

72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.