At no time during this incident sequence did Mr. [redacted] press or step on, either intentionally or inadvertently, the accelerator pedal to cause it to surge, and witnesses have confirmed that, throughout the incident sequence, they observed the brake lights illuminated on the Camry, confirming that Mr. [redacted] was in fact stepping hard on the brake, attempting to control the vehicle.

The Toyota Camry, provided to the [redacted] by the Hertz Corporation as a replacement vehicle during the repair of [redacted]s vehicle, was defectively designed and manufactured. The Hertz Corporation knew, or should have known, the vehicle was subject to the danger of sudden unintended acceleration and should have, but failed to, respond to this hazard by removing the Camry from its fleet or, at a minimum, providing and attaching, adequate warnings to the vehicle of its defects and hazards. The condition of sudden unintended acceleration in Toyota's vehicles, including the 2010 Camry, was known to Hertz prior to this incident which was therefore aware of the unsafe and defective nature of its design and manufacture, and knew of alternate designs and features used by other manufacturers which could reduce or eliminate the hazard of sudden unintended acceleration. Despite being aware of the danger of this defect, Hertz or an entity for which it has legal responsibility, provided the Camry with this defect and failed to warn the [redacted] of the defect and its hazards.

[redacted] died and [redacted] was severely injured because of the vehicle's defect and Hertz's failure to warn of that defect.

The defects in design and manufacture of the 2010 Toyota Camry constitute a breach of the Implied Warranty of Merchantability in violation of Massachusetts General Laws Chapter 106, §2-314 and the regulations promulgated thereunder. Toyota Motor Sales (USA), Inc., The Hertz Corporation and their legally related entities are liable in Massachusetts pursuant to Massachusetts General Laws Ch. 93A in a product liability/death action because of the breach of the implied warranty of merchantability. Maillet v. ATF-Davidson Co., 407 Mass. 185 (1990). Hertz's failure to warn is an additional Ch. 93A violation.

On behalf of the Estate of [redacted] and on behalf of [redacted] claim is hereby made that a breach of the implied warranty of merchantability, in violation of Chapter 93A, arose for the following reasons without limitation:

1. the vehicle is unsafe because, as a result of its design and manufacture, the vehicle has the propensity to experience a condition known as sudden unintended acceleration which poses a hazard of serious injury or death;

2. the vehicle failed to have a warning informing a user of the unsafe condition and the hazard of the vehicle, or its propensity to experience sudden unintended acceleration;