] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

TOY-RQ-05E-00005804

problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

b. For restitution and disgorgement in amounts exceeding $5 million.

c. For claims other than those under the Unfair Competition Law, for damages in amounts exceeding $5 million, and punitive damages in an amounts to be determined.

d. For claims other than those under the Unfair Competition Law, for attorneys' fees.

e. For costs of suit.

f. For such other relief as the Court deems proper.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the class on any claims and issues that are triable by jury.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

TOY-RQ-05E-00005805

PROOF OF SERVICE
Baldisseri v. Toyota
United States District Court Case No. CV 09-9386 GAF(FMOx)

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP. On the date set forth below I served the document(s) described as **First Amended Complaint** on all the interested parties in this action, by placing: [ ] the original [xx] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP:

Toyota Motor Sales, U.S.A., Inc. Toyota Motor North America, Inc. Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017	

[X] **BY MAIL**: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[ ] **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

[ ] **(BY FAX)** On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456.

[ ] **(BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS)**: I personally served said document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California on December 28, 2009.

Jeanette Kerr

TOY-RQ-05E-00005806

Name & Address:
Ira Spiro (SBN 67641)
J. Mark Moore (SBN 180473)
H. Scott Leviant (SBN 200834)
SPIRO MOSS LLP
11377 W. Olympic Blvd., 5th Fl., L.A., CA 90064

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, and the General Public PLAINTIFF(S) 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 DEFENDANT(S).	CASE NUMBER CV 09-9386 GAF (FMOx) **SUMMONS**

FOR OFFICE USE ONLY

TO: DEFENDANT(S): Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Ira Spiro, whose address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, CA 90064. 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: 28 DEC 2009

By: MARILYN DAVIS
Deputy Clerk

(Seal of the Court)

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

Ira Spiro, Cal. State Bar No. 67641
ira@spiromoss.com
J. Mark Moore, Cal. State Bar No. 180473
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Attorneys for Plaintiff DALE BALDISSERI

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2009 DEC 23 PM 3:47

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated and the general public, Plaintiff, 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 Defendants.	Case No. CV 09-9386 GAF(FMOx) CLASS ACTION Assigned to Hon. Gary A. Feess **FIRST AMENDED COMPLAINT** **DEMAND FOR JURY TRIAL**

ORIGINAL

TOY-RQ-05E-00005808

I. INTRODUCTORY FACTS

1. Toyota's vehicles have a defective condition that causes uncontrolled acceleration to speeds up to 100 m.p.h and more. The defective condition is deadly. Data compiled by the safety research organization, Safety Research and Strategies, shows that since 2001, Toyota uncontrolled acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities. This summer, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control and crashed.

2. Toyota has known about the uncontrolled acceleration in its vehicles, and the crashes, injuries, and deaths since 2001. Since 2002, these incidents have resulted in at least eight investigations into uncontrolled acceleration in Toyota vehicles by the National Highway Traffic Safety Administration (NHTSA).

3. Toyota continued to manufacture, sell, advertise, and market the vehicles in which high incidence of uncontrolled acceleration was occurring, without warning buyers about this life-threatening uncontrolled acceleration peril, but instead concealed it.

4. Toyota also knew of an important measure against unintended acceleration, "smart pedal" software that overrides the throttle when the brake pedal is pressed. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

5. Toyota has had a reputation for safety for decades, and knows people buy its vehicles because of that reputation. Toyota markets and advertises safety. In a national Toyota Camry television commercial Toyota says, "It's OK to be overprotective. We are."

6. In August, 2009, after a widely reported unintended acceleration crash that killed a California highway patrol officer and his family, Akio Toyoda, president of the Japanese parent corporation, issued a public apology saying, "Customers bought our cars because they thought they were the safest but now we have given them cause for grave

TOY-RQ-05E-00005809

concern. I can't begin to express my remorse." But Toyota's actions have not matched the words of its president. For years Toyota continued to sell its dangerous vehicles without modification to address the danger, without admitting the defect, and continued to do so even after the president's statement.

7. Finally, after more than eight years of abnormal and unacceptable incidence of unintended acceleration, in September 2009, Toyota admitted there is a defect in its vehicles that causes unintended acceleration. But Toyota limited its admission only to some of its models that have had unintended acceleration and resulting crashes, not all that have had the problem. Also, Toyota claimed the defect "does not exist in vehicles in which the driver's side floor mat is compatible with the vehicle and properly secured."

8. On October 30, 2009, Toyota began mailing a letter to owners[1] of only some of its models that have experienced high incidence of unintended acceleration, not to owners of all Toyota models that have experienced it. Toyota calls the letter an "Interim Notice." The letter contains the statement about "compatible, properly secured" floor mats quoted above.

9. Even though Toyota has made a limited admission of a defect in a limited number of its models, Toyota continues to manufacture and sell even those models without making the changes it announced in the October 30, 2009 "Interim Notice," and without installing "smart pedal" software.

10. Even though Toyota knows about the high incidence of unintended acceleration in **other** Toyota models, Toyota denies there is any defect in them. Instead, Toyota still continues to manufacture, sell, advertise, and market them, leading buyers to believe they are free of defects. And Toyota is not making any changes in those vehicles to address unintended acceleration, and is not installing "smart pedal" software on those vehicles or any others.

[1] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

TOY-RQ-05E-00005810

II. SOME DEFINITIONS

11. In this pleading:

a. "**Toyota**" and "**Defendants**" both mean all the defendants, jointly and individually.

b. "**2009 Notice Vehicles**" means the Toyota and Lexus vehicles referred to in Toyota's notice October 30, 2009 "Interim Notice". They are, according to Toyota's website: 2007 – 2010 Camry, 2005 – 2010 Avalon, 2004 – 2009 Prius, 2005 – 2010 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350.

c. "**2002 - 2010 Vehicles**" means all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles" includes cars, trucks, SUVs, and crossovers.)

d. "**Subject Vehicles**" means the 2009 Notice Vehicles together with the 2002 - 2010 Vehicles.

12. The allegations in this pleading are made without any admission that, as to any particular allegation, plaintiff bears the burden of pleading, proof, or persuasion. plaintiff reserves all rights to plead in the alternative.

III. JURISDICTION AND VENUE

13. This Court also has original diversity jurisdiction under 28 U.S.C. § 1332 (d)(2), as amended by the Class Action Fairness Act of 2005, because this is a class action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and:

a. the majority of class members are citizens of states different from all defendants;

b. and less than one-third of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the state in which the action was originally filed, namely California;

TOY-RQ-05E-00005811

c. and all class members are citizens of states and one defendant is a citizen or subject of a foreign state.

14. Also, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under the laws of the United States federal law. Rights to relief for plaintiff and the class depend on the resolution of substantial questions of federal law.

15. Also, this Court has supplemental jurisdiction over the state law claims. The state law claims are so related to the claims in the action within the original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

16. Venue is proper in this district because a substantial part of the events and omissions giving rise to the claims occurred in this district, including Defendants' headquarters in Torrance, Los Angeles County. Venue is proper in this district also because there is personal jurisdiction in this district over all Defendants. Presently and at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles County.

IV. PARTIES

17. Plaintiff, Mr. Baldisseri, is a citizen of California.

18. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California.

19. Defendant Toyota Motor North America, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

20. Defendant Toyota Motor Manufacturing, California, Inc. is a California corporation and a citizen of California, with its principal place of business in California.

21. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of

TOY-RQ-05E-00005812

business in Kentucky. It is registered[2] to do business in California.

22. The true names of defendants Does 1 through 20 are unknown. Those defendants are sued by said fictitious names, and the complaints will be amended as necessary to obtain relief against defendants Does 1 through 20 when the true names and capacities are ascertained, or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court.

23. On information and belief: Each defendant is a wholly owned subsidiary of the Japanese parent company, Toyota Motor Corporation. Each defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this complaint. Each defendant is under common control and management.

24. On information and belief, at all relevant times, directly or indirectly, or through agents or other persons, each defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged below. On information and belief, it is alleged that each defendant acted pursuant to and within the scope of these relationships, that each defendant knew or should have known about the conduct of all other defendants, and that each defendant authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants.

[2] "Qualified" is the technically correct term

TOY-RQ-05E-00005813

V. FACTS IN MORE DETAIL

A. Toyota Has Known for Years its Vehicles Have High, Unacceptable Incidence of Unintended Acceleration, But Did Nothing About It. Instead, Toyota Denied and Concealed It, and Did Not Install a Protection Widely Used by Other Manufacturers.

25. Since 2001, more than 1,000 Toyota and Lexus owners have reported that their vehicles suddenly accelerated on their own, in many cases crashing.

26. NHTSA issued a statement during the first week of November, 2009, indicating that the seven recalled Toyota models do indeed have an "underlying defect." NHTSA reports that its records show that a total of 15 people died in crashes related to possible sudden acceleration in Toyota vehicles from the 2002 model year and newer, compared with 11 such deaths in vehicles made by all other automakers. The *Los Angeles Times* located federal and other records of 19 fatalities involving Toyota and Lexus vehicles from those model years, fatalities in which sudden or unintended acceleration may have been a factor. The *Times* also located more than 1,000 reports by owners that their vehicles had suddenly accelerated. The *Times* also reported that a nationally known safety expert identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001. The *Times* further reported that other experts say the numbers may be far higher, pointing to a 2007 NHTSA survey of 600 Lexus owners that found 10% complained they had experienced sudden acceleration. In the first week of November, 2009, NHTSA called the issue a "very dangerous problem" and said the remedy remains to be determined.

27. The *Times* has reported the following examples:

a. According to one lawsuit, a woman was killed when a 2005 Camry accelerated and plunged off a cliff in Pismo Beach, California. However, that vehicle is not included in Toyota's recall, which affects only 2007 and later Camrys.

b. A San Diego woman said she was unable to stop her 2008 Toyota

TOY-RQ-05E-00005814

Tacoma pickup from accelerating through the back wall of her garage, destroying a bathroom on the other side. She reports that both her dealer and Toyota's national sales division told her the vehicle had no defects.

c. A woman in Medford, Oregon reported three frightening incidents of unintended acceleration, including one with her 15-year-old daughter behind the wheel. She took her 2007 Prius to the dealership. But mechanics and a Toyota field representative told her that they believed the problem lay in the pedal, which was replaced. Not trusting this explanation, she traded in her Prius for a 2008 BMW 5-series.

d. In October 2009, a man was stopped at a busy Long Beach intersection when he said his 2008 Toyota Tacoma pickup unexpectedly started accelerating, forcing him to stand on the brakes to keep the bucking truck from plowing into oncoming cars. Toyota said the gas pedal design in the truck and more than 4 million other Toyota and Lexus vehicles makes the gas pedal vulnerable to being trapped open by floor mats. But the man said he removed the mats in his truck months earlier on the advice of his Toyota dealer after his truck suddenly accelerated and rear-ended a BMW. He said he will not drive the truck anymore, and does not want anyone else to.

e. A woman awoke in an Oklahoma hospital a month after a crash in her 2005 Camry. She said the car sped out of control on a freeway, then smashed into an embankment after she swerved it onto an exit ramp, leaving behind long skid marks from attempts to stop the vehicle with her brakes and emergency brake. She reports she sustained permanent memory loss, and her best friend died.

f. A Long Beach, California woman , a former science teacher, said she was taken on an 8-mile high-speed ride by her 2007 Prius while she was following her husband in a group bicycle tour in Wisconsin. She said her Prius accelerated from 45 mph to 75 mph on a winding, two-lane highway crowded with 100 cyclists. She reported standing on the brakes with both feet and seeing fire from

her car.

g. A San Dimas emergency room physician said he was driving his Lexus with the cruise control on a Central California on Highway in 2008, not touching the accelerator, when suddenly the vehicle accelerated to 100 mph. He reported that the brakes did not release the cruise control or slow down the vehicle. He said he hasn't used the car since.

h. In 2004, NHTSA began a probe into a defect petition filed by a registered nurse who was then director of health services for the Montgomery County, Md., school system. She reported that she had her foot on the brake of her 2002 Lexus ES when it took off and hit a tree.

i. A Texas man, who has a mechanical engineering degree and spent 15 years as an engineer at General Motors, Chrysler and other auto and truck makers reports that in July, 2008, his wife was driving her 2006 Lexus ES 330 with four grandchildren near Houston when it accelerated out of control. To avoid a wreck, she crossed four lanes of traffic before smashing into a masonry sign, totaling the car and deploying the air bags. No one was seriously injured.

j. The driver of a 2007 Lexus ES 350 reported that the sedan accelerated into a building, bounced backward, struck another vehicle and ended up on top of a snowbank.

k. At least five other lawsuits filed against Toyota in the last few years before 2009 alleged a defect causing unintended acceleration. One, involved a runaway 2007 Toyota Camry that crashed and killed a man near San Jose, California

l. Another suit alleges that the two men experienced repeated incidents of unintended acceleration in their vehicles, a 2008 Toyota FJ Cruiser and a 2004 Toyota Camry. No allegations of crashes or injury were made. Neither vehicle is included in the current recall.

m. The wife of a Torrance, California woman experienced a runaway

acceleration incident in 2009, in her 2007 Lexus IS. She traded it for a Buick.

28. Owner complaints helped trigger at least eight investigations into sudden acceleration in Toyota and Lexus vehicles by the NHTSA since 2002.[3]

29. The *Times* reports: Toyota first installed electronic throttles in 2002 model year Lexus ES and Camry sedans. Total complaints of sudden acceleration for the Lexus and Camry in the 2002-2004 model years averaged 132 a year, up from an average of 26 annually for the 1999-2001 models. The average number of sudden-acceleration complaints involving the Toyota Tacoma jumped more than 20 times, on average, in the three years after Toyota's introduction of drive-by-wire in these trucks in 2005. Increases were also found on the hybrid Prius, among other models. Although Toyota said it knows of no electronic defects that would cause a vehicle to surge out of control, it issued at least three technical service bulletins to its dealers warning of problems with the new electronic throttles in the 2002 and 2003 Camry. According to one of the bulletins that was published by Alldata, a vehicle information company, the throttle systems on six-cylinder engines can cause the vehicle to "exhibit a surging during light throttle input at speeds between 38 mph and 42 mph." The solution provided to dealers was to reprogram the engine control module. A NHTSA test found that a Toyota throttle exhibited unusual behavior when researchers applied a magnetic field to the device's sensitive electronics. Engine speed surged by 1,000 revolutions per minute, according to a 2008 report by the agency's Vehicle Research and Test Center. Nonetheless, the lab concluded that the system "showed no vulnerabilities to electric signal activities." The details of the experiment were not explained in the lab report, and the agency never explained the apparent contradiction.

30. In the NHTSA investigation of the 2004 unintended acceleration incident

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[3] The *Times* reports the following about those investigations. Federal officials systematically excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had suddenly accelerated, which sharply narrowed the scope of the probes. Federal officials eliminated broad categories of sudden-acceleration complaints, including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem.

TOY-RQ-05E-00005817

reported by the Alabama registered nurse, NHTSA and Toyota both winnowed down other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models. When NHTSA asked Toyota to disgorge all of the reports it knew about, Toyota eliminated an unknown number in five broad categories, including cases in which drivers said they were unable to control a runaway engine by applying the brakes. Federal investigators said only 20 cases were considered relevant. But The *Times'* examination of consumer complaints and a sampling of reports from Toyota dealers found more than 400 reports of sudden acceleration involving those models. And federal records show that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

31. As for Toyota's position that brakes can always overcome a vehicle's engine, Toyota and NHTSA now acknowledge that a braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. This is shown by a number of Toyota actions, one of which is its announcement that some of its cars will be modified so that the brake overrides the accelerator if both pedals are pressed at the same time.

32. In 2005, a Phoenix man who had experienced a minor accident he blamed on sudden acceleration, filed a defect petition with the NHTSA that included nearly 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority should be eliminated because they dealt "with two completely different issues."

33. The *Times* reports that when owners said the "vehicle unintentionally or suddenly 'accelerated,'" Toyota claimed that represented a different issue than when they said "the vehicle 'surged' or 'lurched.'" On information and belief, the truth is, wile the vocabulary used in the complaints have differences, the issues were the same.

34. According to the complaint in *Choi v Toyota*, pending in this Court, an initial Toyota design for the Subject Vehicles called for "an electronic throttle control and a redundant mechanical linkage between the gas pedal and the engine throttle control as a failsafe in the event of a sudden unintended acceleration"; this feature would disconnect the electronic throttle control and allow a driver to stop the vehicle, but

Toyota began selling vehicles without this feature around 2001; Toyota failed to include another "failsafe measure" that would "automatically reduce the engine to idle when the brakes are being applied while the throttle is in an open position".

35. Until recently, Toyota maintained that its vehicles have no defect and that runaway accelerations were caused by incorrectly installed floor mats wedging the accelerator pedal into a wide-open position. Toyota's insistence that the vehicles had no defect drew a sharp rebuke from NHTSA, saying Toyota made "inaccurate and misleading" statements about the nature of the problem.

36. Toyota continues its advertising and public statements touting "safety." Toyota's video of November, 2009, placed on its website, states that NHTSA "thoroughly investigated" Toyota uncontrolled acceleration and used "stringent safety testing. . . . Toyota and Lexus take public safety very seriously. We believe our vehicles are among the safest on the road. Your best source of information can be found at Toyota.com and Lexus.com." The video also states that Toyota's November 2009 "recall" is "voluntary." The video is at:
http://pressroom.toyota.com/pr/tms/electronic.aspx?fid=84801

37. Toyota website statement dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality. [¶] "In 2009, Toyota won more IIHS Top Safety Pick (TSP) awards than any other manufacturer. Toyota continues to improve vehicle passive and active safety, including improvement of past winners of IIHS TSP". The statement is at:
http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2273.

B. Toyota's So-Called "Recall"

38. Toyota's "Interim Notice," published in the press and on the Internet, has caused serious misinformation and misunderstanding about what to do about the problem.

39. On October 30, 2009, Toyota announced what it termed a "recall" of some models that have experienced uncontrolled acceleration, but not all models. Toyota states the "recall" covers 3.86 million vehicles in the United States.

40. Plaintiff places quotes around "recall" because the term is misleading. Toyota has not told anyone to bring their vehicles in yet. Toyota has said it plans to have dealers ready to do the "recall" work possibly as early as January, 2010, but on a "rolling" basis, starting with some models and model years then moving to others. That is part of the problem – these dangerous vehicles will still be on the road for months, and the drivers have in mind Toyota's dangerous "advice" to stall them, unless a corrective notice is sent.

41. Toyota states that to reduce the risk of the mat snagging the gas pedal, technicians will cut off about three-quarters of an inch from the bottom of the pedal. On Toyota Camry and Avalon and Lexus ES models, they also will replace thick foam padding under the carpeting with thinner pads to allow more clearance between the pedal and floor.

42. At an even later unspecified time, Toyota will modify software in the vehicles' engine control systems that, says Toyota, will override the throttle any time the brake is applied. The remedy will be made initially only in the Camry, Avalon, Lexus ES and Lexus IS sedans, only later in all models.

43. That software, often called a smart pedal, has been is in use for years by many other manufacturers as a protection against unintended acceleration, such as Volkswagen, Audi, Porsche, BMW, Nissan and Chrysler. But even though unintended acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has never installed this software in its vehicles.

C. Toyota's "Interim Notice" Instructions to Owners.

44. In connection with what Toyota refers to as a "recall," beginning October 30, 2009, Toyota mailed the "Interim Notice," and put it on Toyota's website. On

TOY-RQ-05E-00005820

November 2, 2009, Toyota distributed a press release announcing the letter campaign.

45. Toyota's uncontrolled acceleration problem causes cars to rush to speeds of 100 m.p.h. and faster. Toyota's "Interim Notice" only compounds the problem. The critical fact is this: Toyota's "Interim Notice" gives the following misguided, misguiding, terrifying directions [words in brackets are added by plaintiff, as is the bolding]:

> "What should you do if you experience accelerator pedal interference?
>
> "Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:
>
> "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it from the accelerator pedal** ***[while the vehicle is accelerating]***; then pull over and stop the vehicle.
>
> "If the floor mat cannot be dislodged, them firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.
>
> "**Shift the transmission gear selector to the Neutral (N) position** ***[eliminating any possibility of accelerating in a controlled manner in order to pull over safely]*** and use the brakes to make a controlled stop at the side of the road and turn off the engine.
>
> "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC** ***[engine will be off, but there will be power to some accessories]***. This will not cause loss of steering or braking, but **the power assist to these systems will be lost** ***[i.e., there will be no power steering or power brakes]***."

46. These instructions are extremely dangerous. When cars suddenly accelerate out of control, these instructions might be better than nothing, but that is the point – Toyota should disclose to people that because these maneuvers are not safe, it might be better to do nothing with the vehicles, i.e. not drive them. Instead, Toyota suggests that its instructions are safe, vested with Toyota's expertise, and that people should continue driving these defective vehicles.

a. If a driver pulls back on the floor mat while the vehicle is moving, her attention is taken away from driving, and her vision away from the road. Doing that while the car is accelerating, probably wildly accelerating, is inviting a crash.

TOY-RQ-05E-00005821

b. "Pull back." Toyota means the driver should bend down to move the floor mat. A driver doing that cannot effectively use the steering wheel, apply the brakes, or use anything else on the car, probably cannot do any of these things at all.

c. Putting the car in neutral is just as bad or worse. You are driving on a freeway or in street traffic. If you put the car in neutral, you completely lose the ability to accelerate in order to move the car to the side safely. It is the same as stalling. Cars have been recalled because of stalling problems. Tendency to stall is a defect. A stalled car in traffic is a safety hazard.

d. In the same breath, Toyota's instructions say, "make a controlled stop at the side of the road and turn off the engine". When the car is put in neutral, it slows down. The other cars on the road do not. In order to make a "controlled stop at the side of the road," a driver has to be able to accelerate out of the way of cars coming up from the right. But Toyota's driver cannot do that.

e. Turning off the engine is worse yet. Now we have a stalled car that has no power steering and no power brakes. Cars designed with power steering are not designed to be steered without it. Steering them without the power is extremely difficult. The same is true of power brakes.

f. For example, older cars designed without power steering had much larger steering wheels than today's cars. Why? Because the driver needed lots of leverage in order to steer. When a modern car loses its power steering, the little steering wheel and other design features in the car make it very hard to steer.

D. The Risks and Dangers Caused By Toyota's "Interim Notice" Instructions

47. The risks caused by Toyota's "Interim Notice" are unacceptable for many reasons, including these and others:

a. The actions recommended by Toyota create a new and different set of hazards (1) loss of vehicle control and (2) disabling/stalling of the vehicle in

traffic."

b. Loss of vehicle control by drivers has been repeatedly recognized as a cause of serious and fatal crashes. As recently as September of this year, the National Highway Traffic Administration [NHTSA] noted the role of driver distraction and loss of control in crash causation. "Distraction from the primary task of driving could present a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report." NHTSA urges drivers: "Avoid conditions that lead to a loss of control."

c. Toyota's recommendations could lead to out-of-control, distracted driving situations that present 'serious and potentially deadly danger' to occupants of the involved Toyota vehicle and those of other vehicles on the highways. as well as bicyclists and pedestrians

d. Toyota's instructions to "pull back the floor mat and dislodge it from the accelerator pedal" could not possibly be accomplished without a diversion of the driver's vision and attention for at least several seconds, totaling even into minutes if the driver has to try more than once, which is likely under the stress of this emergency. This is a forced diversion away from the driving task and attention to the stream of traffic. NHTSA has found that glances away from the roadway totaling "more than 2 seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving."

e. The dangers presented to occupants of vehicles disabled in traffic or along the sides of busy highways have been long recognized.

f. A California court found that "stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise." (October 11, 2000 Alameda Superior Court

statement of decision after trial, stating intention to order recall of 23 million vehicles because of defects causing stalling.)

g. Following the recommendations in the "Interim Notice" would cause the vehicle to stall. A stalled or disabled vehicle is one which, due to loss of power, is no longer able to maintain its travel speed. In the case of a Toyota suddenly afflicted by an uninvited power surge due to its "uncontrolled acceleration" defect, the vehicle may be traveling at a dangerously high rate of speed while its driver attempts to carry out Toyota's recommendations.

h. As the vehicle slows, it increasingly presents a hazard to itself and to other vehicles, which are traveling at highway rates of speed. Even if the driver is able to successfully maneuver the disabled vehicle out of the road's traffic lanes and onto the roadside – a difficult and dangerous undertaking -- it continues to present a hazard, since it is now a 'fixed object' subject to impact by other vehicles. If the incident occurs on a stretch of highway that has no shoulder, the disabled vehicle is forced to a stop in a lane of traffic.

i. Drivers of these vehicles thus are caught between the devil of the uncorrected, uncontrolled acceleration defect and the deep blue sea of Toyota's recommendations. Toyota should advise owners of these vehicles to not drive them until its 'campaign remedy' has been accomplished.

E. Plaintiff's Damages, Injuries and Losses

48. As a result of Toyota's reputation for safety and quality, which has been advertised and marketed by Toyota, and as a result of Toyota's concealments and misrepresentations and other conduct described in this complaint, above and below, plaintiff suffered injury in fact and lost money and property, and plaintiff conferred benefits on Toyota, in a number of ways, including but not limited to the following:

a. Plaintiff bought a new 2009 Toyota Camry from a Toyota dealership. He would not have bought it otherwise. He would not have bought it if Toyota

had not concealed and the facts about unintended acceleration, described above.

b. Plaintiff paid the purchase price and continued to make payments.

c. Plaintiff remained loyal to Toyota and returned to the Toyota dealer for repairs and maintenance. He purchased parts manufactured by Toyota, such as a replacement undercarriage part, and replacement wipers.

d. Plaintiff lost money and property, consisting of the difference in value between a vehicle free of defects the value of the vehicles he bought, with a defective condition, and reduced resale value as a result of having it.

e. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," he called Toyota and asked that Toyota supply him with a substitute car. Toyota refused.

f. Instead, Toyota told him to take out the floor mat, and he did. The car is now being driven without the mat, and there will be extra wear and tear on the carpet that otherwise would be covered by the floor mat. The purpose of the floor mat is to protect the carpet beneath it.

g. After plaintiff learned about the unintended acceleration defect, and received the "Interim Notice," use of the Camry was lost for a time, because of the danger of using the car. Plaintiff spent money to rent a substitute car. But plaintiff could not rent a substitute car for long. Use of the car remains less than it would be without the unintended acceleration defect.

VI. CLASS ACTION ALLEGATIONS

49. This action is brought and is properly be maintained as a class action under Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of those who fall within the following CLASS DEFINITIONS. In these definitions, "Owners" includes those who lease the vehicles. The classes do not include any individual who has suffered any bodily, emotional or psychological injury as a result of any crash that resulted from sudden or uncontrolled acceleration of any of the vehicles mentioned in

TOY-RQ-05E-00005825

this complaint, or the successors of any individuals who died as a result of any such crash. The claims in this action do not include any claims for bodily, emotional or psychological injury or for physical injury to property. Also, the classes do not include any judge who handles any aspect of this case, or any defendant or executive of any defendant, or their family members.

A. Definition of California 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2009 Notice Vehicles are: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

B. Definition of California 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the 2002 - 2010 Vehicles in California, or who purchase or lease any of them in California while this case is pending.

As stated above, the 2002 - 2010 Vehicles are all model year 2002 - 2010 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of the Lexus brand. The "brand" is also called the "badge." "Vehicles includes cars, trucks, SUVs, and crossovers.)

C. Definition of National 2009 Notice Class

All individuals, entities, and organizations who purchased or leased any of the 2009 Notice Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

D. Definition of National 2002 - 2010 Vehicles Class

All individuals, entities, and organizations who purchased or leased any of the

TOY-RQ-05E-00005826

2002 - 2010 Vehicles in the United States, or who purchase or lease any of them in the United States while this case is pending.

a. Numerosity: The class is so numerous that individual joinder of all members is impracticable. There are approximately 3.86 million class members.

b. **Ascertainability:** The class members are specific individuals, entities, and organizations whose identity can easily be ascertained from Defendants' records.

c. Existence and Predominance of Common Questions of Law and Fact: Common questions of law and fact exist as to all Class members, and predominate over any questions that affect only individual members of the Class. The common questions of law and fact include, but are not limited to:

i. What is the extent of the implied warranty of fitness Toyota gave on the Subject Vehicles.

ii. What is the extent of the implied warranty of merchantability Toyota gave on the Subject Vehicles.

iii. What express warranty did Toyota give on the Subject Vehicles?

iv. Did Toyota fail to comply with its implied warranty of fitness on the Subject Vehicles?

v. Did Toyota fail to comply with its implied warranty of merchantability on the Subject Vehicles?

vi. Did Toyota fail to comply with its express warranty on the Subject Vehicles?

vii. Did Toyota violate the Song-Beverly Consumer Warranty Act?

viii. What is the proper measure of damages for the class for breach of the implied warranty of fitness?

ix. What is the proper measure of damages for the class for breach of the implied warranty of merchantability?

x. What is the proper measure of damages for the class for breach of the express warranty?

TOY-RQ-05E-00005827

xi. What is the proper measure of damages for the class for breach of the Song-Beverly Consumer Warranty Act?

xii. Does Toyota's conduct satisfy any of the tests for punitive damages to the class?

xiii. If so, what punitive damages should be awarded the class?

d. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff and other class members sustained damages, losses, and injuries in fact arising out of the propensity for unintended acceleration of the vehicles, and arising out of Defendants' common misrepresentations, practices, and violations of law referred to in each claim for relief. Plaintiff seeks recoveries for the same types of damages, losses, and injuries in fact as were sustained by the other class members. Each class member, as well as plaintiff, purchased and owned at least one of the Subject Vehicles Plaintiffs and the members of the Class sustained the same types of damages, losses and injuries in fact.

e. Adequacy: will fairly and adequately protect the interests of the class. The attorneys for plaintiff and the potential class are qualified and competent and very experienced in class action litigation. Plaintiff is not disqualified by any interests antagonistic to the rest of the class.

f. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Also, because the losses, injuries and damages suffered by each of the class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public of adjudication of individual litigation and claims

TOY-RQ-05E-00005828

would be very substantial, and substantially more than if the claims are treated as class action. Individual litigation and claims would also present the potential for inconsistent or contradictory results. The issues in this lawsuit can be decided by means of common, classwide proof. In addition, if appropriate, the court can, and is empowered to, fashion methods to efficiently manage this lawsuit as a class action. There is no administrative remedy available to the class members for the relief sought here.

g. F.R.Civ.P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.

FIRST CLAIM FOR RELIEF

(Class Action Against All Defendants for Breach of Warranty and Violation of the California Song-Beverly Consumer Warranty Act)

50. Plaintiff incorporates paragraphs 1 through 49.

51. When the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for the ordinary purposes for which such vehicles are used.

52. Also, when the Subject Vehicles were purchased or leased, Toyota had reason to know the Subject Vehicles were required for safe transportation, and that plaintiff and the other class members were relying on the skill and judgment of Toyota to select and furnish vehicles suitable for that purpose. Therefore when the Subject Vehicles were purchased or leased by plaintiff and the other class members, the purchases and leases carried with them an implied warranty by Toyota that the Subject Vehicles were fit for that purpose.

53. Toyota gave express warranties along with the purchases and leases of the Subject Vehicles by plaintiff and the other class members that, among other things, the

TOY-RQ-05E-00005829

vehicles were "built to exceptional standards." Along with the purchases and leases, Toyota also expressly warranted the powertrain, engine, transmission/transaxle, and other components of the powertrain for 60 months/60,000 miles.

54. As a result of the unintended acceleration defective condition and the conduct of Toyota described in this complaint, Toyota failed to comply with these warranties and breached them, and plaintiff and the other class members have been damaged by the failures. The failures and breaches were and are willful.

55. The damages include, but are not limited to, these:

a. The difference in value between a vehicle free of defects the value of the vehicles they bought, with a defective condition, and reduced resale value as a result of having it.

b. Extra wear and tear on the carpet that otherwise would be covered by the floor mat.

c. Lost of use of the vehicle and payments for substitute vehicles.

d. The cost to correct the defective condition, and loss of use of the vehicles while the corrections are made.

e. Payments of the purchase price and lease payments.

56. This claim for relief is limited to those class members who are individuals. The Song-Beverly Consumer Warranty Act violations are limited to those class members who purchased or leased new Subject Vehicles primarily for personal, family, or household purposes.

57. Plaintiff and the class gave Toyota all notices and demands required to recover under this claim for relief.

58. By its conduct described above, at all relevant times, Toyota has been aware of the unintended acceleration defective condition, and has consciously disregarded the rights and safety of plaintiff and the other class members. The misconduct by Toyota was done with malice, fraud, and oppression and in willful and conscious disregard of the rights and safety of plaintiff and others. Toyota's conduct is despicable conduct

TOY-RQ-05E-00005830

carried on by the Toyota with a willful and conscious disregard of the rights or safety of others. It is despicable conduct that subjects persons to cruel and unjust hardship in conscious disregard of their rights. It was intentional misrepresentation, deceit, or concealment of a material fact known to Toyota, with the intention on the part of Toyota of thereby depriving persons of property or legal rights. Plaintiff and the class are entitled to punitive damages.

SECOND CLAIM FOR RELIEF

(Class Action Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

59. Plaintiff incorporates paragraphs 1 through 58.

60. On information and belief, all the conduct by Toyota described in this complaint took place, originated, or emanated at the headquarters of Toyota in Los Angeles County, California.

61. Plaintiff owns a 2009 Camry, which he purchased in California approximately in February, 2009.

62. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

63. Toyota's conduct is unlawful because, among other things, it constitutes breach of warranty and violation of the Song-Beverly Consumer Warranty Act.

64. Toyota's conduct is fraudulent within the meaning of the Unfair Competition Law because, among other things, as stated more particularly above, it is and has been likely to deceive the class members and members of the public about the safety of the Subject Vehicles, the unintended acceleration and its risks, what can and has been done about it, and the safety of the instructions in the "Interim Notice," all as stated in above.

65. Toyota's conduct is unfair within the meaning of the Unfair Competition

TOY-RQ-05E-00005831

Law (UCL) because, among other things, as the facts above show:

a. The gravity of the harm to the class members and the public far outweighs the utility of Toyota's conduct. The risk and actuality of crashes, injuries, and deaths far outweigh any legitimate reasons or utility Toyota could have had in not correcting the unintended acceleration long ago, in not recalling all the Subject Vehicles, in not manufacturing them with the smart pedal, in not installing the smart pedal on all the Subject Vehicles years ago, certainly by now, in not sending the class members a new notice correcting the "Interim Notice." conduct is unfair within the meaning of the Unfair Competition Law (UCL)

b. Toyota's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to the class members.

c. Toyota's conduct violates the policy or spirit of one of the various antitrust laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition, because, among other things, Toyota has, for many years, for many years Toyota has sold the Subject Vehicles without devoting to them the necessary cost and effort to sufficiently protect against unintended acceleration, and without the smart pedal and other technology that would sufficiently protect against it.

66. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

a. Do the Subject Vehicles have a defective condition that causes unintended acceleration?

b. What did Toyota know about the defective condition, and when did Toyota know it?

c. What did Toyota conceal or fail to disclose regarding the defective

TOY-RQ-05E-00005832

condition?

d. What did Toyota fail to do that would have ameliorated the defective condition?

e. What did Toyota fail to do that would have ameliorated the number or severity of the crashes, injuries, and deaths that have resulted from defective condition?

f. What is the proper injunctive and declaratory relief for Toyota's violation of the Unfair Competition Law?

g. What are the proper measures of restitution for Toyota's violation of the Unfair Competition Law?

h. What would have been the cost to Toyota to manufacture the Subject Vehicles so as to sufficiently protect against unintended acceleration?

i. What would have been the cost to Toyota to manufacture the Subject Vehicles with smart pedal technology?

THIRD CLAIM FOR RELIEF

(Additional Class Action Claim Against All Defendants for Injunction and Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in Violation of the California Unfair Competition Law)

67. Plaintiff incorporates paragraphs 1 through 49.

69. NHTSA has a legislative mandate to issue motor vehicle safety standards. Toyota, like all manufacturers of motor vehicles, is required to adhere to the standards. The purpose of the standards is to protect the public against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles.

70. Toyota, like all motor vehicle manufacturers, is required to certify that its vehicles comply with all the standards, and must place on its vehicles a manufacturer's certificate of compliance with all the standards. A motor vehicle manufacturer may not issue the certificate if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading in a material respect. Toyota placed the

TOY-RQ-05E-00005833

certificate on plaintiff's Camry and all the Subject Vehicles. They are representations that the vehicles comply with all the standards, but the representations are false, and they were false when they were made, as Toyota knew.

68. Standard 124, in 49 C.F.R. 571.124, states:

"S5.1 There shall be at least two sources of energy **capable of returning the throttle to the idle position** within the time limit specified by S5.3 from any accelerator position or speed **whenever the driver removes the opposing actuating force.** In the event of failure of one source of energy by a single severance or disconnection, **the throttle shall return to the idle position** within the time limits specified by S5.3, from any accelerator position or speed whenever the driver removes the opposing actuating force.

"S5.2 The throttle shall return to the idle position from any accelerator position or any speed of which the engine is capable whenever any one component of the accelerator control system is disconnected or severed at a single point. The return to idle shall occur within the time limit specified by S5.3, measured either from the time of severance or disconnection or from the first removal of the opposing actuating force by the driver.

"S5.3 Except as provided below, maximum time to return to idle position shall be 1 **second** for vehicles of 4536 kilograms or less GVWR, and **2 seconds** for vehicles of more than 4536 kilograms GVWR. **Maximum time to return to idle position shall be 3 seconds for any vehicle** that is exposed to ambient air at −18 degrees Celsius to −40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

69. The Subject Vehicles do not meet this standard. The vehicles do not have a source of energy capable of returning the throttle to the idle position within specified times, maximum 3 seconds, **whenever** the driver removes the opposing actuating force. Instead, in the Subject Vehicles, the throttle does not return to the idle position at all

when there is unintended acceleration. This is shown by the enormously higher incidence of uncontrolled acceleration in the Subject Vehicles than in all other vehicles combined.

70. A notice to owners is required by the National Traffic and Motor Vehicle Safety Act[4] whenever a manufacturer "decides" there is a defect that relates to vehicle safety. On October 30, 2009, Toyota began mailing a notice, although the notice does not comply with the Act. Toyota calls it an "Interim Notice." The "Interim Notice" is Exhibit A to this complaint.[5] It states:

"Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

71. 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"

72. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the "Interim Notice," rather than stating the true

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[4] 49 U.S.C. 30101 *et seq.*

[5] Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners, the top states the model name and model years that apply to the particular owners receiving the notice. For example, Mr. Baldisseri's owns a 2009 Camry. The top of his notice states, "Certain 2007 through 2010 Model Year Camry". His notice is Exhibit B to this complaint.

TOY-RQ-05E-00005835

risk, contains horribly dangerous instructions[6] about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and that in fact add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled 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 "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of control:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat;

b. If that doesn't work, instructs Toyota, then stall the car right on the road. Do so regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral or turn off the engine. The car necessarily slows to a stop. The wheels cannot receive power to move out of the way of traffic on the right or behind. And with the engine off, the power steering and power brakes do not work. Nevertheless, the notice instructs the impossible: after putting the car in neutral, or turning off the engine, "make a controlled stop at the side of the road."

73. As to items (3), (4) or (5), the "Interim Notice" states that this information will be given in a later notice, but it doesn't say now much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

(e) Second Notification.— If the Secretary decides that a notification sent by a

[6] On its own website, Toyota calls them "instructions".

> manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d[7] notification in the way the Secretary prescribes by regulation."

Toyota violates the Act by not including all the section 30119 information in its "Interim Notice," and by using a second notice for a different purpose.

74. This conduct by Toyota constitutes unlawful, fraudulent, and unfair competition under the California Unfair Competition Law.

75. As stated above, Toyota has mailed a notice that violates the National Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful conduct because:

a. Toyota's notice violates the National Traffic and Motor Vehicle Safety Act.

b. Any conduct that violates any law, federal or state, also violates the Unfair Competition Law, under its unlawful "prong."

c. Therefore, Toyota's "Interim Notice" violates the Unfair Competition Law.

76. On information and belief, the "Interim Notice" was devised and written at the headquarters of Toyota in Los Angeles County, California, and all of Defendants' conduct described in this complaint emanated from there.

77. The "Interim Notice" is required by the National Traffic and Motor Vehicle Safety Act[8] whenever a manufacturer "decides" there is a defect that relates to vehicle safety.

78. In this Claim for Relief, additional common questions of law and fact exist as to all Class members, and additionally predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably

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[7] "2d" is how the statute reads

[8] 49 U.S.C. 30101 *et seq.*

TOY-RQ-05E-00005837

related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice falsely and strongly implies that if the safety risk of the defect occurs, namely uncontrolled acceleration, the car can still be safe, and can safely be stopped at the side of the road?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(5) the earliest date on which the defect or noncompliance will be

TOY-RQ-05E-00005838

remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

PRAYER

WHEREFORE, Plaintiff prays judgment for himself and all others on whose behalf this suit is brought, against Defendants, jointly and severally:

a. For preliminary injunction and permanent injunctions, including but not limited to the following:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do when unintended acceleration occurs in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same vehicles[9] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration

[9] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

TOY-RQ-05E-00005839

problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

b. For restitution and disgorgement in amounts exceeding $5 million.

c. For claims other than those under the Unfair Competition Law, for damages in amounts exceeding $5 million, and punitive damages in an amounts to be determined.

d. For claims other than those under the Unfair Competition Law, for attorneys' fees.

e. For costs of suit.

f. For such other relief as the Court deems proper.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the class on any claims and issues that are triable by jury.

Dated: December 28, 2009

Ira Spiro
of Spiro Moss LLP

TOY-RQ-05E-00005840

PROOF OF SERVICE
Baldisseri v. Toyota
United States District Court Case No. CV 09-9386 GAF(FMOx)

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP. On the date set forth below I served the document(s) described as **First Amended Complaint** on all the interested parties in this action, by placing: [ ] the original [xx] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP:

Toyota Motor Sales, U.S.A., Inc. Toyota Motor North America, Inc. Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017	

[X] **BY MAIL**: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[ ] **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

[ ] **(BY FAX)** On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456.

[ ] **(BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS)**: I personally served said document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California on December 28, 2009.

Jeanette Kerr

Name & Address:
Ira Spiro (SBN 67641)
J. Mark Moore (SBN 180473)
H. Scott Leviant (SBN 200834)
SPIRO MOSS LLP
11377 W. Olympic Blvd., 5th Fl., L.A., CA 90064

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, and the General Public PLAINTIFF(S) 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 DEFENDANT(S).	CASE NUMBER CV 09-9386 GAF (FMOx) **SUMMONS**

FOR OFFICE USE ONLY

TO: DEFENDANT(S): Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Ira Spiro, whose address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, CA 90064. 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: 28 DEC 2009

By: MARILYN DAVIS
Deputy Clerk

(Seal of the Court)

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

Ira Spiro, Cal. State Bar No. 67641
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Attorneys for Plaintiff DALE BALDISSERI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, 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., Defendants.	Case No.: Class Action **APPLICATION FOR TEMPORARY RESTRAINING ORDER (Or Order to Show Cause in the Alternative); MEMORANDUM OF POINTS AND AUTHORITIES** **Separately Filed: Declarations of Ben Kelley, Plaintiff Dale Baldisseri and Attorney Ira Spiro** **Declaration under Local Rule 7-19.1 and Paragraph 5 of the Procedures and Schedules of Hon. M. Howard Matz is paragraph 18 of the Declaration of Ira Spiro**

TABLE OF CONTENTS

Page(s)

I. INTRODUCTION 1

II. FACTS 3

A. Toyota's Instructions to Owners 3

B. Toyota Sudden Acceleration 6

C. The Risks and Dangers Caused By Toyota's "Interim Notice" 6

III. ARGUMENT 9

A. The Criteria for Issuing a Temporary Restraining Order or a Preliminary Injunction 9

B. This Application Meets the Criteria for Temporary Restraining Order 10

1. There are Serious Questions Going to the Merits, and a Strong Likelihood of Success on the Merits 10

2. The Balance of Hardships Is Sharply in Favor of Plaintiff and the Class. Irreparable Harm is Likely 11

3. The Balance of Equities Is Sharply in Favor of Plaintiff and the Class 13

4. A Temporary Restraining Order is in the Public Interest 14

5. Mandatory Injunctive Relief is Permissible and Should Not Be Tested Under a Different Standard Than a Prohibitory Injunction 15

6. No Bond Should Be Required 16

7. Class Certification 17

III. CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Brewer v. Richards
2009 WL 863436 at 2 (C.D.Cal. 2009) 9

Chicago United Industries, Ltd. v. City of Chicago
445 F.3d 940 (7th Cir. 2006) 15

Dish Network L.L.C. v. Sonicview USA, Inc.
2009 WL 2224596 9

Flynt Distributing Company, Inc. v. Harvey
734 F.2d 1389 (9th Cir. 1984) 3

Garcia v. Service Employees Intern. Union
2009 WL 3561528 at 1 (N.D.Cal. 2009) 9

Grolier, Inc. v. FTC
699 F2d 983 (9th Cir. 1983) 16

Hunter v. General Motors Corporation
2007 WL 4100084 19

Katie A. v. Los Angeles County
481 F.3d 1150 (9th Cir. 2007) 18

Lands Council v. McNair
537 F.3d 98, 987 (9th Cir. 2008) 9, 10

Save Strawberry Canyon v. Department of Energy
613 F.Supp.2d 1177 (N.D.Cal 2009) 10

United Food & Commercial Workers Union V. Southwest Ohio Regional Transit Authority
163 F.3d 341 (6th Cir. 1998) 15

United States v. Williams
2009 WL 3388329 at 1 (E.D.Cal. 2009) 9

United Steelworkers of America v. Textron, Inc.
836 F.2d 6 (1st Cir. 1987) 3

Warner-Lambert Co. v. FTC
562 F2d 749 (DC Cir. 1977) 15

Winter v. Natural Resources Defense Council
129 S.Ct. 365 (2008) 9

CALIFORNIA CASES

Consumers Union of U.S., Inc. v. Alta–Dena Certified Dairy
4 CA4th 963 (1992) 15

FEDERAL STATUTES

National Traffic and Motor Vehicle Safety Act, 49 U.S.C. 10101 *et seq.* 10

49 U.S.C. 30119 . . . . . 11, 18 - 19

49 U.S.C. 30119 . . . . . 11, 19

FEDERAL RULES

Federal Rules of Civil Procedure 23(a) 17

CALIFORNIA STATUTES

Busn. & Prof. Code §17200 10

I. INTRODUCTION

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.[1] This past August, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control.[2]

Faced with the sudden-acceleration crisis, on October 30, 2009,[3] Toyota began mailing to 3.8 million owners of its cars and trucks an "Interim Notice",[4]stating instructions[5] about what to do if the car suddenly speeds out of control.

Imagine the situation. You are driving on the freeway or in traffic, and suddenly your car begins to race up towards 100 m.p.h. You are terrified. You might be trying to swerve around cars in your path. You struggle to think what to do. Here is what Toyota says:

a. First, go down and try to "pull back the floor mat." In other words, at high speeds, take your eyes and mind off the road, reach down to the floor and try to move the mat.

b. If that doesn't work, instructs Toyota, then stall the car right on the road, regardless of whether it is in the middle of traffic or on a freeway. Toyota doesn't use the word "stall," but that is precisely what happens if you follow Toyota's instructions to put the car in neutral, or turn off the

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[1] Kelley decl., ¶ 3

[2] Spiro decl., ¶ 4.

[3] Kelley decl., ¶ 4.

[4] Kelley decl., 2, Exh. A. It is on Toyota's website at: http://pressroom.toyota.com/pr/tms/document/Floor_mat_Owner_Letter_sample.pdf

[5] On its own website, Toyota calls them "instructions". (Spiro decl., ¶ 3.)

engine. Either way, the wheels cannot receive power to move out of the way of traffic on the right or behind. In traffic it becomes impossible, or unthinkably difficult, to avoid a collision with cars to the right or behind. Nevertheless, the notice instructs the impossible: "make a controlled stop at the side of the road."

These instructions are horribly dangerous, to the driver and anyone on the road or near it.[6] They falsely imply that trying to reach down, and dislodge the floor mat, shifting to neutral, or turning off the engine, all while wildly accelerating, even in traffic, are safe things to do. They are not, as plaintiff's expert affirms.[7] Toyota should be made to issue a correction, to recommend true safety measures. That is the major goal of this application. Specifically:

Plaintiff applies for an temporary restraining order and preliminary injunction as follows:

1. Toyota[8] is enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do if sudden acceleration problems occur in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Toyota is ordered to mail a corrective notice to all owners of the same

---

[6] he instructions are so wrong it is difficult to believe Toyota gives them for any purpose other than to tell the real truth, that the cars should not be driven.

[7] Kelley decl., ¶¶ 7 - 17.

[8] Toyota is the manufacturer of vehicles with the Toyota and Lexus brand. A brand is called a "badge," in the auto industry. Toyota manufactures the Prius under the Toyota badge. It also manufactures the Scion. The complaint names as defendants several Toyota entities, which we refer to collectively as "Toyota." Toyota Motor Corporation is the main Japanese company. The other defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. are all listed on the website of the California Secretary of State as corporations authorized to do business in California. Their relationships to the main company are shown on Toyota websites.

vehicles[9] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration problem, it is not possible to do that safely. Do not attempt it."

C. "Earlier, Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, "Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

II. FACTS[10]

A. Toyota's Instructions to Owners.

In connection with what Toyota refers to as a "recall," beginning October 30, 2009, Toyota mailed the "Interim Notice," and put it on Toyota's website. On November 2, 2009, Toyota distributed a press release announcing the letter campaign.[11]

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[9] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. (Spiro decl., ¶ 3.)

[10] We submit admissible evidence in the declarations filed herewith. However, an application for temporary restraining order or preliminary injunction is not required to be strictly confined to admissible evidence. *Flynt Distributing Company, Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984); *United Steelworkers of America v. Textron, Inc.*, 836 F.2d 6, 8 (1st Cir. 1987).

[11] Toyota says so on its website, at: http://pressroom.toyota.com/pr/tms/toyota/toyota-begins-interim-notification-112088.aspx

Toyota's sudden acceleration problem causes cars to rush to speeds of 100 m.p.h. and faster.[12] The critical fact is this: Toyota's "Interim Notice" gives the following misguided, misguiding, terrifying directions[13] [words in brackets are added by plaintiff, as is the bolding]:

> "What should you do if you experience accelerator pedal interference?
>
> "Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:
>
> "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it from the accelerator pedal** ***[while the vehicle is accelerating]***; then pull over and stop the vehicle.
>
> "If the floor mat cannot be dislodged, them firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.
>
> "**Shift the transmission gear selector to the Neutral (N) position** ***[eliminating any possibility of accelerating in a controlled manner in order to pull over safely]*** and use the brakes to make a controlled stop at the side of the road and turn off the engine.
>
> "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC** ***[engine will be off, but there will be power to some accessories]***. This will not cause loss of steering or braking, but **the power assist to these systems will be lost** ***[i.e., there will be no power steering or power brakes]***."

These instructions are extremely dangerous.[14] When cars suddenly accelerate out of control, these instructions might be better than nothing, but that is the point – Toyota should disclose to people that because these maneuvers are not safe, it might be better to do nothing with the vehicles, i.e. not drive them.

- If a driver pulls back on the floor mat while the vehicle is moving, her attention is taken away from driving, and her vision away from the road. Doing that while the car is accelerating, probably wildly accelerating, is inviting a crash.[15]

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[12] Spiro decl., ¶ 5.

[13] Exh. A, Kelley decl., ¶2.

[14] Kelley decl., ¶¶ 7 - 17.

[15] Kelley decl., ¶¶ 9 - 10.

"Pull back." Toyota means the driver should bend down to move the floor mat. A driver doing that cannot even use the steering wheel, the brakes, or anything else on the car.

- Putting the car in neutral is just as bad or worse. You are driving on a freeway or in street traffic. If you put the car in neutral, you completely lose the ability to accelerate in order to move the car to the side safely. It is the same as stalling. Cars have been recalled because of stalling problems. Tendency to stall is a defect. A stalled car in traffic is a safety hazard.[16]

In the same breath, Toyota's instructions say, "make a controlled stop at the side of the road and turn off the engine". When the car is put in neutral, it slows down. The other cars on the road do not. In order to make a "controlled stop at the side of the road," a driver has to be able to accelerate out of the way of cars coming up from the right. But Toyota's driver cannot do that.

- Turning off the engine is worse yet. Now we have a stalled car that has no power steering and no power brakes. Cars designed with power steering are not designed to be steered without it. Steering them without the power is extremely difficult. The same is true of power brakes.[17]

For example, older cars designed without power steering had much larger steering wheels than today's cars. Why? Because the driver needed lots of leverage in order to steer. When a modern car loses its power steering, the little steering wheel and other design features in the car make it very hard to steer.

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[16] Kelley decl., ¶¶ 12 - 16.

[17] Kelley decl., ¶¶ 11 - 16

B. Toyota Sudden Acceleration.

The sudden acceleration problems in Toyota vehicles have recently received a good deal of press. But Toyota's "Interim Notice," published in the press and on the Internet, has caused serious misinformation and misunderstanding about what to do about the problem. Toyota sudden acceleration is already before this Court in two related putative class actions.[18]

On October 30, 2009, Toyota announced what it termed a "recall" of some models that have experienced sudden acceleration, but not all models.[19] As we say, the recall covers 3.8 million vehicles in the United States. (*Id.*, ¶ 4.)

We place quotes around "recall" because the term is misleading. Toyota has not told anyone to bring their vehicles in yet. Toyota has said it plans to have dealers ready to do the "recall" work possibly as early as January, 2010, but on a "rolling" basis, starting with some models and model years then moving to others.[20] That is part of the problem – these dangerous vehicles will still be on the road for months, and the drivers have in mind Toyota's dangerous "advice" to stall them, unless a corrective notice is sent.

C. The Risks and Dangers Caused By Toyota's "Interim Notice"

Ben Kelley an eminent policy expert, author, researcher, educator, and historian, in the field of injury control. Plaintiff has engaged him as an expert. His qualifications include these:

- He is a former official of the U.S. Department of Transportation.
- He is a member of the adjunct faculty of Tufts University Medical School.

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[18] *Choi v Toyota Motor Corporation*, 2:09-CV-08143 AHM-FMO, complaint filed November 5, 2009, and *Kmetz v. Toyota Motor Sales U.S.A., Inc.*, 2:09-CV-8478 AHM-FMO, complaint filed November 18, 2009. There has been no activity on substantive issues in those cases. Both cases are assigned to Judge Matz.

[19] Kelley decl., ¶ 4.

[20] Spiro decl., ¶ 6.

• He was a principal architect of the world-renowned vehicle safety research and communications program of the Insurance Institute for Highway Safety, where he served as a senior officer for fifteen years.

• He has frequently testified before Congress and the courts concerning unsafe products and the injuries they cause.

• He has been a faculty lecturer at the Johns Hopkins University School of Public Health and Hygiene Injury Control Program, a guest lecturer at Yale Medical School, the Wisconsin School of Medicine, and the University of California Medical School at Davis.

• He has been the Manager of the Transportation and Communications Policy Department, Chamber of Commerce of the United States.

Mr. Kelley states some of the compelling reasons why the risks caused by Toyota's "Interim Notice" are unacceptable. We quote from his declaration:

- "[T]he actions recommended by Toyota . . . create a new and different set of hazards . . . (1) loss of vehicle control and (2) disabling/stalling of the vehicle in traffic."
- "Loss of vehicle control by drivers has been repeatedly recognized as a cause of serious and fatal crashes. As recently as September of this year, the National Highway Traffic Administration [NHTSA] noted the role of driver distraction and loss of control in crash causation. "Distraction from the primary task of driving could present a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report." . . . NHTSA urges drivers: "Avoid conditions that lead to a loss of control."
- "Toyota's recommendations . . . could lead to out-of-control, distracted driving situations that present 'serious and potentially deadly danger' to

occupants of the involved Toyota vehicle and those of other vehicles on the highways . . . as well as with bicyclists and pedestrians

- "pull back the floor mat and dislodge it from the accelerator pedal" . . . could not possibly be accomplished without a diversion of the driver's vision and attention for seconds or even minutes – a forced diversion away from the driving task and attention to the stream of traffic. . . . NHTSA . . . found that glances away from the roadway totaling 'more than 2 seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving.'"

- "The dangers presented to occupants of vehicles disabled in traffic or along the sides of busy highways have been long recognized."

- "A California court found that 'stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise.'" [quoting 10/11/00 Alameda Superior Court statement of decision after trial, stating intention to order recall of 23 million vehicles because of defects causing stalling]

- "Following the recommendations [in the "Interim Notice"] would cause the vehicle to stall. . . . A stalled or disabled vehicle is one which, due to loss of power, is no longer able to maintain its travel speed. (In the case of a Toyota suddenly afflicted by an uninvited power surge due to its "sudden acceleration" defect, the vehicle may be traveling at a dangerously high rate of speed while its driver attempts to carry out Toyota's recommendations.)"

- "As the vehicle slows, it increasingly presents a hazard to itself and to other vehicles, which are traveling at highway rates of speed. Even if the driver is able to successfully maneuver the disabled vehicle out of the road's traffic lanes and onto the roadside – a difficult and dangerous undertaking . . . it continues to present a hazard, since it is now a 'fixed object' subject to impact

by other vehicles. If the incident occurs on a stretch of highway that has no shoulder . . . the disabled vehicle is forced to a stop in a lane of traffic."

- "Drivers of these vehicles thus are caught between the devil of the uncorrected sudden acceleration defect and the deep blue sea of Toyota's recommendations. . . . Toyota should advise owners of these vehicles to not drive them until its 'campaign remedy' has been accomplished."

That is the goal of this application, to get Toyota to notify owners of the real danger and the best way to protect themselves, and to disabuse them of Toyota's misleading implication that its "Interim Notice" instructions chart a safe course.

III. ARGUMENT

A. The Criteria for Issuing a Temporary Restraining Order or a Preliminary Injunction

The test for issuing a temporary restraining order is the same as the test for a preliminary injunction.[21]

In 2008 the Ninth Circuit restated its test, in *Lands Council v. McNair*:

> "A preliminary injunction is appropriate when a plaintiff demonstrates 'either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor. These two options represent extremes on a single continuum: the less certain the district court is of the likelihood of success on the merits, the more plaintiffs must convince the district court that the public interest and balance of hardships tip in their favor."[22]

Just a few months later, Supreme Court held in *Winter v. Natural Resources Defense Council* that the test requires that:

> "A plaintiff seeking a preliminary injunction must establish that he is likely to

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[21] *Garcia v. Service Employees Intern. Union*, 2009 WL 3561528 at *1 (N.D.Cal. 2009); *United States v. Williams*, 2009 WL 3388329 at *1 (E.D.Cal. 2009); *Dish Network L.L.C. v. Sonicview USA, Inc.*,. 2009 WL 2224596 at*2 (S.D.Cal. 2009); *Brewer v. Richards*, 2009 WL 863436 at *2 (C.D.Cal. 2009).

[22] *The Lands Council v. McNair*, 537 F.3d 98, 987 (9th Cir. 2008), internal citations and quotations omitted.

succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."[23]

In March, 2009, Judge Alsup of the Northern District of California held that *Winter* left intact the second option in the *Lands Council v. McNair* test, i.e. "(2) that serious questions going to the merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor."

> "The Ninth Circuit had, just months before *Winter* articulated its traditional test as follows: 'A preliminary injunction is appropriate when a plaintiff demonstrates either: (1) a likelihood of success on the merits and the *possibility* of irreparable injury; or (2) **that serious questions going to the merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor** ....' *The Lands Council,* 537 F.3d at 987 (emphasis added). **In *Winter* the Supreme Court rejected the first prong but did not address the second.**"[24]

B. This Application Meets the Criteria for Temporary Restraining Order.

As the court reaffirmed in *Strawberry Canyon, supra,* one alternative test is the second prong in *Lands Council v. McNair*: **"serious questions going to the merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor."**

1. There are Serious Questions Going to the Merits, and a Strong Likelihood of Success on the Merits.

Success on the merits equates with success on this application, because the complaint seeks the same thing as the application. Both claims for relief in the complaint seek only the injunction sought by this application, plus declaratory relief stating the same things the injunction would require Toyota to state.

In the first claim for relief, the injunction is authorized by the Unfair Competition Law.[25] The claim is that the "Interim Notice" is unlawful, because it is

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[23] *Winter v. Natural Resources Defense Council*, 129 S.Ct. 365, 374 (2008).

[24] *Save Strawberry Canyon v. Department of Energy*, 613 F.Supp.2d 1177, 1180, fn. 2 (N.D.Cal. 2009), emph. added.

[25] Busn. & Prof. Code §17200 et. seq.

contrary to a requirement of the National Traffic and Motor Vehicle Safety Act.[26] The Act requires that a notice such as Toyota's "Interim Notice" must "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"[27]

The "Interim Notice" does not comply with requirement (2). Instead, it violates and contradicts the requirement. It is dangerously misleading. It is the opposite of a truthful "evaluation of the risk to motor vehicle safety". It strongly and falsely implies that if the safety risk of the defect occurs, i.e. sudden acceleration, the car still can be safe, that it can safely be stopped at the side of the road. That is not true.

2. The Balance of <u>Hardships</u> Is Sharply in Favor of Plaintiff and the Class. Irreparable Harm is Likely.

The "Interim Notice" is extremely dangerous to life and limb. It is likely to lead people to follow Toyota's horrendous advice about what to do if the car suddenly accelerates, advice that could kill them. A temporary restraining order is absolutely necessary to protect people from this. Thus, the balance of hardships falls very, very strongly against Toyota, in favor of plaintiff and the class.

What is Toyota's hardship? Another mailing. That is all. The cost for the world's largest car maker of a mailing, even to millions of people, cannot even

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[26] 49 U.S.C. 10101 *et seq.*

[27] 49 U.S.C. 30119.

compare to the risk of death and serious injury the car maker has caused. Toyota's annual report for 2009, which is on its website, reports its net revenues for the first half of the current fiscal year are $208.9 billion U.S. dollars. Its net assets at year end were $295.8 billion U.S. dollars.[28]

What is the hardship for plaintiff and the class? Crashes, serious injury, and death, from people trying the maneuvers in Toyota's dangerous instructions: reaching for the floor mat, shifting to neutral, and turning off the engine at high speeds. Death and serious injury are irreparable harm.

How likely is it that people will have occasion to make the maneuvers? The likelihood is the same as the likelihood of sudden acceleration. According to the "Interim Notice," whenever there is sudden acceleration, drivers should try these maneuvers. Toyota decided that the likelihood of sudden acceleration is high enough to require the "Interim Notice". Since, according to Toyota's instructions, the maneuvers are to occur whenever there is sudden acceleration, the likelihood is also high enough to require a corrective notice.

People believe these maneuvers are safe. That is shown on Toyota's own website. People have posted statements there showing they are perfectly willing to try these maneuvers. For example, here are two posts on the website:[29]

> "Tom Roberts, November 22, 2009
> ". . . Toyota's suggested actions when you experience a vehicle that doesn't want to slow down are simple and effective. I would go so far as to suggest you practice doing them on a back road with no traffic so that it is a natural reaction if you encounter the need. . . . .
>
> "Michael, November 26, 2009
> "I wondering why the persons that had a run away car didn't turn off the ignition key? Take the car out of gear ? use the parking brake ? Shift to reverse ? or neutral ? sideswipe a guard rail ?

That is what some people, aided by Toyota's ideas, think is safe.

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[28] The annual report is at http://www.toyota.co.jp/en/ir/library/annual/pdf/2009/p08_09.pdf

[29] Spiro decl., ¶ 9.

In any event, the risk of serious harm unless the "Interim Notice" is corrected is unacceptable.

The risk is unacceptable because shifting to neutral or turning off the engine is equivalent to stalling, and a propensity to stall is serious enough to warrant a recall of millions of cars. That is exactly what the Alameda Superior Court ordered on October 11, 2000 because of Fords that stalled.[30]

The risk is unacceptable because of the gravity of even one death.

It is unacceptable when we compare one death to the cost of sending a corrective letter.

It is unacceptable because it can be reduced by a corrective notice, the very same means Toyota used in a wrong-headed effort to reduce the risks from unintended acceleration.

It is unacceptable because Toyota's "Interim Notice" misleads owners and drivers into thinking the maneuvers in the notice are a real answer to their safety concerns, when they are not.

3. The Balance of Equities Is Sharply in Favor of Plaintiff and the Class.

The balance of equities is heavily against Toyota because Toyota knew about the sudden acceleration problem at least since 2003. Mr. Kelley refers to: "millions of vehicles made before 2005 that were the subject of six government (NHTSA) unintended acceleration investigations and defect petitions since 2003?"[31]

Also, Toyota has been engaged in a campaign of dissembling about the sudden acceleration situation. The National Highway Traffic Administration took them to

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[30] Kelley decl., ¶ 13; Spiro decl, ¶ 7 and attached Exhibit, Statement of Decision.

[31] Kelley decl., ¶ 4.

task about it.[32]

The "Interim Notice" itself is dissembling. For example, it states in the first paragraph:

"Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured."

But the danger occurs when the floor mat becomes unsecured. A "properly secured" floor mat can become unsecured. It is "secured" by a pin in the floor of the car that goes through a hole in the floor mat. The mat can come off the pin. Toyota's quoted statement suggests that once the mat is properly secured, there is no danger. That is false. The mat can come off. That is one thing Toyota, at some uncertain date, apparently will address in the "recall."

Corporations like to point out that they are "persons" under the law, with many of the same rights as human "persons." What would a human person do? If you, any person reading this, made a product that had killed 18 people, would you tell people to reach down to fix it while driving? While driving a rapidly accelerating car? Would you tell them to shift to neutral in traffic, or on a freeway? Would you tell them to shut off the engine?

What if you did, and later you realized those things are dangerous? Would you immediately tell them not to try those things? That is all plaintiff is asking that Toyota be ordered to do here.

4. A Temporary Restraining Order is in the Public Interest.

Can anyone seriously dispute that it is in the public interest to issue a temporary restraining order that can save lives, prevent injuries, prevent crashes, in vehicles "recalled" because of the risk of those exact things? Especially when the temporary restraining order is only for a mailing to correct a mailing that poses the

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[32] Spiro decl., ¶ 8.

risk?

5. Mandatory Injunctive Relief is Permissible and Should Not Be Tested Under a Different Standard Than a Prohibitory Injunction.

Part of the temporary restraining order plaintiffs seeks is prohibitory, part is mandatory. The prohibitory part is to enjoin defendants from reiterating the instructions in the "Interim Notice." The mandatory part is to order the new mailing, and posting of the same thing on Toyota's website. Although there is law to the contrary, the mandatory part should not be tested under a more restricted test than the prohibitory part. In any event, the mandatory part amply meets either standard.

The Ninth Circuit has held that a mandatory injunction is subject to a heightened standard, namely "when issuing a mandatory preliminary injunction, the court must find that the 'facts and law clearly favor' plaintiffs."[33] Thoughtful judicial thinking on the subject concludes that a heightened standard should not apply, that the test should be the same, mandatory or prohibitory. For example, the Sixth Circuit:

> "We believe, however, that the difference between mandatory and prohibitory injunctive relief does not warrant application of differing legal standards. Accordingly, we reject the Tenth Circuit's "heavy and compelling" standard and hold that the district court did not err when it balanced the four equitable factors traditionally considered to determine whether preliminary injunctive relief is warranted."[34]

And the Seventh Circuit:

> "Preliminary relief is properly sought only to avert irreparable harm to the moving party. Whether and in what sense the grant of relief would change or preserve some previous state of affairs is neither here nor there. To worry these questions is merely to fuzz up the legal standard."[35]

Federal and California courts have affirmed prominent mandatory injunctions

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[33] *Katie A. v. Los Angeles County*, 481 F.3d 1150, 1156 (9th Cir. 2007)

[34] *United Food & Commercial Workers Union V. Southwest Ohio Regional Transit Authority*, 163 F.3d 341, 348 (6th Cir. 1998).

[35] *Chicago United Industries, Ltd. v. City of Chicago*, 445 F.3d 940, 944 (7th Cir. 2006), internal citations omitted.

under the California Unfair Competition Law. In *Consumers Union v. Alta–Dena Certified Dairy*, the Court of Appeal upheld an injunction that required the dairy to place a warning on all its advertisements and products for 10 years, to correct false advertising.[36] The Court of Appeal pointedly observed the infirmities of a mere prohibitory injunction:

> "An 'order which commands a party only to go and sin no more simply allows every violator a free bite at the apple.'"[37]

The Ninth Circuit, in *Chabner v. United of Omaha Life Insurance Co.*,[38] held that a trial court has power under § 17203 to enter an order requiring an insurer to rewrite its insurance policy to conform to law.

The FTC is similar to the California Unfair Competition Law in many ways. In FTC cases, federal courts have frequently approved of mandatory or corrective disclosures.[39]

6. No Bond Should Be Required.

This Court, in *Bowen v. Consolidated Electrical Distributors, Inc. Employee Welfare Benefit Plan* described "three recognized exceptions" to the requirement of a bond for a preliminary injunction:

> "(1) the moving party is not able to afford the security; (2) the balance of hardships weighs overwhelmingly in the favor of the party seeking the injunction; and (3) the moving party demonstrates a strong likelihood of

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[36] *Consumers Union of U.S., Inc. v. Alta–Dena Certified Dairy*, 4 CA4th 963, 972–974 (1992).

[37] *Consumers Union, supra*, 4 CA4th at 973, 6 CR2d at 198, quoting *Warner-Lambert Co. v. FTC* 562 F2d 749, 761–762 (DC Cir. 1977).

[38] 225 F3d 1042, 1053 (9th Cir. 2000).

[39] See, e.g., *Grolier, Inc. v. FTC* 699 F2d 983, 987, (9th Cir. 1983).

success on the merits."[40]

The *Bowen* court ruled a bond was not required because "the potential damages to the defendant are overwhelmingly outweighed by the hardships that plaintiff would suffer if required to post the bond."[41]

The same is true here. Defendant would seek a bond in the amount of the cost of the new mailing sought by plaintiff. That would be impossible for plaintiff to obtain. His yearly income is $89,000 to $90,000. His net worth is approximately $200,000 to $250,000.[42] If, as a result, the temporary restraining order were not issued, that would be an overwhelming hardship for the class, leaving it exposed to the risk of crashes, injury, and death caused by Toyota's misguided "Interim Notice."

The result of the temporary restraining order for Toyota, the expense of a new mailing, cannot compare. Toyota's net revenues for the first half of the current fiscal year are $208.9 billion U.S. dollars. Its net assets at year end were $295.8 billion U.S. dollars.[43]

7. Class Certification.

Because this is purely an action for injunctive and declaratory relief, the requirements for class certification are more limited than in a class action for damages. They are those in Federal Rules of Civil Procedure 23(a) and 23(b)(2). Those requirements are:

a. Rule 23(a)(1): Numerosity

b. Rule 23(a)(2): The existence of common questions of law or fact. Predominance of such questions is not required, as it is under Rule 23(b)(3).

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[40] 461 F.Supp.2d 1179, 1187 (C.D.Cal 2006).

[41] 461 F.Supp.2d at 1188.

[42] Baldisseri decl., ¶ 5.

[43] This is shown in Toyota's 2009 annual report. It is at: http://www.toyota.co.jp/en/ir/library/annual/pdf/2009/p08_09.pdf

c. Rule 23(a)(3) Plaintiff's claims and typical of the class

d. Rule 23(a)(4) Adequacy of representation

e. Rule 23(b)(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."

These requirements are met.

a. Numerosity: Toyota's "Interim Notice" is being sent to approximately 3.8 million owners. The content of the notice is exactly the same in each notice. There is only one negligible difference: at the top, for Camry owners the notice says "Camry" and lists the model years, for Lexus owners the notice says "Lexus" and lists the model years, etc.

b. Common Questions of Law and Fact Exist: There are questions of law and fact common to the class. They include, but are not limited to:

i. Did Toyota violate section 30119 of the Act, which requires the notice to contain "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance"?

ii. Did Toyota violate section 30119 because the notice, rather than stating the true risk, contains very dangerous instructions about the risk?

iii. Did Toyota violate section 30119 because the notice falsely implies that the risk is avoidable or controllable by taking steps that are dangerous, and add to the risk?

iv. Did Toyota violate section 30119 because the notice 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?

v. Did Toyota violate section 30119 because the notice is dangerously misleading and is the opposite of a truthful "evaluation of the risk to motor vehicle safety"?

vi. Does the Act require that all the information specified in section 30119 be in a single notice?

vii. Does the Act require that a second notice can be used only for the purpose provided in section 30119(e)?

viii. Did Toyota violate section 30119 of the Act by not including in the notice "(3) the measures to be taken to obtain a remedy of the defect or noncompliance" and/or by using a second notice to do so, and using a second notice for a different purpose other than provided for in section 30119(e)?

ix. Did Toyota violate section 30119 of the Act by not including in the notice "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

x. Did Toyota violate section 30119 of the Act by not including in the notice "(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" and/or by using a second notice to do so, and using a second notice for a different purpose other than permitted by section 30119(e)?

c. Typicality: Plaintiff seeks exactly the same relief, injunctive and declaratory relief, as he seeks for the rest of the class, no more, no less. Plaintiff, like all the class members, is entitled to a statement in compliance with section 30119 of the Act.

d. Adequacy: Plaintiff is an educated, very reliable family man.[44] He has held the same job for 39 years, and has lived in the same California county his whole life.

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[44] Baldisseri decl., ¶¶ 5, 6.

Plaintiff's attorneys are very experienced in class action litigation. In 2007, in a case in which the undersigned was very active, the law firm obtained an extremely favorable appellate opinion on Unfair Competition Law issues in an automobile defect class action, *Hunter v. General Motors Corporation*, 2007 WL 4100084. Attorney Scott Leviant of the firm writes a widely followed blog on complex litigation.[45]

e. F.R.Civ..P. 23(b)(2), Defendants Acting Generally Toward the Class:

Toyota has acted the same towards the entire class. Toyota's "Interim Notice" is the same for the entire class.

III. CONCLUSION

The purpose of this application is to save lives. That is the reason we have spent dozens and dozens of hours on it. That is the reason plaintiff brings it. That is the reason the Court should grant it.

Dated: December 21, 2009

Ira Spiro
of Spiro Moss LLP

[45] Spiro decl., ¶¶ 10 - 17.

TOY-RQ-05E-00005866

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DALE BALDISSERI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, 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., Defendants	Case No.: Class Action **PLAINTIFF'S DECLARATIONS OF BEN KELLEY, PLAINTIFF DALE BALDISSERI AND IRA SPIRO IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER (Or Order to Show Cause in the Alternative)** **Declaration under Local Rule 7-19.1 and Paragraph 5 of the Procedures and Schedules of Hon. M. Howard Matz is paragraph 18 of the Declaration of Ira Spiro**

TOY-RQ-05E-00005867

DECLARATION OF BEN KELLEY

I, Ben Kelley, declare:

1. I am a policy expert, author, researcher, historian, and educator in the field of injury control. Attached as Exhibit C is my curriculum vitae, the contents of which are true. Among other things stated in it:

a. I am a former official of the U.S. Department of Transportation.

b. I am a member of the adjunct faculty of Tufts University Medical School.

c. I was a principal architect of the world-renowned vehicle safety research and communications program of the Insurance Institute for Highway Safety, where he served as a senior officer for fifteen years.

d. I have frequently testified before Congress and the courts concerning unsafe products and the injuries they cause.

e. I have been a faculty lecturer at the Johns Hopkins University School of Public Health and Hygiene Injury Control Program, a guest lecturer at Yale Medical School, the Wisconsin School of Medicine, and the University of California Medical School at Davis.

f. I have been the Manager of the Transportation and Communications Policy Department, Chamber of Commerce of the United States.

Statement of Problem

2. Toyota Motors has notified owners of certain Toyota vehicles of a defect which causes unwanted sudden acceleration of those vehicles. Under the heading, "Potential Floor Mat Interference With Accelerator Pedal, Safety Recall Campaign (Interim Notice)," Toyota has acknowledged that the condition caused by the defect – "a stuck open accelerator pedal" – may result in "very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death." (Exhibit A is a sample of Toyota's letter to owners, obtained from its website at http://pressroom.toyota.com/pr/tms/document/Floor_mat_Owner_Letter_sample .pdf.)

3. Data compiled by Safety Research and Strategies shows that to date, Toyota sudden acceleration incidents have accounted for 725 crashes, 304 injuries, and 18 fatalities. The data can be found at http://www.safetyresearch.net/2009/12/15/toyota-sudden-unintended-acceleration-complaints-update/.

4. According to the National Highway Traffic Safety Administration, 3.8 million vehicles are involved in the "campaign." (NHTSA press release No. 110409, Nov. 4, 2009) (The Center for Auto Safety, in a statement issued November 25, has asked: "Why doesn't Toyota's recall cover the millions of vehicles made before 2005 that were the subject of six government (NHTSA) unintended acceleration investigations and defect petitions since 2003?")

5. Toyota began sending its letter to owners on October 30, more than three weeks after notifying NHTSA of its intention to undertake a safety recall of the involved vehicles. (Toyota notice to NHTSA, October 5, 2009) In the letter, Toyota makes it clear that it has not yet developed a "campaign remedy" under which it would recall the defective vehicles and eliminate the defect. Thus, no way has yet been provided by Toyota for owners to have the defect repaired, and therefore if they drive the vehicles, they will be at risk of "a crash, serious injury or death" because of the defect.

6. Instead, Toyota puts forward instructions for actions which it says an owner/driver should undertake if his or her car suddenly and uncontrollably accelerates. Among those actions are the following:

> "Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:
>
> "First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.
>
> "If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will

TOY-RQ-05E-00005869

increase the effort required to slow the vehicle.

"Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

"If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button."

"If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel."

7. Although the actions specified by Toyota are intended to counteract the hazards of sudden acceleration induced by these vehicles' admitted defects, they create a new and different set of hazards for the same vehicles in the event that owners take such actions. These hazards are (1) loss of vehicle control and (2) disabling/stalling of the vehicle in traffic.

Loss of Control Hazard

8. Loss of vehicle control by drivers has been repeatedly recognized as a cause of serious and fatal crashes. As recently as September of this year, the National Highway Traffic Administration noted the role of driver distraction and loss of control in crash causation. (DOT HS 811 216, Traffic Safety Facts, Research Notes, September 2009) "Distraction from the primary task of driving could present a serious and potentially deadly danger. In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report." On its Safercar website (www.safercar.gov) NHTSA urges drivers: "Avoid conditions that lead to a loss of control."

9. Toyota's instructions to drivers encountering unexpected sudden acceleration while operating their vehicles – including in highway traffic at speeds that routinely exceed 50, 60 and 70 miles per hour – could lead to out-of-control, distracted driving situations that present "serious and potentially deadly danger" to occupants of the involved Toyota vehicle and those of other vehicles on the highways with which it might collide, as well as with bicyclists and pedestrians in the vicinity. For example, the instructions specifically direct the driver, who may already be panicked by the unforeseen power surge, to turn attention away from the driving task while he or she attempts to "pull back the floor mat and dislodge it from the accelerator pedal."

10. Such a maneuver could not possibly be accomplished without a diversion of the driver's vision and attention to the vehicle's floor for seconds or even minutes – a forced diversion away from the driving task and attention to the stream of traffic. In a study of distraction as a contributor to crashes or near-crashes, a NHTSA research study found that glances away from the roadway totaling "more than 2 seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving." (DOT HS 810 594, "The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data," April 2006)

11. In addition, Toyota's instruction to turn off the car's engine creates yet another hazard, despite Toyota's assurance that "this will not cause loss of steering or braking control…" In fact, the severe degradation of driver control that results from power steering loss is well known. As recently as October 14 of this year, Consumer Reports, in an online article concerning sudden acceleration, warned: "…we do not advise shutting off the engine while still driving. We tried this with our Toyota Venza—as Toyota suggests—by holding down the start/stop button for three seconds. While this also allowed us to stop, we lost power steering and had trouble maneuvering the vehicle due to the extremely heavy steering." Such a loss of power steering and

TOY-RQ-05E-00005871

"trouble maneuvering the vehicle" could be lethal in highway traffic. (http://blogs.consumerreports.org/cars/2009/10/toyota-recall-putting-stuck-floor-mat-survival-strategies-to-the-test.html)

Disabled Vehicle Hazard

12. The dangers presented to occupants of vehicles disabled in traffic or along the sides of busy highways have been long recognized. For example, NHTSA's Federal Motor Vehicle Safety Standard No. 125 states its purpose as "to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled vehicles." The standard, which addresses the need for warning devices to alert motorists to the hazards of stalled vehicles, has been in effect since 1974.

13. A California court, in considering the safety implications of stalling, found that "stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise." (Statement of Decision, Howard v. Ford Motor Co. et al, California Superior Court, County of Alameda, No. 763785-2, October 11, 2000)

14. Following the instructions advanced by Toyota's letter to owners would cause the vehicle to stall, although Toyota does not use that term. The instructions call for the following actions to be taken by the driver of a moving vehicle, with the clear purpose of bringing it to a stall so as to terminate the defect-caused sudden acceleration:

> "Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.
>
> "If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.
>
> "If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the

Engine Start/Stop button."

15. A stalled or disabled vehicle is one which, due to loss of power, is no longer able to maintain its travel speed. (In the case of a Toyota suddenly afflicted by an uninvited power surge due to its "sudden acceleration" defect, the vehicle may be traveling at a dangerously high rate of speed while its driver attempts to carry out Toyota's recommendations.)

16. As the vehicle slows, it increasingly presents a hazard to itself and to other vehicles, which are traveling at highway rates of speed. Even if the driver is able to successfully maneuver the disabled vehicle out of the road's traffic lanes and onto the roadside – a difficult and dangerous undertaking if, for instance, the vehicle suddenly loses power while traveling in the high-speed lane and must cross two or three lanes of heavy traffic to reach the roadside – it continues to present a hazard, since it is now a "fixed object" subject to impact by other vehicles. If the incident occurs on a stretch of highway that has no shoulder, recovery area or other space alongside the travel way, the disabled vehicle is forced to a stop in a lane of traffic, making it even more of a hazard to itself and other vehicles.

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Conclusion

17. As is apparent, the actions recommended by Toyota for drivers of its defective vehicles who are confronted with "sudden acceleration" surges in traffic are actions which create new and troubling hazards. Drivers of these vehicles thus are caught between the devil of the uncorrected sudden acceleration defect and the deep blue sea of Toyota's recommendations. There they will remain until Toyota comes up with a "campaign remedy" that will lead to an effective recall and correction of the defective vehicles. To avoid creating this unacceptable and dangerous choice between two potentially injurious conditions, Toyota should advise owners of these vehicles to not drive them until its "campaign remedy" has been accomplished.

I declare under penalty of perjury under the laws of the United States of America that what is stated above is true and correct. Executed at Pebble Beach, California, on December 15, 2009.

Ben Kelley

DECLARATION OF DALE BALDISSERI

I, Dale Baldisseri, declare:

1. I am the plaintiff in the lawsuit entitled Baldisseri v. Toyota.

2. I own a 2009 Toyota Camry.

3. Approximately a month ago, I received in the mail a document from Toyota. The title of it includes the words, *Interim Notice.* A true copy of the notice is attached as Exhibit B. The notice led me to think that the Camry is safe to drive, despite the defect, so I continued making payments on the Camry without taking any action about my purchase of the car, or whether I should have to continue paying for a defective car. Later, I rented a car to substitute for the Camry, largely because the notice gave me doubts about whether it is safe to drive the Camry. The notice is unclear about whether it is safe. The notice says that if acceleration happens, the driver should make a controlled stop at the side of the road, but the notice also makes that appear extremely difficult or impossible. I cannot afford to rent a substitute car indefinitely.

4. My yearly income is approximately $89,000 to $90,000. My net worth is approximately $200,000 to $250,000, by far the great majority of it in my family home.

5. I am a resident of San Mateo County, California. I am 61 years old. I have been employed at essentially the same job for 39 years. The ownership of the company changed hands, and the company name has changed, but essentially it has been the same employer. In my job, I spend a great deal of time driving a truck. The job has always required that.

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6. I graduated high school and attended college for a year and a half, majoring in business. I have lived in the San Mateo County my whole life.

I declare under penalty of perjury under the laws of the United States of America that what is stated above is true and correct. Executed at San Mateo County, California, on December 20, 2009.

Dale Baldisseri

DECLARATION OF IRA SPIRO

I, Ira Spiro, declare:

1. I am an active member of the State Bar of California and a member of the bar of this Court. I am attorney of record for plaintiff.

2. Toyota's website refers to the "Interim Notice" as "instructions." This is at http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2234. Attached as Exhibit D is a copy I made from that page from the website. See third paragraph.

3. Toyota's website states that the "Interim Notice" is being mailed to owners of the following vehicles:

- 2007 – 2010 Camry
- 2005 – 2010 Avalon
- 2004 – 2009 Prius
- 2005 – 2010 Tacoma
- 2007 – 2010 Tundra
- 2007 – 2010 ES350
- 2006 – 2010 IS250 and IS350

This information is found at:
http://pressroom.toyota.com/pr/tms/toyota/toyota-begins-interim-notification-112088.aspx. Attached as Exhibit E is a copy I made from that page from the website.

4. Toyota's website reports the August 28, 2009 death of California Highway Patrol Officer Mark Saylor and three members of his family near San Diego, while driving a 2009 Lexus ES350. The website reports that, according to law enforcement investigators, the deaths may have been caused by the defect described in the Toyota "Interim Notice." The website statement appears at:
http://pressroom.toyota.com/pr/tms/search.aspx?q=%22California+Highway+Patrol%22
Attached as Exhibit F is a copy I made from that page from the website.

5. Concerning the crash that killed the California Highway Patrol Officer and his family, The *Los Angeles Times* reported that the car accelerated to more than 100

TOY-RQ-05E-00005877

m.p.h.[1] The *Times* article is at:
http://www.latimes.com/news/local/la-fi-toyota-recall8-2009nov08,0,6120294.story
Attached as Exhibit G is a copy I of the article I made from the *Los Angeles Times* website.

6. Toyota's website states that the so-called recall or "remedy process" "will occur on a rolling schedule during 2010." This is found at:
http://pressroom.toyota.com/pr/tms/toyota/toyota-consumer-safety-advisory-102572.aspx
Attached as Exhibit H is a copy I made from that page from the website. See seventh paragraph.

7. Attached as Exhibit I is a true copy of the Statement of Decision in Howard v. Ford Motor Company, Alameda Superior Court case 763785-2. The Statement of Decision shows that basis of the case was a defect that caused Ford vehicles to stall. The last paragraph states: "The Court intends to issue orders compelling recall and repair".

8. A November 6, 2009 statement on Toyota's website states:

> "Finally, on Wednesday of this week, NHTSA issued a statement that read in part 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.' [¶] It was never Toyota's intention to mislead or provide inaccurate information and we regret any confusion our press release may have caused with the media and with the public. Toyota agrees with NHTSA's position that the removal of the floor mats is an interim measure and

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[1] Speed and other facts are known about the crash. It was reported that the officer was trying desperately to save his family by attempting to get advice over a cell phone before he crashed.

TOY-RQ-05E-00005878

that further vehicle-based action is required. . . ."

This can be found at

http://pressroom.toyota.com/pr/tms/toyota-s-response-to-nhtsa-news-release.aspx

Exhibit D, eighth paragraph.

9. On December 15, 2009, I copied the following posts on the Toyota website (http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2234):

"Tom Roberts, November 22, 2009

". . . Toyota's suggested actions when you experience a vehicle that doesn't want to slow down are simple and effective. I would go so far as to suggest you practice doing them on a back road with no traffic so that it is a natural reaction if you encounter the need. Above all, relax. Stop worrying that there's a hidden gremlin just waiting to strike when you least expect it. It doesn't exist. . . .

"Michael, November 26, 2009

"I wondering why the persons that had a run away car didn't turn off the ignition key? Take the car out of gear ? use the parking brake ? Shift to reverse ? or neutral ? sideswipe a guard rail ? I do not think the details I have heard should be blamed on the car. It very much sounds like operator error. I feel the accident should have been avoided. Why is there not a kill switch!"

"Erika, November 25, 2009

"I don't understand why this is even an issue! People must be stupid if they don't know what to do if the gas pedal gets stuck. Maybe they shouldn't even be driving in the first place. If you cant figure out how to stop your own vehicle you really have problems. Come on now this doesn't just happen with Toyota it could happen with any car if you dont keep your factory floor mats in the vehicle or move them around at all... I have had a Toyota for 30 years and will keep on buying them. They will out last the competition any day!!!!"

"Terri, November 25, 2009

"I'm with ya, Erika on my loyalty to Toyota. They're the only car/van/truck I've owned since 1978. QUALITY & RELIABILITY x 1000000. As far as the people who don't know what to do if they can't get their accelerator unstuck....PUT VEHICLE IN NEUTRAL AND TURN OFF THE KEY. No power, no gas."

"Critical Thinker, November 23, 2009

"Audi went through a similar problem years ago. . . . The real problem was a simple one--it was just the nut behind the wheel. These fools swore up and down that they were pressing the brake pedal as hard as they could, yet the vehicle kept accelerating. . . . So to all the people who claim that they were not able to stop their Toyota, get over it and learn how to drive. The brake pedal is NOT the one on the right side.

"Pretty safe teen driver, November 24, 2009

"[T]here is an easy fix to all problems. buy manual transmission. if the car starts accelerating hard, drop the clutch. engines dies, use the hand brake to slow the car down to a stop. there, a 17y/o fixed all your problems.

"Jenni Thompson, November 20, 2009

". . . Just take the floor mats out and read the stuff Toyota sends you. YOU have to decide what DATA/information is trust-worthy versus just wild rumors and make your own decisions."

Background and Experience of Class Counsel

10. My firm and its lawyers have handled more than 200 class actions in the past ten years. We have settled over 100. I have been litigating class actions every year since 1999.

11. In 2007, my firm, in a case in which I was very active, obtained an extremely favorable appellate opinion on Unfair Competition Law issues in an automobile defect, *Hunter v. General Motors Corporation*, 2007 WL 4100084.

12. My firm has been appointed lead or co-lead class counsel in federal and state courts in California and elsewhere, by way of motion for class certification or motion for settlement approval, including the following small sample (I was personally lead or co-lead class counsel in approximately half of these):

- Perrier Group
- Foremost-McKesson
- Liberty Mutual Insurance
- Travelers Insurance
- Fidelity Employment Services Company, a subsidiary of the Fidelity organization
- Home Depot
- Starbucks Corporation
- IBM
- Wells Fargo
- Chevron
- Best Buy
- 24 Hour Fitness
- Coors Distributing
- Interstate Brands (largest baking company in U.S. – Wonder Bread, Hostess)
- TJ Maxx
- Taco Bell
- Linens 'N Things
- Bridgestone-Firestone
- Jamba Juice
- Joann's Stores
- W.H. Smith

TOY-RQ-05E-00005881

13. I have been a panelist in continuing legal education seminars at annual conventions of the State Bar of California and other bar groups on the subjects of ethics in class actions, mediation of class actions, ethics of attorney marketing, other legal ethics subjects.

14. My partner, Dennis Moss, and I authored an *amicus* brief to the California Supreme Court for consideration in landmark case of *Sav-On Drug v. Superior Court*, 34 Cal.4th 319 (2004), which set the standard for class certification in wage and hour disputes. Mr. Moss and I handled the appeal in *Indian Head v. Superior Court*, California Court of Appeal case BC146565. The December 2001 opinion in that case, though unpublished, was important in this area of law at the time, as it upheld class certification in an overtime class action, at approximately the same time as the Court of Appeal in the *Sav-On* case reversed class certification in an overtime class action (and was itself reversed by the California Supreme Court).

15. Attorney Scott Leviant of our firm writes a widely followed blog on complex litigation.

16. I received a Bachelor of Arts degree, Phi Beta Kappa, from Stanford University in 1971, and a Juris Doctor degree from the University of California, Berkeley (Boalt Hall) in 1975.

17. In addition to my experience in litigation, I have devoted a good deal of volunteer work in service to the bar and the courts.

a. By appointment of the Board of Governors of the State Bar of California, I served a three year term, ending September 2001, on the State Bar's ethics committee, the Standing Committee on Professional Responsibility and Conduct (COPRAC). This is the committee that writes the official ethics opinions of the State Bar, which are often cited by state and federal courts. I was the chair of COPRAC's subcommittee on Alternative Dispute Resolution.

b. I was a member of the committee of 11 lawyers, judges and mediation administrators who, on behalf of the California Judicial Council/Administrative Office

TOY-RQ-05E-00005882

of the Courts, wrote the California rules of court governing the professional conduct of mediators in court-connected mediation, Cal. Rules of Court 3.850 et seq.

c. By appointment of the Board of Governors of the State Bar of California, I served a term as chair of the Alternative Dispute Resolution Committee of the State Bar, and served on that committee for five years.

d. For approximately nine years I was active as a member of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association. This is the committee that writes the official ethics opinions of the Los Angeles County Bar Association, which are often cited by state and federal courts.

18. On Monday, December 21, 2009, at 9:50 a.m, I telephoned the three attorneys at Loeb and Loeb who are listed as attorneys for Toyota in the *Choi* case. The only one I could reach was Darlene Cho. I told her that on Tuesday, December 22, 2009 I would be filing in the United States District Court for the Central District of California a class action against Toyota and an application for a temporary restraining order, and that as far as I knew there would be no hearing on the application. I described the requested temporary restraining order, accurately describing it as it is requested in the application. Early that afternoon, I received a call from Lisa Gilford, who explained she is an attorney with the law firm, Alston Bird, and she and the firm represent Toyota in the *Choi* and *Kmetz* cases pending in this Court. I told her the same I had told Ms. Cho. I asked if her firm would accept service for Toyota. She said she had contacted Toyota about my call to Ms. Cho, but Toyota had not yet replied, and she could not accept service. That night I served on Ms. Gilford by email all papers being filed by plaintiff in this action. The email stated opposition appears to be due on December 23, 2009.

I declare under penalty of perjury under the laws of the United States of America that what is stated above is true and correct. Executed at Los Angeles, California , on December 21, 2009.

Ira Spiro

EXHIBIT A

Certain [Model Year] through [Model Year] Model Year [model]
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign (*Interim Notice*)

[VIN]
Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 200_ through certain 200_ model year [name of model] vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim

What is the risk?
A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?
We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?
We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

What should you do if you experience accelerator pedal interference?
Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

-If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.

-If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

SAMPLE

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

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

SAMPLE

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

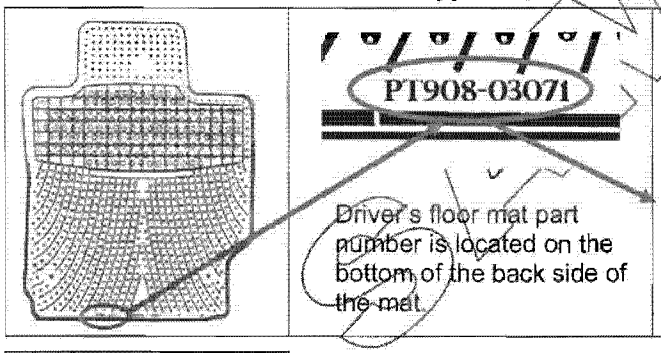
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the attached Application Information Chart to verify mat-to-vehicle application.

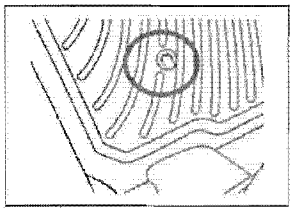


Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

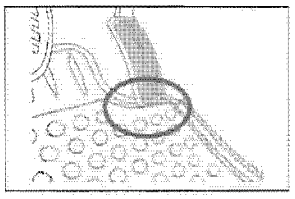
Part Number	Model	Type
PT206-32100 - 45	Camry / Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

The last 2 digits on the part number indicate the color code



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

SAMPLE

2005 – 2010 Model Year Toyota Avalon Vehicles
Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'05	'06	'07	'08	'09	'10	Color
PT206-07090-02	Avalon	Carpeted					x	x	Ivory
PT206-07090-16	Avalon	Carpeted					x	x	Graphite
PT206-07090-17	Avalon	Carpeted					x	x	Lt Gray
PT206-07090-18	Avalon	Carpeted					x	x	Dk Charcoal
PT208-07000-08	Avalon	Carpeted	x						Ivory
PT208-07000-15	Avalon	Carpeted	x						Taupe
PT208-07000-23	Avalon	Carpeted	x						Stone
PT208-07040-04	Avalon	Carpeted	x						Taupe
PT208-07040-10	Avalon	Carpeted	x						Ivory
PT208-07040-21	Avalon	Carpeted	x						Stone
PT548-07050-10	Avalon	Carpeted	x	x	x	x	x	x	Ivory
PT548-07050-11	Avalon	Carpeted	x	x	x	x	x	x	Lt Gray
PT548-07050-12	Avalon	Carpeted	x	x	x	x	x	x	Dk Charcoal
PT548-07050-22	Avalon	Carpeted	x	x	x	x	x	x	Graphite
PT548-07070-10	Avalon	Carpeted			x	x	x	x	Ivory
PT548-07070-11	Avalon	Carpeted			x	x	x	x	Lt Gray
PT548-07070-12	Avalon	Carpeted			x	x	x	x	Dk Charcoal
PT548-07070-22	Avalon	Carpeted			x	x	x	x	Graphite
PT908-07050-02	Avalon	All Weather	x	x	x	x	x	x	Black
PT908-07050-14	Avalon	All Weather	x	x	x	x	x	x	Brown

(Please note: Sample chart shown)

SAMPLE

EXHIBIT B

TOYOTA

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
P.O. Box 2991
Torrance, CA 90509-2991

CMD

Dale Baldisseri
324 Rolling Hills Ave.
San Mateo, CA 94403-4321

Certain 2007 through 2010 Model Year Camry
Potential Floor Mat Interference with Accelerator Pedal
Safety Recall Campaign *(Interim Notice)*

VIN: 4T1BE46K59U867308

Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that a defect which relates to motor vehicle safety exists in certain 2007 through certain 2010 model year Camry vehicles. The defect is 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. Toyota has determined that this defect does not exist in vehicles in which the driver side floor mat is compatible with the vehicle and properly secured.

Toyota is currently developing a campaign remedy and will notify you when it is ready. In the meantime, we are providing important information regarding the issue and steps you may take in the interim.

What is the risk?

A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

What will Toyota do?

We will notify you again as soon as a campaign remedy is available for your vehicle.

What should you do?

We request that you take out ***any removable*** driver's floor mat and NOT replace it with any other floor mat until the campaign remedy is ready and implemented on your vehicle.

In the event you choose not to take out your removable floor mat, Toyota strongly recommends that you ensure that the correct floor mat is being used, that it is properly installed and secured, that it is not flipped over with the bottom-side up, and that one floor mat is not stacked over another. Information on proper floor mat installation for your vehicle is enclosed with this notification. Please visit http://www.toyota.com/floormats for information on other models.

Spanish translation on back side
Traducción en español en el reverso

010-19464-D00048606-TCCC000182-P000004

What should you do if you experience accelerator pedal interference?

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference. If this occurs, Toyota recommends you take the following actions:

First, if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal; then pull over and stop the vehicle.

If the floor mat cannot be dislodged, then firmly and steadily step on the brake pedal with both feet. Do NOT pump the brake pedal repeatedly as this will increase the effort required to slow the vehicle.

Shift the transmission gear selector to the Neutral (N) position and use the brakes to make a controlled stop at the side of the road and turn off the engine.

If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC. This will not cause loss of steering or braking control, but the power assist to these systems will be lost.

- If the vehicle is equipped with an Engine Start/Stop button, firmly and steadily push the button for at least three seconds to turn off the engine. Do NOT tap the Engine Start/Stop button.
- If the vehicle is equipped with a conventional key-ignition, turn the ignition key to the ACC position to turn off the engine. Do NOT remove the key from the ignition as this will lock the steering wheel.

What if you have other questions?

Please visit http://www.toyota.com/floormats for further information. Your local Toyota dealer will be more than happy to answer any of your questions as well. If you require further assistance, you may contact the Toyota Customer Experience Center at 1-888-270-9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Time.

Toyota will advise you in a separate letter when a campaign remedy is available for your vehicle. After you receive that separate letter, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153) or go to http://www.safercar.gov, if you believe that Toyota has failed or is unable to provide a remedy without charge or within a reasonable time after the earliest date we advise you in writing that a campaign remedy is available for your vehicle.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the vehicle lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products.

Sincerely,

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

Spanish translation on back side
Traducción en español en el reverso

010-19464-000046608-T000000182-P000004

Toyota Carpeted or All-Weather Floor Mat Inspection, Application and Installation Instructions

STOP Read these important Warnings BEFORE installing ANY type of Floor Mat.

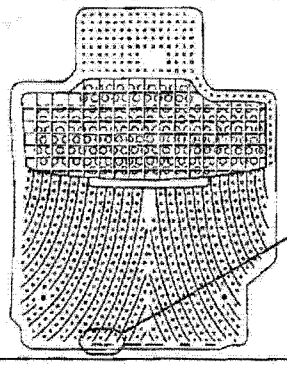
A. General Floor Mat Warnings

- Only install floor mats designed specifically for that model and model year. Check for correct model name and part number on the packaging label to confirm vehicle application.
  - Never install a floor mat if you are uncertain of the model application.
  - Never install the floor mat upside down or turned over for any reason.
  - Only install the driver's floor mat in the driver's foot area.
- Always properly secure the driver's floor mat using the retaining hooks (clips) supplied in the bag with the floor mats (in the case of Lexus with the carpet floor mats). Follow the floor mat retention clip installation instruction supplied with the clips. If the mat is properly secured and you have confirmed vehicle applicability, it will not interfere with the accelerator pedal.
  - Never install the front driver's floor mat without all retaining hooks (clips) securing the mat firmly in place.
- The retaining hooks (clips) are designed to accommodate only one floor mat at a time.
  - Do not install another floor mat(s) on top of an existing driver's floor mat.
- After installation, always check the operation of the accelerator, brake and clutch (if applicable) pedals to assure the floor mat does not interfere with them.
- Carefully read the warning tag attached to the front driver's floor mat regarding installation.

B. Floor Mat Inspection Instructions and Application Information

- **Before placing a floor mat in a vehicle be familiar with the procedure outlined below.**
  - **Identify the correct driver's floor mat for the specific vehicle application.**
  - **Correctly install the driver's floor mat.**
- **Regularly verify the correct floor mat is securely installed in the appropriate model using the retaining hooks (clips).**

NOTE: Use the Application Information Chart to verify mat-to-vehicle application.

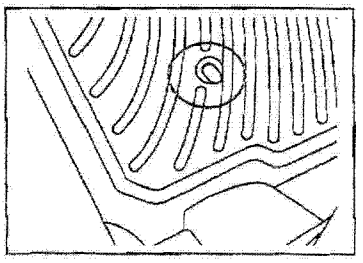


Driver's floor mat part number is located on the bottom of the back side of the mat.

(Sample of Application Information Chart)
See Attachments for details specific to your vehicle.

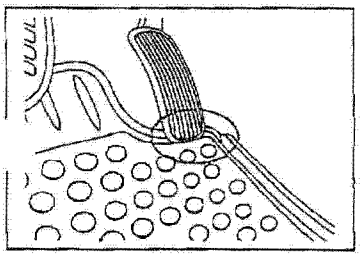
Part Number	Model	Type
PT206-32100 - 45	Camry/Camry Hybrid	Carpeted
PT908-03071 - 02	Camry	All Weather
PT908-03071 - 14	Camry	All Weather

The last 2 digits on the part number indicate the color code



1. Make sure the driver's floor mat is properly secured by the retaining hooks (clips). Confirm that the retaining hooks (clips) are secured into the grommet holes in the vehicle's floor (carpet).

   Warning: Do not stack the floor mats in any vehicle. The retaining hooks (clips) are designed to accommodate only one floor mat at a time.



2. Check the following pedal operation (fully depress the pedal) to assure the floor mat does not interfere with it. Make sure the vehicle is turned off and in the "Park" position when testing:
   - Accelerator Pedal
   - Brake Pedal
   - Clutch Pedal (if equipped)

Spanish translation on back side
Traducción en español en el reverso

TOYOTA CAMRY

2007 – 2010 Model Year Toyota Camry Vehicles Floor Mat to Vehicle Application Chart

Part Number	Model	Type	'07	'08	'09	'10	Color
PT206-32060-11	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Ash
PT206-32060-12	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Dk Charcoal
PT206-32060-14	Camry / Camry Hybrid	Carpeted	✔	✔	✔	✔	Bisque
PT206-32078-40	Camry Hybrid	Carpeted	✔				Bisque
PT206-32100-12	Camry / Camry Hybrid	Carpeted				✔	Gray
PT206-32100-45	Camry / Camry Hybrid	Carpeted				✔	Brown
PT908-03071-02	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Black
PT908-03071-14	Camry / Camry Hybrid	All Weather	✔	✔	✔	✔	Brown
PT908-0307F-02	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Black
PT908-0307F-14	Camry / Camry Hybrid (Front Mat)	All Weather	✔	✔			Brown
PT908-32070-02*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Black
PT908-32070-14*	Camry / Camry Hybrid - Do not use*	All Weather	✔				Brown

*These mats were recalled in 2007. Please place them in your trunk until further notice.

EXHIBIT C

January 1, 2010

CV, Bibliography of Ben Kelley
3117 Bird Rock Road
Pebble Beach, CA 93953
www.producthazardconsulting.com
ben.kelley@yahoo.com
benjamin.kelley@tufts.edu
phone/fax 831 920 2460
cellphone 617 599 8120

Ben Kelley has worked in the field of injury control for more than 30 years as an educator, researcher, author, policy expert and historian. A former official of the U.S. Department of Transportation, he was a principal architect of the world-renowned vehicle safety research and communications program of the Insurance Institute for Highway Safety, where he served as a senior officer for fifteen years. Later, as president of the Institute for Injury Reduction, he led in efforts to document motor vehicle and other hazardous products and to inform the public about their lack of safety. He has frequently testified before Congress and the courts concerning unsafe products and the injuries they cause. Presently he divides his time between teaching, consulting and writing about injury issues.

Professional

Current: Visiting faculty member, "Introduction to Injury Control," Tufts University School of Medicine; director, Motor Vehicle Hazards Archives Project (www.AutoHazardInfo.org); board member, Public Health Advocacy Institute; board member, Center for Auto Safety; guest lecturer, Northeastern University School of Law; expert witness and consultant on product hazard and injury causation issues.

1986-1995: President, Institute for Injury Reduction, a non-profit research and educational group founded by plaintiff's attorneys to address issues involving product-related injuries; President, A.B. Kelley Consulting..

1969-85: Senior vice president, Insurance Institute for Highway Safety (a principal architect of its highly-regarded research and communications work); faculty lecturer, Johns Hopkins University School of Public Health and Hygiene Injury Control Program; guest lecturer, Yale Medical School, Wisconsin School of Medicine, University of California Medical School at Davis.

1967-69, Director, Office of Public, Legislative and Governmental Affairs, U.S. Federal Highway Administration of the Department of Transportation; involved in policy-setting for DOT highway, motor vehicle safety and highway safety programs.

1966-67: Manager, Transportation and Communications Policy Department, Chamber of

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Commerce of the United States.

1963-66: Special Assistant to Interstate Commerce Commissioner William H. Tucker.

1961-63: Transportation Editor, New York Journal of Commerce, Washington (DC) Bureau.

1960-61: Reporter, Traffic World Magazine, Washington, D.C.; contributing writer, Automotive News magazine.

1957-60: Editor/Reporter, Shipping and Trade News, Tokyo News Service, Tokyo, Japan.

1954-57: Military Service, U.S. Army Security Agency/National Security Agency.

Education

Diplomas in Korean (U.S. Government Language School, Monterey, California), Japanese (Naganuma Institute, Tokyo, Japan). Course work at Sophia University, Tokyo. Harvard Business School, research management course for mid-career organization professionals.

Present, Past Memberships

National Coalition for Car Crash Injury Reduction; CRASH (Citizen for Reliable and Safe Highways)(Board of Directors); Center for Auto Safety (Board of Directors); National Safety Council (Board of Directors); American Public Health Association; National Press Club; Association for Advancement of Automotive Medicine (officer); CINE (Board of Directors); Society of Automotive Engineers (Member Grade); Institute for Injury Reduction (Board of Directors); member and MVHAP representative, Society for the Advancement of Violence and Injury Research (SAVIR); Organization of American Historians.

Awards, Recognitions

CINE Golden Eagle; Zagreb Film Festival; U.S. Department of Transportation Special Achievement Award; Who's Who In America.

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EXHIBIT D

November 06, 2009 by Irv Miller

Unintended Acceleration: Toyota Addresses the Issues

Recently, there has been some controversy regarding a safety recall that Toyota is undertaking. We want to take this opportunity to set the record straight with a chronology of the events of the past week.

On Friday, October 30, we began sending letters to Toyota owners and Lexus owners about a defect related to motor vehicle safety that exists on certain models. The defect is 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. As an interim precaution, we asked owners to take out any removable driver's floor mat and not replace it with any other floor mat until a vehicle-based remedy can be developed and implemented on their vehicle. When such a remedy is determined, owners will be notified.

In addition, the letter contains instructions for owners on what to do should they experience accelerator pedal interference.

On Monday, November 2, Toyota distributed a press release announcing the customer letter campaign and cited a recent decision by NHTSA related to unintended acceleration on a Lexus vehicle.

On Tuesday and Wednesday, a series of media reports circulated, stating that there was growing suspicion by some Toyota and Lexus owners, that a glitch of some kind in the electronic engine management system was the cause of reports of unintended acceleration. There were also reports in the media that Toyota's press release implied that the company believed the only issue was the removal of floor mats and that its future recall would not involve any other remedies.

First, the question of unintended acceleration involving Toyota and Lexus vehicles has been one of the most thoroughly and repeatedly investigated issues by Toyota, as well as by the engineering experts at the National Highway Traffic Safety Administration (NHTSA). Six times in the past six years NHTSA has undertaken an exhaustive review of allegations of unintended acceleration on Toyota and Lexus vehicles and six times the agency closed the investigation without finding any electronic engine control system malfunction to be the cause of unintended acceleration.

Just last week NHTSA denied a request for an additional investigation of unwanted and unintended acceleration of model year 2007 Lexus ES350 vehicles and model years 2002-2003 Lexus ES300. After conducting an extensive technical review of the issue, including interviews with consumers who had complained of unwanted acceleration, NHTSA concluded that "...the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations." (click here for ODI report)

Finally, on Wednesday of this week, NHTSA issued a statement that read in part 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."

It was never Toyota's intention to mislead or provide inaccurate information and we regret any confusion our press release may have caused with the media and with the public. Toyota agrees with NHTSA's position that the removal of the floor mats is an interim measure and that further vehicle-based action is required. We are in the process of developing appropriate vehicle-based remedies that will help prevent accelerator pedal entrapment. In the meantime we will continue to keep you updated on the floor mat situation as more information becomes available.

Irv Miller
Group Vice President, Environmental and Public Affairs
Toyota Motor Sales, U.S.A., Inc.

TOY-RQ-05E-00005904

EXHIBIT E

Posted to: Avalon, Camry, Corporate, Prius, Tacoma, Toyota, Tundra

Toyota Begins Interim Notification to Owners Regarding Future Voluntary Safety Recall Related to Floor Mats

Letter Confirms No Defect Exists in Vehicles with Properly Installed Floor Mats

TORRANCE, Calif., November 2, 2009 -- Toyota Motor Sales (TMS), U.S.A., Inc., today announced that it has begun mailing letters to owners of certain Toyota and Lexus models regarding 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 letter, in compliance with the National Traffic and Motor Vehicle Safety Act and reviewed by the National Highway Traffic Safety Administration (NHTSA) also confirms that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured.

The Toyota finding is consistent with a recent decision by NHTSA denying a request for an additional investigation of unwanted and unintended acceleration of model year 2007 Lexus ES350 vehicles and model years 2002-2003 Lexus ES300. After conducting an extensive technical review of the issue, including interviews with consumers who had complained of unwanted acceleration, NHTSA concluded that "...the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations."

This is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no vehicle based cause for the unwanted acceleration allegations.

"The question of unintended acceleration involving Toyota and Lexus vehicles has been repeatedly and thoroughly investigated by NHTSA, without any finding of defect other than the risk from an unsecured or incompatible driver's floor mat," said Bob Daly, TMS senior vice president.

"Toyota takes public safety seriously. We believe our vehicles are among the safest on the road. Our engineers are working hard to develop an effective remedy that can help prevent floor mat interference with the pedal. As soon as it is ready, we will notify owners of the relevant models to bring their vehicle to a dealer for the necessary modification at no charge," Mr. Daly added.

In the recently completed investigation, NHTSA conducted extensive testing on a Lexus ES350. The agency reported that:

"The vehicle was fully instrumented to monitor and acquire data relating to yaw rate, speed, acceleration, deceleration, brake pedal effort, brake line hydraulic pressure, brake pad temperature, engine vacuum, brake booster vacuum, throttle plate position, and accelerator pedal position. Multiple electrical signals were introduced into the electrical system to test the robustness of the electronics against single point failures due to electrical interference. The system proved to have multiple redundancies and showed no vulnerabilities to electrical signal activities. Magnetic fields were introduced in proximity to the throttle body and accelerator pedal potentiometers and did result in an increase in engine revolutions per minute (RPM) of up to approximately 1,000 RPM, similar to a cold-idle engine RPM level. Mechanical interferences at the throttle body caused the engine to shut down."

The Toyota letter is an interim notice to owners of a future voluntary safety recall campaign. The following models are affected:

- 2007 - 2010 Camry
- 2005 - 2010 Avalon
- 2004 - 2009 Prius
- 2005 - 2010 Tacoma
- 2007 - 2010 Tundra
- 2007 - 2010 ES350
- 2006 - 2010 IS250 and IS350

Until Toyota develops a remedy, it is asking owners of affected Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat.

The Toyota letter also informs owners of what to do if they experience accelerator pedal interference, general floor mat warnings and proper floor mat application information. Owners who have further questions are asked to visit http://www.toyota.com/floormats or http://www.lexus.com/floormats where the owner letter in its entirety can also be viewed. The most recent NHTSA report can be viewed on these websites as well.

Click here for the NHTSA report

Click here for Toyota owner letter

Click here for Toyota USA Update on Safety Advisory Video

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NOTE TO EDITORS: Photography to accompany this story is available and can be retrieved in digital form by media without charge at www.toyotanewsroom.com.

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EXHIBIT F

September 16, 2009

Lexus ES 350 Accident Investigation

On August 28th, 2009, California Highway Patrol Officer Mark Saylor and three members of his family tragically lost their lives on a highway near San Diego California, while driving a 2009 ES350 loaned to them by a local Lexus dealer. Our deepest sympathies go out to the friends and family of Mark, Cleofe, Mahala, and Cleofe's brother Chris Lastrella. Preliminary information from law enforcement investigators indicates that the cause may have been an all-weather floor mat from a different Lexus model which, if installed incorrectly in the ES350, could cause it to interfere with the accelerator pedal.

EXHIBIT G

latimes.com/news/local/la-fi-toyota-recall8-2009nov08,0,6120294.story
latimes.com

Runaway Toyota cases ignored

Safety investigators dismissed numerous reports of sudden acceleration, then said data were lacking.

By Ralph Vartabedian and Ken Bensinger

November 8, 2009

More than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own, in many cases slamming into trees, parked cars and brick walls, among other obstacles, a Times review of federal records has found.

The crashes resulted in at least 19 deaths and scores of injuries over the last decade, records show. Federal regulators say that is far more than any other automaker has experienced.

Owner complaints helped trigger at least eight investigations into sudden acceleration in Toyota and Lexus vehicles by the National Highway Traffic Safety Administration in the last seven years. Toyota Motor Corp. recalled fewer than 85,000 vehicles in response to two of those probes, and the federal agency closed six other cases without finding a defect.

But those investigations systematically excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had suddenly accelerated, which sharply narrowed the scope of the probes, the Times investigation revealed.

Federal officials eliminated broad categories of sudden-acceleration complaints, including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem.

NHTSA officials used the exclusions as part of their rationale to close at least five of the investigations without finding any defect, because -- with fewer incidents to consider -- the agency concluded there were not enough reported problems to warrant further inquiry. In a 2003 Lexus probe, for example, the agency threw out all but one of 37 customer complaints cited in a defect petition. It then halted further investigation, saying it "found no data indicating the existence of a defect trend."

Meanwhile, fatal crashes involving Toyota vehicles continued to mount.

In a written statement, the NHTSA said its records show that a total of 15 people died in crashes related to possible sudden acceleration in Toyota vehicles from the 2002 model year and newer, compared with 11 such deaths in vehicles made by all other automakers.

The Times located federal and other records of 19 fatalities involving Toyota and Lexus vehicles from the same model years in which sudden or unintended acceleration may have been a factor, as well as more than 1,000 reports by owners that their vehicles had suddenly accelerated. Independent safety expert Sean Kane, president of Safety Research and Strategies, said he has identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

Other experts say the numbers may be far higher, pointing to a 2007 NHTSA survey of 600 Lexus owners that found

10% complained they had experienced sudden acceleration.

Most sudden accelerations did not result in a crash, but there were notable exceptions. Bulent Ezal, a retired engineer, plunged 70 feet off a Pismo Beach cliff into the Pacific Ocean surf. He was hospitalized with minor injuries, but his wife of 46 years was killed.

"By the time they pulled me out, the tide was about to cover the car," Ezal said.

He said his 2005 Camry had suddenly accelerated in a parking lot.

In its research, The Times examined thousands of federal defect investigation records, complaints filed with NHTSA by Toyota and Lexus owners, lawsuits against the company, and reports by independent safety experts and local police agencies.

Toyota has been under a spotlight since Aug. 28, when off-duty California Highway Patrolman Mark Saylor and three members of his family died in a Lexus ES 350 that accelerated to more than 100 mph and crashed in San Diego County.

Toyota has blamed the Saylor crash on an incorrectly installed floor mat that jammed the accelerator pedal. The company announced a recall of 3.8 million vehicles in September and is designing a fix aimed at preventing sudden acceleration caused by floor mats.

The recall affects the following Toyota models: the 2007-2010 Camry, the 2004-2009 Prius, the 2005-2010 Avalon, the 2005-2010 Tacoma and the 2007-2010 Tundra, as well as the 2007-2010 Lexus ES 350 and the 2006-2010 Lexus IS 250 and IS 350.

Last week, the NHTSA called the issue a "very dangerous problem" and said the remedy remains to be determined.

The agency declined a request for interviews, but issued a statement defending its past actions, saying its officials have continuously monitored Toyota vehicles for potential defects and that many of the reports of sudden acceleration involved only momentary surges of engine power that did not result in any loss of vehicle control.

"NHTSA takes every allegation of safety problems seriously and that is why we read every consumer complaint within one business day of its receipt," the agency said. "In the case of complaints about sudden acceleration in Toyota vehicles NHTSA moved very quickly to respond to them."

Toyota Motor Corp. defended its Toyota and Lexus vehicles and the validity of prior investigations.

"Over the past six years, NHTSA has undertaken several exhaustive reviews of allegations of unintended acceleration on Toyota and Lexus vehicles. In each case, the agency closed the investigation without finding any electronic engine control system malfunction to be the cause of unintended acceleration," the company said in a statement.

Whatever the cause, Toyota and Lexus owners have grappled with the dangerous consequences.

* Jean Bookout awoke in an Oklahoma hospital a month after a crash in her 2005 Camry.

She said the car sped out of control on a freeway, then smashed into an embankment after she swerved it onto an exit ramp, leaving behind long skid marks from attempts to stop the vehicle with her brakes and emergency brake.

Bookout sustained permanent memory loss, and her best friend died.

"I did everything I could to stop the car," she said Tuesday.

* Nancy Bernstein, a vice president for a Long Beach community garden and former science teacher, said she was taken on an 8-mile high-speed ride by her 2007 Prius while she was following her husband in a group bicycle tour in Wisconsin. She said her Prius accelerated from 45 mph to 75 mph on a winding, two-lane highway crowded with 100 cyclists.

"I was sure I was going to kill someone on a bicycle or myself," she recalled. "I stood on the brakes with both feet. All of a sudden, I see fire. I thought, sure, my brakes are on fire. I thought about maybe trying to sideswipe a tree to slow down."

Eventually she was able to stop at the bottom of a hill, using her brakes and emergency brake. A local resident rushed out with a fire extinguisher.

* Dr. David. W. Smith, an emergency room physician from San Dimas, has yet to receive a satisfactory answer from Toyota about his Lexus GS 300. Smith said he was driving with his cruise control in Central California on Highway 99 last year, not touching the accelerator, when suddenly the vehicle accelerated to 100 mph.

The brakes did not release the cruise control or slow down the vehicle, Smith recalled. Finally, he shifted into neutral and shut off the engine. "I am sure it is the cruise control," he said. "I haven't used it since."

In reviewing consumer complaints during its investigations, the NHTSA relied on established "positions" that defined how the agency viewed the causes of sudden acceleration. Cases in which consumers alleged that the brakes did not stop a car were discarded, for example, because the agency's official position was that a braking system would always overcome an engine and stop a car. The decision was laid out in a March 2004 memorandum.

When asked to submit its own complaint data to the NHTSA, Toyota eliminated reports claiming that sudden acceleration occurred for "a long duration," or more than a few seconds. Elsewhere, the company said a fail-safe in its throttle system makes such an event impossible.

NHTSA officials acknowledged in a statement that the exclusions were made, but defended the practice.

"While some vehicles may be excluded from the scope of an investigation into a specific defect allegation, all are continuously reviewed, along with other relevant information, in order to identify other emerging issues of concern," the statement said.

A reduced pool of reports created the appearance that the problem was much smaller than the total number of complaints suggested, making a broader vehicle recall seem less necessary, critics say.

"NHTSA has ways of pigeonholing reports, categorizing them as brake failure rather than sudden acceleration," said attorney Edgar Heiskell of Charleston, W.Va., who is suing Toyota over a fatal crash in Flint, Mich. "By excluding these braking and long-duration events, they have taken 80% of the cases off the table."

In 2004, the NHTSA began a probe into a defect petition filed by Carol J. Mathews, a registered nurse who was then director of health services for the Montgomery County, Md., school system. Matthews reported that she had her foot on the brake of her 2002 Lexus ES when it took off and hit a tree.

In its subsequent investigation, the NHTSA and Toyota both winnowed down other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models.

When the agency asked Toyota to disgorge all of the reports it knew about, the company eliminated an unknown number in five broad categories, including cases in which drivers said they were unable to control a runaway engine by applying the brakes.

In closing the probe, federal investigators said only 20 cases were considered relevant.

But The Times' examination of consumer complaints and a sampling of reports from Toyota dealers found more than 400 reports of sudden acceleration involving those models. And federal records show that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

As for its position that brakes can always overcome a vehicle's engine, the safety agency and Toyota now acknowledge that a braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration.

The NHTSA began investigating the problem of sudden acceleration in the mid-1980s, after a flood of complaints about the Audi 5000. One outgrowth of the subsequent investigation was the NHTSA view that acceleration events at high speed are a different issue than events at low speed.

In 2005, for example, Jordan Ziprin of Phoenix, who had experienced a minor accident he blamed on sudden acceleration, filed a defect petition with the NHTSA that included nearly 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority should be eliminated because they dealt "with two completely different issues."

When owners said the "vehicle unintentionally or suddenly 'accelerated,' " Toyota claimed that represented a different issue than when they said "the vehicle 'surged' or 'lurched.' " The NHTSA ultimately went a step further, eliminating every single complaint except Ziprin's, finding them to have "ambiguous significance."

The agency also has thrown out evidence for other reasons. In 2008, the NHTSA opened a probe of the Toyota Tacoma after a consumer found that the truck had accumulated 32 times as many sudden-acceleration complaints as any other pickup. But Toyota at the time said the complaints stemmed from "media and Internet exposure." The NHTSA closed the case without a finding after it whittled down a list of more than 450 complaints to just 62.

"To this day I still can't find evidence online of a flood of media exposure," said William Kronholm, the Helena, Mont., man who said he requested the investigation after he experienced two acceleration events in his 2006 Tacoma. "They never dealt with the question I presented in any real way."

The NHTSA has declined to reconsider previous investigations, even in the face of new evidence.

In March, Jeffrey Pepski of Plymouth, Minn., formally requested that the NHTSA reopen two closed investigations into Toyota and Lexus vehicles for the acceleration problem, arguing in part that 10 other motorists had experienced sudden acceleration that could not be explained by floor mats.

The NHTSA looked at the 10 cases and tossed them out. The agency's way of looking at them sharply contrasted with the drivers' original accounts.

In one case, the driver of a 2007 Lexus ES 350 reported that the sedan accelerated into a building, bounced backward, struck another vehicle and ended up on top of a snowbank.

But federal officials described the same case as a "single incident of alleged engine surge while parking vehicle. No trouble found by dealer."

The NHTSA denied Pepski's petition last week, arguing that further study was "not warranted."

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Times researcher Scott J. Wilson and Times staff writer Melissa Rohlin contributed to this report.

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EXHIBIT H

Posted to: Avalon, Camry, Corporate, Prius, Tacoma, Toyota, Tundra

Toyota Announces Details of Remedy to Address Potential Accelerator Pedal Entrapment

Torrance, Calif., November 25, 2009 - - Toyota Motor Sales, U.S.A., Inc. (TMS) announced today details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models. Toyota issued a consumer safety advisory on September 29 on this issue and has, as an interim measure, commenced the mailing of safety notices to certain Toyota and Lexus owners on October 30.

The models involved are: 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

The specific measures of the vehicle-based remedy are as follows:

1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.

2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

In addition, as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals.

Toyota is in the process of completing development of these actions and for the ES350, Camry, and Avalon will start notifying owners of the involved vehicles via first-class mail by the end of this year. The remedy process regarding the other five models will occur on a rolling schedule during 2010.

Dealers will be trained and equipped to make the necessary modifications to these models starting at the beginning of 2010. Initially, dealers will be instructed on how to reshape the accelerator pedal for the repair. As replacement parts with the same shape as the modified pedal become available, they will be made available to dealers for the repair, beginning around April 2010. Customers who have had the remedy completed will have the opportunity to receive a new pedal if they desire.

In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.

The brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010.

The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Owners who have further questions are asked to visit www.toyota.com or www.lexus.com or contact the Toyota Customer Experience Center at 1-800-331-4331 or Lexus Customer Assistance at 1-800-255-3987.

EXHIBIT I

ENDORSED
FILED
ALAMEDA COUNTY

OCT 1 1 2000

CLERK OF THE SUPERIOR COURT
By BARBARA DELL
Deputy

CALIFORNIA SUPERIOR COURT

COUNTY OF ALAMEDA

ROBERT HOWARD, SUSAN VON RITTER, DOUGLAS CURRAN, KIRK MORGANSON, and JERRY MACALA, on behalf of themselves and all others similarly situated, Plaintiffs, vs. FORD MOTOR COMPANY, and DOES 1-100, inclusive, Defendants.	No. 763785-2 **STATEMENT OF DECISION** **(CODE CIV. PROC. § 632; CAL. R. CT. 232, 520)** Hon. Michael E. Ballachey

I. INTRODUCTION

This is an action brought under the Unfair Competition Law (hereafter UCL) (Business and Professions Code sections 17200, *et. seq.*). Plaintiffs also seek relief, in this phase of this trial, under the equitable provisions of Consumers Legal Remedies Act (hereafter CLRA (Civil Code sections 1750, *et. seq.*, specifically, Civil Code section 1780(a)(3), (5))).

Having heard all of the evidence herein on the non-jury issues in a bifurcated trial, and having received extensive briefing from the parties (an Opening Trial Brief from plaintiffs, a responsive Trial Brief from defendant, a Reply Trial Brief from plaintiffs, a Surreply Brief from defendant, a Surrebuttal Brief from plaintiffs), along with briefs from both parties on the

TOY-RQ-05E-00005918

significance of the California Supreme Court rulings in *Kraus v. Trinity Management Service, Inc.*, 23 Cal. 4th 116 (2000), and *Cortez v. Purolator Air Filtration Products, Co.*, 23 Cal 4th 163 (2000) (an opening brief from plaintiffs, a responsive brief from defendant, and a reply by plaintiffs), as well as Ford's written Request for a Statement of Decision, Plaintiffs' Proposed Statement of Decision, and Ford's Objections to Proposed Statement of Decision, the court now issues this final Statement of Decision pursuant to Code of Civil Procedure 632 and California Rules of Court 232 and 520.

TOY-RQ-05E-00005919

II. PLAINTIFFS' CLAIMS FOR REMEDIES

1. Plaintiffs' claim for "disgorgement" as restitution is DENIED. Plaintiffs failed to establish, by a preponderance of the evidence, proof of "ill gotten gains" in the form of "avoided costs" with sufficient precision to warrant such an order. This claim also raises grave questions as to the constitutional appropriateness of such an order (*Kraus, supra; Cortez, supra*).

2. The plaintiffs' request for restitution is GRANTED. This order relates to those sums actually paid by Class Members to defendant for replacement of thick film ignition ("TFI") modules outside of warranty, whether or not payment was made at a time when the warranty had expired. Class Members are entitled to restitution under both the UCL (Bus. & Prof. Code § 17203) and the CLRA (Civ. Code § 1780(a)(3)). The parties are to be prepared to discuss the size of any such restitution fund, the content of notice to Class Members, and mechanisms of payment to appropriate Class Members. Defendant shall be liable for the cost of notice to Class Members of their entitlement to restitution. Determination of these issues shall be referred to Referee pursuant to Code of Civil Procedure section 639, subdivisions (c), (d) and (e), at defendant's expense, for recommendation to the court on the appropriate amount of a restitution fund and for appropriate procedures to ensure payment to Class Members. The expenses of the Referee shall include fees, administrative costs and any related expense reasonably incurred by the Referee. Amounts not paid out to Class Members due to inability to locate them may be held in a "fluid recovery" fund pending further order of the court. *See* Code Civ. Proc. § 384. It is clear that such relief is appropriate in a Class Action where members have sustained a monetary loss and cannot be located. *Kraus,* 23 Cal. 4th at 127-37; *Cortez,* 23 Cal. 4th at 173-75.

3. Plaintiffs' request for equitable relief in the form of affirmative orders regarding a "fix" of the problem giving rise to liability, namely the hidden defect in the distributor mounted TFI modules in Class Vehicles, is GRANTED. This issue requires additional proceedings at which evidence will be presented to assist the court in fashioning an appropriate remedy. The viable

TOY-RQ-05E-00005920

alternatives appear to be: (1) a replacement program with a late iteration of the distributor mounted TFI module, (2) a remote-mount solution, or (3) a program whereby older vehicles are purchased from current owners by defendant, if more economically appropriate. The court is without sufficient information to resolve this question based on the record to date. To obtain this information, the Court shall, pursuant to Code of Civil Procedure section 639, subdivisions (c), (d), and (e), appoint a Referee who will have the authority to use Evidence Code section 730, *et. seq.*, to appoint expert witnesses, as the Referee deems appropriate, address discovery disputes, and take testimony on this question. The Referee will report to the court with recommendations on the issues referred to him, specifically regarding the appropriate remedy. The cost of any such Referee, including fees, administrative expenses, and any expert witness fees shall be borne by defendant. These proceedings will also be under both the CLRA (Civ. Code § 1780(a)(3), (5)) and the UCL (Bus. & Prof. Code § 17203).

4. Plaintiffs' request for reasonable attorney's fees and costs is GRANTED. *See, e.g.*, Civ. Code § 1780(d) (attorney fees and costs); Code Civ. Proc. § 1021.5 (attorney fees in cases involving questions of public concern); *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19 (2000) (manner in which amount of attorney fees is determined California); *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal. App. 4th 499, 543-44 (1997) (application of Code Civ. Proc. § 1021.5 in UCL action); *Flannery v. Cal. Highway Patrol*, 61 Cal. App. 4th 629, 634-38 (1998) (discussing application of Section 1021.5). Plaintiffs shall make such claim by way of a fee petition and cost bill to be filed herein in a timely fashion. This issue shall also be referred to the Referee, at defendant's expense as ordered above, pursuant to C.C.P. 639 (c), (d), and (e) for appropriate recommendation on all related issues.

TOY-RQ-05E-00005921

III. ANALYSIS OF EVIDENCE

As Congress and various states began to demand increased mileage and better emissions performance from automobile manufacturers, the old "breaker points" ignition technology became inadequate to the task. All automobile manufacturers, including defendant Ford Motor Company, turned to electronic ignition systems to meet the challenge posed by these changes in the law. *See* Austin Tr. at 6357:16-6358:7 ("the breaker points in a mechanical, non-electronic ignition system were identified as a frequent source of emission problems in vehicles in customer service"); Davis Tr. at 4658:16-4659:5, 4659:6-4660:6 (the electronic ignition system assists with fuel economy and with emissions because both require accurate spark and timing).[1]

Ford's first effort was the "Duraspark," commencing in the 1970s. *See* TX 154 at 3 ("all passenger cars incorporated electronic ignition systems beginning in 1975 and all light trucks adopted similar systems beginning in 1976"). The original Duraspark technology called for remote mounting at least in part because Ford knew that the reliability of electrical components depended on keeping them below maximum design temperatures. Miller V at 30:6-14, 34:2-38:5.

The decision to remote mount the Duraspark followed numerous meetings, at which people responsible for designing the engines and ignition systems for Ford vehicles sought to place the ignition electronics inside the passenger compartment. Their goal was to "avoid issues of splash, and as much of the temperature issue as we could from the engine directly . . . ." This suggestion to

[1]As used in this Statement of Decision, all citations to "Tr." are to the official trial transcript; all citations to "V" are to the videotaped deposition transcripts presented at trial; and all citations to "TX" are to trial exhibits that were admitted into evidence.

TOY-RQ-05E-00005922

"invade the architecture of the interior of the automobile to mount this electronic computer to run our engine . . ." was met with "acrimonious" opposition from the "body engineers and stylists and the whole rest of the company." Feaheny Tr. at 2008:8-2010:8.

The argument by Feaheny and his engineers to place ignition electronics in the passenger compartment was lost. *See, e.g.,* TX 215 at TFIX 9735. A design decision, made for reasons related to style and not concerned with safety, emissions control, or mileage, set Ford on a course which led directly to the TFI problems unveiled in this litigation. The decision not to place the delicate electronic, computer driven ignition technology inside the passenger compartment and directly on the distributor instead, flawed at the outset, has been fiercely and stubbornly defended ever since. *See, e.g.,* Davis Tr. at 4974:26-4975:3; Minear Tr. at 7793:20-24.

After the failure of the Duraspark technology, in the early 1980s, Ford decided to use "thick film" technology for its next generation of ignition modules. (Hereafter TFI modules) *See, e.g.,* Davis V at 17:13-18:6 ("we needed a new ignition system that would marry the operation of these two together properly"); TX 5089 at TFIX 0208 (enumerating reasons Ford replaced Duraspark with new generation of ignition modules). The TFI module is the electronic "brain" of the ignition system that controls the spark in the internal combustion process. It is designed to last for the life of the vehicle without the need for service or maintenance. *See, e.g.,* Miller V at 30:15-32:1; Pecht Tr. at 1627:5-1628:5; Davis Tr. at 4695:19-4696:3; TX 455 at TFI4 0142; TX 823 at TFI6 1237. *See also,* Ford's Motor Company's Opening Trial Brief, p. 6:9-23. Ford knew, from the very beginning of the shift to electronic technology, that the TFI module was vulnerable to "thermal stress" and that heat was the enemy of electronic devices. *See* Pecht Tr. at 1616:11-26, 1613:15-1614:4, 1617:28-16119:22, 1624:17-1625:6, 1637: 5-1638:3; Davis Tr. 4814:-4815:18; TX 958 at TFI5 2481 ("rule of thumb" is that TFI module life doubles with each 10° C in temperature); *see also* TX 4641 at TFIA 7170-7171 (Ford document defining TFI module as a "critical circuit": one that can "disable the vehicle or severely impairs the driver's ability to operate the vehicle").

Because of earlier size considerations with respect to the Duraspark module, and because of the earlier "acrimonious" decision making process about vehicular architecture and style, the TFI module was ultimately designed for placement on the distributor. *See* Feaheney Tr. at 2008:8-2010:8; TX 215 at TFIX 9735 (memorandum from Ford upper management stating that plans to remote-mount the TFI module were abandoned for "cost/function reasons").[2] Ford installed TFI modules on the distributors of approximately 23 million vehicles it manufactured and sold nationally, including the class vehicles involved in the present action. *See, e.g.*, TX 2560; TX 215 at TFIX 9735.

For reasons having to do with internal generation of heat ("dwell") and external generation of heat (the engine and ambient temperature conditions), the TFI module began to manifest failure, both in pre-production testing and under field conditions almost immediately. *See, e.g.*, TX 283 at TFI4 4001; TX 308. Installing TFI modules on the distributors of class vehicles caused them to fail due to exposure to excessive heat and thermal stress. *See, e.g.*, Pecht Tr. at 1616:11-1619:16; Wuorenma V at 131:18-25; Paulsen Tr. at 5263:23-5264:7; TX 519; TX 585, TX 591; TX 721; TX 826.

The proof on this question is overwhelming. As pointed out above, Ford knew from the very beginning of the shift to electronic technology that the TFI module was vulnerable to thermal stress and that heat was the enemy of electronic devices. *See, e.g.*, Miller V at 30:6-14, 34:2-38:5; Davis Tr. 4814:9-14, 4815:5-10, 4928:23-4390:5; Hoffman V at 36:14-39:14; Minear V at 77:15-81:1; Partington V at 87:8-88:12, Paulsen Tr. at 5123:14-19, 5206:7-11, 5337:18-22; Paulsen V at 119:22-120:23; Pecht Tr. at 1613:15-1616:26, 1617:28-1619:4, 1624:26-1625:6, 1637:5-1638:3, 1659:9-1664:9, 1670:24-1676:22, 1731:14-20; Marlett V at 56:14-60:10; TX 838 at TFP6 3808; TX 4641 at TFIA 7170-7171; TX 391 at TFI4 1371-72, 1395-96; TX 5141 at TFI6 1273, 1276; TX

[2]Ford's original engineering specifications (which were prepared in 1980) called for the TFI module to be mounted to a heatsink on the left-hand fender apron, one of the coolest locations under the hood. *See* TX 173 at TFIH 0027, 0034. As mentioned above, Ford management later abandoned that approach due to cost considerations. *See* TX 215 at TFIX 9735.

TOY-RQ-05E-00005924

5081 at TSA 004209-10; TX 385; TX 273 at TFI4 3852; TX 283 at TFI4 4001; TX 823 at TFI6 1237; TX 5048 at TFI5 7749. Moreover, Ford has been aware, since at least 1982, that installing its TFI ignition modules on the distributors of class vehicles made them inordinately prone to failure due to exposure to excessive heat and thermal stress (the "TFI defect"). *See, e.g.,* TX 139 at TSA 004030-31; TX 273 at TFI4 3852; TX 283 at TFI4 4001; TX 308; TX 327; TX 385; TX 386; TX 389; TX 391; TX 437 at TFI4 3539; TX 471; TX 466; TX 495 at TFI5 0585-96; TX 510; TX 526-A; TX 734; TX 760; TX 4390; TX 838; TX 5082; TX 5130; TX 5138; TX 5351 at TFI7 5133; TX 5042 at 1; TX 5081 at TSA 004197, 004204, 004209-10; TX 5048 at TFI5 7749; TX 5085 at 1988-0825; TX 5087 at TSA 005573, 00579-80; TX 5698 at 2040 0202, 2040 0237; TX 5699 at TSA 000014; Paulsen V at 119:22-120:23; Paulsen Tr. at 5325:16-5326:25; Minear V at 77:15-81:1, 88:17-90:16, 115:5-116:24; Wuorenma V at 126:25-131:25.

The record is replete with internal Ford documents and testimony, all detailing the levels of failure, concerns with design (soldering), attempts to rectify the problem, cost concerns about warranty rates, and early consideration of remote mounting. *See generally* TX 273 at TFI4 3852; TX 283 at TFI4 4001; TX 526A; TX 215; TX 5130; TX 391; TX 139; TX 5698 at 2040 0237; TX 5699, TX 437 at TFI4 3539; TX 510; TX 4390; Paulsen Tr. at 5262:16-5267:8; Partington V at 24:18-25:5, 42:6-49:3. In fact, by 1987 (in the 1988 model year) certain automobiles were remote-mounted. These included Taurus/Sable 3.8-liter engines. Paulsen Tr. at 5325:16-5326:25. Several lines of Ford trucks were also later remote mounted. Minear V at 53:3-19; TX 742; TX 5140; TX 805; TX 806; TX 814; TX 821. The weight of the evidence is that these remote-mount decisions were based on Ford's concerns about its inability to control under-hood temperatures adequately.

It is true that Mr. Davis testified, in defense of his opinion that the TFI module is best mounted on the distributor, about theoretical problems of electro-magnetic interference and weakness associated with additional attachment mechanisms. No evidence was produced to demonstrate the reality of these concerns. Moreover, there was no evidence that Ford's conversion

to remote mount on the various vehicles discussed above gave rise to any of the problems that concerned Mr. Davis.

The clear weight of the evidence is that high temperatures are anathema to electronic components. *See, e.g.*, Pecht Tr. at 1637:15-19 ("the higher the temperature, the more opportunities there are for failures in the electronics"); Russell V at 78:6-80:8 (Ford's designated witness on failure analysis unable to identify single latent defect that would not be affected by temperature); TX 391 at TFI4 1371-72, 1395-96; TX 5141 at TFI6 1273, 1276; TX 5081 at TSA 004209 4210; TX 385. TFI module failure can cause class vehicles' engines to stall at any time, at any speed, under any circumstances, and the propensity to fail increases over time. *See, e.g.*, Hoffman V at 59:10-67:11; Hohnke V at 75:15-22; TX 492; TX 4119; TX 5130; TX 907; Russell V at 75:19-78:5; Wuorenma V at 126:25-131:25; Paulsen Tr. at 5338:26-5340:8; *see also* Bresnehan Tr. at 8089:4-8092:19; TX 576 at TFI8 4430. When a TFI module fails in a class vehicle, the vehicle can lose power steering and power-assisted brakes, and can become disabled on the roadway. *See, e.g.*, Richardson V at 33:3-38:12; TX 4301; TX 762; TX 526-A at TFI6 0815; at TX 5130 at TSA 005533.

Ford's contention that there is no significant difference in remote mounted TFI module warranty returns and distributor mounted TFI module warranty returns is contrary to the weight of the evidence. *See, e.g.*, Minear V at 167:4-170:18 (explaining that high warranty rates in remote-mounted vehicles was caused by salt contamination); Davis V at 95:11-96:11 (same); *see also* Minear V at 99:2-20 (admitting that Ford was aware of no thermal stress-related problems with remote-mounted modules). Ford's argument is not well taken in any event because it begs the question of whether or not its TFI modules, in either location, were free of defects.

The first person to try a remote mount on an older model automobile was Mr. Noettl, whose essentially amateur effort worked without encountering any of Mr. Davis' theoretical problems. *See* Noettl Tr. at 3988-4117. His testimony about the vehicle that he modified was never rebutted.

TOY-RQ-05E-00005926

During the same time period that much of the internal knowledge of the TFI module problem was being gained by Ford, and while Ford's efforts to achieve a cure for the problem were underway, the National Highway Traffic Safety Administration ("NHTSA") opened five separate investigations in response to stalling complaints. Ford's response to the information requests NHTSA served in those investigations, notwithstanding its own warranty experience and expense, was to resort to word games. Ford told NHTSA that "engine stalling may result from a wide variety of reasons, many of which have nothing to do with the failure of an ignition system component," rather than reveal what it obviously knew about the impact of TFI module failure on stalling. *See generally* TX 5761; TX 365; TX 5041; TX 762; TX 937. Ford's strategy, clearly established by the credible evidence was: If you don't ask the right question, we don't have to answer with what common sense tells us you want to know.

Ford withheld responsive information from NHTSA that it was obligated to divulge. For example, the declaration and trial testimony of Michael Brownlee (NHTSA's former Associate Administrator for Safety Assurance) was that Ford should have included, in response to NHTSA investigation No. PE84-05, at least the "Houston Study" (TX 391) and the minutes of a "5/50 Emission Warranty Problem/Resolution Meeting." (TX 5087). Mr. Brownlee also declared, and later testified at trial, that Ford had withheld 17 pertinent documents from NHTSA over the course of several investigations. Brownlee Tr. at 2680:8-18, 2865:23-2867:24, 2887:8-17. At trial, Mr. Brownlee described many other documents that Ford withheld from NHTSA during the same period. *Id.* at 2773:11-2861:28. His testimony and declaration on that subject are credible and persuasive. Similarly, Mr. Ditlow testified persuasively regarding a variety of documents that Ford withheld from NHTSA during the same investigations, as well as investigation Nos. E84-29, PE87-028, and PE89-011. Ditlow Tr. at 3380:3395:6, 3434:3-3481:24; 3484:21-3488:3, 3911:28-3915:19.[3] To a lesser extent, far too late to do any good, NHTSA agreed. *See generally* TX 5067.

[3]Federal law prohibited Mr. Brownlee from testifying about PE87-028 and PE89-011 due to his direct involvement in those investigations as the Director of NHTSA's Office of Defect Investigations. *See* Brownlee Tr. at 2675:5-2676:20.

TOY-RQ-05E-00005927

It is to be noted that neither NHTSA's findings in that regard, nor its determination to not re-open any of its investigations, is binding on this court. *See, e.g., Hewlett*, 54 Cal. App. 4th at 526 ("an erroneous administrative construction does not govern the court's interpretation of the statute"); *Huges v. Bd. of Architectural Examiners*, 17 Cal. 4th 763, 794 (1988) (non-adjudicatory administrative proceeding has no collateral estoppel effect); *Asuza Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal App. 4th 1165, 1221 (1997) (collateral estoppel effect only given to final decision of agency that acted in a judicial capacity).

Ford's dissimulation reached its nadir in the testimony of Bob Wheaton, Ford's witness designated as most knowledgeable about safety issues, when he insisted that "safe is too subjective" and denied knowledge of any "written definition of what safe is within Ford Motor Company." Wheaton V at 29:17-31:16. Other Ford executives were similarly evasive when pressed on the question of whether or not a failed TFI module, under any circumstances, presented an unreasonable risk of safety. *See, e.g.*, Petrauskus V at 20:16-34:19, 44:5-48:10 (Ford's Vice President of Safety and Environmental Engineering who could not conceive of circumstance in which stalling could create a safety risk); Transou V at 21:22-29:24 (Ford's Vice President of Car Engineering who felt that stalling on the roadway posed no safety risk).

Ford's use of language such as "stop, won't start," "quits on road," "starts after stop," "driveability," and other euphemisms for stalling problems, all of which were immersed in rhetoric claiming a multiplicity of causes for stalling (everything from running out of gas to a dead battery!) are at least disingenuous when juxtaposed with Ford's actual knowledge of the extent of the TFI module problem and its impact on vehicle operation and safety. *See generally* TX 273 (Ford internal memorandum dated April 13, 1982); TX 283 (Ford internal memorandum dated April 29, 1982); TX 308 (Ford internal memorandum, reviewed on May 24, 1983); TX 5130 (Ford internal memorandum dated October 17, 1983); TX 386 (Ford internal memorandum dated July 23, 1985); TX 391 (Ford internal memorandum dated June 6, 1985, and revised August 16, 1985); TX 510 (Ford internal memorandum dated October 15, 1986). More specifically TX 556 is a Ford FMEA

report, in which TFI module failure was rated as a "5" ("very high severity" in relation to safety). This report, dated December 16, 1986, was prepared one week after the Owner Notification Program was announced internally by Ford upper management, based on "driveability" concerns and not as safety recall. *See* TX 554; TX 7054 (Bradley Depo.) at V 46:24-48:18.

One need look no further than the evidence presented by Ben Kelley (Kelley Tr. at 1495-1563; Kelley V at 2254) and the materials relied upon by him to conclude, as this court does, that stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of the occupants of any such automobile. It would defy common sense and the weight of the evidence to find otherwise. *See also Schreidel v. Am. Honda Motor Co., Inc.*, 34 Cal. App. 4th 1242, 1250 (1995) (discussing safety risks created by stalled vehicle); *Ibrahim v. Ford Motor Co.*, 214 Cal. App.3d 878, 883 (1989) (same); *United States v. General Motors Corp.*, 417 F. Supp. 933, 935-36 (D.D.C. 1976) (same).

Rather Ford used tortured interpretations of common language to avoid its responsibilities to NHTSA, the Environmental Protection Agency ("EPA"), and the consuming public. The TFI module problem was, according to Ford either an emissions problem because it happened gradually and gave the driver a warning, or not an emissions problem because the modules failed suddenly, without warning. *Compare, e.g.,* Petrauskus V at 127:19-131:4; TX 5084 *and* TX 4454 at 69:8-70:17 (Ford's answers to interrogatories) *with* Hoffman V at 59:10-67:11 *and* Austin Tr. at 6450:5-6451:9; *see also* Macher V at 56:9-57:10, 58:10-59:15, 89:10-104:20 (Ford could not confirm existence of prior warning before TFI-related stall occurs). By taking these inconsistent positions, separate divisions within Ford claimed justification for their failure to respond to governmental safety inquiries and to comply with statutory emission control responsibilities. The Ford Motor Company, as a single corporate entity, cannot claim such justification.

Ford improperly arrogated unto itself the task of defining terms and decided for itself what information to reveal. Michael Brownlee (regarding NHTSA Investigation Nos. P85-24 and PE85-

TOY-RQ-05E-00005929

05) and Clarence Ditlow (regarding NHTSA Investigation Nos. E84-29, PE87-028, and PE89-011) with respect to NHTSA, and Charles Freed with respect to the EPA, have testified persuasively to that end. *See, e.g.*, Brownlee Tr. at 2889:3-2893:27; Ditlow Tr. at 3788:3-3792:22; Freed Tr. at 4507:15-4509:1.

In defense of plaintiffs' claims, Ford presented a blizzard of unpersuasive statistical evidence in an attempt to disprove the obvious: That TFI modules failed in enormous numbers from the outset, that they continued to fail in unacceptable numbers for many years before being replaced by successor technology, and that they presented a serious safety risk to its consumers. (As of 1998, approximately 15 million distributor-mounted TFI modules have been replaced in a population of fewer than 23 million vehicles: Ford replaced approximately 1.5 million distributor-mounted TFI modules under warranty; Ford sold approximately 3.2 million replacement TFI modules; and three third-party suppliers of replacement TFI modules sold approximately 10 million additional distributor-mounted TFI modules from 1988 through 1998. *See, e.g.*, TX 15; TX 16; TX 2676-B)

Ford's defense misses the point of this lawsuit. It was not for Ford to decide what "safety" meant, or what levels of warranty returns obligated it to report to the EPA. Ford's responsibility was to respond to legitimate government inquiries with appropriate information so that an independent evaluation could determine the presence or absence of a problem. *See* Freed Tr. at 4459:20-23, 4572:21-4573:22; Brownlee Tr. at 2800:14-23; *see also* Brownlee Tr. at 2689:11-2690:11 (testifying to the effect that NHTSA investigation would have proceeded to "Engineering Analysis" if Ford had not withheld information); TX 5076 at 16 ("Manufacturers may not pick and choose among relevant documents that are within an ODI inquiry").

As part of its blizzard of unpersuasive statistical evidence, Ford also contended that Class Vehicles are not involved in more crashes than non-class vehicles and that the distributor mounted TFI module was not a causal factor in crashes and hence not involved in vehicle safety. Without

TOY-RQ-05E-00005930

resolving the question of the utility of crash statistics, which are conceded to be collected and reported in a haphazard fashion, the court finds that Dr. Robertson's analysis of these statistics, showing a 9% higher fatality rate for Class Vehicles over non-Class Vehicles, is persuasive. *See* Robertson Tr. at 2522:28-2523:13; TX 5713 (discussing FARS data); *see also* Ditlow Tr. at 3502:9-3504:16 (same).

Ford's expert on this subject, Dr. Wecker, achieved results similar to Robertson, using Robertson's data. Wecker Tr. at 6070:11-6071:13. Wecker disagreed with Robertson on the scope of the data, with Wecker being concerned about the "hot rod" factor (that is, that the higher fatality rate may have been attributable to drivers under 21 years of age driving "hot rod" Mustangs recklessly). Such manipulation of questionable data might lead a cynic to recall the aphorism about "Lies, Damned Lies, and Statistics." This court declines that temptation, but nonetheless finds the weight of the evidence to favor plaintiff on this issue.

Given the enormous financial impact of this problem, as revealed by the 5/50 Warranty Review (TX 526A), and given the much greater expense of an involuntary recall should NHTSA order one, it comes as no surprise that Ford did what it did: Make a show of concern by ordering a partial and much less expensive "Owner Notification" with respect to some of the cars subject to the problem. *See* TX 561; TX 7054 (Bradley Depo.) at V 46:24-48:18 (safety recall campaigns are almost twice as costly as owner notification programs).

Ford was required by law to report to the EPA when it became aware of 25 or more TFI module failures in a given model year during the entire class period. 40 C.F.R. § 85.1903. Ford was required by law to report to CARB when it became aware of 25 or more TFI module failures in a given model year, through the 1989 model year. 13 Cal. Code Reg. § 2146. Ford was aware that far more than 25 TFI modules failed each year during the entire class period. TX 15; TX 16. With the exception of a single report filed in connection with certain E- and F- Series trucks in 1995, Ford failed to report any TFI module failures to EPA, during the entire class period. See Austin, Tr.

TOY-RQ-05E-00005931

At 6415:15-6417:9; Freed Tr. At 4448:21-4449:8. Ford also failed to report any TFI module failures to CARB regarding 1983 to 1989 model-year class vehicles. See Austin Tr. at 6415:4-6417:9; Freed Tr. at 4448:21-4449:8

Ford's deception of the government and the consuming public is especially clear in the case of emissions/warranty returns which are "presumed bad" unless later tested and found not defective. Minear V at 109:25-111:22; TX 491 at TF10 5241-43 (memorandum prepared by former Vice-Chairman Louis Ross regarding threat of litigation by EPA). That Ford understood its obligations to the EPA cannot be denied. Minear V at 109:25-112:13; Minear Tr. at 7910:23-7912:15; TX 491 at TF10 5243. That knowledge became focused when the EPA pressed Ford on the 5/50 warranty implications of ignition parts, triggering an internal discussion of the issue. *See* TX 491. Ford was acutely aware of the financial implications of making this extension of the warranty on the TFI module and yet, because of its understanding of EPA's position and authority, agreed to make the change. *Id.*

Ford knew the EPA reporting requirements. Minear V at 109:25-112:13; Minear Tr. at 7910:23-7912:15; TX 491 at TF10 5243 ("defective components covered under the 5/50 warranty and presumed to cause a failure to meet applicable emission standards . . ."). Nonetheless, in spite of internal information of warranty failures of this ignition/emission control device far in excess of statutory or regulatory standards, Ford repeatedly failed to report these returns to EPA. Freed Tr. at 4507:15-4509:1, 4537:11-17. Moreover, there was no evidence that any of the warranty-returned TFI modules were ever tested to ascertain the impact of their failure on air quality. Minear Tr. at 7910:23-7912:15. Ford's failure to respond to its responsibility to the EPA can only be interpreted as an effort to avoid discovery of the TFI module problem by the agency and the consuming public.

It is axiomatic that NHTSA and the EPA in the federal system, and the California Air Resources Board ("CARB") in California, are "watchdog" agencies designated to protect consumer safety and the environment. In the absence of information from the manufacturer it is through these

TOY-RQ-05E-00005932

agencies that consumers are informed of problems with the products that they purchase. Warranty replacement, or even post-warranty replacement, without disclosure of the reason for the replacement, offer little insight to the consumer as to the nature of the problem. Ford never made any such disclosure to either the government or to any consumer.

Along with all of the evidence discussed above, additional evidence of Ford's intent to conceal this information is seen in its manipulation of testing procedures by reducing testing temperature levels. *See* TX 819 at TF14 5466; Russell V at 22:3-41:1; Pecht Tr. at 6581:6-6585:1. The unexplained reduction of temperature levels was suspicious even to Ford's emissions expert. *See* Austin Tr. at 6511:21-6516:14; TX 4123.

Additionally, there is evidence that Ford, as a condition of settling various civil lawsuits arguably involving evidence of TFI module failure, demanded the return of information disclosed in discovery during those lawsuits. *E.g.*, TX 5823 It is noteworthy that, notwithstanding the repeated promises from Ford to offer evidence countering the circumstantial evidentiary significance of this practice, none was forthcoming.

Ford's most significant effort to defeat plaintiffs' claim, at least from the point of view of expense to Ford, came from Dr. McCarthy, whose testimony was largely to the effect that there never was a TFI module problem in the first place. Dr. McCarthy's testimony is questionable on several grounds. Most significantly, he tested only approximately 4,000 TFI modules, which were selected for him by Ford dealers from warranty returns. The 4,000 modules tested by McCarthy must be compared to the total population of 1.5 million TFI modules replaced on warranty, the 13 million TFI modules sold after warranty, as well as the same number of original TFI modules. TX 2560; TX 2676-B; TX 5579. In addition, the persuasive evidence is that too many of the relatively few TFI modules tested by McCarthy were low mileage to lend any significant credence to his opinions. *See* Pecht Tr. at 6555:22-6562:23.

TOY-RQ-05E-00005933

TFI modules that function in laboratory testing are deemed Trouble Not Identified ("TNI"), which means only that Ford did not detect a malfunction during testing. It does not mean the testing methodology was correct or adequate and it does not mean that the modules were non-defective. *See, e.g.*, Macher V at 108:2-16; Russell V at 14:4:-20:20; Marlett V at 68:12-69:6; Balock V at 9:6-48:13; Hohnke V at 75:15-22; Brownlee Tr. at 2703:26-2706:14, 3162:7-3164:2; Pecht Tr. at 6582:28-6585:1; Woronowicz V at 9:1-20, 13:21-14:7, 17:23-19:13, 32:20-33:8, 34:23-35:23; Hohnke V at 75:15-22; TX 5698 at 2040-0202; TX 4303 at TFI5 3731-3732; TX 4289; TX 4300; TX 4323. McCarthy's conclusion that re-tested warranty returns which "passed" various tests as "TNI" (trouble not identified) and were therefore not defective is flawed. Again, "TNI" does not prove that the module was not defective. It merely establishes Ford's, and McCarthy's, inability to find the problem. The "TNI" finding did not exclude intermittent failures and did not establish that the particular TFI as non-defective. Macher V at 108:2-16; Russell V at 19:5-9; Marlett V at 13:14-14:9, 70:14-81:21; TX 5698 at 2040-0202; *see also* Brownlee Tr. at 2703:26-2706:14, 3162:7-3164:2. Finally, after all was said and done, McCarthy still found significant, unacceptable percentages of failed TFI modules in his study. *See* Pecht Tr. at 6583:3-6585:1.

It should also be pointed out that McCarthy's reliance on the "*X-Car*" case is likewise flawed. He has confused performance problems with component failure. *See* Ditlow Tr. at 3491:9-3509:19; Brownlee Tr. at 3210:21-3211:13, 7641:12-7642:18.

Dr. Bresnehan's testimony, which sought to establish that because Ford's value held in the used car market there could be no defect in Ford products, is likewise unavailing. As pointed out on cross-examination, Ford's efforts in the market, over the time from 1983 to 1999 had allowed it to come "up to below average." Bresnehan Tr. at 8107:10-28.

Ford's repeated arguments that Class Members who purchased their vehicles before January 1, 1993, and that plaintiffs' UCL claims are barred by the Statute of Limitations are rejected for the same reasons that they have been previously rejected. The same is true of Ford's repeated argument

TOY-RQ-05E-00005934

that there can be no liability in this case in the absence of a direct sale. The court's position on these issues is clear from the record. There is no need for further comment at this juncture.

Ford failed to meet its obligations to report safety related defect information to relevant governmental agencies and, by so doing, concealed vital information related to vehicle safety from the consuming public. This fraudulent concealment is tantamount to fraudulent misrepresentation under the CLRA and constitutes a violation of both Civil Code sections 1770(a)(5) and (7). *Outboard Marine Corp. v. Superior Court*, 52 Cal. App. 3d 30, 36 (1975). Otherwise stated, by not telling the government and the consuming public about the defects in the distributor mounted TFI modules, Ford was, in effect, making positive statements about the durability and safety of the device. *See id.*

The same conduct is violative of the UCL under all three theories offered. The fraud of Ford in this part of the case, namely, concealment of a known safety defect, is actionable even if no one was actually deceived. Here, however, there was deception. *See* Curran Tr. at 2231:14-2232:2, 2236:6-9, 2236:14-17; Rams Tr. at 1438:13-15; Macala Tr. at 4262:28-4263:13; Benbow Tr. at 44:24-45:2; Provost V at 22:4-22. Moreover, it has been shown that members of the public were likely to be deceived. *See Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (1976); *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647-48 (1996). Ford's conduct, discussed above, which violated its obligations under various state and federal statutes and regulations, is more than sufficient to support a finding that Ford violated the UCL in that regard also.

Ford also engaged in "unfair" business practices for the same reasons: concealment of highly significant safety related information from the government's legitimate inquiry and from the consuming public. *See, e.g., People v. Cappuccio, Inc.*, 204 Cal. App. 3d 750, 760 (1988) (public was injured as a result of the defendant withholding information from Department of Fish and Game, "so that it could properly protect the public's interest . . .").

TOY-RQ-05E-00005935

Ford's concern about resting liability on predicate statutes has been addressed early and often in this litigation. The result is the same here: Plaintiffs are not enforcing the predicate statutes, they seek to enforce the UCL and CLRA. That their proof includes evidence of unlawfulness in relation to these statutes does not bar them from recovery. Quite the contrary, such evidence constitutes the very proof necessary to establish the various violations of California consumer protection legislation. *Committee on Children's Television*, 35 Cal. 3rd 197, 210-211 (1983); *State Farm Fire & Casualty v. Superior Court*, 45 Cal. App. 4th 1093, 1102-1103 (1996).

The record is also replete with evidence of Ford's intent to keep the information about the TFI module secret from the consuming world, separate and apart from the government. Internal Ford documents make this clear. One need only refer to the instructions "don't include in minutes," TX 437; Partington V at 42:6-48:7, or to the failure of Ford to advise dealers about the TFI module problem in Technical Service Bulletins (called TSB), even though this was standard policy at Ford, *see* Minear V at 127:15-129:3, 117:14-129:16; Russell V at 66:12-67:11; Gunderson Tr. at 2104:1-2105:7; TX 960 (especially at TFO4 4091). Finally, there is uncontroverted evidence regarding Ford's insistence on the return of all discovery materials in settled civil actions.

It is interesting to note that while Ford argues, through McCarthy and others that there was never a TFI module problem related to safety, it is undisputed that Ford went to enormous expense and effort to correct this non-problem. *See* TX 4390 (Dilworth declaration); Ford Opening Brief at 11-46; *see also* Pecht Tr. at 1918:9-26 (Ford's efforts to improve TFI module were actually a form of "crisis management"). Most of the "improvements" to the TFI module related to concerns about heat and thermal stress.

TOY-RQ-05E-00005936

One feels compelled to ask: If there was no problem, if the warranty returns of TFI modules were truly non-defective parts, if the problem was not related to automobile safety, why did Ford not disclose the information and make its case to NHTSA or to the EPA? That approach would have allowed for an independent analysis and would have avoided the difficulty of late revelation discussed in NHTSA's conclusion to the Special Order proceedings. *See* TX 5076.

The Ford engineers' stubborn commitment to a flawed decision (*see* Feahney Tr. at 2008:14-2009:12) is perhaps best demonstrated in Mr. Paulsen's reluctance to answer to Mr. Poling. *See* Paulsen Tr. at 5002:15-5003:21, 5042:22-5049:26, 5051:20-5053:7, 5263:1-4. In listening to Mr. Paulsen, the court was reminded of "The Emperor's New Clothes": No one wanted to be the one to deliver the bad news to the President of Ford. That reluctance, and Ford's commitment to failed technology, cannot be accepted as a realistic attempt to solve the obvious safety problem confronting Ford: the massive failure of distributor mounted TFI modules due to excessive heat and thermal stress.

None of Ford's affirmative defenses is supported by any relevant or material evidence or by applicable law. Indeed, with the exception of its statute-of-limitations defense, Ford has expressly waived its affirmative defenses. Tr. at 6836:22-6838:16.

All of the findings and evidentiary comments contained herein are based upon the court's assessment of the credibility of the witnesses and weight to be given to the testimony of the various expert witnesses who testified at the trial. All testimonial conflicts and conflicts in opinion testimony have been resolved in support of the conclusions reached herein.

TOY-RQ-05E-00005937

The court intends to issue orders compelling recall and repair of class vehicles regardless of the mileage on those vehicles, restitution of amounts actually paid by class members for replacement TFI modules during the Class Period, whether in or out of warranty, and award reasonable attorneys fees and costs as indicated.

DATED: 12/11/20

Michael E. Ballachey
Judge of the Superior Court

TOY-RQ-05E-00005938

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, 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., Defendants	Case No.: Class Action **PLAINTIFF'S [proposed] ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

TOY-RQ-05E-00005939

TO DEFENDANTS:

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

Toyota Motor North America, Inc.,

Toyota Motor Manufacturing, California, Inc.,

Toyota Motor Engineering & Manufacturing North America, Inc.:

YOU ARE HEREBY ORDERED TO SHOW CAUSE on January __, 2010, at _____. __.m. why a preliminary injunction should not issue against you substantially as set forth below.

Opposition papers shall be filed and served no later than _____ ___, 20___.

Reply papers shall be filed and served no later than _____ ___, 20___.

Plaintiff's Proposed Preliminary Injunction:

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do if sudden acceleration problems occur in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same vehicles[1] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles

[1] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. (Spiro decl., ¶ 3.)

is not to drive them.

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, "Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

Dated:

A. HOWARD MATZ
United States District Judge

TOY-RQ-05E-00005941

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DALE BALDISSERI, on behalf of himself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, U.S.A., INC.; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR MANUFACTURING, CALIFORNIA, INC.; TOYOTA MOTOR ENGINEERING & MANU-FACTURING NORTH AMERICA, INC.; Defendants	Case No.: Class Action **PLAINTIFF'S [proposed] TEMPORARY RESTRAINING ORDER AND NOTICE OF HEARING ON PRELIMINARY INJUNCTION**

FINDINGS

1. There are serious questions going to the merits. There is a strong likelihood of success on the merits.

2. The balance of hardships is sharply in favor of plaintiff and the class. Irreparable harm is likely without this temporary restraining order.

3. The balance of equities is sharply in favor of plaintiff and the class.

4. A temporary restraining order is in the public interest.

5. With respect to the issue of security for a temporary restraining order, plaintiff is not able to afford the security, the balance of hardships weighs overwhelmingly in the favor of plaintiff and the class and (3) plaintiff demonstrates a strong likelihood of success on the merits .

TEMPORARY RESTRAINING ORDER

1. Defendants are enjoined from any further mailing or communicating the following, quoted from the "Interim Notice," or anything substantially similar concerning what to do if sudden acceleration problems occur in Toyota vehicles:

"pull back the floor mat and dislodge it from the accelerator pedal".

"Shift the transmission gear selector to the Neutral (N) position".

"If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC".

2. Defendants are ordered to mail a corrective notice to all owners of the same vehicles[1] that were the subject of the "Interim Notice," including lessees. Toyota shall also place the notice on its website on a page directly accessible from the website home page. The corrective notice shall state:

A. "The safest means to protect yourself from the defect in the vehicles is not to drive them.

[1] The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350. (Spiro decl., ¶ 3.)

TOY-RQ-05E-00005943

B. "Earlier, Toyota instructed that if you experience acceleration problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the floor mat and dislodge it from the accelerator pedal. But if there is an acceleration problem, it is not possible to do that safely. Do not attempt it."

C. "Toyota also instructed that if you experience acceleration problems in a Toyota vehicle, "Shift the transmission gear selector to the Neutral (N) position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to ACC". But if there is an acceleration problem, it is very dangerous to shift into neutral or turn the engine OFF, or to ACC. Do not do that."

3. The Court does not require security for the temporary restraining order.

TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that on January __, 2010, at _____. __.m. in Courtroom 14, 312 N. Spring Street, Los Angeles, California, the Court will hear argument whether a preliminary injunction should issue substantially in the same form as the temporary restraining order above.

Opposition papers shall be filed and served no later than _____ ___, 20___.

Reply papers shall be filed and served no later than _____ ___, 20___.

Dated:

A. HOWARD MATZ
United States District Judge

TOY-RQ-05E-00005944

LINK: 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9386 GAF (FMOx)	Date	December 23, 2009
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: APPLICATION FOR TEMPORARY RESTRAINING ORDER

On October 30, 2009, Defendants began mailing to 3.8 million owners of their cars and trucks an "Interim Notice," informing them of a potential defect that could cause their vehicles to suddenly accelerate. (Kelley Decl. ¶¶ 2-5.) The notice advises the owners to take certain actions to avoid that problem. Plaintiffs have filed a lawsuit challenging the "Interim Notice" and have filed an application for temporary restraining order enjoining Defendants from communicating certain information in the Interim Notice and compelling them to mail a corrective notice. (Pl.'s Application at 2-3.)

The Court notes that Plaintiffs have created the emergency that allegedly warrants relief. See Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488 (C.D. Cal. 1995). A party moving for ex parte relief must show that it is without fault in creating the crisis that requires relief. Id. at 492. Here, Plaintiffs did not file their application until December 22, 2009, approximately seven (7) weeks after the Defendants began mailing the notices at issue. Given the delay in the presentation of this application, the Court concludes that the issues raised can be presented through a properly noticed motion.

Accordingly, Plaintiff's application for temporary restraining order is **DENIED**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Dale Baldisseri Plaintiff(s), v. Toyota Motor Sales U.S.A., Inc., et al Defendant(s).	CASE NUMBER: CV09-09386 AHM (Ex) **ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 (Related Cases)**

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 08-05.

12-23-09 — *Date*

Gary A. Feess — *United States District Judge*

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

Date — *United States District Judge*

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV09-09158 GAF (FMOx) and the present case:

- ☑ 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.
- ☐ E. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Eick to Magistrate Judge Olguin.

On all documents subsequently filed in this case, please substitute the initials GAF (FMOx) after the case number in place of the initials of the prior judge, so that the case number will read CV09-09386 GAF (FMOx). This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the ☑ Western ☐ Southern ☐ Eastern Division.

Traditionally filed subsequent documents must be filed at the ☑ Western ☐ Southern ☐ Eastern Division. Failure to file at the proper location will result in your documents being returned to you.

cc: ☐ Previous Judge ☐ Statistics Clerk

TOY-RQ-05E-00005946

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of himself and all others similarly situated and the general public, Plaintiff, 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 Defendants.	Case No. CV 09-9386 GAF(FMOx) CLASS ACTION Assigned to Hon. Gary A. Feess **DISMISSAL OF PARTIES DESIGNATED BY A FICTITIOUS NAME**

TOY-RQ-05E-00005947

Plaintiff Dale Baldisseri hereby dismisses the complaint without prejudice as to only some of the fictitiously named defendants, namely DOES 11-20.

Dated: December 30, 2009

/s/ IRA SPIRO
Ira Spiro
of Spiro Moss LLP

TOY-RQ-05E-00005948

PROOF OF SERVICE
Baldisseri v. Toyota
United States District Court Case No. CV 09-9386 GAF(FMOx)

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP. On the date set forth below I served the document(s) described as **DISMISSAL OF PARTIES DESIGNATED BY A FICTITIOUS NAME** on all the interested parties in this action, by placing: [ ] the original [xx] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP:

Toyota Motor Sales, U.S.A., Inc. Toyota Motor North America, Inc. Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017	

[X] **BY MAIL**: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[ ] **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

[ ] **(BY FAX)** On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456.

[ ] **(BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS)**: I personally served said document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California on December 28, 2009.

/s/ COLE OLIVER
Cole Oliver

TOY-RQ-05E-00005949

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA MOTOR SALES, et al. Defendant(s)	CASE NUMBER: CV09-9386-AHM(EX) **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. [X] summons [X] complaint [ ] alias summons [ ] first ammended complaint [ ] second amended complaint [ ] third amended complaint
   [X] other *(specify)*: **Certificate and Notice of Interested Parties; Civil Cover Sheet; [Prop.] Temporary Restraining Order; [Prop.] Order to Show Cause; Application for Temporary Restraining Order; Declarations of Ben Kelley, Dale Baldisseri and Ira Spiro in Support of Application for Temporary Restraining Order; Notice of Assignment; Notice to Counsel**
2. **Person served:**
   a. [X] Defendant *(name:)* **TOYOTA MOTOR NORTH AMERICA, INC.**
   b. [X] Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE OF PROCESS
   c. [X] Address where the papers were served: **818 WEST SEVENTH STREET LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. [X] Federal Rules of Civil Procedure
   b. [ ] California Code of Civil Procedure
4. **I served** the person named in Item 2:
   a. [X] 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 twelve (12) years of age.
      1. [X] **Papers were served on** *(date)*: **12/24/2009 at** *(time)*: **09:15 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss clerk at the U.S. Attorneys Office.

Name of person served:

Title of person served:

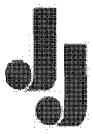
Date and time of service: *(date):* at *(time):*

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. **(Attach signed return receipt or 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):*



Vincent E. Avila
JANNEY AND JANNEY ATTORNEY SERVICE
1545 WILSHIRE BLVD.
LOS ANGELES, CA 90017
(213) 628-6338

a. Fee for service: $ **53.00**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**140/5906**
County: **LOS ANGELES**

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: **December 28, 2009** **Vincent E. Avila**
Type or Print Server's Name

Vincent Avila
(Signature)

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
11377 W. OLYMPIC BLVD., FIFTH FL.
LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA MOTOR SALES, et al. Defendant(s)	CASE NUMBER: CV09-9386-AHM(EX) **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. [X] summons [X] complaint [ ] alias summons [ ] first ammended complaint [ ] second amended complaint [ ] third amended complaint
   [X] other *(specify)*: **Certificate and Notice of Interested Parties; Civil Cover Sheet; [Prop.] Temporary Restraining Order; [Prop.] Order to Show Cause; Application for Temporary Restraining Order; Declarations of Ben Kelley, Dale Baldisseri and Ira Spiro in Support of Application for Temporary Restraining Order; Notice of Assignment; Notice to Counsel**
2. **Person served:**
   a. [X] Defendant *(name:)* **TOYOTA MOTOR SALES, U.S.A., INC.**
   b. [X] Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE OF PROCESS
   c. [X] Address where the papers were served: **818 WEST SEVENTH STREET LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. [X] Federal Rules of Civil Procedure
   b. [ ] California Code of Civil Procedure
4. **I served** the person named in Item 2:
   a. [X] 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 twelve (12) years of age.
      1. [X] **Papers were served on** *(date)*: **12/24/2009 at** *(time)*: **09:15 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss 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. **(Attach signed return receipt or 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):*

Vincent E. Avila
JANNEY AND JANNEY ATTORNEY SERVICE
1545 WILSHIRE BLVD.
LOS ANGELES, CA 90017
(213) 628-6338

a. Fee for service: $ **25.00**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**140/5906**
County: **LOS ANGELES**

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: **December 28, 2009** **Vincent E. Avila** *Type or Print Server's Name*

Vincent Avila *(Signature)*

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
11377 W. OLYMPIC BLVD., FIFTH FL.
LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s)	CASE NUMBER: **CV09-9386-AHM(EX)**
v.	**PROOF OF SERVICE SUMMONS AND COMPLAINT** (Use separate proof of service for each person/party served)
TOYOTA MOTOR SALES, et al. Defendant(s)	

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. [X] summons [X] complaint [ ] alias summons [ ] first ammended complaint [ ] second amended complaint [ ] third amended complaint
   [X] other *(specify)*: **Certificate and Notice of Interested Parties; Civil Cover Sheet; [Prop.] Temporary Restraining Order; [Prop.] Order to Show Cause; Application for Temporary Restraining Order; Declarations of Ben Kelley, Dale Baldisseri and Ira Spiro in Support of Application for Temporary Restraining Order; Notice of Assignment; Notice to Counsel**
2. **Person served:**
   a. [X] Defendant *(name;)* **TOYOTA MOTOR MANUFACTURING, CALIFORNIA, INC.**
   b. [X] Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE OF PROCESS
   c. [X] Address where the papers were served: **818 WEST SEVENTH STREET LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. [X] Federal Rules of Civil Procedure
   b. [ ] California Code of Civil Procedure
4. **I served** the person named in Item 2:
   a. [X] 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 twelve (12) years of age.
      1. [X] **Papers were served on** *(date)*: **12/24/2009 at** *(time)*: **09:15 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss 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. **(Attach signed return receipt or 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):*

Vincent E. Avila
JANNEY AND JANNEY ATTORNEY SERVICE
1545 WILSHIRE BLVD.
LOS ANGELES, CA 90017
(213) 628-6338

a. Fee for service: $ **25.00**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**140/5906**
County: **LOS ANGELES**

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: **December 28, 2009** **Vincent E. Avila**
Type or Print Server's Name

Vincent Avila
(Signature)

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
11377 W. OLYMPIC BLVD., FIFTH FL.
LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA MOTOR SALES, et al. Defendant(s)	CASE NUMBER: CV09-9386-AHM(EX) **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. [X] summons [X] complaint [ ] alias summons [ ] first ammended complaint [ ] second amended complaint [ ] third amended complaint
   [X] other *(specify)*: **Certificate and Notice of Interested Parties; Civil Cover Sheet; [Prop.] Temporary Restraining Order; [Prop.] Order to Show Cause; Application for Temporary Restraining Order; Declarations of Ben Kelley, Dale Baldisseri and Ira Spiro in Support of Application for Temporary Restraining Order; Notice of Assignment; Notice to Counsel**
2. **Person served:**
   a. [X] Defendant *(name:)* **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**
   b. [X] Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE OF PROCESS
   c. [X] Address where the papers were served: **818 WEST SEVENTH STREET LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. [X] Federal Rules of Civil Procedure
   b. [ ] California Code of Civil Procedure
4. **I served** the person named in Item 2:
   a. [X] 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 twelve (12) years of age.
      1. [X] **Papers were served on** *(date)*: **12/24/2009 at** *(time)*: **09:15 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss 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. **(Attach signed return receipt or 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):*

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(213) 628-6338

a. Fee for service: $ **25.00**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**140/5906**
County: **LOS ANGELES**

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: **December 28, 2009** **Vincent E. Avila**
Type or Print Server's Name

Vincent Avila
(Signature)

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
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LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA Defendant(s)	CASE NUMBER: CV09-9386 **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 ammended complaint ☐ second amended complaint ☐ third amended complaint
   ☒ other *(specify)*: **Summons on First Amended Complaint & First Amended Complaint**
2. **Person served:**
   a. ☒ Defendant *(name:)* **TOYOTA MOTOR NORTH AMERICA, INC.**
   b. ☒ Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE
   c. ☒ Address where the papers were served: **C.T. CORP. - 818 W. 7TH ST. 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 twelve (12) years of age.
      1. ☒ **Papers were served on** *(date)*: **12/29/2009 at** *(time)*: **10:35 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss 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. **(Attach signed return receipt or 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):*

Timothy J. Price
Janney & Janney Attorney Service, Inc.
1545 Wilshire Blvd., Ste. 311
Los Angeles, CA 90017
(213) 628-6338

a. Fee for service: **$ 28.90**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**5077**
County: **Los Angeles**

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: **December 29, 2009** **Timothy J. Price**
Type or Print Server's Name

(Signature)

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
11377 W. OLYMPIC BLVD., FIFTH FL.
LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA Defendant(s)	CASE NUMBER: CV09-9386
	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 ammended complaint ☐ second amended complaint ☐ third amended complaint
   ☒ other *(specify)*: **Summons on First Amended Complaint & First Amended Complaint**
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, REGISTERED AGENT FOR SERVICE
   c. ☒ Address where the papers were served: **C.T. CORP. - 818 W. 7TH ST. 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 twelve (12) years of age.
   1. ☒ **Papers were served on** *(date)*: **12/29/2009 at** *(time)*: **10:35 am**
   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or 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 procecss 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. **(Attach signed return receipt or 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):*

Timothy J. Price
Janney & Janney Attorney Service, Inc.
1545 Wilshire Blvd., Ste. 311
Los Angeles, CA 90017
(213) 628-6338

a. Fee for service: **$ 44.00**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**5077**
County: **Los Angeles**

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: **December 29, 2009** **Timothy J. Price**
Type or Print Server's Name

(Signature)

IRA SPIRO SBN: 67641
SPIRO MOSS BARNES, LLP.
11377 W. OLYMPIC BLVD., FIFTH FL.
LOS ANGELES, CA 90064-0000
(310) 235-2468

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA Defendant(s)	CASE NUMBER: CV09-9386
	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 ammended complaint ☐ second amended complaint ☐ third amended complaint
   ☒ other *(specify)*: **Summons on First Amended Complaint & First Amended Complaint**
2. **Person served:**
   a. ☒ Defendant *(name:)* **TOYOTA MOTOR MANUFACTURING, CALIFORNIA, INC.**
   b. ☒ Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE
   c. ☒ Address where the papers were served: **C.T. CORP. - 818 W. 7TH ST. LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. ☒ Federal Rules of Civil Procedure
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4. **I served** the person named in Item 2:
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   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, or 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 where 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 prepaid)* 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 addressed 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 or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also 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 business 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 of 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 or other evidence of actual receipt by the person served).**

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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 procecss 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. **(Attach signed return receipt or 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).**

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a. Fee for service: **$ 28.90**

b. ☐ Not a registered California process server

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d. ☒ Registered California process server
Registration # :**5077**
County: **Los Angeles**

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: **December 29, 2009** **Timothy J. Price**
Type or Print Server's Name

(Signature)

IRA SPIRO SBN: 67641
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LOS ANGELES, CA 90064-0000
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BALDISSERI Plaintiff(s) v. TOYOTA Defendant(s)	CASE NUMBER: CV09-9386
	PROOF OF SERVICE SUMMONS AND COMPLAINT (Use separate proof of service for each person/party served)

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   ☒ other *(specify)*: **Summons on First Amended Complaint & First Amended Complaint**
2. **Person served:**
   a. ☒ Defendant *(name:)* **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**
   b. ☒ Other *(specify name and title or relationship to the party/business named)*:
   MARGARET WILSON, REGISTERED AGENT FOR SERVICE
   c. ☒ Address where the papers were served: **C.T. CORP. - 818 W. 7TH ST. LOS ANGELES, CA 90017**
3. **Manner of Service** in compliance with *(the appropriate box* **must** *be checked)*:
   a. ☒ Federal Rules of Civil Procedure
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   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 twelve (12) years of age.
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   4. ☐ **by mailing** *(by first-class mail, postage prepaid)* copies to the person served in Item 2(b) at the place where the copies were left in Item 2(c).
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e. ☐ **Substituted service on domestic corporation, unincorporated association (including partnership), or public entity. (C.C.P. 415.20 only)** By leaving during usual business 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 of 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.)**

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Name of person served:

Title of person served:

Date and time of service: *(date):* at *(time):*

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(213) 628-6338

a. Fee for service: **$ 91.90**

b. ☐ Not a registered California process server

c. ☐ Exempt from registration under B&P 22350(b)

d. ☒ Registered California process server
Registration # :**5077**
County: **Los Angeles**

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: **December 29, 2009** **Timothy J. Price**
Type or Print Server's Name

(Signature)

(FMOx), DISCOVERY, RELATED-G

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-09386-GAF-FMO

Dale Baldiseeri v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: Judge Gary A. Feess
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-09158-GAF-FMO
Cause: 28:1331 Fed. Question

Date Filed: 12/22/2009
Jury Demand: Plaintiff
Nature of Suit: 350 Motor Vehicle
Jurisdiction: Federal Question

Plaintiff

Dale Baldiseeri
on behalf of himself and others similarly situated

represented by **David M Arbogast**
Arbogast & Berns LLP
6303 Owensmouth Avenue 10th Floor
Woodland Hills, CA 91367-2263
818-961-2000
Fax: 818-936-0232
Email: darbogast@law111.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

H Scott Leviant
Spiro Moss LLP
11377 West Olympic Boulevard 5th Floor
Los Angeles, CA 90064
310-235-2468
Fax: 310-235-2456
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Ira R Spiro
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310-235-2468

TOY-RQ-05E-00005966

Fax: 310-235-2456
Email: mark@spiromoss.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Sales, U.S.A., Inc. represented by **Cari K Dawson**
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309
404-881-7000
Fax: 404-881-7777
Email: cari.dawson@alston.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa Gilford
Alston & Bird LLP
333 South Hope Street 16th Floor
Los Angeles, CA 90071
213-576-1000
Fax: 213-576-1100
Email: lisa.gilford@alston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor North America, Inc. represented by **Cari K Dawson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa Gilford
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Manufacturing, California, Inc. represented by **Cari K Dawson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa Gilford
(See above for address)

TOY-RQ-05E-00005967

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc. represented by **Cari K Dawson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa Gilford
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Does 1-10
1 through 10

Date Filed	#	Docket Text
12/22/2009	1	COMPLAINT against Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. (Filing fee $ 350 PAID) Jury Demanded, filed by plaintiff Dale Baldiseeri.(car) (ds). (Additional attachment(s) added on 12/29/2009: # 1 Notice of Assignment, # 2 Summons, # 3 Civil Cover Sheet) (ds). (Entered: 12/22/2009)
12/22/2009	2	APPLICATION for Temporary Restraining Order (Or Order to Show Cause in the Alternative); Memorandum of Points and Authorities, filed by plaintiff Dale Baldiseeri. (car) (ds). (Entered: 12/22/2009)
12/22/2009	3	PLAINTIFF'S DECLARATION of Ben Kelley, Plaintiff Dale Baldisseri and Ira Spiro In Support of Application for Temporary Restraining Order (Or Order to Show Cause in the Alternative), 2 , filed by Plaintiff Dale Baldiseeri. (car) (Additional attachment(s) added on 12/29/2009: # 1 Exhibits A - C, # 2 Exhibits D - H, # 3 Exhibit I, Part 1, # 4 Exhibit I, Part 2) (ds). (Entered: 12/22/2009)
12/22/2009		21 DAY Summons Issued re Complaint - (Discovery), 1 as to Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. (car) (Entered: 12/22/2009)
12/22/2009	4	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Dale Baldiseeri (car) (ds). (Entered: 12/22/2009)
12/23/2009	5	MINUTES (IN CHAMBERS): ORDER RE: APPLICATION FOR TEMPORARY RESTRAINING ORDER by Judge Gary A. Feess: Plaintiff's application for temporary restraining order is DENIED. (bp) (Entered: 12/23/2009)
12/23/2009	6	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case- filed. Related Case No: CV09-09158 GAF (FMOx). Case transferred from Magistrate

		Judge Charles F. Eick and Judge A. Howard Matz to Judge Gary A. Feess and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge CV09-09386 GAF (FMOx).Signed by Judge Gary A. Feess (at) (Entered: 12/23/2009)
12/24/2009	7	Filed Stamped Copy of Complaint filed by Plaintiff Dale Baldiseeri (Spiro, Ira) (Entered: 12/24/2009)
12/24/2009	8	NOTICE OF MOTION AND MOTION for Temporary Restraining Order as to Notice of Defect filed by Plaintiff Dale Baldiseeri. Motion set for hearing on 12/23/2009 at 09:30 AM before Judge Gary A. Feess. (Spiro, Ira) (Entered: 12/24/2009)
12/28/2009	9	NOTICE of Manual Filing filed by Plaintiff Dale Baldiseeri of First Amended Complaint. (Spiro, Ira) (Entered: 12/28/2009)
12/28/2009	10	FIRST AMENDED COMPLAINT against defendants DOES, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. amending Complaint - (Discovery) 1 , filed by plaintiff Dale Baldiseeri. (rrey) (Entered: 12/29/2009)
12/28/2009		21 DAY Summons Issued re Amended Complaint, 10 as to defendants DOES, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.. (rrey) (Entered: 12/29/2009)
12/30/2009	11	DISMISSAL OF PARTIES DESIGNATED BY A FICTITIOUS NAME filed by Plaintiff Dale Baldiseeri (Spiro, Ira) (Entered: 12/30/2009)
01/04/2010	12	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor North America, Inc. served on 12/24/2009, answer due 1/14/2010. The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	13	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Engineering & Manufacturing North America, Inc. served on 12/24/2009, answer due 1/14/2010. The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	14	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Manufacturing, California, Inc. served on 12/24/2009, answer due 1/14/2010. The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	15	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Sales, U.S.A., Inc. served on 12/24/2009, answer due 1/14/2010. The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	16	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor North America, Inc. served on 12/29/2009, answer due 1/19/2010. *FIRST AMENDED*

		COMPLAINT The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	17	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Engineering & Manufacturing North America, Inc. served on 12/29/2009, answer due 1/19/2010. *FIRST AMENDED COMPLAINT* The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	18	PROOF OF SERVICE Executed by PLAINTIFF Dale Baldiseeri, upon Toyota Motor Sales, U.S.A., Inc. served on 12/29/2009, answer due 1/19/2010. *FIRST AMENDED COMPLAINT* The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/04/2010	19	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Manufacturing, California, Inc. served on 12/29/2009, answer due 1/19/2010. *FIRST AMENDED COMPLAINT* The Summons and Complaint were served by Personal Service service, by Federal statute, upon Margaret Wilson, Registered Agent for Service of Process. Due Dilligence declaration No. Original Summons No. (Spiro, Ira) (Entered: 01/04/2010)
01/19/2010	20	NOTICE OF MOTION AND MOTION to Dismiss Plaintiff's First Amended Complaint filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.. Motion set for hearing on 2/22/2010 at 09:30 AM before Judge Gary A. Feess. (Attachments: # 1 Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiff's First Amended Complaint, # 2 Proposed Order)(Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	21	NOTICE OF MOTION AND MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.. Motion set for hearing on 2/22/2010 at 09:30 AM before Judge Gary A. Feess. (Attachments: # 1 Memorandum of Points and Authorities in Support of Motion to Strike Allegations from First Amended Complaint, # 2 Proposed Order)(Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	22	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Plaintiff's First Amended Complaint 20 , MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 21 filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.. (Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	23	APPENDIX filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor

		Engineering & Manufacturing North America, Inc.. Re: MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 21 , MOTION to Dismiss Plaintiff's First Amended Complaint 20 (Attachments: # 1 Exhibit Appendix-Part 1/Exhibits 1-5, # 2 Exhibit Appendix-Part 2/Exhibits 6-7, # 3 Exhibit Appendix-Part 3/Exhibits 8-10, # 4 Exhibit Appendix-Part 4/Exhibits 11-13, # 5 Exhibit Appendix-Part 5/Exhibits 14-16, # 6 Exhibit Appendix-Part 6/Exhibits 17-18, # 7 Exhibit Appendix-Part 7/Exhibits 19-20, # 8 Exhibit Appendix-Part 8/Exhibits 21-23, # 9 Exhibit Appendix-Part 9/Exhibits 24-27, # 10 Exhibit Appendix-Part 10/Exhibits 28-30, # 11 Exhibit Appendix-Part 11/Exhibits 31-33, # 12 Exhibit Appendix-Part 12/Exhibits 34-40, # 13 Exhibit Appendix-Part 13/Exhibits 41-50, # 14 Exhibit Appendix-Part 14/Exhibits 51-53, # 15 Exhibit Appendix-Part 15/Exhibits 54-56, # 16 Exhibit Appendix-Part 16/Exhibits 57-60, # 17 Exhibit Appendix-Part 17/Exhibits 61-63, # 18 Exhibit Appendix-Part 18/Exhibits 64-68)(Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	24	Certificate of Interested Parties filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., identifying Dale Baldisseri, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Corporation, Toyota Auto Body of California. (Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	25	APPLICATION for attorney Cari K Dawson to Appear Pro Hac Vice (PHV Fee of $185 receipt number 09730000000006416273 paid.) filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.. (Attachments: # 1 Proposed Order)(Gilford, Lisa) (Entered: 01/19/2010)
01/20/2010	26	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE by Judge Gary A. Feess: The Court, having reviewed the accompanying application of Cari K. Dawson for permission to appear and participate in the above-entitled action on behalf of defendant, granting 25 Application to Appear Pro Hac Vice by Attorney Cari K. Dawson on behalf of Defendants' Toyota Motor Sales, designating Lisa Gilford as local counsel. (bp) (Entered: 01/21/2010)
01/25/2010	27	STIPULATION to Continue HEARING ON MOTION TO DISMISS AND MOTION TO STRIKE from February 22, 2010 to March 8, 2010 filed by Plaintiff Dale Baldiseeri. (Attachments: # 1 Proposed Order [proposed] ORDER FOR CONTINUANCE OF HEARING ON DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE)(Spiro, Ira) (Entered: 01/25/2010)
01/27/2010	28	IT IS HEREBY ORDERED that the hearing on defendants' motion to dismiss the first amended complaint and motion to strike allegations from the first amended complaint is continued from February 22, 2010 to Monday, March 8, 2010, at 9:30 a.m. (bp) (Entered: 01/27/2010)
02/02/2010	29	STIPULATION for Extension of Time to File Rule 23-3 Motion for Class Certification filed by Plaintiff Dale Baldiseeri. (Attachments: # 1 Proposed Order FOR EXTENSION OF LOCAL RULE 23-3 TIME FOR FILING MOTION FOR CLASS

		CERTIFICATION)(Spiro, Ira) (Entered: 02/02/2010)
02/05/2010	30	ORDER Approving Stipulation for Extension of Local Rule 23-3 Time for Filing Motion for Class Certification 29 by Judge Gary A. Feess. IT IS HEREBY ORDERED that the 90 day period for filing a motion for class certification shally not apply in this action, but instead the deadline for filing a motion for class certification shall be set by the Court in the first scheduling order issued. (csi) (Entered: 02/05/2010)
02/12/2010	31	NOTICE of Appearance filed by attorney David M Arbogast on behalf of Plaintiff Dale Baldiseeri (Arbogast, David) (Entered: 02/12/2010)
02/16/2010	32	REQUEST FOR JUDICIAL NOTICE *IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE* filed by plaintiff Dale Baldiseeri. (Attachments: # 1 Exhibit EXHIBIT A TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE, # 2 Exhibit EXHIBIT B TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE)(Spiro, Ira) (Entered: 02/16/2010)
02/16/2010	33	MEMORANDUM in Opposition to MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 21 filed by Plaintiff Dale Baldiseeri. (Leviant, H) (Entered: 02/16/2010)
02/16/2010	34	Opposition re: MOTION to Dismiss Plaintiff's First Amended Complaint 20 filed by Plaintiff Dale Baldiseeri. (Attachments: # 1 Exhibit Exhibit A)(Leviant, H) (Entered: 02/16/2010)
02/17/2010	35	NOTICE OF ERRATA REGARDING PLAINTIFF'S OPPOSITIION TO TOYOTA DEFENDANTS' MOTION TO DISMISS filed by plaintiff Dale Baldiseeri. (Attachments: # 1 Exhibit PLAINTIFF DALE BALDISSERI'S CORRECTED OPPOSITION TO TOYOTA DEFENDANTS' MOTION TO DISMISS, # 2 Exhibit EXHIBIT TO PLAINTIFF DALE BALDISSERI'S CORRECTED OPPOSITION TO TOYOTA DEFENDANTS' MOTION TO DISMISS)(Spiro, Ira) (Entered: 02/17/2010)
02/17/2010	36	OPPOSITION opposition re: MOTION to Dismiss Plaintiff's First Amended Complaint 20 filed by Plaintiff Dale Baldiseeri. (Attachments: # 1 Exhibit EXHIBIT TO PLAINTIFF DALE BALDISSERI'S CORRECTED OPPOSITION TO TOYOTA DEFENDANTS' MOTION TO DISMISS)(Spiro, Ira) (Entered: 02/17/2010)
02/22/2010	37	REPLY Brief in Support of Motion to Strike filed by Defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 02/22/2010)
02/22/2010	38	REPLY to Opposition to Motion to Dismiss filed by Defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 02/22/2010)
02/22/2010	39	APPENDIX filed by Defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor North

		America, Inc., Toyota Motor Sales, U.S.A., Inc.. Re: Reply (Motion related), Reply (Motion related) 37 , Reply (Motion related), Reply (Motion related) 38 (Attachments: # 1 Exhibit 1-6 to Appendix, # 2 Exhibit 7-12 to Appendix)(Gilford, Lisa) (Entered: 02/22/2010)
02/23/2010	40	NOTICE OF ERRATA filed by plaintiff Dale Baldiseeri. (Spiro, Ira) (Entered: 02/23/2010)
02/23/2010	41	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Plaintiff's First Amended Complaint 20 , MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 20 21 filed by plaintiff Dale Baldiseeri. (Attachments: # 1 Exhibit Exhibits A-D)(Spiro, Ira) (Entered: 02/23/2010)

PACER Service Center			
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02/25/2010 06:29:55			
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Billable Pages:	7	**Cost:**	0.56

TOY-RQ-05E-00005973

FILE START

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

JONATHAN GELLMAN, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation.

Defendant. /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jonathan Gellman, on behalf of himself and on behalf of a class of similarly situated persons throughout the state of Florida, makes the following allegations on information and belief based on an investigation reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiff, which are alleged on personal knowledge.

NATURE OF THE ACTION

1. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a voluntary safety recall related to floor mats in certain Toyota and Lexus models of its automobiles. The recall was announced because the driver's floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle. On November 25, 2009, Toyota announced details of a vehicle-based 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. Toyota will start notifying owners of ES350, Camry, and Avalon models by the end of

2009 and will notify owners of the other models on a rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on behalf of himself and all others similarly situated.

2. Toyota admits that unintended acceleration may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

3. Toyota's actions give rise to violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101 and other common law claims.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Gellman is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Gellman leased a 2010 Lexus IS250 in October 2009 from Lexus of North Miami in North Miami, Florida.

5. Defendant Toyota Motor Sales, USA, Inc. is a wholly owned subsidiary of Toyota Motor Corporation and is incorporated in California with its principal place of business in Torrance, California. Toyota is in the business of manufacturing, producing, and distributing automobiles worldwide. At all material times, Toyota has done, and continues to do, business in Florida and every other state in the nation.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over Toyota because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Toyota is authorized to do business here, Toyota has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. Toyota sells its products within the state of Florida and in

Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendant Toyota is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

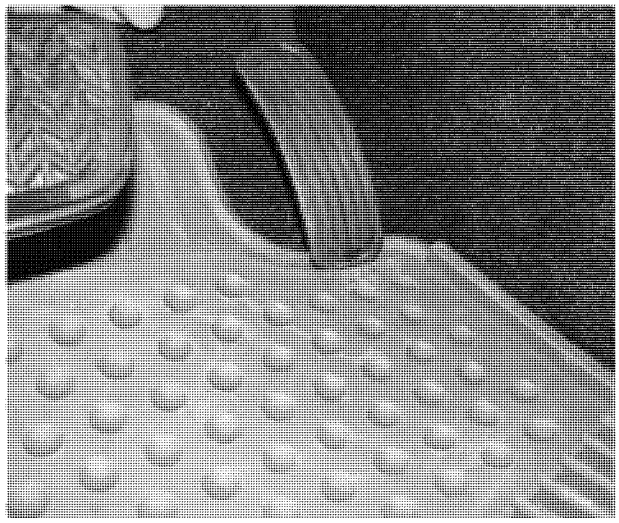
10. On or about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

11. According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

	Years	**Make**	**Model**
A.	2007 – 2010	Toyota	Camry
B.	2005 – 2010	Toyota	Avalon
C.	2004 – 2009	Toyota	Prius
D.	2005 – 2010	Toyota	Tacoma
E.	2007 – 2010	Toyota	Tundra
F.	2007 – 2010	Toyota	ES350
G.	2006 – 2010	Lexus	IS250
H.	2006 – 2010	Lexus	IS350

12. In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle.

13. Below is an example of how the floor mats obstruct the normal use of the accelerator pedal:



14. Indeed, since the defective floor plan design, as admitted by Toyota, required the removal of the floor mats paid for by consumers, the floor mats are now worthless and useless.

15. On November 25, 2009, Toyota 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 Toyota does not provide for alternative transportation while consumers' vehicles are being repaired.

16. Toyota has 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 Toyota 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. Toyota has 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.

17. On October 29, 2009, The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. *See* ODI Resume (attached as Exhibit A).

18. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries.

19. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations." Exhibit A.

20. It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform.

21. Toyota's conduct, including instructing consumers to remove their floor mats without compensation, is a violation of FDUTPA, as well as other common laws.

CLASS ACTION ALLEGATIONS

22. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

23. This class action is brought under Federal Rule of Civil Procedure Rule 23(a) and Rule 23(b)(3). Plaintiff submits that class action treatment is appropriate under either or both of these rules.

I. SIZE AND DEFINITION OF THE CLASS

24. Plaintiff brings this class action on behalf of himself and all other similarly situated class members defined as: All persons throughout Florida who have purchased or leased Toyota's Vehicles during the class period.

25. The class consists of thousands of consumers. Upon information and belief, the identities of these consumers are known to Toyota through their own records or are otherwise ascertainable. Therefore, the proposed class is ascertainable but so numerous that joinder of all members is impracticable.

II. COMMONALITY

26. There are questions of law and fact common in the class, because each and every class member is or will be asserting claims against Defendant. Common questions arise in every such case, including:

a. whether Toyota issued a recall of certain driver's floor mats;

b. whether the concerned recall instructs Plaintiff and Class members to take out driver's floor mats and not replace them;

c. whether Toyota has reimbursed or compensated Plaintiff and Class members for the loss of the use of the driver's floor mats;

d. whether the floor mats 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 member for their damages;

f. whether Toyota engaged in deceptive acts and practices in the marketing and sale of its Vehicles by failing to disclose the defects in its floor plan;

g. whether Toyota's conduct amounts to an unfair and/or deceptive trade practice within the meaning of the Florida's Deceptive and Unfair Trade Practices Act;

h. whether Plaintiff and members of the Class have sustained damages, and the proper measure of those damages;

i. whether Toyota has been unjustly enriched as a result of its conduct; and

j. whether Plaintiff and Class members are entitled to injunctive relief.

III. TYPICALITY

27. The claims of Plaintiff who is representative of the class herein, are typical of the claims of the Class, because the Class members seek the identical remedy and the same injunction, namely to obtain the value of the worthless floor mats sold by Toyota to consumers.

28. The claims within the class are typical, because each and every member of the Class brings the same cause of action for damages and injunctive relief.

IV. ADEQUACY OF REPRESENTATION

29. Plaintiff will fairly and adequately represent and pursue the interests of Class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

V. REQUIREMENTS OF RULE 23(b)(3)

30. Certification is also appropriate under Rule 23(b)(3) because common issues predominate. The exact same issues will apply uniformly to each Class member seeking damages herein and injunctive relief as set forth explicitly in the common questions of law and fact listed above. Also, a class action is a superior methodology for the litigation of these issues because individual class members have no practical interest or ability to bring this action for damages or injunctive relief in their individual capacity.

COUNT I- VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101.

33. FDUTPA, provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

34. Plaintiff and the class members are persons as defined and construed under the FDUTPA, Fla. Stat. §§501.201-501.213.

35. The practices employed by Toyota, whereby Toyota sells and markets its Vehicles without disclosing the dangerous defects in its floor plan design are unfair, deceptive and misleading.

36. Toyota's actions amount to unfair and/or deceptive acts in violation of the FDUTPA.

37. Even though Toyota knew or should have known of the defective nature of the Vehicles, it continued to sell the Vehicles to consumers without properly disclosing this defect or correcting the defect.

38. Toyota's sales practices were deceptive, misleading, and intended to increase their own profits to the detriment of the consumers. Toyota has profited from its uniform deceptive practices, in that Toyota received millions of dollars for floor mats and accelerator pedals which are useless and worthless causing Plaintiff and the Class substantial injuries.

39. Plaintiff and other members of the Class would not have paid for the useless and worthless floor mats if Toyota had disclosed the defects of their Vehicles.

40. Plaintiff and the Class members suffered actual damages as a result of Toyota's deceptive and unfair trade acts. Specifically, as a result of Toyota's deceptive and unfair trade acts and practices, Plaintiff and the Class members suffered monetary losses, i.e., the purchase price of the floor mats, which themselves are unfit for their intended purpose.

41. Plaintiff reserves the right to allege other violations of law that constitute unlawful business acts or practices based on the above-alleged conduct. Such conduct is ongoing and continues to this date.

WHEREFORE, Plaintiff and class members demand an award against Toyota for (1) actual and/or compensatory damages as provided by Fla. Stat. § 501.2075, (2) the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, (3) an order enjoining Toyota from continuing its unfair and/or deceptive conduct, and (4) any such other relief as this Court deems just and proper.

COUNT II—BREACH OF CONTRACT

42. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows.

43. Toyota provides Vehicles to the consuming public. Plaintiff and class members, through their agreement to purchase Toyota's Vehicles paid certain sums for the floor mats within the Vehicles.

44. Toyota had a duty under the contract to provide Vehicles which did not contain defects that would render the floor mats worthless and useless. Toyota materially breached the parties' contract when they provided worthless and useless floor mats with their Vehicles.

45. The contracts Toyota entered into with Plaintiff and the Class were identical as it relates to the payment of monies for the floor mats. Specifically, Toyota did not disclose that the

floor mats sold with the Vehicle, which ordinarily have their own inherent value, are useless and worthless.

46. Plaintiff and the Class has been damaged by Toyota's breach of contract in that they paid for floor mats which are worthless and not fit for their intended purpose.

47. Plaintiff and class members demand compensation for their loss of use and value of the floor mats purchased.

WHEREFORE Plaintiff and Class Members request that this Court enter judgment against Toyota and in favor of Plaintiff and the class for damages, including payment for the value of the floor mats, pre-judgment interest and such other relief as this Court deems just and appropriate.

COUNT III- UNJUST ENRICHMENT

48. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows:

49. Toyota received from Plaintiff and Class Members monetary compensation from their purchase of Toyota's defective Vehicles which are excessive and unreasonable, and are the result of overcharging and overreaching.

50. As a result, Plaintiff and the class have conferred a benefit on Toyota, and Toyota has knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

51. Toyota will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount each Class member enriched Toyota and for which Toyota has been unjustly enriched.

52. This count is in the alternative and, if Plaintiff's other claims do not proceed, Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and Class members demand an award against Toyota for the amounts equal to the amount each class member enriched Toyota and for which Toyota has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

53. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: January 4, 2010.

Respectfully submitted,

s/ Lance A. Harke
Lance A. Harke, P.A.
lharke@harkeclasby.com
Florida Bar No. 863599
Sarah Clasby Engel, P.A.
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Counsel for Plaintiff & Class Members

EXHIBIT A

U.S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

Investigation: DP09-001
Date Opened: 04/08/2009 Closing Date: 10/29/2009
Principal Investigator: Stephen McHenry
Subject: Unwanted and Unintended Acceleration

Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation
Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300
Population: 230,517 (estimated)

Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	64	0	0
Crashes/Fires:	8	0	0
Injury Incidents:	7	0	0
# Injuries:	15	0	0
Fatality Incidents:	0	0	0
# Fatalities:	0	0	0
Other*:	50	0	0

*Description of Other: Number of incidents attributable to accelerator pedal interference

Action: This petition has been denied. Recall 09V-388
Engineer: *Stephen McHenry* SMcH Date: *10/29/2009*
Div. Chief: *Jeffrey L. Quandt* Date: *10/29/2009*
Office Dir.: *Kathleen C. DeMeter* Date: *10/29/2009*

Summary: The Office of Defects Investigation (ODI) opened DP09-001 on April 8, 2009, to evaluate a defect petition requesting additional investigation of potential throttle control system defects unrelated to floor mat interference with accelerator pedals in model year (MY) 2007 Lexus ES350 vehicles. The petitioner referenced an earlier ODI investigation concerning floor mat interference with accelerator pedal return (PE07-016/EA07-010), which he stated was too narrow in scope as it did not include all incidents of unwanted acceleration and consider all potential causes of vehicle speed control concerns. The petition also requested an "investigation of MY 2002-2003 Lexus ES300 for those 'longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect' that were determined not to be within the scope of investigation PE04-021." As background, the petitioner owns a MY 2007 Lexus ES350 that allegedly experienced an unwanted and uncontrolled acceleration event (ODI complaint number 10261660). Toyota concluded that the incident was caused by an unsecured floor mat.

To assess the petitioner's request, ODI interviewed the petitioner, inspected his vehicle, reviewed information submitted by Toyota, reviewed owner complaints alleging incidents of unwanted acceleration in the subject vehicles and material related to the investigations cited by the petitioner. ODI identified 64 complaints alleging incidents of unwanted acceleration in MY 2007 Lexus vehicles, resulting in 8 crashes and 15 injuries. ODI's analysis of these complaints determined that 50 (78%) involved incidents of floor mat interference, including 7 (88%) of the crashes and all 15 injuries. Therefore, ODI's analysis found that the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations.

On October 5, 2009, Toyota initiated a safety recall (Recall 09V-388) to address concerns with potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect, as alleged by the petitioner, at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances. Please see the Federal Register notice for further details.

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

JONATHAN GELLMAN, an individual, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Miami-Dade, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Harke & Clasby LLP
155 South Miami Ave. Suite 600
Miami, FL 33130
Telephone: 305-536-8220
Facsimile: 305-536-8229

DEFENDANTS

TOYOTA MOTOR SALES, USA, INC., a California corporation.

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

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

Attorneys (If Known)

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

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
☐ 900 Appeal 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 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):
a) Re-filed Case ☐ YES ☑ NO
b) Related Cases ☐ YES ☑ NO
JUDGE
DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. § 1332. This is an action to recover damages sustained as a result of Defendants' sale of defective motor vehicles.
LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. 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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD
DATE January 4, 2010

FOR OFFICE USE ONLY
AMOUNT _____ RECEIPT # _____ IFP _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

JONATHAN GELLMAN, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation.

Defendant. /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jonathan Gellman, on behalf of himself and on behalf of a class of similarly situated persons throughout the state of Florida, makes the following allegations on information and belief based on an investigation reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiff, which are alleged on personal knowledge.

NATURE OF THE ACTION

1. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a voluntary safety recall related to floor mats in certain Toyota and Lexus models of its automobiles. The recall was announced because the driver's floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle. On November 25, 2009, Toyota announced details of a vehicle-based 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. Toyota will start notifying owners of ES350, Camry, and Avalon models by the end of

2009 and will notify owners of the other models on a rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on behalf of himself and all others similarly situated.

2. Toyota admits that unintended acceleration may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

3. Toyota's actions give rise to violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101 and other common law claims.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Gellman is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Gellman leased a 2010 Lexus IS250 in October 2009 from Lexus of North Miami in North Miami, Florida.

5. Defendant Toyota Motor Sales, USA, Inc. is a wholly owned subsidiary of Toyota Motor Corporation and is incorporated in California with its principal place of business in Torrance, California. Toyota is in the business of manufacturing, producing, and distributing automobiles worldwide. At all material times, Toyota has done, and continues to do, business in Florida and every other state in the nation.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over Toyota because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Toyota is authorized to do business here, Toyota has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. Toyota sells its products within the state of Florida and in

Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendant Toyota is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

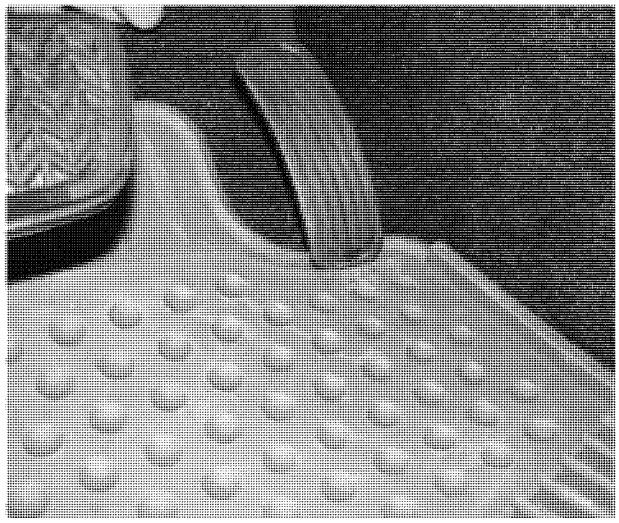
10. On or about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

11. According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

	Years	**Make**	**Model**
A.	2007 – 2010	Toyota	Camry
B.	2005 – 2010	Toyota	Avalon
C.	2004 – 2009	Toyota	Prius
D.	2005 – 2010	Toyota	Tacoma
E.	2007 – 2010	Toyota	Tundra
F.	2007 – 2010	Toyota	ES350
G.	2006 – 2010	Lexus	IS250
H.	2006 – 2010	Lexus	IS350

12. In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle.

13. Below is an example of how the floor mats obstruct the normal use of the accelerator pedal:



14. Indeed, since the defective floor plan design, as admitted by Toyota, required the removal of the floor mats paid for by consumers, the floor mats are now worthless and useless.

15. On November 25, 2009, Toyota 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 Toyota does not provide for alternative transportation while consumers' vehicles are being repaired.

16. Toyota has 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 Toyota 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. Toyota has 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.

17. On October 29, 2009, The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. *See* ODI Resume (attached as Exhibit A).

18. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries.

19. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations." Exhibit A.

20. It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform.

21. Toyota's conduct, including instructing consumers to remove their floor mats without compensation, is a violation of FDUTPA, as well as other common laws.

CLASS ACTION ALLEGATIONS

22. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

23. This class action is brought under Federal Rule of Civil Procedure Rule 23(a) and Rule 23(b)(3). Plaintiff submits that class action treatment is appropriate under either or both of these rules.

I. SIZE AND DEFINITION OF THE CLASS

24. Plaintiff brings this class action on behalf of himself and all other similarly situated class members defined as: All persons throughout Florida who have purchased or leased Toyota's Vehicles during the class period.

25. The class consists of thousands of consumers. Upon information and belief, the identities of these consumers are known to Toyota through their own records or are otherwise ascertainable. Therefore, the proposed class is ascertainable but so numerous that joinder of all members is impracticable.

II. COMMONALITY

26. There are questions of law and fact common in the class, because each and every class member is or will be asserting claims against Defendant. Common questions arise in every such case, including:

a. whether Toyota issued a recall of certain driver's floor mats;

b. whether the concerned recall instructs Plaintiff and Class members to take out driver's floor mats and not replace them;

c. whether Toyota has reimbursed or compensated Plaintiff and Class members for the loss of the use of the driver's floor mats;

d. whether the floor mats 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 member for their damages;

f. whether Toyota engaged in deceptive acts and practices in the marketing and sale of its Vehicles by failing to disclose the defects in its floor plan;

g. whether Toyota's conduct amounts to an unfair and/or deceptive trade practice within the meaning of the Florida's Deceptive and Unfair Trade Practices Act;

h. whether Plaintiff and members of the Class have sustained damages, and the proper measure of those damages;

i. whether Toyota has been unjustly enriched as a result of its conduct; and

j. whether Plaintiff and Class members are entitled to injunctive relief.

III. TYPICALITY

27. The claims of Plaintiff who is representative of the class herein, are typical of the claims of the Class, because the Class members seek the identical remedy and the same injunction, namely to obtain the value of the worthless floor mats sold by Toyota to consumers.

28. The claims within the class are typical, because each and every member of the Class brings the same cause of action for damages and injunctive relief.

IV. ADEQUACY OF REPRESENTATION

29. Plaintiff will fairly and adequately represent and pursue the interests of Class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

V. REQUIREMENTS OF RULE 23(b)(3)

30. Certification is also appropriate under Rule 23(b)(3) because common issues predominate. The exact same issues will apply uniformly to each Class member seeking damages herein and injunctive relief as set forth explicitly in the common questions of law and fact listed above. Also, a class action is a superior methodology for the litigation of these issues because individual class members have no practical interest or ability to bring this action for damages or injunctive relief in their individual capacity.

COUNT I- VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101.

33. FDUTPA, provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

34. Plaintiff and the class members are persons as defined and construed under the FDUTPA, Fla. Stat. §§501.201-501.213.

35. The practices employed by Toyota, whereby Toyota sells and markets its Vehicles without disclosing the dangerous defects in its floor plan design are unfair, deceptive and misleading.

36. Toyota's actions amount to unfair and/or deceptive acts in violation of the FDUTPA.

37. Even though Toyota knew or should have known of the defective nature of the Vehicles, it continued to sell the Vehicles to consumers without properly disclosing this defect or correcting the defect.

38. Toyota's sales practices were deceptive, misleading, and intended to increase their own profits to the detriment of the consumers. Toyota has profited from its uniform deceptive practices, in that Toyota received millions of dollars for floor mats and accelerator pedals which are useless and worthless causing Plaintiff and the Class substantial injuries.

39. Plaintiff and other members of the Class would not have paid for the useless and worthless floor mats if Toyota had disclosed the defects of their Vehicles.

40. Plaintiff and the Class members suffered actual damages as a result of Toyota's deceptive and unfair trade acts. Specifically, as a result of Toyota's deceptive and unfair trade acts and practices, Plaintiff and the Class members suffered monetary losses, i.e., the purchase price of the floor mats, which themselves are unfit for their intended purpose.

41. Plaintiff reserves the right to allege other violations of law that constitute unlawful business acts or practices based on the above-alleged conduct. Such conduct is ongoing and continues to this date.

WHEREFORE, Plaintiff and class members demand an award against Toyota for (1) actual and/or compensatory damages as provided by Fla. Stat. § 501.2075, (2) the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, (3) an order enjoining Toyota from continuing its unfair and/or deceptive conduct, and (4) any such other relief as this Court deems just and proper.

COUNT II—BREACH OF CONTRACT

42. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows.

43. Toyota provides Vehicles to the consuming public. Plaintiff and class members, through their agreement to purchase Toyota's Vehicles paid certain sums for the floor mats within the Vehicles.

44. Toyota had a duty under the contract to provide Vehicles which did not contain defects that would render the floor mats worthless and useless. Toyota materially breached the parties' contract when they provided worthless and useless floor mats with their Vehicles.

45. The contracts Toyota entered into with Plaintiff and the Class were identical as it relates to the payment of monies for the floor mats. Specifically, Toyota did not disclose that the

floor mats sold with the Vehicle, which ordinarily have their own inherent value, are useless and worthless.

46. Plaintiff and the Class has been damaged by Toyota's breach of contract in that they paid for floor mats which are worthless and not fit for their intended purpose.

47. Plaintiff and class members demand compensation for their loss of use and value of the floor mats purchased.

WHEREFORE Plaintiff and Class Members request that this Court enter judgment against Toyota and in favor of Plaintiff and the class for damages, including payment for the value of the floor mats, pre-judgment interest and such other relief as this Court deems just and appropriate.

COUNT III- UNJUST ENRICHMENT

48. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows:

49. Toyota received from Plaintiff and Class Members monetary compensation from their purchase of Toyota's defective Vehicles which are excessive and unreasonable, and are the result of overcharging and overreaching.

50. As a result, Plaintiff and the class have conferred a benefit on Toyota, and Toyota has knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

51. Toyota will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount each Class member enriched Toyota and for which Toyota has been unjustly enriched.

52. This count is in the alternative and, if Plaintiff's other claims do not proceed, Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and Class members demand an award against Toyota for the amounts equal to the amount each class member enriched Toyota and for which Toyota has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

53. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: January 4, 2010.

Respectfully submitted,

s/ Lance A. Harke
Lance A. Harke, P.A.
lharke@harkeclasby.com
Florida Bar No. 863599
Sarah Clasby Engel, P.A.
sengel@harkeclasby.com
Florida Bar No. 991030
HARKE & CLASBY LLP
155 South Miami Ave., Suite 600
Miami, Florida 33130
Telephone: (305) 536-8220
Telecopier: (305) 536-8229

Counsel for Plaintiff & Class Members

EXHIBIT A

U.S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

Investigation: DP09-001
Date Opened: 04/08/2009 Closing Date: 10/29/2009
Principal Investigator: Stephen McHenry
Subject: Unwanted and Unintended Acceleration

Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation
Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300
Population: 230,517 (estimated)

Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	64	0	0
Crashes/Fires:	8	0	0
Injury Incidents:	7	0	0
# Injuries:	15	0	0
Fatality Incidents:	0	0	0
# Fatalities:	0	0	0
Other*:	50	0	0

*Description of Other: Number of incidents attributable to accelerator pedal interference

Action: This petition has been denied. Recall 09V-388
Engineer: *Stephen McHenry* SMcH Date: *10/29/2009*
Div. Chief: *Jeffrey L. Quandt* Date: *10/29/2009*
Office Dir.: *Kathleen C. DeMeter* Date: *10/29/2009*

Summary: The Office of Defects Investigation (ODI) opened DP09-001 on April 8, 2009, to evaluate a defect petition requesting additional investigation of potential throttle control system defects unrelated to floor mat interference with accelerator pedals in model year (MY) 2007 Lexus ES350 vehicles. The petitioner referenced an earlier ODI investigation concerning floor mat interference with accelerator pedal return (PE07-016/EA07-010), which he stated was too narrow in scope as it did not include all incidents of unwanted acceleration and consider all potential causes of vehicle speed control concerns. The petition also requested an "investigation of MY 2002-2003 Lexus ES300 for those 'longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect' that were determined not to be within the scope of investigation PE04-021." As background, the petitioner owns a MY 2007 Lexus ES350 that allegedly experienced an unwanted and uncontrolled acceleration event (ODI complaint number 10261660). Toyota concluded that the incident was caused by an unsecured floor mat.

To assess the petitioner's request, ODI interviewed the petitioner, inspected his vehicle, reviewed information submitted by Toyota, reviewed owner complaints alleging incidents of unwanted acceleration in the subject vehicles and material related to the investigations cited by the petitioner. ODI identified 64 complaints alleging incidents of unwanted acceleration in MY 2007 Lexus vehicles, resulting in 8 crashes and 15 injuries. ODI's analysis of these complaints determined that 50 (78%) involved incidents of floor mat interference, including 7 (88%) of the crashes and all 15 injuries. Therefore, ODI's analysis found that the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations.

On October 5, 2009, Toyota initiated a safety recall (Recall 09V-388) to address concerns with potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect, as alleged by the petitioner, at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances. Please see the Federal Register notice for further details.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

JONATHAN GELLMAN, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation.

Defendant. /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jonathan Gellman, on behalf of himself and on behalf of a class of similarly situated persons throughout the state of Florida, makes the following allegations on information and belief based on an investigation reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiff, which are alleged on personal knowledge.

NATURE OF THE ACTION

1. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a voluntary safety recall related to floor mats in certain Toyota and Lexus models of its automobiles. The recall was announced because the driver's floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle. On November 25, 2009, Toyota announced details of a vehicle-based 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. Toyota will start notifying owners of ES350, Camry, and Avalon models by the end of

2009 and will notify owners of the other models on a rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on behalf of himself and all others similarly situated.

2. Toyota admits that unintended acceleration may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

3. Toyota's actions give rise to violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101 and other common law claims.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Gellman is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Gellman leased a 2010 Lexus IS250 in October 2009 from Lexus of North Miami in North Miami, Florida.

5. Defendant Toyota Motor Sales, USA, Inc. is a wholly owned subsidiary of Toyota Motor Corporation and is incorporated in California with its principal place of business in Torrance, California. Toyota is in the business of manufacturing, producing, and distributing automobiles worldwide. At all material times, Toyota has done, and continues to do, business in Florida and every other state in the nation.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over Toyota because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Toyota is authorized to do business here, Toyota has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. Toyota sells its products within the state of Florida and in

Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendant Toyota is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

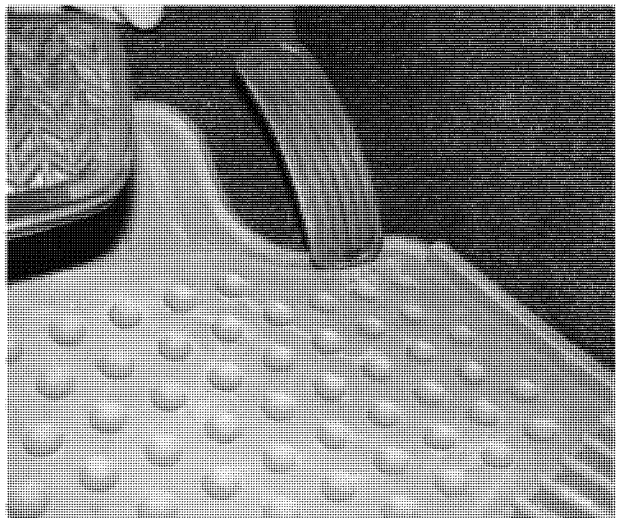
10. On or about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

11. According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

	Years	**Make**	**Model**
A.	2007 – 2010	Toyota	Camry
B.	2005 – 2010	Toyota	Avalon
C.	2004 – 2009	Toyota	Prius
D.	2005 – 2010	Toyota	Tacoma
E.	2007 – 2010	Toyota	Tundra
F.	2007 – 2010	Toyota	ES350
G.	2006 – 2010	Lexus	IS250
H.	2006 – 2010	Lexus	IS350

12. In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle.

13. Below is an example of how the floor mats obstruct the normal use of the accelerator pedal:



14. Indeed, since the defective floor plan design, as admitted by Toyota, required the removal of the floor mats paid for by consumers, the floor mats are now worthless and useless.

15. On November 25, 2009, Toyota 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 Toyota does not provide for alternative transportation while consumers' vehicles are being repaired.

16. Toyota has 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 Toyota 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. Toyota has 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.

17. On October 29, 2009, The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. *See* ODI Resume (attached as Exhibit A).

18. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries.

19. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations." Exhibit A.

20. It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform.

21. Toyota's conduct, including instructing consumers to remove their floor mats without compensation, is a violation of FDUTPA, as well as other common laws.

CLASS ACTION ALLEGATIONS

22. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

23. This class action is brought under Federal Rule of Civil Procedure Rule 23(a) and Rule 23(b)(3). Plaintiff submits that class action treatment is appropriate under either or both of these rules.

I. SIZE AND DEFINITION OF THE CLASS

24. Plaintiff brings this class action on behalf of himself and all other similarly situated class members defined as: All persons throughout Florida who have purchased or leased Toyota's Vehicles during the class period.

25. The class consists of thousands of consumers. Upon information and belief, the identities of these consumers are known to Toyota through their own records or are otherwise ascertainable. Therefore, the proposed class is ascertainable but so numerous that joinder of all members is impracticable.

II. COMMONALITY

26. There are questions of law and fact common in the class, because each and every class member is or will be asserting claims against Defendant. Common questions arise in every such case, including:

a. whether Toyota issued a recall of certain driver's floor mats;

b. whether the concerned recall instructs Plaintiff and Class members to take out driver's floor mats and not replace them;

c. whether Toyota has reimbursed or compensated Plaintiff and Class members for the loss of the use of the driver's floor mats;

d. whether the floor mats 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 member for their damages;

f. whether Toyota engaged in deceptive acts and practices in the marketing and sale of its Vehicles by failing to disclose the defects in its floor plan;

g. whether Toyota's conduct amounts to an unfair and/or deceptive trade practice within the meaning of the Florida's Deceptive and Unfair Trade Practices Act;

h. whether Plaintiff and members of the Class have sustained damages, and the proper measure of those damages;

i. whether Toyota has been unjustly enriched as a result of its conduct; and

j. whether Plaintiff and Class members are entitled to injunctive relief.

III. TYPICALITY

27. The claims of Plaintiff who is representative of the class herein, are typical of the claims of the Class, because the Class members seek the identical remedy and the same injunction, namely to obtain the value of the worthless floor mats sold by Toyota to consumers.

28. The claims within the class are typical, because each and every member of the Class brings the same cause of action for damages and injunctive relief.

IV. ADEQUACY OF REPRESENTATION

29. Plaintiff will fairly and adequately represent and pursue the interests of Class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

V. REQUIREMENTS OF RULE 23(b)(3)

30. Certification is also appropriate under Rule 23(b)(3) because common issues predominate. The exact same issues will apply uniformly to each Class member seeking damages herein and injunctive relief as set forth explicitly in the common questions of law and fact listed above. Also, a class action is a superior methodology for the litigation of these issues because individual class members have no practical interest or ability to bring this action for damages or injunctive relief in their individual capacity.

COUNT I- VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101.

33. FDUTPA, provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

34. Plaintiff and the class members are persons as defined and construed under the FDUTPA, Fla. Stat. §§501.201-501.213.

35. The practices employed by Toyota, whereby Toyota sells and markets its Vehicles without disclosing the dangerous defects in its floor plan design are unfair, deceptive and misleading.

36. Toyota's actions amount to unfair and/or deceptive acts in violation of the FDUTPA.

37. Even though Toyota knew or should have known of the defective nature of the Vehicles, it continued to sell the Vehicles to consumers without properly disclosing this defect or correcting the defect.

38. Toyota's sales practices were deceptive, misleading, and intended to increase their own profits to the detriment of the consumers. Toyota has profited from its uniform deceptive practices, in that Toyota received millions of dollars for floor mats and accelerator pedals which are useless and worthless causing Plaintiff and the Class substantial injuries.

39. Plaintiff and other members of the Class would not have paid for the useless and worthless floor mats if Toyota had disclosed the defects of their Vehicles.

40. Plaintiff and the Class members suffered actual damages as a result of Toyota's deceptive and unfair trade acts. Specifically, as a result of Toyota's deceptive and unfair trade acts and practices, Plaintiff and the Class members suffered monetary losses, i.e., the purchase price of the floor mats, which themselves are unfit for their intended purpose.

41. Plaintiff reserves the right to allege other violations of law that constitute unlawful business acts or practices based on the above-alleged conduct. Such conduct is ongoing and continues to this date.

WHEREFORE, Plaintiff and class members demand an award against Toyota for (1) actual and/or compensatory damages as provided by Fla. Stat. § 501.2075, (2) the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, (3) an order enjoining Toyota from continuing its unfair and/or deceptive conduct, and (4) any such other relief as this Court deems just and proper.

COUNT II—BREACH OF CONTRACT

42. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows.

43. Toyota provides Vehicles to the consuming public. Plaintiff and class members, through their agreement to purchase Toyota's Vehicles paid certain sums for the floor mats within the Vehicles.

44. Toyota had a duty under the contract to provide Vehicles which did not contain defects that would render the floor mats worthless and useless. Toyota materially breached the parties' contract when they provided worthless and useless floor mats with their Vehicles.

45. The contracts Toyota entered into with Plaintiff and the Class were identical as it relates to the payment of monies for the floor mats. Specifically, Toyota did not disclose that the

floor mats sold with the Vehicle, which ordinarily have their own inherent value, are useless and worthless.

46. Plaintiff and the Class has been damaged by Toyota's breach of contract in that they paid for floor mats which are worthless and not fit for their intended purpose.

47. Plaintiff and class members demand compensation for their loss of use and value of the floor mats purchased.

WHEREFORE Plaintiff and Class Members request that this Court enter judgment against Toyota and in favor of Plaintiff and the class for damages, including payment for the value of the floor mats, pre-judgment interest and such other relief as this Court deems just and appropriate.

COUNT III- UNJUST ENRICHMENT

48. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows:

49. Toyota received from Plaintiff and Class Members monetary compensation from their purchase of Toyota's defective Vehicles which are excessive and unreasonable, and are the result of overcharging and overreaching.

50. As a result, Plaintiff and the class have conferred a benefit on Toyota, and Toyota has knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

51. Toyota will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount each Class member enriched Toyota and for which Toyota has been unjustly enriched.

52. This count is in the alternative and, if Plaintiff's other claims do not proceed, Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and Class members demand an award against Toyota for the amounts equal to the amount each class member enriched Toyota and for which Toyota has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

53. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: January 4, 2010.

Respectfully submitted,

s/ Lance A. Harke
Lance A. Harke, P.A.
lharke@harkeclasby.com
Florida Bar No. 863599
Sarah Clasby Engel, P.A.
sengel@harkeclasby.com
Florida Bar No. 991030
HARKE & CLASBY LLP
155 South Miami Ave., Suite 600
Miami, Florida 33130
Telephone: (305) 536-8220
Telecopier: (305) 536-8229

Counsel for Plaintiff & Class Members

EXHIBIT A

U.S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

Investigation: DP09-001
Date Opened: 04/08/2009 Closing Date: 10/29/2009
Principal Investigator: Stephen McHenry
Subject: Unwanted and Unintended Acceleration

Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation
Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300
Population: 230,517 (estimated)

Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	64	0	0
Crashes/Fires:	8	0	0
Injury Incidents:	7	0	0
# Injuries:	15	0	0
Fatality Incidents:	0	0	0
# Fatalities:	0	0	0
Other*:	50	0	0

*Description of Other: Number of incidents attributable to accelerator pedal interference

Action: This petition has been denied. Recall 09V-388
Engineer: *Stephen McHenry* SMcH Date: *10/29/2009*
Div. Chief: *Jeffrey L. Quandt* Date: *10/29/2009*
Office Dir.: *Kathleen C. DeMeter* Date: *10/29/2009*

Summary: The Office of Defects Investigation (ODI) opened DP09-001 on April 8, 2009, to evaluate a defect petition requesting additional investigation of potential throttle control system defects unrelated to floor mat interference with accelerator pedals in model year (MY) 2007 Lexus ES350 vehicles. The petitioner referenced an earlier ODI investigation concerning floor mat interference with accelerator pedal return (PE07-016/EA07-010), which he stated was too narrow in scope as it did not include all incidents of unwanted acceleration and consider all potential causes of vehicle speed control concerns. The petition also requested an "investigation of MY 2002-2003 Lexus ES300 for those 'longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect' that were determined not to be within the scope of investigation PE04-021." As background, the petitioner owns a MY 2007 Lexus ES350 that allegedly experienced an unwanted and uncontrolled acceleration event (ODI complaint number 10261660). Toyota concluded that the incident was caused by an unsecured floor mat.

To assess the petitioner's request, ODI interviewed the petitioner, inspected his vehicle, reviewed information submitted by Toyota, reviewed owner complaints alleging incidents of unwanted acceleration in the subject vehicles and material related to the investigations cited by the petitioner. ODI identified 64 complaints alleging incidents of unwanted acceleration in MY 2007 Lexus vehicles, resulting in 8 crashes and 15 injuries. ODI's analysis of these complaints determined that 50 (78%) involved incidents of floor mat interference, including 7 (88%) of the crashes and all 15 injuries. Therefore, ODI's analysis found that the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations.

On October 5, 2009, Toyota initiated a safety recall (Recall 09V-388) to address concerns with potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect, as alleged by the petitioner, at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances. Please see the Federal Register notice for further details.

JS 44 (Rev. 2/08)

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

JONATHAN GELLMAN, an individual, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Miami-Dade, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Harke & Clasby LLP
155 South Miami Ave. Suite 600
Miami, FL 33130
Telephone: 305-536-8220
Facsimile: 305-536-8229

DEFENDANTS

TOYOTA MOTOR SALES, USA, INC., a California corporation.

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

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

Attorneys (If Known)

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

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

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

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

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

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

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of 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
☐ 900 Appeal 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 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☐ YES ☑ NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (**Do not cite jurisdictional statutes unless diversity**):

28 U.S.C. § 1332. This is an action to recover damages sustained as a result of Defendants' sale of defective motor vehicles.

LENGTH OF TRIAL via ____ days estimated (for both sides to try entire case)

VIII. 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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE January 4, 2010

FOR OFFICE USE ONLY

AMOUNT ____ RECEIPT # ____ IFP ____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

JONATHAN GELLMAN, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation.

_____Defendant._____/

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jonathan Gellman, on behalf of himself and on behalf of a class of similarly situated persons throughout the state of Florida, makes the following allegations on information and belief based on an investigation reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiff, which are alleged on personal knowledge.

NATURE OF THE ACTION

1. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a voluntary safety recall related to floor mats in certain Toyota and Lexus models of its automobiles. The recall was announced because the driver's floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle. On November 25, 2009, Toyota announced details of a vehicle-based 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. Toyota will start notifying owners of ES350, Camry, and Avalon models by the end of

2009 and will notify owners of the other models on a rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on behalf of himself and all others similarly situated.

2. Toyota admits that unintended acceleration may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

3. Toyota's actions give rise to violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101 and other common law claims.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Gellman is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Gellman leased a 2010 Lexus IS250 in October 2009 from Lexus of North Miami in North Miami, Florida.

5. Defendant Toyota Motor Sales, USA, Inc. is a wholly owned subsidiary of Toyota Motor Corporation and is incorporated in California with its principal place of business in Torrance, California. Toyota is in the business of manufacturing, producing, and distributing automobiles worldwide. At all material times, Toyota has done, and continues to do, business in Florida and every other state in the nation.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over Toyota because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Toyota is authorized to do business here, Toyota has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. Toyota sells its products within the state of Florida and in

Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendant Toyota is subject to personal jurisdiction in this district.

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9. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

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11. According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

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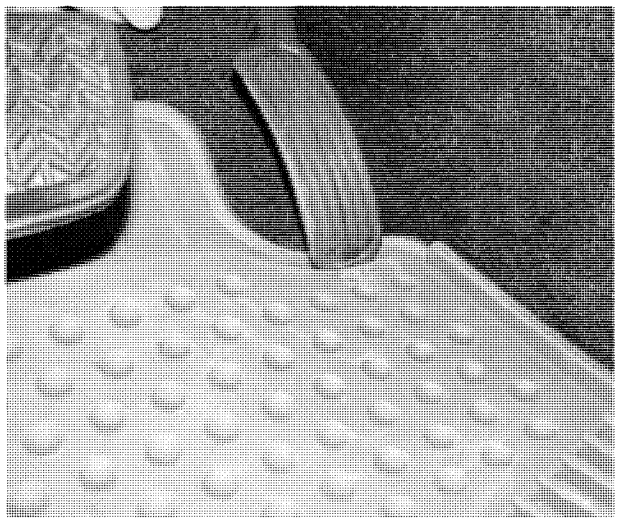
12. In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle.

13. Below is an example of how the floor mats obstruct the normal use of the accelerator pedal:



14. Indeed, since the defective floor plan design, as admitted by Toyota, required the removal of the floor mats paid for by consumers, the floor mats are now worthless and useless.

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17. On October 29, 2009, The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. *See* ODI Resume (attached as Exhibit A).

18. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries.

19. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations." Exhibit A.

20. It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform.

21. Toyota's conduct, including instructing consumers to remove their floor mats without compensation, is a violation of FDUTPA, as well as other common laws.

CLASS ACTION ALLEGATIONS

22. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

23. This class action is brought under Federal Rule of Civil Procedure Rule 23(a) and Rule 23(b)(3). Plaintiff submits that class action treatment is appropriate under either or both of these rules.

I. SIZE AND DEFINITION OF THE CLASS

24. Plaintiff brings this class action on behalf of himself and all other similarly situated class members defined as: All persons throughout Florida who have purchased or leased Toyota's Vehicles during the class period.

25. The class consists of thousands of consumers. Upon information and belief, the identities of these consumers are known to Toyota through their own records or are otherwise ascertainable. Therefore, the proposed class is ascertainable but so numerous that joinder of all members is impracticable.

II. COMMONALITY

26. There are questions of law and fact common in the class, because each and every class member is or will be asserting claims against Defendant. Common questions arise in every such case, including:

a. whether Toyota issued a recall of certain driver's floor mats;

b. whether the concerned recall instructs Plaintiff and Class members to take out driver's floor mats and not replace them;

c. whether Toyota has reimbursed or compensated Plaintiff and Class members for the loss of the use of the driver's floor mats;

d. whether the floor mats 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 member for their damages;

f. whether Toyota engaged in deceptive acts and practices in the marketing and sale of its Vehicles by failing to disclose the defects in its floor plan;

g. whether Toyota's conduct amounts to an unfair and/or deceptive trade practice within the meaning of the Florida's Deceptive and Unfair Trade Practices Act;

h. whether Plaintiff and members of the Class have sustained damages, and the proper measure of those damages;

i. whether Toyota has been unjustly enriched as a result of its conduct; and

j. whether Plaintiff and Class members are entitled to injunctive relief.

III. TYPICALITY

27. The claims of Plaintiff who is representative of the class herein, are typical of the claims of the Class, because the Class members seek the identical remedy and the same injunction, namely to obtain the value of the worthless floor mats sold by Toyota to consumers.

28. The claims within the class are typical, because each and every member of the Class brings the same cause of action for damages and injunctive relief.

IV. ADEQUACY OF REPRESENTATION

29. Plaintiff will fairly and adequately represent and pursue the interests of Class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

V. REQUIREMENTS OF RULE 23(b)(3)

30. Certification is also appropriate under Rule 23(b)(3) because common issues predominate. The exact same issues will apply uniformly to each Class member seeking damages herein and injunctive relief as set forth explicitly in the common questions of law and fact listed above. Also, a class action is a superior methodology for the litigation of these issues because individual class members have no practical interest or ability to bring this action for damages or injunctive relief in their individual capacity.

COUNT I- VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101.

33. FDUTPA, provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

34. Plaintiff and the class members are persons as defined and construed under the FDUTPA, Fla. Stat. §§501.201-501.213.

35. The practices employed by Toyota, whereby Toyota sells and markets its Vehicles without disclosing the dangerous defects in its floor plan design are unfair, deceptive and misleading.

36. Toyota's actions amount to unfair and/or deceptive acts in violation of the FDUTPA.

37. Even though Toyota knew or should have known of the defective nature of the Vehicles, it continued to sell the Vehicles to consumers without properly disclosing this defect or correcting the defect.

38. Toyota's sales practices were deceptive, misleading, and intended to increase their own profits to the detriment of the consumers. Toyota has profited from its uniform deceptive practices, in that Toyota received millions of dollars for floor mats and accelerator pedals which are useless and worthless causing Plaintiff and the Class substantial injuries.

39. Plaintiff and other members of the Class would not have paid for the useless and worthless floor mats if Toyota had disclosed the defects of their Vehicles.

40. Plaintiff and the Class members suffered actual damages as a result of Toyota's deceptive and unfair trade acts. Specifically, as a result of Toyota's deceptive and unfair trade acts and practices, Plaintiff and the Class members suffered monetary losses, i.e., the purchase price of the floor mats, which themselves are unfit for their intended purpose.

41. Plaintiff reserves the right to allege other violations of law that constitute unlawful business acts or practices based on the above-alleged conduct. Such conduct is ongoing and continues to this date.

WHEREFORE, Plaintiff and class members demand an award against Toyota for (1) actual and/or compensatory damages as provided by Fla. Stat. § 501.2075, (2) the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, (3) an order enjoining Toyota from continuing its unfair and/or deceptive conduct, and (4) any such other relief as this Court deems just and proper.

COUNT II—BREACH OF CONTRACT

42. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows.

43. Toyota provides Vehicles to the consuming public. Plaintiff and class members, through their agreement to purchase Toyota's Vehicles paid certain sums for the floor mats within the Vehicles.

44. Toyota had a duty under the contract to provide Vehicles which did not contain defects that would render the floor mats worthless and useless. Toyota materially breached the parties' contract when they provided worthless and useless floor mats with their Vehicles.

45. The contracts Toyota entered into with Plaintiff and the Class were identical as it relates to the payment of monies for the floor mats. Specifically, Toyota did not disclose that the

floor mats sold with the Vehicle, which ordinarily have their own inherent value, are useless and worthless.

46. Plaintiff and the Class has been damaged by Toyota's breach of contract in that they paid for floor mats which are worthless and not fit for their intended purpose.

47. Plaintiff and class members demand compensation for their loss of use and value of the floor mats purchased.

WHEREFORE Plaintiff and Class Members request that this Court enter judgment against Toyota and in favor of Plaintiff and the class for damages, including payment for the value of the floor mats, pre-judgment interest and such other relief as this Court deems just and appropriate.

COUNT III- UNJUST ENRICHMENT

48. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows:

49. Toyota received from Plaintiff and Class Members monetary compensation from their purchase of Toyota's defective Vehicles which are excessive and unreasonable, and are the result of overcharging and overreaching.

50. As a result, Plaintiff and the class have conferred a benefit on Toyota, and Toyota has knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

51. Toyota will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount each Class member enriched Toyota and for which Toyota has been unjustly enriched.

52. This count is in the alternative and, if Plaintiff's other claims do not proceed, Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and Class members demand an award against Toyota for the amounts equal to the amount each class member enriched Toyota and for which Toyota has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

53. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: January 4, 2010.

Respectfully submitted,

s/ Lance A. Harke
Lance A. Harke, P.A.
lharke@harkeclasby.com
Florida Bar No. 863599
Sarah Clasby Engel, P.A.
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Telephone: (305) 536-8220
Telecopier: (305) 536-8229

Counsel for Plaintiff & Class Members

EXHIBIT A

U S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

Investigation: DP09-001
Date Opened: 04/08/2009 Closing Date: 10/29/2009
Principal Investigator: Stephen McHenry
Subject: Unwanted and Unintended Acceleration

Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation
Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300
Population: 230,517 (estimated)

Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	64	0	0
Crashes/Fires:	8	0	0
Injury Incidents:	7	0	0
# Injuries:	15	0	0
Fatality Incidents:	0	0	0
# Fatalities:	0	0	0
Other*:	50	0	0

*Description of Other: Number of incidents attributable to accelerator pedal interference

Action: This petition has been denied. Recall 09V-388
Engineer: *Stephen McHenry* SMcH Date: *10/29/2009*
Div. Chief: *Jeffrey L. Quandt* Date: *10/29/2009*
Office Dir.: *Kathleen C. DeMeter* Date: *10/29/2009*

Summary: The Office of Defects Investigation (ODI) opened DP09-001 on April 8, 2009, to evaluate a defect petition requesting additional investigation of potential throttle control system defects unrelated to floor mat interference with accelerator pedals in model year (MY) 2007 Lexus ES350 vehicles. The petitioner referenced an earlier ODI investigation concerning floor mat interference with accelerator pedal return (PE07-016/EA07-010), which he stated was too narrow in scope as it did not include all incidents of unwanted acceleration and consider all potential causes of vehicle speed control concerns. The petition also requested an "investigation of MY 2002-2003 Lexus ES300 for those 'longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect' that were determined not to be within the scope of investigation PE04-021." As background, the petitioner owns a MY 2007 Lexus ES350 that allegedly experienced an unwanted and uncontrolled acceleration event (ODI complaint number 10261660). Toyota concluded that the incident was caused by an unsecured floor mat.

To assess the petitioner's request, ODI interviewed the petitioner, inspected his vehicle, reviewed information submitted by Toyota, reviewed owner complaints alleging incidents of unwanted acceleration in the subject vehicles and material related to the investigations cited by the petitioner. ODI identified 64 complaints alleging incidents of unwanted acceleration in MY 2007 Lexus vehicles, resulting in 8 crashes and 15 injuries. ODI's analysis of these complaints determined that 50 (78%) involved incidents of floor mat interference, including 7 (88%) of the crashes and all 15 injuries. Therefore, ODI's analysis found that the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations.

On October 5, 2009, Toyota initiated a safety recall (Recall 09V-388) to address concerns with potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect, as alleged by the petitioner, at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances. Please see the Federal Register notice for further details.

United States District Court

SOUTHERN DISTRICT OF FLORIDA

JONATHAN GELLMAN an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC., a California corporation.

Defendants.

_____/

SUMMONS IN A CIVIL CASE

CASE NO.: 10-20006-CIV-COOKE

TO: Toyota Motor Sales, USA, Inc.
CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Harke & Clasby LLP
155 South Miami Avenue, Suite 600
Miami, FL 33130
Telephone: 305-536-8220
Facsimile: 305-536-8229

an answer to the complaint which is herewith served upon you, within twenty ~~(20)~~ 21 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Steven M. Larimore
Clerk of Court

SUMMONS

s/Rosy Avael
Deputy Clerk
U.S. District Courts

January 5, 2010
DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

DEFENDANT'S RULE 7.1 DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the undersigned counsel for Defendant Toyota Motor Sales, U.S.A., Inc. hereby identifies Toyota Motor Corporation as the only publicly held corporation owning 10% or more of Toyota Motor Sales, U.S.A., Inc.'s stock.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101
Fax: 305 442 6744

By: */s/ Michael R. Tein*
MICHAEL R. TEIN
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ALSTON & BIRD LLP
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1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

Attorneys for Defendant Toyota Motor Sales USA Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 25, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST

Lance A. Harke, P.A.
lharke@harkeclasby.com
Sarah Clasby Engel, P.A.
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

UNOPPOSED MOTION TO EXTEND TIME TO
RESPOND TO INITIAL COMPLAINT

Pursuant to Federal Rule of Civil Procedure 6(b), Defendant Toyota Motor Sales, U.S.A., Inc. hereby moves for an order extending Defendant's time within which to answer or otherwise respond to Plaintiff's Complaint, and states as follows:

1. Plaintiff's Complaint was filed on January 4, 2010. Defendant's deadline to respond to the Complaint is January 29, 2010.

2. Due to the complex legal and factual issues raised by Plaintiff's claims, Defendant respectfully requests that it be given until March 1, 2010 to respond to the Complaint.

3. Certificate of Compliance with S.D. Fla. L.R. 7.1: Undersigned counsel has conferred with counsel for the Plaintiff, who does not oppose the relief sought in this motion.

Respectfully submitted,

LEWIS TEIN, P.L.
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By: */s/ Michael R. Tein*
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Attorneys for Defendant Toyota Motor Sales USA Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 25, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST

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Telephone: (305) 536-8220
Facsimile: (305) 536-8229

Attorneys for Plaintiff

Exhibit A (Proposed Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

ORDER GRANTING UNOPPOSED MOTION TO
EXTEND TIME TO RESPOND TO INITIAL COMPLAINT

THIS CAUSE having come before the Court upon the Defendant's Motion to Extend Time to Respond to Initial Complaint, and this Court being fully advised, it is hereby:

ORDERED AND ADJUDGED that the Motion is hereby granted.

DONE AND ORDERED in Miami-Dade County, Florida this _____ day of _____, 2010.

_____
HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to: Michael R. Tein, Esq.
Kristine McAllister Brown, Esq.
Lance A. Harke, Esq.
Sarah Clasby Engel, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ORDER REFERRING CASE TO MAGISTRATE JUDGE

This case is referred to the Honorable Ted E. Bandstra, United States Magistrate Judge for the Southern District of Florida, for appropriate resolution of all non-dispositive pretrial matters as well as motions for attorney's fees and costs and motions for sanctions, in accordance with 28 U.S.C. §§ 636(b)(1)(A) and (B). ***Motions in Limine and any motion affecting deadlines set by the Court's Scheduling Order are excluded from this referral, unless specifically referred by separate order.***

The parties are notified that all subsequent pleadings bearing on matters referred to the Magistrate Judge shall be so designated by setting forth beneath the case number the identity of the Magistrate Judge to which the matter has been referred and the date of the Order of Reference.

DONE and ORDERED in chambers at Miami, Florida, this 25th day of January 2010.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ORDER REQUIRING COUNSEL TO MEET AND FILE
JOINT SCHEDULING REPORT AND PROPOSED ORDER

THIS MATTER came before the Court upon the filing of the Complaint. The Court has reviewed the Complaint. To efficiently, expeditiously, and economically resolve this dispute, it is **ORDERED**:

1. Plaintiff shall forward a copy of this Order to all defendants, upon notice of appearance of defense counsel.

2. Discovery in this case shall be conducted in accordance with the Federal Rules of Civil Procedure and Southern District of Florida Local Rules (effective April 15, 2009), except that the deadlines under Local Rules 16.1.D., E., H., J., K., and L., may be modified by further order of the Court.

3. In addition to complying with S.D. Fla. L.R. 5.1, ***all* filings must be double-spaced**, any motion and accompanying memorandum of law shall not exceed **a combined length of twenty pages**, and all non-dispositive motions **must be accompanied by a proposed order strictly adhering to the following requirements**:

a. **12 pt. Times New Roman font**

b. **One inch margins on all sides**

c. **1/2 inch tab setting**

d. **Left Justified**

e. **Conforming to the exemplar form order found on the last page of this order.**

f. **Filed electronically with the corresponding motion.**

g. ***Additionally*, e-mailed as a Word Perfect 12 document to cooke@flsd.uscourts.gov. The subject line of the e-mail shall include the *case number*, *case name*, and *docket entry number* of the corresponding motion.**

Failure to comply with the foregoing requirements may result in the relevant motion being denied without prejudice.

4. Within **forty five (45) days** of the appearance of a defendant, counsel shall file a Joint Scheduling Report and Joint Proposed Scheduling Order pursuant to Local Rule 16.1.B.2, with a complete service list containing the name, address, phone number, **fax number** and party represented of each counsel.

5. Counsel for the parties shall meet in person for a scheduling conference at least **twenty one (21) days** prior to the date the above Joint Proposed Scheduling Order is due. At this conference, the parties **shall** accomplish the following: (1) determine the appropriate case management track for the action pursuant to Local Rule 16.1.A.2; (2) develop a case management plan which sets deadlines in compliance with paragraphs A, B, and C of this Order; and (3) discuss settlement in good faith.

A. The Joint Scheduling Report shall include all information required by the eleven subsections, (a) through (k), of Local Rule 16.1.B.2. **Unilateral submissions are**

prohibited.

B. As an attachment to the parties' Joint Scheduling Report, and in Compliance with Local Rule 16.1.B.2, the parties shall jointly complete ***Attachment A*** to this Order. The parties shall insert the specific day, month and year for each listed deadline which applies to the parties' case management plan. In completing ***Attachment A***, the parties shall take into consideration the suggested pretrial deadlines set out in ***Attachment B*** to this Order. If the parties agree that one or more of the proposed deadlines (such as "expert witness deadlines") is not appropriate for this action, they may strike the language and omit that proposed deadline in ***Attachment A***. The parties' proposed dates **shall** include: (1) **at least seventeen (17) weeks** between the deadline for all pretrial dispositive motions and the proposed trial date; and (2) **at least five (5) weeks** between the deadline for the pretrial stipulation and the proposed trial date.

C. As part of the Joint Scheduling Report, the parties shall jointly complete and file with the Court the Magistrate Judge Jurisdiction Election Form appended to this Order as ***Attachment C***. The Court will not accept unilateral submissions in this regard; thus, a "Yes" should be checked only if all parties agree. If the parties consent to a full disposition of the case by the Magistrate Judge, including trial and entry of final judgment, the parties shall jointly file the election form appended to this Order as ***Attachment D***.

6. The Parties must jointly select a mediator certified under Local Rule 16.2.B, and schedule a time, date, and place for mediation. In addition, the Parties must jointly file a proposed order scheduling mediation in the form specified by Local Rule 16.2.H. If the parties cannot agree on a mediator, they shall notify the clerk in writing as soon as possible and the Clerk shall designate a certified mediator on a blind rotation basis. Counsel for all parties shall familiarize themselves with and adhere to all provisions of Local Rule 16.2. The parties shall complete mediation at least

30 days prior to the calendar call.

7. The foregoing information will aid the Court in its management of this case, including the expeditious resolution of any discovery disputes, and help the parties focus on the key issues of the case at an early stage in the proceedings. **Accordingly, failure of counsel to file a joint scheduling report shall result in dismissal, default, and the imposition of other sanctions, including attorney's fees and costs.**

DONE and ORDERED in Chambers, at Miami, Florida, this 25th day of January 2010.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of Record

(include dates) **Pretrial Deadlines, Pretrial Conference and Trial Date**

_____ ___, ___ Joinder of parties and amendment of pleadings.

_____ ___, ___ Parties shall furnish opposing counsel with a written list containing the names and addresses of all fact witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify unless good cause is shown and there is no prejudice to opposing party. The parties are under a continuing obligation to supplement discovery responses within ten (10) days of receipt or other notice of new or revised information.

_____ ___, ___ All fact discovery must be completed.

_____ ___, ___ Plaintiff must furnish expert witness list to the Defendant, along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Plaintiff shall make its experts available for deposition by Defendant.

_____ ___, ___ All dispositive *and* other pretrial motions not explicitly excluded by S.D. Fla. L.R. 7.1.A.1, and accompanying memoranda of law must be filed. A **minimum of seventeen (17) weeks** is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. **If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.**

_____ ___, ___ Defendant must furnish expert witness list to the Plaintiff along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Defendant shall make its experts available for deposition by Plaintiff.

_____ ___, ___ All expert discovery must be completed. ***If a Daubert or Markman hearing is necessary, the parties are to add that as an additional deadline at the bottom of Attachment A. All Daubert and Markman briefing shall be complete two (2) weeks prior to any scheduled hearing on the same.***

_____ ___, ___ Mediation must be completed. (The parties should select the earliest date to maximize resolution of the case in a manner that promotes client and judicial economy.)

_____ ___, ___ (a) Joint pretrial stipulation must be filed pursuant to Local Rule 16.1.E. The pretrial stipulation shall include Plaintiff's non-binding breakdown of damages with corresponding amounts; the witness lists shall be pared down to those witnesses the parties actually intend to call at trial; and the exhibit lists shall identify the witness introducing each exhibit. **The parties shall meet at least one (1) month prior to the deadline for filing the pretrial stipulation to confer on the preparation of that stipulation.** The Court will not accept unilateral pretrial stipulations, and will strike, *sua sponte*, any such submissions; **and**

(b) A joint statement outlining (1) the legal elements of Plaintiff's claims, including damages, and (2) the legal elements of the defenses raised, either in the form of a proposed jury instruction (for jury cases) or proposed conclusions of law (for non-jury cases); **and**

(c) Joint Summary of Respective Motions in Limine must be filed. The Summary shall contain a cover page providing the style of the case and an index of the motions in limine. The Summary shall also include for each evidentiary issue: (*i*) a one (1) page motion identifying the evidence sought to be precluded at trial and citing legal authority supporting exclusion; and (*ii*) a one (1) page response to the motion providing a statement of the purpose for which the challenged evidence would be offered and citing legal authority in support of admission of the challenged evidence. The parties shall work together to prepare the Summary. Prior to submission of the Summary, the parties are encouraged to resolve evidentiary issues through stipulation.

_____ ___, ___ Final proposed jury instructions or findings of fact and conclusions of law must be submitted. ***(A courtesy copy shall be submitted to chambers at flsd_cookefl@flsd.uscourts.gov, in WordPerfect format),*** each party's list indicating each witness who will testify at trial, a one sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination.

_____ ___, ___ Pretrial conference. Usually 30 minutes are allotted for pretrial conference unless the parties or the Court, *sua sponte*, indicate a greater time is needed.

_____ ___, ___ Trial Date.

_____ ___, ___ Date of any other deadline the parties adopt as part of their case management plan.

[Attachment A]

SUGGESTED PRETRIAL DEADLINES

31 weeks prior to pretrial stip	Joinder of parties and amendment of pleadings.
21 weeks prior to pretrial stip	Parties shall furnish opposing counsel with a written list containing the names and addresses of all fact witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
18 weeks prior to pretrial stip	All fact discovery must be completed.
16 weeks prior to pretrial stip	Plaintiff must furnish expert witness list to the Defendant, along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Plaintiff shall make its experts available for deposition by Defendant.
17 weeks prior to pretrial stip	All dispositive pretrial motion and memoranda of law must be filed. A **minimum of seventeen (17) weeks** is required for the Court to review dispositive motion prior to filing of the joint pretrial stipulation. **If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.**
14 weeks prior to pretrial stip	Defendant must furnish expert witness list to the Plaintiff along with the summaries/reports required by Local Rule 16.1K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Defendant shall make its experts available for deposition by Plaintiff.
12 weeks prior to pretrial stip	All expert discovery must be completed. If a Daubert or Markman hearing may be necessary, the parties are to add that as an additional deadline at the bottom of attachment A. ***All Daubert and Markman briefing shall be complete two (2) weeks prior to any scheduled hearing on the same.***
10 weeks prior to pretrial stip	Mediation must be completed. (The parties should select the earliest date to maximize resolution of the case in a manner that promotes client and judicial economy.)
5 weeks prior to the Friday before trial period	(a) Joint pretrial stipulation must be filed pursuant to Local Rule 16.1.E. The pretrial stipulation shall include Plaintiff's non-binding breakdown of damages with corresponding amounts and other relief sought. The parties shall meet at least one (1) month prior to the deadline for filing the pretrial stipulation to confer on the preparation of that stipulation. The Court will not accept unilateral pretrial stipulations, and will strike, *sua sponte*, any such submissions; **and** (b) A joint statement outlining (1) the legal elements of Plaintiff's claims, including damages, and other relief sought, and (2) the legal elements of the defenses raised, either in the form of a proposed jury instruction (for jury cases) or proposed conclusions of law (for non-jury cases); **and** (c) Joint Summary of Respective Motions in Limine must be filed. The Summary shall contain a cover page providing the style of the case and an index of the motions in limine. The Summary shall also include for each evidentiary issue: (*i*) a one (1) page motion identifying the evidence sought to be precluded at trial and citing legal authority supporting exclusion; and (*ii*) a one (1) page response to the motion providing a statement of the purpose for which the challenged evidence would be offered and citing legal authority in support of admission of the challenged evidence. The parties shall work together to prepare the Summary. Prior to submission of the Summary, the parties are encouraged to resolve evidentiary issues through stipulation.
Friday before Calendar Call	Final proposed jury instructions or findings of fact and conclusions of law must be submitted. ***(A courtesy copy shall be submitted to chambers at flsd_cookefl@flsd.uscourts.gov, in WordPerfect format),*** each party's list indicating each witness who will testify at trial, a one sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ELECTION TO JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE FOR FINAL DISPOSITION OF MOTIONS

In accordance with the provisions of 28 U.S.C. 636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge decide the following motions and issue a final order or judgment with respect thereto:

1. Motions for Costs Yes _____ No _____
2. Motions for Attorney's Fees Yes _____ No _____
3. Motions for Sanctions Yes _____ No _____

_____ _____
(Date) (Signature-Plaintiff's Counsel)

_____ _____
(Date) (Signature-Plaintiff's Counsel)

_____ _____
(Date) (Signature-Defendant's Counsel)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ELECTION TO JURISDICTION BY A
UNITED STATES MAGISTRATE JUDGE FOR TRIAL

In accordance with the provisions of 28 U.S.C. § 636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge conduct any and all further proceedings in the case, including TRIAL, and entry of final judgment with respect thereto.

_____	_____
(Date)	(Signature-Plaintiff's Counsel)
_____	_____
(Date)	(Signature-Plaintiff's Counsel)
_____	_____
(Date)	(Signature-Defendant's Counsel)
_____	_____
(Date)	(Signature-Defendant's Counsel)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: XX-CIV-XXXXX-COOKE/BANDSTRA

NAME(S) OF PLAINTIFF(S),

Plaintiff(s),

v.

NAME(S) OF DEFENDANT(S),

_____

Defendant(s).

_____/

TITLE OF ORDER

THIS MATTER is before the Court upon [**Plaintiff/Defendant, insert name(s),**] Motion for..., [**D.E. (insert docket entry number)**], filed [**insert date**].

The Court, having reviewed the Motion and being advised fully in the premises, hereby

ORDERS and ADJUDGES as follows:

[**Insert text of proposed judgment and order.**]

DONE and ORDERED in chambers, Miami, Florida, this ___ day of [**insert month**] 20__.

_____
MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of Record

FILED by _____ D.C.
FEB 04 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. – MIAMI

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA VEHICLE UNINTENDED ACCELERATION PRODUCTS LIABILITY LITIGATION

MDL DOCKET No. _____

MOTION TO TRANSFER AND CONSOLIDATE TO THE SOUTHERN DISTRICT OF FLORIDA

Plaintiff Jonathan Gellman, plaintiff and putative class representative in the action entitled *Jonathan Gellman v. Toyota Motor Sales, USA, Inc.*, Case No. 10-20006-CIV-COOKE/BANDSTRA, pending in the United States District Court for the Southern District of Florida, through undersigned counsel, respectfully requests that the Judicial Panel on Multidistrict Litigation ("Panel") enter an Order pursuant to 28 U.S.C. § 1407 transferring and consolidating the cases listed in the Schedule of Actions Involved (attached to the Memorandum in Support of this Motion) to the United States District Court for the Southern District of Florida. Plaintiff further requests that the federal judge presently presiding over the *Gellman v. Toyota* litigation, the Honorable Marcia G. Cooke, be designated as the presiding MDL judge. Plaintiff has submitted a Memorandum in Support of this motion which details the factual and legal basis for said transfer.

WHEREFORE, Plaintiff Gellman requests that the Panel grant the pending motion to consolidate and transfer pursuant to 28 U.S.C. § 1407, and that the United States District Court for the Southern District of Florida and the Honorable Judge Cooke be designated as the MDL Court.

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155 South Miami Avenue • Suite 600 • Miami, FL 33130 • Tel. 305-536-8220 • Fax 305-536-8229

Respectfully submitted,

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Counsel for Plaintiff Jonathan Gellman

TOY-RQ-05E-00006052

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA VEHICLE UNINTENDED ACCELERATION PRODUCTS LIABILITY LITIGATION

MDL DOCKET No. _____

FILED by EB D.C.
FEB 04 2010
STEVEN M. LARIMORE
CLERK U. S. DIST CT
S. D. of FLA. – MIAMI

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER AND CONSOLIDATE TO THE SOUTHERN DISTRICT OF FLORIDA

Plaintiff Jonathan Gellman, plaintiff and putative class representative in the action entitled *Jonathan Gellman v. Toyota Motor Sales, USA, Inc.*, Case No. 10-20006-CIV-COOKE/BANDSTRA, pending in the United States District Court for the Southern District of Florida,[1] through undersigned counsel, respectfully submits this memorandum in support of his request that the Judicial Panel on Multidistrict Litigation ("Panel") enter an Order pursuant to 28 U.S.C. § 1407 transferring and consolidating the cases listed in the Schedule of Actions (attached hereto as Exhibit 2), such actions concerning claims arising from the design/manufacture, marketing and sales of the motor vehicles designed, manufactured, marketed and sold by Defendant Toyota Motor Sales, USA, Inc., ("Toyota").

Plaintiff requests that the Panel transfer and consolidate the cases referenced herein to a single district for coordinated and/or consolidated pre-trial proceedings, and that such proceedings be assigned to the United States District Court for the Southern District of Florida. Plaintiff further requests that the federal judge presently presiding over the *Gellman v. Toyota* litigation, the Honorable Marcia G. Cooke, be designated as the presiding MDL judge.

Factual Background

Plaintiff and the members of the putative class are consumers who purchased sustained economic damages as a direct and proximate result of Defendant Toyota's design/manufacture,

[1] A copy of Plaintiff Gellman's Complaint is attached hereto as Exhibit 1.

marketing and sales of defective vehicles. Plaintiff has alleged that Toyota's actions regarding the design/manufacture and sales of its vehicles violate applicable state consumer protection and common laws, and compensatory damages, as well as other damages are appropriate remedies for Toyota's wrongful actions.

Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus. On or about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

	Years	**Make**	**Model**
A.	2007 – 2010	Toyota	Camry
B.	2005 – 2010	Toyota	Avalon
C.	2004 – 2009	Toyota	Prius
D.	2005 – 2010	Toyota	Tacoma
E.	2007 – 2010	Toyota	Tundra
F.	2007 – 2010	Toyota	ES350
G.	2006 – 2010	Lexus	IS250
H.	2006 – 2010	Lexus	IS350

In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle. This "remedy" did not resolve the defect. On November 25, 2009, Toyota 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, this second purported resolution did not resolve the defects.

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TOY-RQ-05E-00006054

In January 2010, Toyota instituted a third recall revealing that pedal mechanisms may become worn, and combined with condensation moisture or humidity, the friction in the mechanism may increase and make the accelerator pedal stick or become hard to depress. This revelation is particularly troubling to Plaintiff and South Florida residents who reside in warmer, more humid climates. The excuses provided by Toyota keep changing and evolving. "At almost every step that led to its current predicament, Toyota underestimated the severity of the sudden-acceleration problem affecting its most popular cars. It went from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes." *See* "Toyota's Slow Awakening to a Deadly Problem," by Bill Vlasic, The New York Times, dated January 31, 2010 (attached hereto as Exhibit 3). In the meantime, consumers have been exposed to an extremely hazardous situation and require relief as soon as possible.

The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations."

It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform. Alternatively, there may be additional vehicles subject to defective accelerator design or manufacture. Toyota admits that unintended acceleration may result in very high vehicle

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speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death. Indeed, many deaths have already been reported as a result of this unintended acceleration. The Toyota vehicles at issue have defects that may result in the above malfunction.

Argument

Plaintiff submits that the cases listed in the Schedule of Actions should be consolidated for MDL treatment. These actions presents textbook cases for MDL treatment given the substantial commonality of factual and legal questions presented in the individual cases at issue, and the strong potential for the preservation of judicial resources that MDL treatment will afford. *In re Southern Pacific Transportation Company Employment Practices Litigation,* 429 F.Supp. 529, 531 (J.P.M.L. 1977). Transfer is necessary in order to prevent both duplication of discovery and inconsistent pre-trial rulings. *In re Ryder Truck lines, Inc.*, 405 F.Supp. 308 (J.P.M.L. 1975).

Plaintiff further submits that the Southern District of Florida should be designated as the MDL Court for these actions. As demonstrated by the attached caseload statistics, the Southern District of Florida has a well-managed docket capable of ensuring timely and expeditious resolution of these consolidated actions. *See* Exhibit 4 hereto. Moreover, the court is under-utilized as a transferee court for MDL litigation. *Id.* As discussed in *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F.Supp. 2d at 1380, such under-utilization alone justifies the transfer of MDL proceedings to that court: "[C]entralization to this district permits the Panel to effect the Section 1407 assignment to a major metropolitan court that (i) is not currently overtaxed with other multidistrict dockets, and (ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require." Lastly, Plaintiff submits that the Honorable Judge Cooke, should be

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TOY-RQ-05E-00006056

designated to oversee the MDL proceedings, as she possesses substantial experience in handling complex MDL actions, and is well-qualified and highly competent to administer this complex litigation.

WHEREFORE Plaintiff Gellman requests that the Panel grant the pending motion to consolidate and transfer the referenced actions pursuant to 28 U.S.C. § 1407, and that the United States District Court for the Southern District of Florida and the Honorable Judge Cooke be designated as the MDL Court for these actions.

Respectfully submitted,

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Howard M. Bushman, P.A.
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Counsel for Plaintiff Jonathan Gellman

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

JONATHAN GELLMAN, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation.

Defendant. /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jonathan Gellman, on behalf of himself and on behalf of a class of similarly situated persons throughout the state of Florida, makes the following allegations on information and belief based on an investigation reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiff, which are alleged on personal knowledge.

NATURE OF THE ACTION

1. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a voluntary safety recall related to floor mats in certain Toyota and Lexus models of its automobiles. The recall was announced because the driver's floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position causing unintended acceleration of the vehicle. On November 25, 2009, Toyota announced details of a vehicle-based 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. Toyota will start notifying owners of ES350, Camry, and Avalon models by the end of

2009 and will notify owners of the other models on a rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on behalf of himself and all others similarly situated.

2. Toyota admits that unintended acceleration may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

3. Toyota's actions give rise to violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101 and other common law claims.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Gellman is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Gellman leased a 2010 Lexus IS250 in October 2009 from Lexus of North Miami in North Miami, Florida.

5. Defendant Toyota Motor Sales, USA, Inc. is a wholly owned subsidiary of Toyota Motor Corporation and is incorporated in California with its principal place of business in Torrance, California. Toyota is in the business of manufacturing, producing, and distributing automobiles worldwide. At all material times, Toyota has done, and continues to do, business in Florida and every other state in the nation.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over Toyota because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Toyota is authorized to do business here, Toyota has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. Toyota sells its products within the state of Florida and in

Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendant Toyota is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. Toyota has been operating in the United States since 1957 and is one of the largest automobile manufacturers in the world. In 2008 alone, Toyota sold more than 2.2 million vehicles in the United States. Toyota also sells its vehicles under the luxury brand name Lexus.

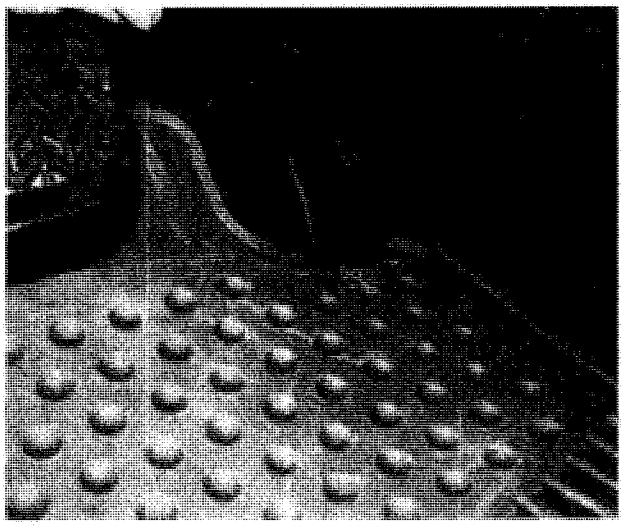
10. On or about August 2009, the National Highway Traffic Safety Administration (NHTSA), along with Toyota, launched an investigation relating to the unintended acceleration in some of its vehicles.

11. According to Toyota, the following models (hereinafter knows as "Vehicles") were affected:

	Years	Make	Model
A.	2007 – 2010	Toyota	Camry
B.	2005 – 2010	Toyota	Avalon
C.	2004 – 2009	Toyota	Prius
D.	2005 – 2010	Toyota	Tacoma
E.	2007 – 2010	Toyota	Tundra
F.	2007 – 2010	Toyota	ES350
G.	2006 – 2010	Lexus	IS250
H.	2006 – 2010	Lexus	IS350

12. In response to the obvious defect, Toyota instructed consumers to remove the floor mats from the Vehicle.

13. Below is an example of how the floor mats obstruct the normal use of the accelerator pedal:



14. Indeed, since the defective floor plan design, as admitted by Toyota, required the removal of the floor mats paid for by consumers, the floor mats are now worthless and useless.

15. On November 25, 2009, Toyota 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 Toyota does not provide for alternative transportation while consumers' vehicles are being repaired.

16. Toyota has 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 Toyota 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. Toyota has 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.

17. On October 29, 2009, The Office of Defects Investigations for the U.S. Department of Transportation and National Highway Traffic and Safety Administration ("ODI") found that there were 64 complaints of unwanted acceleration, resulting in 8 crashes and 15 injuries regarding Toyota's automobiles. *See* ODI Resume (attached as Exhibit A).

18. Of these complaints, fifty (50) or 78% of the total involved incidents of floor mat interference, including 7 (88%) of the crashes and all of the injuries.

19. ODI further found that the "only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate mat installations." Exhibit A.

20. It is possible that additional Toyota vehicles will reveal the same potential for entrapment of the accelerator by floor mats because the floor mats and floor pan design are uniform.

21. Toyota's conduct, including instructing consumers to remove their floor mats without compensation, is a violation of FDUTPA, as well as other common laws.

CLASS ACTION ALLEGATIONS

22. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

23. This class action is brought under Federal Rule of Civil Procedure Rule 23(a) and Rule 23(b)(3). Plaintiff submits that class action treatment is appropriate under either or both of these rules.

I. SIZE AND DEFINITION OF THE CLASS

24. Plaintiff brings this class action on behalf of himself and all other similarly situated class members defined as: All persons throughout Florida who have purchased or leased Toyota's Vehicles during the class period.

25. The class consists of thousands of consumers. Upon information and belief, the identities of these consumers are known to Toyota through their own records or are otherwise ascertainable. Therefore, the proposed class is ascertainable but so numerous that joinder of all members is impracticable.

II. COMMONALITY

26. There are questions of law and fact common in the class, because each and every class member is or will be asserting claims against Defendant. Common questions arise in every such case, including:

a. whether Toyota issued a recall of certain driver's floor mats;

b. whether the concerned recall instructs Plaintiff and Class members to take out driver's floor mats and not replace them;

c. whether Toyota has reimbursed or compensated Plaintiff and Class members for the loss of the use of the driver's floor mats;

d. whether the floor mats 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 member for their damages;

f. whether Toyota engaged in deceptive acts and practices in the marketing and sale of its Vehicles by failing to disclose the defects in its floor plan;

g. whether Toyota's conduct amounts to an unfair and/or deceptive trade practice within the meaning of the Florida's Deceptive and Unfair Trade Practices Act;

h. whether Plaintiff and members of the Class have sustained damages, and the proper measure of those damages;

i. whether Toyota has been unjustly enriched as a result of its conduct; and

j. whether Plaintiff and Class members are entitled to injunctive relief.

III. TYPICALITY

27. The claims of Plaintiff who is representative of the class herein, are typical of the claims of the Class, because the Class members seek the identical remedy and the same injunction, namely to obtain the value of the worthless floor mats sold by Toyota to consumers.

28. The claims within the class are typical, because each and every member of the Class brings the same cause of action for damages and injunctive relief.

IV. ADEQUACY OF REPRESENTATION

29. Plaintiff will fairly and adequately represent and pursue the interests of Class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

V. REQUIREMENTS OF RULE 23(b)(3)

30. Certification is also appropriate under Rule 23(b)(3) because common issues predominate. The exact same issues will apply uniformly to each Class member seeking damages herein and injunctive relief as set forth explicitly in the common questions of law and fact listed above. Also, a class action is a superior methodology for the litigation of these issues because individual class members have no practical interest or ability to bring this action for damages or injunctive relief in their individual capacity.

COUNT I- VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201-501.2101.

33. FDUTPA, provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

34. Plaintiff and the class members are persons as defined and construed under the FDUTPA, Fla. Stat. §§501.201-501.213.

35. The practices employed by Toyota, whereby Toyota sells and markets its Vehicles without disclosing the dangerous defects in its floor plan design are unfair, deceptive and misleading.

36. Toyota's actions amount to unfair and/or deceptive acts in violation of the FDUTPA.

37. Even though Toyota knew or should have known of the defective nature of the Vehicles, it continued to sell the Vehicles to consumers without properly disclosing this defect or correcting the defect.

38. Toyota's sales practices were deceptive, misleading, and intended to increase their own profits to the detriment of the consumers. Toyota has profited from its uniform deceptive practices, in that Toyota received millions of dollars for floor mats and accelerator pedals which are useless and worthless causing Plaintiff and the Class substantial injuries.

39. Plaintiff and other members of the Class would not have paid for the useless and worthless floor mats if Toyota had disclosed the defects of their Vehicles.

40. Plaintiff and the Class members suffered actual damages as a result of Toyota's deceptive and unfair trade acts. Specifically, as a result of Toyota's deceptive and unfair trade acts and practices, Plaintiff and the Class members suffered monetary losses, i.e., the purchase price of the floor mats, which themselves are unfit for their intended purpose.

41. Plaintiff reserves the right to allege other violations of law that constitute unlawful business acts or practices based on the above-alleged conduct. Such conduct is ongoing and continues to this date.

WHEREFORE, Plaintiff and class members demand an award against Toyota for (1) actual and/or compensatory damages as provided by Fla. Stat. § 501.2075, (2) the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, (3) an order enjoining Toyota from continuing its unfair and/or deceptive conduct, and (4) any such other relief as this Court deems just and proper.

COUNT II—BREACH OF CONTRACT

42. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows.

43. Toyota provides Vehicles to the consuming public. Plaintiff and class members, through their agreement to purchase Toyota's Vehicles paid certain sums for the floor mats within the Vehicles.

44. Toyota had a duty under the contract to provide Vehicles which did not contain defects that would render the floor mats worthless and useless. Toyota materially breached the parties' contract when they provided worthless and useless floor mats with their Vehicles.

45. The contracts Toyota entered into with Plaintiff and the Class were identical as it relates to the payment of monies for the floor mats. Specifically, Toyota did not disclose that the

floor mats sold with the Vehicle, which ordinarily have their own inherent value, are useless and worthless.

46. Plaintiff and the Class has been damaged by Toyota's breach of contract in that they paid for floor mats which are worthless and not fit for their intended purpose.

47. Plaintiff and class members demand compensation for their loss of use and value of the floor mats purchased.

WHEREFORE Plaintiff and Class Members request that this Court enter judgment against Toyota and in favor of Plaintiff and the class for damages, including payment for the value of the floor mats, pre-judgment interest and such other relief as this Court deems just and appropriate.

COUNT III- UNJUST ENRICHMENT

48. Plaintiff incorporates by reference paragraphs 1 through 30 as if fully set forth herein and further alleges as follows:

49. Toyota received from Plaintiff and Class Members monetary compensation from their purchase of Toyota's defective Vehicles which are excessive and unreasonable, and are the result of overcharging and overreaching.

50. As a result, Plaintiff and the class have conferred a benefit on Toyota, and Toyota has knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

51. Toyota will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount each Class member enriched Toyota and for which Toyota has been unjustly enriched.

52. This count is in the alternative and, if Plaintiff's other claims do not proceed, Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and Class members demand an award against Toyota for the amounts equal to the amount each class member enriched Toyota and for which Toyota has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

53. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: January 4, 2010.

Respectfully submitted,

s/ Lance A. Harke
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Sarah Clasby Engel, P.A.
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Counsel for Plaintiff & Class Members

TOY-RQ-05E-00006069

EXHIBIT A

U S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

Investigation: DP09-001
Date Opened: 04/08/2009 Closing Date: 10/29/2009
Principal Investigator: Stephen McHenry
Subject: Unwanted and Unintended Acceleration

Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation
Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300
Population: 230,517 (estimated)

Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	64	0	0
Crashes/Fires:	8	0	0
Injury Incidents:	7	0	0
# Injuries:	15	0	0
Fatality Incidents:	0	0	0
# Fatalities:	0	0	0
Other*:	50	0	0

*Description of Other: Number of incidents attributable to accelerator pedal interference

Action: This petition has been denied. Recall 09V-388
Engineer: *Stephen McHenry* SMcH Date: *10/29/2009*
Div. Chief: *Jeffrey L. Quandt* Date: *10/29/2009*
Office Dir.: *Kathleen C. DeMeter* Date: *10/29/2009*

Summary: The Office of Defects Investigation (ODI) opened DP09-001 on April 8, 2009, to evaluate a defect petition requesting additional investigation of potential throttle control system defects unrelated to floor mat interference with accelerator pedals in model year (MY) 2007 Lexus ES350 vehicles. The petitioner referenced an earlier ODI investigation concerning floor mat interference with accelerator pedal return (PE07-016/EA07-010), which he stated was too narrow in scope as it did not include all incidents of unwanted acceleration and consider all potential causes of vehicle speed control concerns. The petition also requested an "investigation of MY 2002-2003 Lexus ES300 for those 'longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect' that were determined not to be within the scope of investigation PE04-021." As background, the petitioner owns a MY 2007 Lexus ES350 that allegedly experienced an unwanted and uncontrolled acceleration event (ODI complaint number 10261660). Toyota concluded that the incident was caused by an unsecured floor mat.

To assess the petitioner's request, ODI interviewed the petitioner, inspected his vehicle, reviewed information submitted by Toyota, reviewed owner complaints alleging incidents of unwanted acceleration in the subject vehicles and material related to the investigations cited by the petitioner. ODI identified 64 complaints alleging incidents of unwanted acceleration in MY 2007 Lexus vehicles, resulting in 8 crashes and 15 injuries. ODI's analysis of these complaints determined that 50 (78%) involved incidents of floor mat interference, including 7 (88%) of the crashes and all 15 injuries. Therefore, ODI's analysis found that the only defect trend related to vehicle speed control in the subject vehicles involved the potential for accelerator pedals to become trapped near the floor by out-of-position or inappropriate floor mat installations.

On October 5, 2009, Toyota initiated a safety recall (Recall 09V-388) to address concerns with potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect, as alleged by the petitioner, at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances. Please see the Federal Register notice for further details.

JS 44 (Rev. 2/08)

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 provide 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 initiatin the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

JONATHAN GELLMAN, an individual, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Miami-Dade, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Harke & Clasby LLP
155 South Miami Ave. Suite 600
Miami, FL 33130
Telephone: 305-536-8220
Facsimile: 305-536-8229

DEFENDANTS

TOYOTA MOTOR SALES, USA, INC., a California corporation.

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

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

Attorneys (If Known)

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

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

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

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

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

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

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of 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 Ac
☐ 900 Appeal of Fee Determinatio 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 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case ☐ YES ☑ NO — JUDGE
b) Related Cases ☐ YES ☑ NO — DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (**Do not cite jurisdictional statutes unless diversity**):

28 U.S.C. § 1332. This is an action to recover damages sustained as a result of Defendants' sale of defective motor vehicles.

LENGTH OF TRIAL via ____ days estimated (for both sides to try entire case)

VIII. 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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE January 4, 2010

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EXHIBIT 2

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL DOCKET No. _____

IN RE: TOYOTA VEHICLE UNINTENDED ACCELERATION PRODUCTS LIABILITY LITIGATION

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiff: Jonathan Gellman **Defendant:** Toyota Motor Sales U.S.A., Inc.	Southern District of Florida (Miami)	1:10-cv-2006-MGC	Marcia G. Cooke
Plaintiffs: Eric Kmetz, Joe Morris **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Doe Defendants	Central District of California (Western Division – Los Angeles)	2:09-cv-08478-AHM-FMO	A. Howard Matz
Plaintiffs: Seong Bae Choi, Chris Chan Park , Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker, **Defendants:** Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.; Doe Defendants	Central District of California (Western Division – Los Angeles)	2:09-cv-08143-AHM-FMO	A. Howard Matz

Plaintiffs: Joseph Hauter, Frank Palomares, **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Doe Defendants	Central District of California (Southern Division – Santa Ana)	8:10-cv-00105-CJC-AN	Cormac J. Carney
Plaintiffs: Michael Graves, Michael C. Graves, Jeff Mullins **Defendants:** Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation	Southern District of West Virginia (Charleston)	2:09-cv-01247	Joseph R. Goodwin
Plaintiff: Heather A. Lane **Defendant:** Toyota Motor Sales U.S.A., Inc.	Central District of California (Western Division – Los Angeles)	2:09-cv-09158-GAF-FMO	Gary A. Feess

Plaintiff: Dale Baldiseeri **Defendants:** Toyota Motor Sales U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc; Toyota Motor Engineering & Manufacturing North America, Inc.	Central District of California (Western Division – Los Angeles)	2:09-cv-09386-GAF-FMO	Gary A. Feess

EXHIBIT 3

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Toyota's Slow Awakening to a Deadly Problem

By BILL VLASIC
Published: January 31, 2010

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DETROIT — The 911 call came at 6:35 p.m. on Aug. 28 from a car that was speeding out of control on Highway 125 near San Diego.

Enlarge This Image

Joshua Lott for The New York Times

The wreckage of a Lexus ES 350 in which four people died in August after it accelerated out of control.

The caller, a male voice, was panic-stricken: "We're in a Lexus ... we're going north on 125 and our accelerator is stuck ... we're in trouble ... there's no brakes ... we're approaching the intersection ... hold on ... hold on and pray ... pray ..."

The call ended with the sound of a crash.

The Lexus ES 350 sedan, made by Toyota, had hit a sport utility vehicle, careened through a fence, rolled over and burst into flames. All four people inside were killed: the driver, Mark Saylor, an off-duty California Highway Patrol officer, and his wife, daughter and brother-in-law.

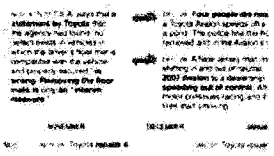
It was the tragedy that forced Toyota, which had received more than 2,000 complaints of unintended acceleration, to step up its own inquiry, after going through multiple government investigations since 2002.

Yet only last week did the company finally appear to come to terms with the scope of the problem — after expanding a series of recalls to cover millions of vehicles around the world, incalculable damage to its once-stellar reputation for quality and calls for Congressional hearings.

With prodding from the National Highway Traffic Safety Administration, Toyota halted production and sales of eight models, including its top-selling Camry sedan.

And late last week, the government allowed the company to go ahead to try yet another new fix for its vehicles, which it is expected to announce on Monday.

Multimedia



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A Series of Warnings

Graphic

A Struggling Company

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Toyota to Issue a Fix for Recalled Cars (January 31, 2010)

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Jordan Ziprin of Phoenix said regulators had focused exclusively on mechanical issues. "I believe this is an electronic issue."

At almost every step that led to its current predicament, Toyota underestimated the severity of the sudden-acceleration problem affecting its most popular cars. It went from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes.

As recently as the fall, Toyota was still saying it was confident that loose floor mats were the sole cause of any sudden acceleration, issuing an advisory to millions of Toyota owners to remove them. The company said on Nov. 2 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the federal traffic safety agency.

But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Toyota's statement was "misleading and inaccurate," the agency said. "This matter is not closed."

The effect on Toyota's business is already being felt. Its sales in the United States in January are expected to drop 11 percent from a year earlier, and its market share in the United States is likely to fall to its lowest point since 2006, according to Edmunds.com, an automotive research Web site.

The company has not yet projected the cost of its recalls and lost sales. But a prolonged slowdown in sales could substantially hurt a company that once minted profit.

Toyota's handling of the problem is a story of how a long-trusted carmaker lost sight of one of its bedrock principles.

In Toyota lore, the ultimate symbol of the company's attention to detail is the "andon cord," a rope that workers on the assembly line can pull if something is wrong, immediately shutting down the entire line. The point is to fix a small problem before it becomes a larger one.

But in the broadest sense, Toyota itself failed to pull the andon cord on this issue, and treated a growing safety issue as a minor glitch — a point the company's executives are now acknowledging in a series of humbling apologies.

"Every day is a lesson and there is something to be learned," Yoshimi Inaba, Toyota's top executive in North America, said at the Detroit auto show in January. "This was a hard lesson."

In Davos, Switzerland, on Friday, Akio Toyoda, the grandson of Toyota's founder who now heads the company, told a Japanese broadcaster that he was "deeply sorry" for the problems.

Toyota's safety problems may prove to be a hard lesson for the N.H.T.S.A., as well. Six separate investigations were conducted by the agency into consumer complaints of unintended acceleration, and none of them found defects in Toyotas other than unsecured floor mats.

In at least three cases, the agency denied petitions for further investigative action because it did not see a pattern of defects and because of a "need to allocate and prioritize N.H.T.S.A.'s limited resources" elsewhere, according to agency documents.

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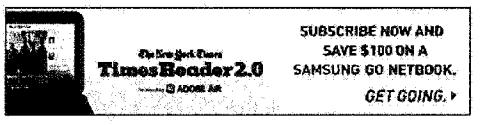

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The investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings.

But the publicity surrounding the accident near San Diego, and Toyota's repeated inability to quell consumer concerns with a definitive solution, has also prompted a flood of lawsuits reminiscent of the litigation a decade ago arising out of the rollovers of Ford Explorers equipped with Firestone tires.

1 | 2 | 3 NEXT PAGE »

Matt Richtel contributed reporting from San Francisco, Clifford Krauss from Houston and Matthew L. Wald from Washington.

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A version of this article appeared in print on February 1, 2010, on page A1 of the New York edition.

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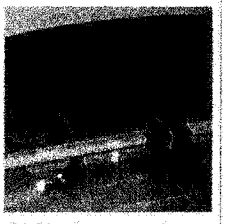

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EXHIBIT 4

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

FLORIDA SOUTHERN			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing	
			2008	2007	2006	2005	2004	2003	U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		9,926	9,011	8,511	9,097	8,479	9,058		
	Terminations		9,506	9,362	8,979	9,463	8,904	9,370		
	Pending		6,035	5,563	6,538	6,948	7,302	7,788		
	% Change in Total Filings	Over Last Year		10.2					16	2
		Over Earlier Years			16.6	9.1	17.1	9.6	12	2
Number of Judgeships			18	18	18	18	18	18		
Vacant Judgeship Months**			.0	.0	.0	.0	7.5	12.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	551	500	473	505	470	503	16	2
		Civil	434	393	373	397	373	396	11	2
		Criminal Felony	97	88	76	87	79	90	25	3
		Supervised Release Hearings**	20	19	24	21	18	17	56	6
	Pending Cases		335	309	363	386	406	433	60	8
	Weighted Filings**		593	549	501	525	513	558	9	2
	Terminations		528	520	499	526	495	521	18	2
	Trials Completed		27	22	19	20	20	21	22	4
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	5.5	5.6	5.8	5.8	6.1	6.2	8	1
		Civil**	4.6	5.0	6.7	6.6	6.3	6.3	2	1
	From Filing to Trial** (Civil Only)		15.6	17.9	16.3	16.7	18.0	18.3	7	2
OTHER	Civil Cases Over 3 Years Old**	Number	474	618	962	902	1,047	714		
		Percentage	10.0	13.7	16.9	14.9	16.7	10.6	75	9
	Average Number of Felony Defendants Filed Per Case		1.5	1.6	1.6	1.5	1.7	1.6		
	Jurors	Avg. Present for Jury Selection	46.27	46.56	49.48	41.83	42.54	44.00		
		Percent Not Selected or Challenged	22.4	26.2	26.9	21.7	19.2	23.8		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7815	206	349	1168	107	181	1615	1228	652	266	730	23	1290
Criminal*	1739	30	301	249	194	595	35	81	31	38	62	75	48

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

TOY-RQ-05E-00006084

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL DOCKET No. _____

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IN RE: TOYOTA VEHICLE UNINTENDED ACCELERATION PRODUCTS LIABILITY LITIGATION

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiff: Jonathan Gellman **Defendant:** Toyota Motor Sales U.S.A., Inc.	Southern District of Florida (Miami)	1:10-cv-2006-MGC	Marcia G. Cooke
Plaintiffs: Eric Kmetz, Joe Morris **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Doe Defendants	Central District of California (Western Division – Los Angeles)	2:09-cv-08478-AHM-FMO	A. Howard Matz
Plaintiffs: Seong Bae Choi, Chris Chan Park , Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker, **Defendants:** Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.; Doe Defendants	Central District of California (Western Division – Los Angeles)	2:09-cv-08143-AHM-FMO	A. Howard Matz

Plaintiffs: Joseph Hauter, Frank Palomares, **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Doe Defendants	Central District of California (Southern Division – Santa Ana)	8:10-cv-00105-CJC-AN	Cormac J. Carney
Plaintiffs: Michael Graves, Michael C. Graves, Jeff Mullins **Defendants:** Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation	Southern District of West Virginia (Charleston)	2:09-cv-01247	Joseph R. Goodwin
Plaintiff: Heather A. Lane **Defendant:** Toyota Motor Sales U.S.A., Inc.	Central District of California (Western Division – Los Angeles)	2:09-cv-09158-GAF-FMO	Gary A. Feess

Plaintiff: Dale Baldiseeri **Defendants:** Toyota Motor Sales U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc; Toyota Motor Engineering & Manufacturing North America, Inc.	Central District of California (Western Division – Los Angeles)	2:09-cv-09386-GAF-FMO	Gary A. Feess

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

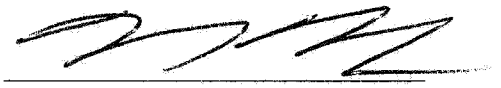
IN RE: TOYOTA VEHICLE UNINTENDED ACCELERATION PRODUCTS LIABILITY LITIGATION

MDL DOCKET No. _____

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion to Transfer and Consolidate to the Southern District of Florida, Memorandum in Support of Motion to Transfer and Consolidate to the Southern District of Florida, Schedule of Actions, along with this proof of service, was served by First class U.S. Mail this 1st day of February 2010, to the attached service list:

Respectfully submitted,



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Clerk of Court United States District Court Southern District of Florida 400 North Miami Avenue, 8th floor Miami, FL 33128	Clerk of Court United States District Court Central District of California 255 East Temple Street Los Angeles, CA 90012
Clerk of Court United States District Court Central District of California 411 West Fourth Street, Room 1053 Santa Ana, CA 92701-4516	Clerk of Court United States District Court Southern District of West Virginia P. O. Box 2546 Charleston, WV 25329
Michael Ross Tein Lewis Tein 3059 Grand Avenue Suite 340 Coconut Grove, FL 33133 **Counsel for Defendant; Toyota Motor Sales U.S.A., Inc.** *S.D. Florida, Case No.: 1:10-cv-2006-MGC*	Behram V Parekh Heather Marie Peterson Michael L Kelly Kirtland and Packard 2361 Rosecrans Avenue 4th Floor El Segundo , CA 90245 **Counsel for Plaintiffs; Joseph Hauter, Frank Palomares** *C.D. California, Case No.: 8:10-cv-00105-CJC-AN*
John D. Arya Lisa Gilford Roger A Cerda Alston & Bird LLP 333 S Hope Street 16th Fl Los Angeles , CA 90071-2901 **Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation** *C.D. California, Case No.: 8:10-cv-00105-CJC-AN*	Vincent Galvin , Jr Bowman & Brooke 1741 Technology Drive San Jose , CA 95110 **Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation** *C.D. California, Case No.: 8:10-cv-00105-CJC-AN*

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Richard D McCune , Jr David C Wright Kristy M Arevalo Jae Kook Kim McCune Wright LLP 2068 Orange Tree Lane Suite 216 Redlands , CA 92374 **Counsel for Plaintiffs: Seong Bae Choi, Chris Chan Park , Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker** *C.D. California, Case No.: 2:09-cv-08143-AHM-FMO*	Cari K Dawson Derin B Dickerson Kyle G A Wallace Alston & Bird LLP 1201 West Peachtree Street Atlanta , GA 30309 **Counsel for Defendants: Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.** *C.D. California, Case No.: 2:09-cv-08143-AHM-FMO*
Lisa Gilford Alston & Bird LLP 333 South Hope Street 16th Floor Los Angeles , CA 90071 **Counsel for Defendants: Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.** *C.D. California, Case No.: 2:09-cv-08143-AHM-FMO*	Michael L Mallow Loeb and Loeb LLP 10100 Santa Monica Boulevard Suite 2200 Los Angeles , CA 90067 **Counsel for Defendants: Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.** *C.D. California, Case No.: 2:09-cv-08143-AHM-FMO*
Benjamin L. Bailey Robert P. Lorea Eric B. Snyder BAILEY & GLASSER 209 Capitol Street Charleston, WV 25301-1386 **Counsel for Plaintiffs : Michael Graves, Michael C. Graves, Jeff Mullins** *S.D. West Virginia. Case No.: 2:09-cv-01247*	Edgar F. Heiskell , III P. O. Box 3232 Charleston, WV 25332-3232 **Counsel for Plaintiffs : Michael Graves, Michael C. Graves, Jeff Mullins** *S.D. West Virginia. Case No.: 2:09-cv-01247*

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TOY-RQ-05E-00006089

Nicholas S. Johnson Rebecca A. Betts David B. Thomas ALLEN GUTHRIE & THOMAS P. O. Box 3394 Charleston, WV 25333-3394 **Counsel for Defendants: Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation** *S.D. West Virginia. Case No.: 2:09-cv-01247*	Cari K. Dawson Derin B. Dickerson Kyle G.A. Wallace ALSTON & BIRD 1201 West Peachtree Street, NW Atlanta, GA 30309-3424 **Counsel for Defendants: Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation** *S.D. West Virginia. Case No.: 2:09-cv-01247*
Lisa M. Gilford ALSTON & BIRD 333 South Hope Street, 16th Floor Los Angeles, CA 90071 **Counsel for Defendants: Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation** *S.D. West Virginia. Case No.: 2:09-cv-01247*	Behram V Parekh Heather Marie Peterson Michael L Kelly Kirtland and Packard LLP 2361 Rosecrans Avenue 4th Floor El Segundo , CA 90245 **Counsel for Plaintiff: Eric Kmetz, Joe Morris** *C.D. California, 2:09-cv-08478-AHM-FMO*
Cari K. Dawson Derin B. Dickerson Kyle G.A. Wallace ALSTON & BIRD 1201 West Peachtree Street, NW Atlanta, GA 30309-3424 **Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation** *C.D. California, 2:09-cv-08478-AHM-FMO*	Lisa M. Gilford ALSTON & BIRD 333 South Hope Street, 16th Floor Los Angeles, CA 90071 **Counsel for Defendants: Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation** *C.D. California, 2:09-cv-08478-AHM-FMO*
Gene J. Stonebarger Stonebarger Law, APC 75 Iron Point Circle, Suite 145 Folsom , CA 95630 **Counsel for Plaintiff: Heather A. Lane** *C.D. California, 2:09-cv-09158-GAF-FMO*	Ben Barnow Sharon Harris Barnow and Associates, P.C. One North LaSalle Street, Suit e4600 Chicago, Illinois 60602 **Counsel for Plaintiff: Heather A. Lane** *C.D. California, 2:09-cv-09158-GAF-FMO*

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Shpetim Ademi David J. Syrios Ademi & O'Reilly, LLP 3620 East Layton Avenue Cudahy, WI 53110 **Counsel for Plaintiff: Heather A. Lane** *C.D. California, 2:09-cv-09158-GAF-FMO*	Aaron D. Robinson Law Office of Aaron D. Robinson 19 South LaSalle Street, Suite 1200 Chicago, IL 60603 **Counsel for Plaintiff: Heather A. Lane** *C.D. California, 2:09-cv-09158-GAF-FMO*
Cari K. Dawson ALSTON & BIRD 1201 West Peachtree Street, NW Atlanta, GA 30309-3424 **Counsel for Defendant: Toyota Motor Sales, U.S.A., Inc** *C.D. California, 2:09-cv-09158-GAF-FMO*	Lisa M. Gilford ALSTON & BIRD 333 South Hope Street, 16th Floor Los Angeles, CA 90071 **Counsel for Defendant: Toyota Motor Sales, U.S.A., Inc.** *C.D. California, 2:09-cv-09158-GAF-FMO*
H Scott Leviant Ira R Spiro J Mark Moore Spiro Moss LLP 11377 West Olympic Boulevard 5th Floor Los Angeles , CA 90064 **Counsel for Plaintiff: Dale Baldiseeri** *C.D. California, 2:09-cv-09386-GAF-FMO*	Cari K. Dawson ALSTON & BIRD 1201 West Peachtree Street, NW Atlanta, GA 30309-3424 **Counsel for Defendant: Toyota Motor Sales U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc; Toyota Motor Engineering & Manufacturing North America, Inc.** *C.D. California, 2:09-cv-09386-GAF-FMO*
Lisa M. Gilford ALSTON & BIRD 333 South Hope Street, 16th Floor Los Angeles, CA 90071 **Counsel for Defendant: Toyota Motor Sales U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc; Toyota Motor Engineering & Manufacturing North America, Inc.** *C.D. California, 2:09-cv-09386-GAF-FMO*	

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February 1, 2010

Via Federal Express

Mr. Jeffery N. Lüthi
Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Room G-255, North Lobby
Washington, DC 20002-8004

FILED by _____ D.C.
FEB 04 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

Re: In Re: Toyota Vehicle Unintended Acceleration Products Liability Litigation

Dear Mr. Lüthi,

Enclosed for filing please find an original and five copies of the following:

1. Motion to Transfer and Consolidate to the Southern District of Florida;
2. Memorandum in Support of Motion to Transfer and Consolidate to the Southern District of Florida;
3. Schedule of Actions and;
4. Proof of Service.

Also enclosed is a CD containing all the above documents in *PDF* format and courtesy copies of the Complaints and dockets sheets for each of the actions identified on the Schedule of Actions. Kindly return a court-stamped copy to our office in the self addressed-stamped envelope provided.

Respectfully submitted,

Lance A. Harke, P.A.

Enclosures
cc: Counsel of record (via U.S. Mail)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE/BANDSTRA

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

SECOND UNOPPOSED MOTION TO EXTEND
TIME TO RESPOND TO INITIAL COMPLAINT

Pursuant to Federal Rule of Civil Procedure 6(b), Defendant Toyota Motor Sales, U.S.A., Inc., hereby moves for an order extending Defendant's time within which to answer or otherwise respond to Plaintiff's Complaint until this Court rules on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation, and states as follows:

1. Plaintiff's Complaint was filed on January 4, 2010.

2. Defendant moved for an extension of time, until March 1, 2010, to answer or otherwise respond to the Complaint. This Court granted Defendant's unopposed motion on January 26, 2010.

3. At present, at least seventy-four similar actions are pending in federal courts throughout the country. These actions are premised upon the same basic set of alleged facts and each assert similar claims against Defendant.

4. In light of these related actions, several motions have already been filed with the Judicial Panel on Multidistrict Litigation ("JPML") for coordinated treatment of the cases. Toyota plans to file a response on February 26, 2010, joining the requests for consolidated treatment and requesting transfer to the Central District of California.

5. In addition, simultaneous with the filing of this motion, Defendant is filing an Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation.

6. Defendant respectfully requests that this Court grant an additional extension of time to answer or otherwise respond to Plaintiff's Complaint during the pendency of Defendant's Motion to Stay.

7. This motion is made in good faith and not for purposes of delay.

8. Certificate of Compliance with S.D. Fla. L.R. 7.1: Undersigned counsel has conferred with counsel for the Plaintiff, who does not oppose the relief sought in this motion.

Respectfully submitted,

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Attorneys for Defendant Toyota Motor Sales U.S.A. Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST
Jonathan Gellman v. Toyota Motor Sales, U.S.A., Inc.
CASE NO. 1:10-CV-20006-MGC
United States District Court, Southern District

Lance A. Harke, P.A. lharke@harkeclasby.com Sarah Clasby Engel, P.A. sengel@harkeclasby.com HARKE & CLASBY LLP 155 South Miami Ave., Suite 600 Miami, Florida 33130 Telephone: (305) 536-8220 Facsimile: (305) 536-8229 Service via Notice of Electronic Filing	Guy Lewis, (FL Bar # 623740) glewis@lewistein.com Mike Tein, (FL Bar # 993552) mtein@lewistein.com Kathryn Meyers (Fl. Bar # 0711152) kmeyers@lewistein.com LEWIS TEIN PL The Offices at Cocowalk Grand Avenue Suite 340 Coconut Grove, FL 33133 Telephone: (305) 442-1101 Facsimile: (305) 442-6744 Service via Notice of Electronic Filing
	Kristine M. Brown (FL Bar # 0433640) Kristy.brown@alston.com ALSTON & BIRD LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424 Telephone: (404) 881-7000 Facsimile: (404) 881-7777 Service via Notice of Electronic Filing Cari K. Dawson Cari.dawson@alston.com Derin B. Dickerson Derin.dickerson@alston.com ALSTON & BIRD LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424 Telephone: (404) 881-7000 Facsimile: (404) 881-7777 Service via first-class mail
Attorneys for Plaintiff Jonathan Gellman	Attorneys for Defendant Toyota Motor Sales, U.S.A., Inc.

Exhibit A (Proposed Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

ORDER GRANTING SECOND UNOPPOSED MOTION TO EXTEND TIME TO RESPOND TO INITIAL COMPLAINT

THIS CAUSE having come before the Court upon the Defendant's Second Unopposed Motion to Extend Time to Respond to Initial Complaint, and this Court being fully advised, it is hereby:

ORDERED AND ADJUDGED that the Motion is hereby granted.

DONE AND ORDERED in Miami-Dade County, Florida this _____ day of _____, 2010.

_____
HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to all counsel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

THIS CASE is before me on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12]. I have reviewed and considered the motion, the record, and the relevant legal authorities. It is **ORDERED and ADJUDGED** as follows:

1. Defendants' Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12] is **GRANTED**. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.

2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendant shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.

3. The Clerk shall ***administratively*** **CLOSE** this case.

DONE and ORDERED in chambers at Miami, Florida, this 25th day of February 2010.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
All Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE/BANDSTRA

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

DEFENDANT'S UNOPPOSED MOTION TO STAY PENDING RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota"), by and through counsel, hereby moves this Court to stay this matter in its entirety pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and states as follows:

This case is one of at least seventy-four similar actions, the vast majority of which are duplicative and/or overlapping putative class actions, pending in federal courts throughout the country.[1] The actions, including this case, are premised upon the same basic set of alleged facts and assert similar claims against Toyota. Plaintiffs in all seventy-four actions claim to be owners or lessees of Toyota and Lexus automobiles subject to voluntary recalls.[2]

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[1] Actions have been filed to date in California, Florida, Louisiana, Texas, South Carolina, Kentucky, Colorado, New Jersey, Puerto Rico, Indiana, Missouri, Ohio, Michigan, Kansas, Pennsylvania, New York, Oklahoma, Alabama, Mississippi, Illinois, West Virginia, Arkansas, Massachusetts, and Connecticut.

[2] Toyota acknowledges that there are some differences in the theories of liability and claims regarding the alleged defect(s) in the various actions. Although the theories of these lawsuits may differ, all relate to voluntary recalls by

Several motions for coordinated treatment of these cases have been filed with the JPML along with numerous responses. Toyota intends to file a response with the JPML on February 26, 2010, joining the requests for consolidated treatment. Given that Toyota's U.S. headquarters are in the Central District of California, the most cases have been filed in that district, and the first-filed class action was filed in that district, Toyota will request transfer to the Central District of California. The JPML will have a hearing on March 25, 2010 at which it will consider consolidation.

The need for coordination of these actions is compelling: the various proposed classes, as well as the individual actions, are overlapping and involve potentially millions of vehicle owners; the complaints contain similar allegations arising from the same recalls; similar pretrial matters will be presented in each case; and numerous groups of plaintiffs' counsel have requested consolidation. Given the strong likelihood that these cases will be transferred into an MDL, the need for a stay of this action to promote the purposes of coordinated MDL treatment is equally compelling. Any action by this Court prior to such transfer would be wasteful of the Court's valuable judicial resources and would create the possibility of inconsistencies in the adjudication of dozens of overlapping class actions.

Not surprisingly, "[a] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved."[3] *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Gordillo v. Bank of Am., N.A.*, No. 1:09-cv-

---

Toyota. Moreover, the transferee court is vested with discretion to consolidate some complaints, but not others, and to permit multiple consolidated complaints for differing types of claims or plaintiffs. Accordingly, the MDL proceeding can accommodate the various complaints and will eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

[3] A district court's authority to stay proceedings is well established. It is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

01954, 2010 WL 148699, at *2 (E.D. Cal. Jan. 14, 2010) (staying litigation pending a JPML ruling); *Dittman v. DJO, LLC*, No. 08-cv-02791, 2010 WL 174555, at *1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No. 5:09-cv-130, 2009 WL 5217063, at *1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v. Merck & Co.*, No. 06-1004, 2006 WL 448695, at *1 (W.D. Tenn. Feb. 19, 2006) (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at *1 (E.D. Mo. Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427-29 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis. 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La. Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro. Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991) (granting stay because it fosters the purpose of the multidistrict litigation statute to coordinate related litigation). Indeed, courts have already stayed at least two related actions pursuant to a similar request by Toyota, and Toyota respectfully suggests that the same rationale applies here. *See* Exhibit A.

Where a motion for transfer or notice of tag-along actions has been filed with the JPML, district courts have typically reviewed three factors to decide whether to stay pending proceedings until the JPML can rule. These factors are: (1) potential prejudice to the non-moving party if the stay is granted; (2) hardship to the moving party if the stay is not granted; and (3) the economical use of judicial resources. *See Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 426, 428; *Nekritz v. Canary*

Capital Partners, LLC, No. 2:03-cv-05081, 2004 WL 1462035, at *1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at *2; *Rivers*, 980 F. Supp. at 1360; *Boudreaux*, 1995 WL 83788, at *1.

In the present case, all three considerations weigh heavily in favor of granting a stay. First, a finite, temporary stay of action in this case will not result in harm to Plaintiff, who has expressed no opposition to the proposed stay.[4] Indeed, this case is in the earliest stages, as Toyota has not responded to the Complaint and discovery has not yet begun. Second, both parties would be harmed if the stay is not granted because they would be forced to engage in costly motion practice and discovery when the case may ultimately be consolidated and transferred elsewhere. Finally, this Court's interest in judicial economy, not to mention that of the transferee court, militates in favor of a stay. If no stay issues before the JPML rules on coordination of these cases, this Court risks burdening its docket with a case that will require time, energy, and attention, but which ultimately may not remain with this Court's caseload. *See U.S. Bank*, 2002 WL 31114069, at *2 ("If the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted."). Courts have often recognized that these concerns of judicial economy weigh in favor of a stay when a motion for transfer is pending before the JPML. *See Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725, at *1.

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[4] If the stay is only in effect until the JPML issues a decision on transfer, courts have recognized that "there will be no extended delay in the commencement of discovery . . . ." *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-CV-01086 and 2:92-CV-01030, 1992 WL 102762, at *1 (E.D. Pa. May 7, 1992). *See also Bledsoe*, 2006 WL 335450, at *1 (commenting that "any delay [pending JPML action] is likely to be relatively short").

WHEREFORE Defendant Toyota respectfully moves this Court for an Order staying this action in its entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the United States District Court for the Southern District of Florida, and this Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiff's Complaint, pending the JPML's ruling on the motions for consolidation.

Certificate of Compliance with S.D. Fla. L.R. 7.1

Undersigned counsel has conferred with counsel for the Plaintiff, who does not oppose the relief sought in this motion.

Respectfully submitted,

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By: */s/ Michael R. Tein*
MICHAEL R. TEIN
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Attorneys for Defendant Toyota Motor Sales U.S.A. Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST
Jonathan Gellman v. Toyota Motor Sales, U.S.A., Inc.
CASE NO. 1:10-CV-20006-MGC
United States District Court, Southern District

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	Kristine M. Brown (FL Bar # 0433640) Kristy.brown@alston.com ALSTON & BIRD LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424 Telephone: (404) 881-7000 Facsimile: (404) 881-7777 Service via Notice of Electronic Filing Cari K. Dawson Cari.dawson@alston.com Derin B. Dickerson Derin.dickerson@alston.com ALSTON & BIRD LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424 Telephone: (404) 881-7000 Facsimile: (404) 881-7777 Service via first-class mail
Attorneys for Plaintiff Jonathan Gellman	Attorneys for Defendant Toyota Motor Sales, U.S.A., Inc.

Exhibit A

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]

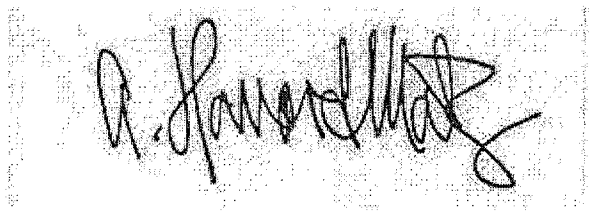
ORDER GRANTING STAY

LEGAL02/31768887v2

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.



DATED: February 22, 2010

Judge of the United States District Court

LEGAL02/31768887v2

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]**

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

Exhibit B (Proposed Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:10-CV-20006-COOKE

JONATHAN GELLMAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, USA, INC.,
a California corporation

Defendant.
_____/

ORDER ON UNOPPOSED MOTION TO STAY PENDING RULING
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

THIS CAUSE having come before the Court upon the Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation, and this Court being fully advised, it is hereby:

ORDERED AND ADJUDGED that the Motion is hereby granted.

DONE AND ORDERED in Miami-Dade County, Florida this _____ day of _____, 2010.

_____
HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to all counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.

_____/

ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

THIS CASE is before me on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12]. I have reviewed and considered the motion, the record, and the relevant legal authorities. It is **ORDERED and ADJUDGED** as follows:

1. Defendants' Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12] is **GRANTED**. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.

2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendant shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.

3. The Clerk shall ***administratively*** **CLOSE** this case.

DONE and ORDERED in chambers at Miami, Florida, this 25th day of February 2010.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
All Counsel of record

REF_PTRL, STAYED, TEB

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:10-cv-20006-MGC

Gellman v. Toyota Motor Sales U.S.A., Inc.
Assigned to: Judge Marcia G. Cooke
Referred to: Magistrate Judge Ted E. Bandstra
Cause: 28:1332 Diversity-Fraud

Date Filed: 01/04/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Jonathan Gellman represented by **Lance August Harke**
Harke &Clasby
155 S Miami Avenue
Suite 600
Miami, FL 33130
305-536-8222
Fax: 536-8229
Email: lharke@harkeclasby.com
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Sales U.S.A., Inc. represented by **Michael Ross Tein**
Lewis Tein
3059 Grand Avenue
Suite 340
Coconut Grove, FL 33133
305-442-1101
Fax: 442-6744
Email: tein@lewistein.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/04/2010	1	COMPLAINT against Toyota Motor Sales U.S.A., Inc.. Filing fee $ 350.00 receipt number 113C-2552407, filed by Jonathan Gellman. (Attachments: #1 Exhibit A, #2 Civil Cover Sheet)(Harke, Lance) (Entered: 01/04/2010)
01/04/2010	2	Clerks Notice of Judge Assignment on Electronic Case to Judge Marcia G. Cooke (gme) (Entered: 01/05/2010)
01/05/2010	3	Summons Issued as to Toyota Motor Sales U.S.A., Inc.. (jua) (Entered: 01/05/2010)
01/25/2010	4	Corporate Disclosure Statement by Toyota Motor Sales U.S.A., Inc.. (Tein, Michael) (Entered: 01/25/2010)
01/25/2010	5	Unopposed MOTION for Extension of Time to File Answer *Respond to Initial Complaint* by Toyota Motor Sales U.S.A., Inc.. (Attachments: #1 Text of Proposed Order)(Tein, Michael) (Entered: 01/25/2010)
01/26/2010	6	ORDER granting 5 Defendant's unopposed Motion for Extension of Time to Respond to Initial Complaint. Defendant's response to Plaintiff's complaint is due on or before March 1, 2010. Signed by Judge Marcia G. Cooke on 1/26/2010. (rss) (Entered: 01/26/2010)
01/26/2010	7	ORDER REFERRING CASE to Magistrate Judge Ted E. Bandstra for non-dispositive Pretrial Proceedings. Signed by Judge Marcia G. Cooke on 1/25/10. (tm) **Document restricted; see DE# 9 .** Modified on 1/26/2010 (dgj). (Entered: 01/26/2010)

01/26/2010	8	Order Requiring Joint Scheduling Report. Signed by Judge Marcia G. Cooke on 1/25/10. (tm) (Entered: 01/26/2010)
01/26/2010	9	Clerks Notice of Docket Correction re 7 Order Referring Case to Magistrate Judge. **Document Restricted Due to Error – Wrong PDF**; The correct document has been attached to this notice. (dgj) (Entered: 01/26/2010)
02/04/2010	10	Courtesy Copy of Plaintiff Jonathan Gellman's Motion to Transfer and Consolidate to the Southern District of Florida Pursuant to 28 USC 1407 for Consolidated Pretrial Proceedings sent before the Judicial Panel on Multidistrict Litigation. (Attachments: # 1 Memorandum In Support) (gp) (Entered: 02/05/2010)
02/25/2010	11	Second MOTION for Extension of Time to File Answer as to 1 Complaint by Toyota Motor Sales U.S.A., Inc.. (Attachments: # 1 Text of Proposed Order)(Tein, Michael) (Entered: 02/25/2010)
02/25/2010	12	Unopposed MOTION to Stay *Pending Ruling by the Judicial Panel on Multidistrict Litigation* by Toyota Motor Sales U.S.A., Inc.. Responses due by 3/15/2010 (Attachments: # 1 Exhibit A, # 2 Text of Proposed Order B)(Tein, Michael) (Entered: 02/25/2010)
02/26/2010	13	ORDER granting 12 Motion to Stay pending a determination by the Judicial Panel on Multidistrict Litigation. Signed by Judge Marcia G. Cooke on 2/25/10. (tm) (Entered: 02/26/2010)