

FILE START

1 GIRARDI | KEESE
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 21 2009

John A. Clarke, Executive Officer/Clerk
By A. K. LaFleur-Clayton, Deputy
A. K. LAFLEUR-CLAYTON

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

BC 420298

10 MARGO HAWATMEH, an individual,)

CASE NO.

11 Plaintiff,)

COMPLAINT FOR DAMAGES

12 v.)

1. Strict Products Liability

13 TOYOTA MOTOR SALES USA INC, a Delaware)
14 corporation; KEYES LEXUS, a California)
15 business entity of unknown origin ; and DOES 1-)
16 100, inclusive,)

2. Negligence

3. Breach of Express Warranty

4. Breach of Implied Warranty of
Merchantability

17 Defendants.)

DEMAND FOR JURY

18)
19)
20 Plaintiff MARGO HAWATMEH (hereinafter "PLAINTIFF") hereby alleges as follows:

21
22 SUMMARY

23 1. On August 6, 2008, PLAINTIFF was seriously injured when her 2005 Lexus ES330
24 experienced an unintended acceleration and brake failure that caused her to collide with a house.

25
26 PARTIES

27 2. PLAINTIFF is an individual who resides in the County of Los Angeles in the State of
28 California.

1
COMPLAINT

1
2 GENERAL ALLEGATIONS

3 9. On August 6, 2008, PLAINTIFF was seriously injured when her 2005 Lexus ES330, vehicle
4 identification number JTHBA30G255119990, license plate number 5PUG863 (hereinafter "SUBJECT
5 VEHICLE"), experienced brake failure. When PLAINTIFF attempted to make a stop at Woodman Avenue
6 to make a right hand turn. PLAINTIFF applied the brake in the SUBJECT VEHICLE, but the SUBJECT
7 VEHICLE instead continued to accelerate. PLAINTIFF sustained serious injuries when the SUBJECT
8 VEHICLE crashed into a home.

9 10. Defendants TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through
10 100, are at all times herein mentioned were engaged in the business of selling, manufacturing, designing,
11 testing, engineering, marketing, modifying, assembling, inspecting, distributing, and controlling the
12 SUBJECT VEHICLE and other similar automobiles. TOYOTA MOTOR SALES USA, INC., KEYES
13 LEXUS, and DOES 1 through 100, market, distribute, sell, modify and repair their vehicles, including the
14 SUBJECT VEHICLE, within the County of Los Angeles, State of California.

15 11. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100,
16 knew, expected and intended the SUBJECT VEHICLE and other similar automobiles and/or substantially
17 similar automobiles to be used for the purposes of transporting persons and property.

18 12. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100, at all
19 times herein mentioned knew, expected and intended that the SUBJECT VEHICLE and other similar
20 automobiles and/or substantially similar automobiles and their component parts would be purchased and
21 used by the purchaser or user without inspection for defects or dangerous propensities or properties therein
22 or in any of its component parts.

23 13. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100,
24 knew, expected and intended that the SUBJECT VEHICLE and other similar automobiles, including its
25 component parts, were highly dangerous and equipped with hazardous instrumentalities to persons riding
26 in them and/or in close proximity to them should such automobile, particularly its transmission, brakes, or
27 any associated parts or components and/or the design, materials, workmanship, configuration, or location
28 thereof be in any manner defective or fail use.

1 14. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100,
2 designed tested, engineered, manufactured, assembled, distributed, marketed and sold the SUBJECT
3 VEHICLE.

4 15. At the time of its manufacture and retail sale by TOYOTA MOTOR SALES USA, INC.,
5 KEYES LEXUS, and DOES 1 through 100, the SUBJECT VEHICLE was defective and unsafe for its
6 intended purposes and uses in that, among other respects, its brakes were not functioning properly so as to
7 when the driver applied the brake, the SUBJECT VEHICLE would continue to accelerate.

8 16. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100,
9 breached their duty of care to PLAINTIFF by failing to use reasonable care in the manufacture, design,
10 testing, marketing, selling, and warning of any risks or dangers of the SUBJECT VEHICLE, as follows:

- 11 a. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100 had
12 knowledge, prior to the sale of the SUBJECT VEHICLE, of the dangers associated with its
13 brakes and failed to warn PLAINTIFF and other consumers of such dangers;
- 14 b. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100 failed
15 to adequately warn and instruct PLAINTIFF and other purchasers and users of the SUBJECT
16 VEHICLE and similar vehicles with respect to the hazards, risks, and dangers of the
17 SUBJECT VEHICLE;
- 18 c. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100 failed
19 to recall and repair the SUBJECT VEHICLE'S brakes and other above-described defective
20 components.

21
22
23 **FIRST CAUSE OF ACTION FOR STRICT LIABILITY**

24 **(BY PLAINTIFF against TOYOTA MOTOR SALES USA, INC., KEYES LEXUS,**
25 **AND DOES 1 through 100)**

26 17. PLAINTIFF refers to, repeats, and re-alleges each of the allegations of the foregoing
27 paragraphs of this Complaint and incorporate said allegations into this Cause of Action as though fully set
28 forth herein.

1 18. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100
2 manufactured, designed, tested, marketed, sold, and were responsible for warning of any risks or dangers
3 of the SUBJECT VEHICLE and its component parts. TOYOTA MOTOR SALES USA, INC., KEYES
4 LEXUS and DOES 1 through 100 knew, or should have known, that the SUBJECT VEHICLE and its
5 component parts would be purchased and used by consumers without inspection for defects or hazards.

6 19. At the time of its manufacture and retail sale by TOYOTA MOTOR SALES USA, INC.,
7 KEYES LEXUS, and DOES 1 through 100, the SUBJECT VEHICLE was defective and unsafe as
8 described above, and TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100
9 failed to warn PLAINTIFF and other consumers of the defects or hazards as described above.

10 20. As a proximate result of the hereinabove and hereinafter alleged acts, omissions and
11 conduct of TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, AND DOES 1 through 100,
12 PLAINTIFF has suffered severe pain and suffering and has resulted in medical as well as incidental
13 expenses, in a sum to be determined at trial.

14
15 **SECOND CAUSE OF ACTION FOR NEGLIGENCE**

16 (BY PLAINTIFF against TOYOTA MOTOR SALES USA, INC., KEYES LEXUS,
17 AND DOES 1 through 100)

18 21. PLAINTIFF refers to, repeats, and realleges each of the allegations of the foregoing
19 paragraphs of this Complaint and incorporate said allegations into this Cause of Action as though fully set
20 forth herein.

21 22. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100 owed a
22 duty of care to the PLAINTIFF in the manufacture, design, testing, marketing, selling, and warning of any
23 risks or dangers of the SUBJECT VEHICLE and all components and sub-assemblies of the SUBJECT
24 VEHICLE, including its transmission and/or shifting mechanism and other above-described defective
25 components.

26 23. TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, and DOES 1 through 100
27 breached their duty of care to PLAINTIFF by failing to use reasonable care in the manufacture, design,
28

1 testing; marketing, selling, and warning of any risks or dangers of the SUBJECT VEHICLE as described
2 above.

3 24. As a proximate result of the hereinabove and hereinafter alleged acts, omissions and
4 conduct of TOYOTA MOTOR SALES USA, INC., KEYES LEXUS, AND DOES 1 through 100,
5 PLAINTIFF has suffered severe pain and suffering and has resulted in medical as well as incidental
6 expenses, in a sum to be determined at trial.

7
8 **THIRD CAUSE OF ACTION FOR BREACH OF EXPRESS WARRANTY**

9 **(BY PLAINTIFF against TOYOTA MOTOR SALES USA, INC., KEYES LEXUS,**
10 **AND DOES 1 through 100)**

11 34. PLAINTIFF refers to, repeats, and realleges each of the allegations of the foregoing
12 paragraphs of this Complaint and incorporate said allegations into this Cause of Action as though fully set
13 forth herein.

14 35. At all times herein mentioned, TOYOTA MOTOR SALES USA, INC., KEYES LEXUS,
15 and DOES 1 through 100 expressly warranted to PLAINTIFF and the general public that the SUBJECT
16 VEHICLE was safe, effective, fit, and proper for its intended use.

17 36. In utilizing the SUBJECT VEHICLE, PLAINTIFF relied on the skill, judgment,
18 representations, and foregoing express warranties of TOYOTA MOTOR SALES USA, INC., KEYES
19 LEXUS, and DOES 1 through 100. Said warranties and representations were false in that the
20 aforementioned product was not safe and was unfit for the uses for which it was intended.

21 37. As a result of the foregoing breach of express warranties by TOYOTA MOTOR SALES
22 USA, INC., KEYES LEXUS, and DOES 1 through 100, PLAINTIFF suffered injuries and damages as
23 alleged herein above.

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- 4. For pre-judgment interest according to law and proof;
- 5. For punitive damages;
- 6. For such other and further relief as the court deems just and proper.

JURY DEMAND

PLAINTIFF hereby demands a trial by jury on all claims so triable.

DATED: August 18, 2009

GIRARDI | KEESE

By: 
THOMAS J. JOHNSTON
Attorneys for PLAINTIFF

FILE START

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.
-----X

Index No: 27718/09
Date Purchased: 10/15/09

Plaintiffs designate
Queens County as the
place of trial

SUMMONS

The basis for venue
is the residence of
the plaintiffs

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on plaintiffs' attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
October 14, 2009

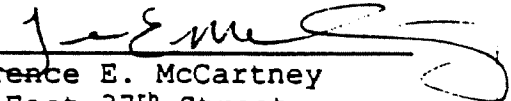
**RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP**

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JAN 20 2010

LEGAL DEPARTMENT

ATTORNEYS FOR THE PLAINTIFF

By: 
Terrence E. McCartney
113 East 37th Street
New York, NY 10016
(212) 684-1880

2009 OCT 15 A 11: 24

QUEENS COUNTY
CLERK'S OFFICE
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To:

Toyota Motor Sales USA, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering
& Manufacturing North America, Inc.
25 Atlantic Avenue
Erlinger, KY 41018

Toyota Motor Corporation
1 Toyota-cho, Toyota-shi
Aichi Prefecture
471-8571 Japan

Star Toyota of Bayside, Inc.
205-11 Northern Boulevard
Bayside, NY 11361

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

Index No.:

-against-

COMPLAINT

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.

-----X
Plaintiffs, by and through their attorneys, Rheingold,
Valet, Rheingold, Shkolnik & McCartney LLP, alleges:

GENERAL ALLEGATIONS

1. Plaintiffs KONG IU LEONG and SIO-KENG LEONG, at all times mentioned, were and are husband and wife and residents of Queens County, New York.

2. Defendant TOYOTA MOTOR SALES USA, INC. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, maintaining corporate offices in the State of California but having sufficient contacts with the State of New York to give this court jurisdiction.

3. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TNA"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give

this court jurisdiction.

4. Defendant TOYOTA MOTOR CORPORATION ("TMC"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.

5. Defendants TMS, TNA and TMC are collectively referred to herein as "the Toyota Defendants" and "Toyota."

6. Defendant STAR TOYOTA OF BAYSIDE, INC. ("Star Toyota"), at all relevant times, was and is a New York corporation, organized under the laws of the State of New York, maintaining corporate offices in the State of New York and doing business in Queens County, New York.

7. On or about June 15, 2009 plaintiffs purchased a 2009 Toyota RAV-4 5 Door Sport 4x4 SUV, VIN JTMBK32V895080564, ("the subject vehicle") which was made in Japan by the Toyota defendants from defendant Star Toyota in Bayside, Queens.

8. The Toyota Defendants designed, manufactured, distributed, promoted and placed the subject vehicle into the stream of commerce.

9. Defendant Star Toyota promoted and sold the subject vehicle to the plaintiffs.

10. When the Leongs drove their new RAV-4 home from the dealership, it was equipped with Toyota original equipment all-weather floor mats which had been installed by Star Toyota personnel.

11. On or about August 27, 2009 plaintiff Kong Leong, with his wife Sio-Keng Leong seated in the front passenger seat, was driving the still new RAV-4 in the westbound lanes of the New York State Thruway (Interstate 90) in the vicinity of mile marker 338.3 in Ontario County, New York, near Rochester. The family was en route to Buffalo to drop off their teenage daughter, Carol Leong, who was about to start her freshman year in college at the State University of New York at Buffalo. Carol was seated in the right rear passenger seat directly behind her mother.

12. At or about 10:00 a.m., while the subject vehicle was being driven in a foreseeable manner at normal highway speed with the driver's side floor mat in its proper as-installed position, the vehicle suddenly and unexpectedly accelerated, despite Mr. Leong removing his foot from the accelerator and applying the brakes, including the emergency brake. Eyewitnesses to the accident saw the brake lights on the Leong vehicle illuminated as the vehicle continued to accelerate. The sudden unintended acceleration and failure of the brakes to engage forced Mr. Leong to quickly change lanes to avoid hitting other cars on the highway, until the vehicle was no longer controllable and it left the roadway and crashed into trees in the center median at a high rate of speed.

13. Despite the fact that all of the occupants of the subject vehicle were wearing their seat belts, they suffered severe and permanent injuries as a result of the accident.

14. Well before the Leongs' accident, Toyota was aware of the sudden unintended acceleration ("SUA") problem in its vehicles because of hundreds of other similar incidents involving Toyota vehicles reported to Toyota and the National Highway Traffic Safety Administration (NHTSA) since 2002.

15. The day after the Leongs' terrifying ordeal in New York, four people died in a fiery crash near San Diego, California in a Toyota vehicle, with the same engine and electronic throttle control components (known within Toyota as 2GR-FE with ETCS-i) as the Leong vehicle. That vehicle also suddenly accelerated and caused the driver, an experienced California Highway Patrol Officer, to lose control of his vehicle and leave the roadway at a high rate of speed. Speaking about the incident afterward, Toyota's President said "four precious lives have been lost. I offer my deepest condolences." According to press reports, he also said "customers bought our cars because they thought they were the safest. But now we have given them cause for grave concern. I can't begin to express my remorse."

16. When the ETCS-i system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe (or back-up) in the event of a problem with the electronic throttle control system. The Leong's 2009 RAV-4, despite being made 10 years later, had no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

17. About a month after the Leongs' accident, Toyota issued a Consumer Safety Advisory indicating that it was investigating the SUA problems in its vehicles saying that 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" and blaming out-of-position floor mats as the cause.

18. While publicly blaming floor mats for their SUA problem, tellingly, Toyota has recently indicated that it is considering software changes to the on-board computer systems as a solution to SUA which would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years. Had that simple design been incorporated in the Leongs' 2009 RAV-4, their accident and injuries would have been avoided entirely.

FIRST CAUSE OF ACTION - STRICT PRODUCT LIABILITY

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

20. The subject vehicle was defective and unreasonably dangerous when the defendants placed it into the stream of commerce.

21. The defects in the subject vehicle were a proximate cause of the injuries suffered by the plaintiffs.

22. By engaging in said conduct, defendants are strictly liable to the plaintiffs.

23. The conduct of the Toyota defendants was so wilful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

SECOND CAUSE OF ACTION - BREACH OF WARRANTY

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

25. Defendants have breached applicable warranties, express and implied, and are therefore liable to the plaintiffs.

THIRD CAUSE OF ACTION - NEGLIGENCE

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

27. The Toyota defendants were negligent in designing, manufacturing, assembling, inspecting, testing, labeling, monitoring, promoting, distributing and selling the subject vehicle.

28. Defendant Star Toyota was negligent in preparing, inspecting, installing optional features, promoting and selling the subject vehicle.

29. As a proximate result of the foregoing, plaintiffs were severely injured, including, but not limited to, conscious pain and suffering.

30. Said defendants are therefore liable to plaintiffs.

31. The conduct of the Toyota defendants was so willful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

FOURTH CAUSE OF ACTION - LOSS OF CONSORTIUM

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

33. Plaintiffs were each entitled to the services and society of one another.

34. As a result of the foregoing, plaintiffs were each deprived of the services of their spouse.

35. As a result, plaintiffs have been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

CPLR 1602 EXCEPTIONS

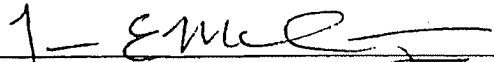
36. Plaintiffs' lawsuit falls within one or more of the enumerated exceptions of article 1602 of the CPLR and specifically sections 1602(2)(iv), 1602(6), 1602(7), 1602(10) and 1602(11).

WHEREFORE, plaintiffs demand judgment against defendants, severally and jointly:

- a. Compensatory damages;
- b. Punitive damages;
- c. All together with interest, costs and disbursements;

d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 14, 2009


Terrence E. McCartney
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
ATTORNEYS FOR PLAINTIFF
113 East 37th Street
New York, New York 10016
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.
-----X

Plaintiffs, by and through their attorneys, Rheingold,
Valet, Rheingold, Shkolnik & McCartney LLP, alleges:

GENERAL ALLEGATIONS

1. Plaintiffs KONG IU LEONG and SIO-KENG LEONG, at all times mentioned, were and are husband and wife and residents of Queens County, New York.
2. Defendant TOYOTA MOTOR SALES USA, INC. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, maintaining corporate offices in the State of California but having sufficient contacts with the State of New York to give this court jurisdiction.
3. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TNA"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in ^{Japan} but having sufficient contacts with the State of New York

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LEGAL DEPARTMENT

Index No.: 27718/09

COMPLAINT

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QUEENS COUNTY

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6. Defendant STAR TOYOTA OF BAYSIDE, INC. ("Star Toyota"), at all relevant times, was and is a New York corporation, organized under the laws of the State of New York, maintaining corporate offices in the State of New York and doing business in Queens County, New York.

7. On or about June 15, 2009 plaintiffs purchased a 2009 Toyota RAV-4 5 Door Sport 4x4 SUV, VIN JTMBK32V895080564, ("the subject vehicle") which was made in Japan by the Toyota defendants from defendant Star Toyota in Bayside, Queens.

8. The Toyota Defendants designed, manufactured, distributed, promoted and placed the subject vehicle into the stream of commerce.

9. Defendant Star Toyota promoted and sold the subject vehicle to the plaintiffs.

10. When the Leongs drove their new RAV-4 home from the dealership, it was equipped with Toyota original equipment all-weather floor mats which had been installed by Star Toyota personnel.

11. On or about August 27, 2009 plaintiff Kong Leong, with his wife Sio-Keng Leong seated in the front passenger seat, was driving the still new RAV-4 in the westbound lanes of the New York State Thruway (Interstate 90) in the vicinity of mile marker 338.3 in Ontario County, New York, near Rochester. The family was en route to Buffalo to drop off their teenage daughter, Carol Leong, who was about to start her freshman year in college at the State University of New York at Buffalo. Carol was seated in the right rear passenger seat directly behind her mother.

12. At or about 10:00 a.m., while the subject vehicle was being driven in a foreseeable manner at normal highway speed with the driver's side floor mat in its proper as-installed position, the vehicle suddenly and unexpectedly accelerated, despite Mr. Leong removing his foot from the accelerator and applying the brakes, including the emergency brake. Eyewitnesses to the accident saw the brake lights on the Leong vehicle illuminated as the vehicle continued to accelerate. The sudden unintended acceleration and failure of the brakes to engage forced Mr. Leong to quickly change lanes to avoid hitting other cars on the highway, until the vehicle was no longer controllable and it left the roadway and crashed into trees in the center median at a high rate of speed.

13. Despite the fact that all of the occupants of the subject vehicle were wearing their seat belts, they suffered severe and permanent injuries as a result of the accident.

14. Well before the Leongs' accident, Toyota was aware of the sudden unintended acceleration ("SUA") problem in its vehicles because of hundreds of other similar incidents involving Toyota vehicles reported to Toyota and the National Highway Traffic Safety Administration (NHTSA) since 2002.

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17. About a month after the Leongs' accident, Toyota issued a Consumer Safety Advisory indicating that it was investigating the SUA problems in its vehicles saying that 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" and blaming out-of-position floor mats as the cause.

18. While publicly blaming floor mats for their SUA problem, tellingly, Toyota has recently indicated that it is considering software changes to the on-board computer systems as a solution to SUA which would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years. Had that simple design been incorporated in the Leongs' 2009 RAV-4, their accident and injuries would have been avoided entirely.

FIRST CAUSE OF ACTION - STRICT PRODUCT LIABILITY

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

20. The subject vehicle was defective and unreasonably dangerous when the defendants placed it into the stream of commerce.

21. The defects in the subject vehicle were a proximate cause of the injuries suffered by the plaintiffs.

22. By engaging in said conduct, defendants are strictly liable to the plaintiffs.

23. The conduct of the Toyota defendants was so wilful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

SECOND CAUSE OF ACTION - BREACH OF WARRANTY

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

25. Defendants have breached applicable warranties, express and implied, and are therefore liable to the plaintiffs.

THIRD CAUSE OF ACTION - NEGLIGENCE

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

27. The Toyota defendants were negligent in designing, manufacturing, assembling, inspecting, testing, labeling, monitoring, promoting, distributing and selling the subject vehicle.

28. Defendant Star Toyota was negligent in preparing, inspecting, installing optional features, promoting and selling the subject vehicle.

29. As a proximate result of the foregoing, plaintiffs were severely injured, including, but not limited to, conscious pain and suffering.

30. Said defendants are therefore liable to plaintiffs.

31. The conduct of the Toyota defendants was so willful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

FOURTH CAUSE OF ACTION - LOSS OF CONSORTIUM

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

33. Plaintiffs were each entitled to the services and society of one another.

34. As a result of the foregoing, plaintiffs were each deprived of the services of their spouse.

35. As a result, plaintiffs have been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

CPLR 1602 EXCEPTIONS

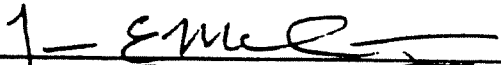
36. Plaintiffs' lawsuit falls within one or more of the enumerated exceptions of article 1602 of the CPLR and specifically sections 1602(2)(iv), 1602(6), 1602(7), 1602(10) and 1602(11).

WHEREFORE, plaintiffs demand judgment against defendants, severally and jointly:

- a. Compensatory damages;
- b. Punitive damages;
- c. All together with interest, costs and disbursements;

d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 14, 2009


Terrence E. McCartney
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
ATTORNEYS FOR PLAINTIFF
113 East 37th Street
New York, New York 10016
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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KONG IU LEONG and SIO-KENG LEONG,

Index No: 27718/09
Date Purchased: 10/15/09

Plaintiffs,

Plaintiffs designate
Queens County as the
place of trial

-against-

SUMMONS

TOYOTA MOTOR SALES USA, INC. TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

The basis for venue
is the residence of
the plaintiffs

Defendants.

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on plaintiffs' attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
October 14, 2009

**RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP**

ATTORNEYS FOR THE PLAINTIFF

LEGAL SERVICES

NOV - 6 2009

GROUP RECEIVED

By: Terrence E. McCartney
Terrence E. McCartney
113 East 37th Street
New York, NY 10016
(212) 684-1880

To:

Toyota Motor Sales USA, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering
& Manufacturing North America, Inc.
25 Atlantic Avenue
Erlinger, KY 41018

Toyota Motor Corporation
1 Toyota-cho, Toyota-shi
Aichi Prefecture
471-8571 Japan

Star Toyota of Bayside, Inc.
205-11 Northern Boulevard
Bayside, NY 11361

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.
-----X

Index No.:

COMPLAINT

LEGAL SERVICES

NOV - 6 2009

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Plaintiffs, by and through their attorneys, Rheingold,
Valet, Rheingold, Shkolnik & McCartney LLP, alleges:

GENERAL ALLEGATIONS

1. Plaintiffs KONG IU LEONG and SIO-KENG LEONG, at all times mentioned, were and are husband and wife and residents of Queens County, New York.
2. Defendant TOYOTA MOTOR SALES USA, INC. ("TMS"), at all times mentioned, was and is a California corporation, organized and existing under the laws of the State of California, maintaining corporate offices in the State of California but having sufficient contacts with the State of New York to give this court jurisdiction.
3. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TNA"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give

this court jurisdiction.

4. Defendant TOYOTA MOTOR CORPORATION ("TMC"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.

5. Defendants TMS, TNA and TMC are collectively referred to herein as "the Toyota Defendants" and "Toyota."

6. Defendant STAR TOYOTA OF BAYSIDE, INC. ("Star Toyota"), at all relevant times, was and is a New York corporation, organized under the laws of the State of New York, maintaining corporate offices in the State of New York and doing business in Queens County, New York.

7. On or about June 15, 2009 plaintiffs purchased a 2009 Toyota RAV-4 5 Door Sport 4x4 SUV, VIN JTMBK32V895080564, ("the subject vehicle") which was made in Japan by the Toyota defendants from defendant Star Toyota in Bayside, Queens.

8. The Toyota Defendants designed, manufactured, distributed, promoted and placed the subject vehicle into the stream of commerce.

9. Defendant Star Toyota promoted and sold the subject vehicle to the plaintiffs.

10. When the Leongs drove their new RAV-4 home from the dealership, it was equipped with Toyota original equipment all-weather floor mats which had been installed by Star Toyota personnel.

11. On or about August 27, 2009 plaintiff Kong Leong, with his wife Sio-Keng Leong seated in the front passenger seat, was driving the still new RAV-4 in the westbound lanes of the New York State Thruway (Interstate 90) in the vicinity of mile marker 338.3 in Ontario County, New York, near Rochester. The family was en route to Buffalo to drop off their teenage daughter, Carol Leong, who was about to start her freshman year in college at the State University of New York at Buffalo. Carol was seated in the right rear passenger seat directly behind her mother.

12. At or about 10:00 a.m., while the subject vehicle was being driven in a foreseeable manner at normal highway speed with the driver's side floor mat in its proper as-installed position, the vehicle suddenly and unexpectedly accelerated, despite Mr. Leong removing his foot from the accelerator and applying the brakes, including the emergency brake. Eyewitnesses to the accident saw the brake lights on the Leong vehicle illuminated as the vehicle continued to accelerate. The sudden unintended acceleration and failure of the brakes to engage forced Mr. Leong to quickly change lanes to avoid hitting other cars on the highway, until the vehicle was no longer controllable and it left the roadway and crashed into trees in the center median at a high rate of speed.

13. Despite the fact that all of the occupants of the subject vehicle were wearing their seat belts, they suffered severe and permanent injuries as a result of the accident.

14. Well before the Leongs' accident, Toyota was aware of the sudden unintended acceleration ("SUA") problem in its vehicles because of hundreds of other similar incidents involving Toyota vehicles reported to Toyota and the National Highway Traffic Safety Administration (NHTSA) since 2002.

15. The day after the Leongs' terrifying ordeal in New York, four people died in a fiery crash near San Diego, California in a Toyota vehicle, with the same engine and electronic throttle control components (known within Toyota as 2GR-FE with ETCS-i) as the Leong vehicle. That vehicle also suddenly accelerated and caused the driver, an experienced California Highway Patrol Officer, to lose control of his vehicle and leave the roadway at a high rate of speed. Speaking about the incident afterward, Toyota's President said "four precious lives have been lost. I offer my deepest condolences." According to press reports, he also said "customers bought our cars because they thought they were the safest. But now we have given them cause for grave concern. I can't begin to express my remorse."

16. When the ETCS-i system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe (or back-up) in the event of a problem with the electronic throttle control system. The Leong's 2009 RAV-4, despite being made 10 years later, had no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

17. About a month after the Leongs' accident, Toyota issued a Consumer Safety Advisory indicating that it was investigating the SUA problems in its vehicles saying that 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" and blaming out-of-position floor mats as the cause.

18. While publicly blaming floor mats for their SUA problem, tellingly, Toyota has recently indicated that it is considering software changes to the on-board computer systems as a solution to SUA which would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years. Had that simple design been incorporated in the Leongs' 2009 RAV-4, their accident and injuries would have been avoided entirely.

FIRST CAUSE OF ACTION - STRICT PRODUCT LIABILITY

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

20. The subject vehicle was defective and unreasonably dangerous when the defendants placed it into the stream of commerce.

21. The defects in the subject vehicle were a proximate cause of the injuries suffered by the plaintiffs.

22. By engaging in said conduct, defendants are strictly liable to the plaintiffs.

23. The conduct of the Toyota defendants was so wilful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

SECOND CAUSE OF ACTION - BREACH OF WARRANTY

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

25. Defendants have breached applicable warranties, express and implied, and are therefore liable to the plaintiffs.

THIRD CAUSE OF ACTION - NEGLIGENCE

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

27. The Toyota defendants were negligent in designing, manufacturing, assembling, inspecting, testing, labeling, monitoring, promoting, distributing and selling the subject vehicle.

28. Defendant Star Toyota was negligent in preparing, inspecting, installing optional features, promoting and selling the subject vehicle.

29. As a proximate result of the foregoing, plaintiffs were severely injured, including, but not limited to, conscious pain and suffering.

30. Said defendants are therefore liable to plaintiffs.

31. The conduct of the Toyota defendants was so willful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

FOURTH CAUSE OF ACTION - LOSS OF CONSORTIUM

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

33. Plaintiffs were each entitled to the services and society of one another.

34. As a result of the foregoing, plaintiffs were each deprived of the services of their spouse.

35. As a result, plaintiffs have been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

CPLR 1602 EXCEPTIONS

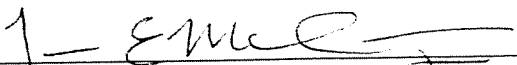
36. Plaintiffs' lawsuit falls within one or more of the enumerated exceptions of article 1602 of the CPLR and specifically sections 1602(2)(iv), 1602(6), 1602(7), 1602(10) and 1602(11).

WHEREFORE, plaintiffs demand judgment against defendants, severally and jointly:

- a. Compensatory damages;
- b. Punitive damages;
- c. All together with interest, costs and disbursements;

d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 14, 2009


Terrence E. McCartney
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
ATTORNEYS FOR PLAINTIFF
113 East 37th Street
New York, New York 10016
(212) 684-1880

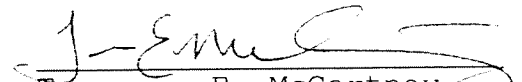
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Terrence E. McCartney, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalties of perjury that affiant is the attorney of record for the within action; that affiant has read the foregoing Complaint and knows the contents thereof; that same is true as to affiant's own knowledge, except as to those matters therein stated to be alleged on information and belief and as to those matters, affiant believes same to be true. Affiant further states that the reason this affirmation is made by affiant and not by plaintiff is that affiant's office for the practice of law is located in a different county than that of plaintiff's residence.

The grounds of affiant's belief as to all matters not stated upon affiant's knowledge are as follows: statements made by plaintiff and affiant's own general investigation into the facts and circumstances of this action.

Dated: New York, New York
 October 14, 2009


Terrence E. McCartney.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

over Defendants.
-----X

Index No: 27718/09
Date Purchased: 10/15/09

Plaintiffs designate
Queens County as the
place of trial

SUMMONS

The basis for venue
is the residence of
the plaintiffs



To the above named defendants:

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and to serve a copy of your answer, or, if the Complaint is not
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Summons, exclusive of the day of service (or within 30 days after
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Dated: New York, New York
October 14, 2009

**RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP**

ATTORNEYS FOR THE PLAINTIFF

LEGAL SERVICES

NOV 11 2009

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Terrence E. McCartney
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New York, NY 10016
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1 Toyota-cho, Toyota-shi
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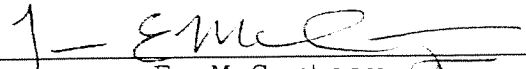
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WHEREFORE, plaintiffs demand judgment against defendants, severally and jointly:

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- b. Punitive damages;
- c. All together with interest, costs and disbursements;

d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 14, 2009


Terrence E. McCartney
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
ATTORNEYS FOR PLAINTIFF
113 East 37th Street
New York, New York 10016
(212) 684-1880

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. ET AL

Defendants.

LEGAL SERVICES

NOV 11 2009

GROUP RECEIVED

SUMMONS AND VERIFIED COMPLAINT

Law Offices
**RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP**
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880



**Service of Process
Transmittal**

11/04/2009

CT Log Number 515675555



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

LEGAL SERVICES

RE: Process Served in California

NOV - 6 2009

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

GROUP RECEIVED

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

TITLE OF ACTION: Kong lu Leong and Sio-Keng Leong, Pltfs. vs. Toyota Motor Sales USA, Inc., et al.,
Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Complaint, Attachment, Verification

COURT/AGENCY: Queens County, Supreme Court, NY
Case # 2771809

NATURE OF ACTION: Product Liability Litigation - Breach of Warranty - Sudden unintended acceleration
and failure of the brakes to engage caused the vehicle to crash causing plaintiffs to
suffer severe and permanent injuries on 8/27/09

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 11/04/2009 at 09:45

APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Terrence E. McCartney
Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP
113 East 37th Street
New York, NY 10016
212-684-1880

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 798120306499
Image SOP
Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com
Email Notification, Webster Burns webster_burns@toyota.com
Email Notification, Dorothy Sutton dorothy_sutton@toyota.com

SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. ET AL

Defendants.

SUMMONS AND VERIFIED COMPLAINT

Law Offices
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

CASE: LEONG, KONG
SET: A
DESCRIPTION: VEHICLE & POST-ACCIDENT
PHOTOS FROM PLAINTIFF'S COUNSEL
PHOTOS: 7

















New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

Local Codes
SY09-1459
SP3T1000126

AMENDED REPORT

19
20

1 Accident Date: Month 8, Day 27, Year 2009. Day of Week: Thursday. Military Time: 10:04. No. of Vehicles: 1. No. Injured: 3. No. Killed: 0. Not Investigated at Scene: . Left Scene: . Police Photos: Yes No. Accident Reconstructed: . VEHICLE BICYCLIST PEDESTRIAN OTHER PEDESTRIAN

2 VEHICLE 1: State of Lic. NY. License ID Number 245431754. Driver Name - exactly as printed on license: LEONG, KONG IU. Address (Include Number and Street): 84-31 55TH RD. City or Town: ELMHURST. State: NY. Zip Code: 11373.

3 Date of Birth: Month 1, Day 5, Year 1947. Sex: M. Unlicensed: . No. of Occupants: 03. Public Property Damaged: . Name - exactly as printed on registration: LEONG, KONG IU. Sex: M. Date of Birth: Month 1, Day 5, Year 1947.

4 Plate Number: ESJ9638. State of Reg. NY. Vehicle Year & Make: 2009 TOYT. Vehicle Type: SUBN. Ins. Code: 100. Ticket/Arrest Number(s): 3T160501SP. Violation Section(s): 1128A.

6 VEHICLE DAMAGE CODING: Check if involved vehicle is: more than 95 inches wide; more than 34 feet long; operated with an overweight permit; operated with an overdimension permit. VEHICLE 1 DAMAGE CODES: Box 1 - Point of Impact: 16, 2; Box 2 - Most Damage: 16, 2. Enter up to three more damage codes: 17, 3, 4, 5.

7 Vehicle Sv: FARMINGTON SER. Towed To: FARMINGTON SER. VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER

8 Reference Marker: Coordinates (if available): Latitude/Northing: 4760390. Longitude/Easting: 320415. Place Where Accident Occurred: County: ONTARIO. Road on which accident occurred: I-90. at 1) intersecting street: 50. or 2) 50 feet miles. of MILE MARKER 338.3 W/B.

9 Accident Description/Officer's notes: OP/V1 WAS ON THE I-90 NEAR MILE MARKER 338.3 TRAVELING WESTBOUND WHEN CHANGE LANES UNSAFELY FROM THE DRIVING LANE TO THE PASSING LANE AT UNSAFE SPEEDS RESULTED IN LOSING CONTROL OF THE VEHICLE STRIKING A TREE IN THE MEDIAN OF THE SOUTH SIDE OF THE ROADWAY. THRUWAY PROPERTY DAMAGE # 3-13961 ASSIGNED PROPERTY DAMAGE BY VEHICLE #01 - TREE, NEW YORK STATE THRUWAY 200 SOUTHERN BLVD ALBANY NY, 12201.

ALL INVOLVED: B 1, 9 1, 10 7, 11 1, 12 62, 13 M, 14 05, 15 12, 16 6, 17 BY 11251ET, TO 18 2706, Names of all involved: LEONG, KONG IU. Date of Death Only: [Blank]

ALL INVOLVED: B 1, 9 3, 10 7, 11 1, 12 53, 13 F, 14 05, 15 12, 16 6, 17 BY 11252ET, TO 18 2706, Names of all involved: LEONG, SIO-KENG. Date of Death Only: [Blank]

ALL INVOLVED: B 1, 9 6, 10 4, 11 1, 12 17, 13 F, 14 05, 15 12, 16 6, 17 BY 11252ET, TO 18 2706, Names of all involved: LEONG, CAROL. Date of Death Only: [Blank]

ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

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ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

ALL INVOLVED: [Blank]. Date of Death Only: [Blank]

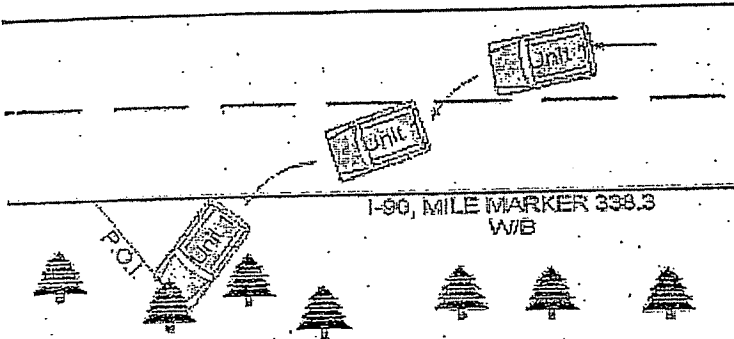
USE COVER SHEET
N

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

Local Codes
SY09- 1459
SP3T16000126

AMENDED REPORT

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Month	Day	Year	Thursday	10:04	1	3	0	Accident Reconstructed <input type="checkbox"/>		
8	27	2009								



PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION

1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION

1. Crossing, With Signal
2. Crossing, Against Signal
3. Crossing, No Signal, Marked Crosswalk
4. Crossing, No Signal or Crosswalk
5. Riding/Walking/Skating Along Highway With Traffic
6. Riding/Walking/Skating Along Highway Against Traffic
7. Emerging from In Front of/Behind Parked Vehicle
8. Going to/From Stopped School Bus
9. Getting On/Off Vehicle Other Than School Bus
10. Working in Roadway
11. Playing in Roadway
12. Other Actions in Roadway*
13. Not in Roadway (Indicate)*

TRAFFIC CONTROL

1. None
2. Traffic Signal
3. Stop Sign
4. Flashing Light
5. Yield Sign
6. Officer/Guard
7. No Passing Zone
8. RR Crossing Sign
9. RR Crossing Flashing Light
10. RR Crossing Gates
11. Stopped School Bus - Red Lights Flashing
12. Construction Work Area
13. Maintenance Work Area
14. Utility Work Area
15. Police/Fire Emergency
16. School Zone
20. Other*

LIGHT CONDITIONS

1. Daylight
2. Dawn
3. Dusk
4. Dark-Road Lighted
5. Dark-Road Unlighted

ROADWAY CHARACTER

1. Straight and Level
2. Straight and Grade
3. Straight at Hillcrest
4. Curve and Level
5. Curve and Grade
6. Curve at Hillcrest

ROADWAY SURFACE CONDITION

1. Dry
2. Wet
3. Muddy
4. Snow/Ice
5. Slush
6. Flooded
0. Other*

WEATHER

1. Clear
2. Cloudy
3. Rain
4. Snow
5. Sleet/Hail/Freezing Rain
6. Fog/Smog/Smoke
0. Other*

WHICH VEHICLE OCCUPIED

1. Vehicle No. 1
2. Vehicle No. 2

A. All-Terrain Vehicle (ATV)
 B. Bicyclist
 C. In-Line Skater
 D. Other*
 E. Pedestrian
 F. Snowmobiler

POSITION IN/ON VEHICLE

1. Driver
- 2-7. Passengers
8. Riding/Hanging on Outside

SAFETY EQUIPMENT USED

1. None
2. Lap Belt
3. Harness
4. Lap Belt/Harness
5. Child Restraint Only
6. Helmet (Motorcycle Only)
7. Air Bag Deployed
8. Air Bag Deployed/Lap Belt
9. Air Bag Deployed/Harness
- A. Air Bag Deployed/Lap Belt/Harness
- B. Air Bag Deployed/Child Restraint

IN-Line Skater/Bicyclist

- C. Helmet Only
- D. Helmet/Other
- E. Pads Only
- F. Stoppers Only
0. Other*

EJECTION FROM VEHICLE

1. Not Ejected
2. Partially Ejected
3. Ejected

AGE **SEX** **M/F**

11 12 13 14 15 16 17 BY TO 18

APPARENT CONTRIBUTING FACTORS

Human

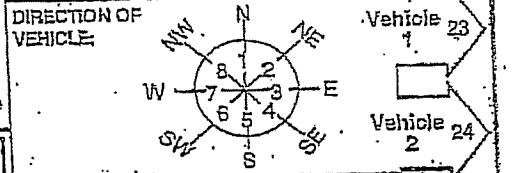
1. Alcohol Involvement
2. Backing Unsafely
3. Driver Inattention/Distracted*
4. Driver Inexperience*
5. Drugs (Illegal)
6. Failure to Yield Right-of-Way
7. Failure to Keep Right
21. Fatigued/Drowsy
8. Fell Asleep
9. Following Too Closely
10. Illness
11. Lost Consciousness
12. Passenger Distraction
13. Passing or Lane Usage Improper
14. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
15. Physical Disability
16. Prescription Medication
17. Traffic Control Disregarded
18. Turning Improperly
19. Unsafe Speed
20. Unsafe Lane Changing
22. Cell Phone (hand-held)
23. Cell Phone (hands-free)
24. Other Electronic Device*
25. Outside-Car Distraction*
26. Reaction to Other Uninvolved Vehicle
28. Aggressive Driving/Road Rage

Vehicular

41. Accelerator Defective
42. Brakes Defective
43. Headlights Defective
44. Other Lighting Defects
45. Oversized Vehicle
46. Steering Failure
47. Tire Failure/Inadequate
48. Tow Hitch Defective
49. Windshield Inadequate
50. Driverless/Runaway Vehicle
60. Other Vehicular*

Environmental

61. Animal's Action
62. Glare
63. Lane Marking Improper/Inadequate
64. Obstruction/Debris
65. Pavement Defective
66. Pavement Slippery
67. Shoulders Defective/Improper
68. Traffic Control Device Improper/Non-Working
69. View Obstructed/Limited



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (7/01)

***EXPLAIN IN ACCIDENT DESCRIPTION**
 If a question DOES NOT APPLY; enter a dash (-).
 If an answer is UNKNOWN, enter an "X".

LOCATION OF MOST SEVERE PHYSICAL COMPLAINT

1. Head
2. Face
3. Eye
4. Neck
5. Chest
6. Back
7. Shoulder-Upper Arm
8. Elbow-Lower Arm-Hand
9. Abdomen - Pelvis
10. Hip-Upper Leg
11. Knee-Lower Leg-Foot
12. Entire Body

TYPE OF PHYSICAL COMPLAINT

1. Amputation
2. Concussion
3. Internal
4. Minor Bleeding
5. Severe Bleeding
6. Minor Burn
7. Moderate Burn
8. Severe Burn
9. Fracture - Dislocation
10. Contusion - Bruise
11. Abrasion
12. Complaint of Pain
13. None Visible
14. Whiplash

VICTIM'S PHYSICAL AND EMOTIONAL STATUS

1. Apparent Death
2. Unconscious
3. Semiconscious
4. Incoherent
5. Shock
6. Conscious

PRE-ACCIDENT VEHICLE ACTION

1. Going Straight Ahead
2. Making Right Turn
16. Making Right Turn on Red
3. Making Left Turn
17. Making Left Turn on Red
4. Making U Turn
5. Starting from Parking
6. Starting in Traffic
7. Slowing or Stopping
8. Stopped in Traffic
9. Entering Parked Position
10. Parked
11. Avoiding Object in-Roadway
12. Changing Lanes
13. Passing
14. Merging
15. Backing
18. Police Pursuit
20. Other*

LOCATION OF FIRST EVENT

1. On Roadway
2. Off Roadway

TYPE OF ACCIDENT - COLLISION WITH

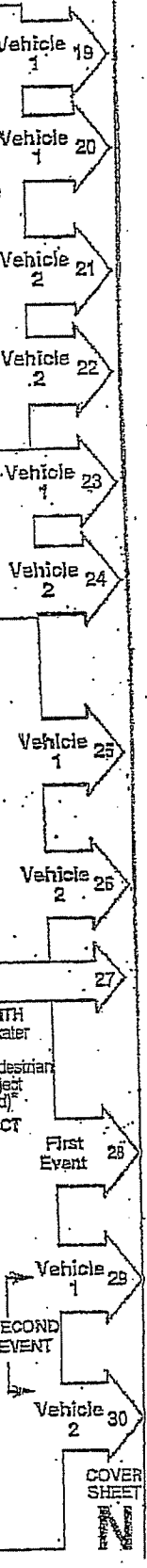
1. Other Motor Vehicle
2. Pedestrian
3. Bicyclist
4. Animal
5. Railroad Train
6. In-Line Skater
7. Deer
8. Other Pedestrian
10. Other Object (Not Fixed)*

COLLISION WITH FIXED OBJECT

11. Light Support/Utility Pole
12. Guide Rail-Not At End
25. Guide Rail-End
13. Crash Cushion
14. Sign Post
15. Tree
16. Building/Wall
17. Curbing
18. Fence
19. Bridge Structure
20. Culvert/Head Wall
21. Median-Not At End
26. Median-End
27. Barrier
22. Snow Embankment
23. Earth Embankment/Rock Cut/Ditch
24. Fire Hydrant
30. Other Fixed Object*

NO COLLISION

31. Overturned
32. Fire/Explosion
33. Submission
34. Ran Off Roadway Only
40. Other*



SUMMARY OF THE DOCUMENT TO BE SERVED
ELEMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.

(article 5, fourth paragraph)
(article 5, alinéa 4)

RECEIVED

JAN 20 2010

LEGAL DEPARTMENT

Name and address of the requesting authority:

Nom et adresse de l'autorité requérante:

Judy A. Nunn

APS INTERNATIONAL, LTD

APS International Plaza, 7800 Glenroy Road, Minneapolis, Minnesota 55439-3122, U.S.A.

Particulars of the parties*:

Identité des parties: Leong v. Toyota Motor Sales USA, Inc.

LIST OF DOCUMENTS: Summary of the Document to be Served, Summons, Complaint, Attorney's Verification, Translations

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE

Nature and purpose of the document:

Nature et objet de l'acte: The purpose of this document is to inform Toyota Motor Corporation that a lawsuit has been started against them and that they have been joined as a defendant.

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Nature et objet de l'instance, le cas échéant, le montant du litige: Plaintiff's claim against the defendant is for damages and other relief in an amount to be determined as a result of the defendant's strict product liability, breach of express and implied warranties, and negligence.

Date and place for entering appearance**:

Date et lieu de la comparution: Defendant is required to serve a copy of the an answer to the attached documents on Plaintiff's Attorney, Terrence E. McCartney of RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & McCARTNEY LLP located at 113 East 37th Street, New York, NY 10016 U.S.A. within 30 days after service of the attached documents, exclusive of the day of service. (See Summons for additional information.).

Court which has given judgment**:

Jurisdiction qui a rendu la décision: N/A

Date of judgment**:

Date de la décision: N/A

Time limits stated in the document**:

Indication des délais figurant dans l'acte: Defendant is required to serve a copy of the an answer to the attached documents on Plaintiff's Attorney within 30 days after service of the attached documents, exclusive of the day of service. (See Summons for additional information.).

Failure to do so may result in the plaintiff(s) taking a default judgment against the defendant for the relief demanded in the attached documents.

EXTRAJUDICIAL DOCUMENT**
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:

Nature et objet de l'acte: N/A

Time limits stated in the document**:

Indication des délais figurant dans l'acte: N/A

* If appropriate, identity and address of the person interested in the transmission of the document.
S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.

** Delete if inappropriate.
Rayer les mentions inutiles.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

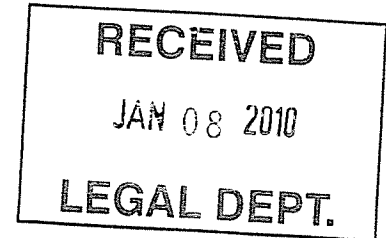
Plaintiffs,

-against-

VERIFIED ANSWER

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs' Verified Complaint (the "complaint") as follows:

1. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint.

2. TEMA denies the allegations contained in paragraph "2" of the complaint as stated and refers all questions of law to this Court. TEMA states that Toyota Motor Sales, U.S.A., Inc. ("TMS") it is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.

3. TEMA denies the allegations contained in paragraph "3" of the complaint as stated and refers all questions of law to this Court. TEMA states it is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

{V0026985.1}

TOY-RQ-05E-00005019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

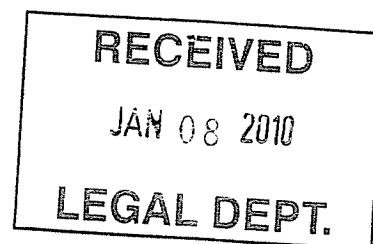
Plaintiffs,

-against-

VERIFIED ANSWER

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs' Verified Complaint (the "complaint") as follows:

1. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint.
2. TEMA denies the allegations contained in paragraph "2" of the complaint as stated and refers all questions of law to this Court. TEMA states that Toyota Motor Sales, U.S.A., Inc. ("TMS") it is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.
3. TEMA denies the allegations contained in paragraph "3" of the complaint as stated and refers all questions of law to this Court. TEMA states it is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

{V0026985.1}

TOY-RQ-05E-00005020

4. TEMA denies the allegations contained in paragraph “4” of the complaint as stated and refers all questions of law to this Court. TEMA states that Toyota Motor Corporation (“TMC”) is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TEMA as none of the allegations contained in paragraph “5” of the complaint are directed to TEMA. To the extent one is required, TEMA denies the allegations as stated.

6. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the complaint.

7. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the complaint concerning plaintiffs’ purchase of the 2009 RAV4, VIN JTMBK32V895080564 (“subject vehicle”), but states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle. TEMA’s involvement was limited to performing certain durability and driveability evaluations and audit testing of the 2006 RAV4..

8. TEMA denies the allegations contained in paragraph “8” of the complaint as stated. TEMA states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle. TEMA’s involvement was limited to performing certain durability and driveability evaluations and audit testing for the 2006 RAV4

9. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the complaint.

10. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the complaint.

11. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the complaint.

12. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TEMA denies the allegations contained in paragraph “14” of the complaint.

15. TEMA denies the allegations contained in paragraph “15” of the complaint as stated.

16. TEMA denies the allegations contained in paragraph “16” of the complaint as stated.

17. TEMA denies the allegations contained in paragraph “17” of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TEMA refers to the terms of the September 29, 2009 advisory.

18. TEMA denies the allegations contained in paragraph “18” of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TEMA denies the allegations contained in paragraph "20" of the complaint.

21. TEMA denies the allegations contained in paragraph "21" of the complaint.

22. TEMA denies the allegations contained in paragraph "22" of the complaint.

23. TEMA denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "24" of the complaint with the same force and effect as though fully set forth herein.

25. TEMA denies the allegations contained in paragraph "25" of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE

26. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TEMA denies the allegations contained in paragraph "27" of the complaint.

28. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TEMA denies the allegations contained in paragraph "30" of the complaint.

31. TEMA denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TEMA refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TEMA, and over whom TEMA exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TEMA or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TEMA denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TEMA, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TEMA is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TEMA was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TEMA.

ELEVENTH AFFIRMATIVE DEFENSE

47. TEMA hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TEMA, it being specifically denied that TEMA is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TEMA, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TEMA's liability, if any, is limited by the statutory operation of CPLR § 1601.

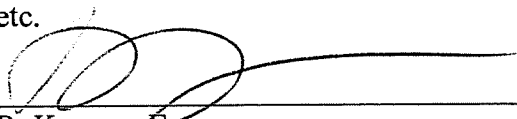
FIFTEENTH AFFIRMATIVE DEFENSE

51. TEMA reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

WHEREFORE, defendant TEMA demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
January 5, 2010

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. in the within action. I have read the foregoing answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 5th day of January, 2010, deponent served the within **VERIFIED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

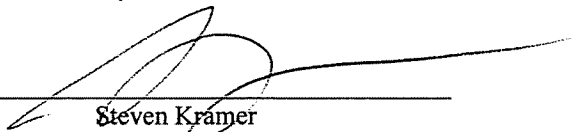
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
5th day of January, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

VERIFIED ANSWER

ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
**TOYOTA MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.**
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005031

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

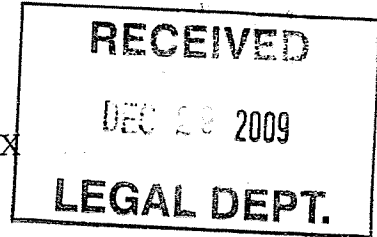
-----X
KONG IU LWONG and SIO-KENG LEONG,

Plaintiff,

-against-

TOYOTA MOTOR SALES USA, INC. TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE INC.,

Defendants.
-----X



ANSWER

The defendant, Star Toyota of Bayside Inc. ("Star Toyota" or "Defendant") as and for its answer to the complaint (the "Complaint") of plaintiffs Kong Iu Wong and Sio-Keng Leong (collectively, the "Plaintiffs"), alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2" of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "4" of the Complaint.
5. Admit the allegations contained in paragraph "5" of the Complaint.
6. Admit the allegations contained in paragraph "6" of the Complaint.
7. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint, except states that Plaintiffs purchased the vehicle that is the subject of this action from Star Toyota.

8. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Complaint.
9. Denies the allegations contained in paragraph "9" of the Complaint, except states that Plaintiffs purchased the vehicle that is the subject of this action from Star Toyota.
10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10" of the Complaint.
11. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Complaint.
12. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the Complaint.
13. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the Complaint.
14. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "14" of the Complaint.
15. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15" of the Complaint.
16. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the Complaint.
17. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17" of the Complaint.
18. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "18" of the Complaint.

AS AND FOR A FIRST CAUSE OF ACTION

19. Star Toyota repeats and re-alleges and incorporates by reference paragraphs 1 - 18 as if fully set forth herein.
20. Denies the allegations contained in paragraph "20" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to defendants Toyota Motor Sales USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation (collectively, the "Toyota Defendants").
21. Denies the allegations contained in paragraph "21" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.
22. Denies the allegations contained in paragraph "22" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.
23. Denies the allegations contained in paragraph "23" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

AS AND FOR A SECOND CAUSE OF ACTION

24. Star Toyota repeats and re-alleges and incorporates by reference paragraphs 1 - 23 as if fully set forth herein.

25. Denies the allegations contained in paragraph "25" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

26. Star Toyota repeats and re-alleges and incorporates by reference paragraphs 1 - 25 as if fully set forth herein.

27. Denies the allegations contained in paragraph "27" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

28. Denies the allegations contained in paragraph "28" of the Complaint.

29. Denies the allegations contained in paragraph "29" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

30. Denies the allegations contained in paragraph "30" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

31. Denies the allegations contained in paragraph "31" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

32. Star Toyota repeats and re-alleges and incorporates by reference paragraphs 1 - 31 as if fully set forth herein.
33. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the Complaint.
34. Denies the allegations contained in paragraph "34" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.
35. Denies the allegations contained in paragraph "35" of the Complaint as they pertain to defendant Star Toyota, except denies knowledge or information sufficient to form a belief as to the allegations as they pertain to the Toyota Defendants.
36. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "36" of the Complaint.

FIRST DEFENSE

37. The Complaint failed to state a cause of action upon which relief can be granted.

SECOND DEFENSE

38. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and ratification.

THIRD DEFENSE

39. Whatever injuries and/or damages that were sustained by Plaintiffs were in whole or in part the result of the conduct of Plaintiffs and not of Star Toyota.

FOURTH DEFENSE

40. Whatever injuries and/or damages that were sustained by Plaintiffs were in whole or in part the result of the conduct of the Toyota Defendants and/or other third parties and not of Star Toyota.

FIFTH DEFENSE

41. Whatever injuries and/or damages that were sustained by Plaintiffs were in whole or in part the result of the carelessness, recklessness, and negligence of Plaintiffs, and not of Star Toyota.

SIXTH DEFENSE

42. Whatever injuries and/or damages that were sustained by Plaintiffs were in whole or in part the result of the carelessness, recklessness, and negligence of the Toyota Defendants and/or other third parties, and not of Star Toyota.

SEVENTH DEFENSE

43. Plaintiffs' claims are barred by their failure to timely revoke acceptance.

EIGHTH DEFENSE

44. Plaintiffs' claims are barred by their failure to properly maintain the vehicle and/or Plaintiffs' possible misuse of the vehicle.

NINTH DEFENSE

45. Plaintiff's claims are barred by their failure to notify Star Toyota of the alleged defects within a reasonable period of time.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiff's claims are barred by their failure to inspect the vehicle within a reasonable period of time.

ELEVENTH AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred because the vehicle was not non-conforming at the time of purchase.

TWELFTH AFFIRMATIVE DEFENSE

48. Plaintiffs' claims are barred because the vehicle does not have any defects which alone or cumulatively substantially impair its value to Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Upon information and belief, any defects in the vehicle were caused by Plaintiffs' abuse, neglect or unauthorized modification or alteration of the motor vehicle by Plaintiffs or third-parties after the vehicle left the control of Star Toyota.

FOURTEENTH AFFIRMATIVE DEFENSE

50. Plaintiff's recovery, if any, is barred or decreased by reason of Plaintiffs failure to mitigate damages.

FIFTEENTH AFFIRMATIVE DEFENSE

51. Star Toyota has acted in good faith and in accordance with the reasonable commercial standards applicable to its business.

SIXTEENTH AFFIRMATIVE DEFENSE

52. Although Star Toyota denies the existence of any alleged defect, Plaintiffs' claims are barred in the event that they had knowledge of the alleged defect and proceeded unreasonably to make use of the vehicle.

SEVENTEENTH AFFIRMATIVE DEFENSE

53. Plaintiff s' claims are barred by the doctrine of spoliation of evidence in the event that Plaintiffs failed to preserve portions of the vehicle in its immediate post-accident condition.

EIGHTEENTH AFFIRMATIVE DEFENSE

54. In the event Plaintiffs recover a verdict or judgment as against Star Toyota, then said verdict or judgment must be reduced pursuant to CPLR 4545© by those amounts which have been or will, with reasonable certainty, replace or indemnify Plaintiffs in whole or part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

NINETENTH AFFIRMATIVE DEFENSE

55. Plaintiff's claims are barred or must be reduced in the event that Plaintiffs failed to utilize an available occupant restraint as required by the New York Vehicle and Traffic Law Section 1229-c and/or failed to properly use or misused an available occupant restraint in the vehicle at the time of the alleged accident and such injuries were sustained or aggravated as a result thereof.

NINETENTH AFFIRMATIVE DEFENSE

56. The equitable share of Star Toyota's liability, if any, is limited by the operation of CPLR 1601.

**AS AND FOR A FIRST CROSS-CLAIM AS
AGAINST THE TOYOTA DEFENDANTS**

57. Star Toyota repeats and realleges each and every allegation in paragraphs "1" through "56" as though fully set forth herein.

58. Upon information and belief, the Toyota Defendants are the manufacturer of the subject vehicle, as alleged in the Plaintiffs' complaint.

59. Upon information and belief, the Toyota Defendants issued each and every warranty alleged in the Plaintiffs' complaint.

60. Upon information, Plaintiffs purchased the subject vehicle as a new car which was still covered under the original warranty issued by the Toyota Defendants.
61. Plaintiff's complaint alleges manufacturing defects in the Plaintiffs' vehicle, over which Star Toyota has and had no control, despite the best efforts of the agents and employees of Star Toyota.
62. Plaintiffs' complaint alleges negligent manufacturing, transportation and maintenance, over which Star Toyota has and had no control, despite the best efforts of the agents and employees of Star Toyota.
63. Plaintiffs' complaint alleges warranty breaches committed by the Toyota Defendants, over which Star Toyota has and had no control, despite the best efforts of the agents and employees of Star Toyota.
64. Star Toyota and the Toyota Defendants are parties to a Dealer Sales and Service Agreement whereby the Toyota Defendants have agreed to indemnify and defend Star Toyota for the causes of action brought in the Complaint.
65. The Toyota Defendants have failed to indemnify and defend Star Toyota in connection with this matter.
66. In the event Star Toyota is adjudged to be liable for any or all of the damages alleged in the plaintiffs' complaint, Star Toyota, pursuant to the agreement between Star Toyota and the Toyota Defendants, is entitled to reimbursement and indemnification by the Toyota Defendants for all monetary and other damages alleged by Plaintiffs against Star Toyota.
67. In the event Star Toyota is adjudged to be liable for any or all of the damages alleged in Plaintiffs' complaint, Star Toyota, pursuant to the agreement between Star Toyota and the Toyota Defendants, is entitled to reimbursement all legal fees incurred in connection with the defense of this matter.

**AS AND FOR A SECOND CROSS-CLAIM AS
AGAINST THE TOYOTA DEFENDANTS**

68. Star Toyota repeats and realleges each and every allegation in paragraphs "1" through "67" as though fully set forth herein.

69. In the event Star Toyota is held liable to the Plaintiffs in any amount, such liability will have been based, in whole or in part, upon the acts and /or omissions of the Toyota Defendants, not of Star Toyota, and said Toyota Defendants will be bound to indemnify Star Toyota for any verdict or judgment that may be rendered against it.

**AS AND FOR A THIRD CROSS-CLAIM AS
AGAINST THE TOYOTA DEFENDANTS**

70. Star Toyota repeats and realleges each and every allegation in paragraphs "1" through "69" as though fully set forth herein.

71. In the event Plaintiffs were was caused to sustain damages or is awarded any form of relief, as set forth in the Complaint, and if said damages arose in whole or in part due to the acts and/or omissions of the Toyota Defendants, and if any judgment or relief is recovered herein by the Plaintiffs against Star Toyota, Star Toyota will be damaged thereby and is entitled to contribution on the basis of proportionate responsibility against the Toyota Defendants for all or part of any verdict or judgment which may be obtained herein by Plaintiffs against Star Toyota, together with costs, disbursements and attorneys' fees.

WHEREFORE, Star Toyota demands judgment against the Plaintiffs and the Toyota Defendants, as follows:

- A. Dismissing the Complaint and each and every count therein;
- B. Judgment against the Toyota Defendants on the second first cross-claim or the reimbursement and indemnification, pursuant to the agreement between Star Toyota and the Toyota Defendants, of (i) all or part of any verdict or judgment that may be rendered against Star Toyota by Plaintiff and (ii) reimbursement all legal fees incurred in connection with the defense of this matter;
- C. Judgment against the Toyota Defendants on the second first cross-claim, in the event Star Toyota is held liable to Plaintiffs in any amount, for indemnification for all or part of any verdict or judgment that may be rendered against Star Toyota by Plaintiff;
- C. Judgment against the Toyota Defendants on the third cross-claim, in the event Plaintiffs were caused to sustain damages or is awarded any form of relief, and if any judgment or relief is recovered herein by Plaintiffs against Star Toyota for contribution on the basis of proportionate responsibility against the Toyota Defendants for all or party of any verdict or judgment which may be obtained herein by Plaintiffs against Star Toyota together with costs, disbursements and attorneys' fees.
- D. Awarding Star Toyota its costs, reasonable attorney's fees and disbursements incurred in defending Plaintiffs' complaint and prosecuting its cross-claims; and,
- E. Awarding Star Toyota such other and further relief as may be deemed just and proper.

Dated: Mineola, New York
January 4, 2010

Respectfully,
BELLAVIA GENTILE & ASSOCIATES,
LLP

BY: Steven Blatt, Esq.
Attorneys for defendant
Star Toyota of Bayside Inc.
200 Old Country Road
Suite 400
Mineola, NY 11501
(516) 873-3000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

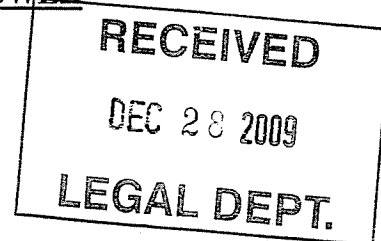
Plaintiffs,

-against-

VERIFIED ANSWER

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR CORPORATION ("TMC"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs' Verified Complaint (the "complaint") as follows:

1. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint.
2. TMC denies the allegations contained in paragraph "2" of the complaint as stated and refers all questions of law to this Court. TMC states that Toyota Motor Sales, U.S.A., Inc. ("TMS") is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.
3. TMC denies the allegations contained in paragraph "3" of the complaint as stated and refers all questions of law to this Court. TMC states that Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

4. TMC denies the allegations contained in paragraph “4” of the complaint as stated and refers all questions of law to this Court. TMC states it is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TMC as none of the allegations contained in paragraph “5” of the complaint are directed to TMC. To the extent one is required, TMC denies the allegations as stated.

6. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the complaint.

7. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the complaint concerning plaintiffs’ purchase of the 2009 RAV4, VIN JTMBK32V895080564 (“subject vehicle”), but states it was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

8. TMC denies the allegations contained in paragraph “8” of the complaint as stated. TMC states TMS is the authorized importer and distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMC also states it was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

9. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the complaint.

10. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the complaint.

11. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the complaint.

12. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TMC denies the allegations contained in paragraph "14" of the complaint.

15. TMC denies the allegations contained in paragraph "15" of the complaint as stated.

16. TMC denies the allegations contained in paragraph "16" of the complaint as stated.

17. TMC denies the allegations contained in paragraph "17" of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TMC refers to the terms of the September 29, 2009 advisory.

18. TMC denies the allegations contained in paragraph "18" of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TMC denies the allegations contained in paragraph "20" of the complaint.

21. TMC denies the allegations contained in paragraph "21" of the complaint.
22. TMC denies the allegations contained in paragraph "22" of the complaint.
23. TMC denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "24" of the complaint with the same force and effect as though fully set forth herein.

25. TMC denies the allegations contained in paragraph "25" of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE

26. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TMC denies the allegations contained in paragraph "27" of the complaint.

28. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TMC denies the allegations contained in paragraph "30" of the complaint.
31. TMC denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TMC refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TMC, and over whom TMC exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TMC or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TMC denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TMC, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the

United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TMC is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TMC was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TMC.

ELEVENTH AFFIRMATIVE DEFENSE

47. TMC hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TMC, it being specifically denied that TMC is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TMC, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TMC's liability, if any, is limited by the statutory operation of CPLR § 1601.

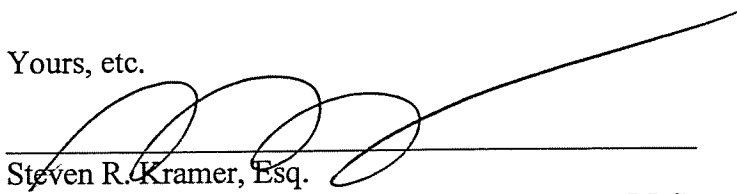
FIFTEENTH AFFIRMATIVE DEFENSE

51. TMC reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

WHEREFORE, defendant TMC demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR CORPORATION in the within action. I have read the foregoing answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR CORPORATION is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **VERIFIED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

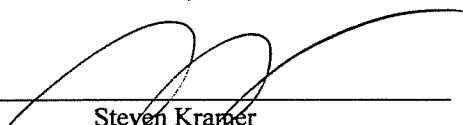
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Krager
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

VERIFIED ANSWER

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

TOYOTA MOTOR CORPORATION

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0026703.1}

TOY-RQ-05E-00005054

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

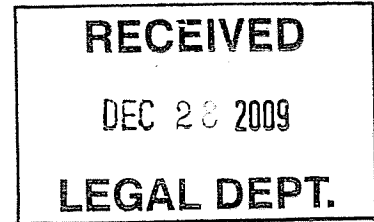
Plaintiffs,

-against-

VERIFIED ANSWER

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), by its attorneys, Eckert
Seamans Cherin & Mellott, LLC, hereby answers plaintiffs' Verified Complaint (the
"complaint") as follows:

1. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint.
2. TMS denies the allegations contained in paragraph "2" of the complaint as stated and refers all questions of law to this Court. TMS states it is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.
3. TMS denies the allegations contained in paragraph "3" of the complaint as stated and refers all questions of law to this Court. TMS states that Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

4. TMS denies the allegations contained in paragraph "4" of the complaint as stated and refers all questions of law to this Court. TMS states that Toyota Motor Corporation ("TMC") is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TMS as none of the allegations contained in paragraph "5" of the complaint are directed to TMS. To the extent one is required, TMS denies the allegations as stated.

6. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the complaint.

7. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the complaint concerning plaintiffs' purchase of the 2009 RAV4, VIN JTMBK32V895080564 ("subject vehicle"), but states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

8. TMS denies the allegations contained in paragraph "8" of the complaint as stated. TMS states it is the authorized importer and distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS also states TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

9. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the complaint.

10. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the complaint.

11. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the complaint.

12. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TMS denies the allegations contained in paragraph "14" of the complaint.

15. TMS denies the allegations contained in paragraph "15" of the complaint as stated.

16. TMS denies the allegations contained in paragraph "16" of the complaint as stated.

17. TMS denies the allegations contained in paragraph "17" of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TMS refers to the terms of the September 29, 2009 advisory.

18. TMS denies the allegations contained in paragraph "18" of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TMS denies the allegations contained in paragraph "20" of the complaint.

21. TMS denies the allegations contained in paragraph "21" of the complaint.
22. TMS denies the allegations contained in paragraph "22" of the complaint.
23. TMS denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "24" of the complaint with the same force and effect as though fully set forth herein.

25. TMS denies the allegations contained in paragraph "25" of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE

26. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TMS denies the allegations contained in paragraph "27" of the complaint.

28. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TMS denies the allegations contained in paragraph "30" of the complaint.

31. TMS denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TMS refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TMS, and over whom TMS exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TMS or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TMS denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TMS, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the

United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TMS is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TMS was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TMS.

ELEVENTH AFFIRMATIVE DEFENSE

47. TMS hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TMS, it being specifically denied that TMS is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TMS, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TMS' liability, if any, is limited by the statutory operation of CPLR § 1601.

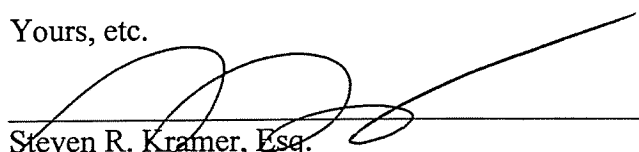
FIFTEENTH AFFIRMATIVE DEFENSE

51. TMS reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

WHEREFORE, defendant TMS demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR SALES, U.S.A., INC. in the within action. I have read the foregoing answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR SALES, U.S.A., INC. is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **VERIFIED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

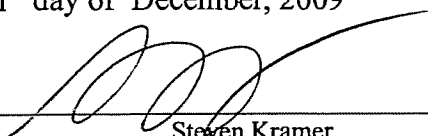
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

VERIFIED ANSWER

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005065

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

STIPULATION

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

STIPULATION TO PRESERVE SUBJECT VEHICLE AND COMPONENTS

WHEREAS, the parties wish to create a mutually agreeable protocol for the storage, inspection and testing of the subject 2009 Toyota RAV-4, bearing vehicle identification number JTMBK32V895080564, including all component parts related thereto (the "subject vehicle");

IT IS NOW, hereby stipulated and agreed by and between the parties, through their respective counsel, as follows:

1. The subject vehicle shall be preserved throughout this litigation (and any appeals thereto) in a cool, dry indoor-covered environment.
2. The subject vehicle is currently owned by plaintiffs and stored at BVRSM, 685 Station Road, Bellport NY.
3. No party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive

{V0025861.1}


examination or disassembly, or the Court issues an order as a result of a motion made on notice to all counsel of record, permitting destructive testing, destructive examination or disassembly.

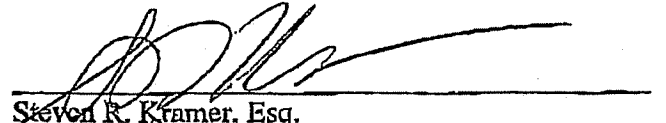
~~4. All inspections of the subject vehicle must be on seven (7) days' prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle.~~

4. This Stipulation shall remain in effect throughout the pendency of the litigation and any appeals thereto, until such time as the litigation is resolved either through settlement or final judgment.

Dated: November 25, 2009
New York, New York

Dated: November 24, 2009
White Plains, New York


Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & MCCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, New York 10016
(212) 684-1880


Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949 2909

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

STIPULATION


Defendants.


IT IS HEREBY STIPULATED AND AGREED, by the parties, through their
respective counsel, as follows:

1. TOYOTA MOTOR CORPORATION ("TMC") hereby voluntarily appears in this
action and will serve its answer by December 21, 2009.
2. TMC shall have, in addition to the prescribed period of time to respond to a
particular discovery request, an additional ninety (90) days in which to respond.
3. TMC shall have at least ninety (90) days' notice in which to produce a designee
for deposition.
4. The deposition of the TMC designee witness shall take place at a location in
Torrance, California.

Dated: November 25, 2009
New York, New York

Dated: November 24, 2009
White Plains, New York


Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & MCCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, New York 10016
(212) 684-1880


Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949 2909

{V0025834.1}

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

STIPULATION

Defendants.


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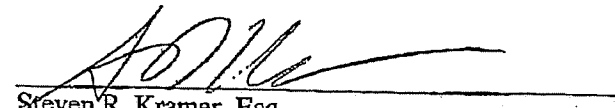
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for deposition.
4. The deposition of the TMC designee witness shall take place at a location in
Torrance, California.

Dated: November 25, 2009
New York, New York

Dated: November 24, 2009
White Plains, New York


Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & MCCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, New York 10016
(212) 684-1880


Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949 2909

{V0025834.1}

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

Index No.: 27718/09

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LEGAL DEPT.

STIPULATION

STIPULATION TO PRESERVE SUBJECT VEHICLE AND COMPONENTS

WHEREAS, the parties wish to create a mutually agreeable protocol for the storage, inspection and testing of the subject 2009 Toyota RAV-4, bearing vehicle identification number JTMBK32V895080564, including all component parts related thereto (the "subject vehicle");

IT IS NOW, hereby stipulated and agreed by and between the parties, through their respective counsel, as follows:

1. The subject vehicle shall be preserved throughout this litigation (and any appeals thereto) in a cool, dry indoor-covered environment.
2. The subject vehicle is currently owned by plaintiffs and stored at BVRSM, 685 Station Road, Bellport NY.
3. No party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive

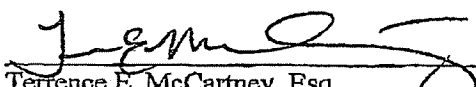
examination or disassembly, or the Court issues an order as a result of a motion made on notice to all counsel of record, permitting destructive testing, destructive examination or disassembly.


~~4. All inspections of the subject vehicle must be on seven (7) days' prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle.~~

4. This Stipulation shall remain in effect throughout the pendency of the litigation and any appeals thereto, until such time as the litigation is resolved either through settlement or final judgment.

Dated: November 25, 2009
New York, New York

Dated: November 24, 2009
White Plains, New York


Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & MCCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, New York 10016
(212) 684-1880


Steven R. Kfamer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949 2909

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. ET AL.

Defendants.

PLAINTIFFS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS
TO THE TOYOTA DEFENDANTS

Law Offices
**RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP**
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

Index No.: 27718/09

-against-


DEPOSITION NOTICE

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.
-----X

PLEASE TAKE NOTICE that, pursuant to CPLR 3106 and 3107,
plaintiffs Kong Iu Leong and Sio-Keng Leong, by their
undersigned attorneys, will take the deposition upon oral
examination of **Bob Carter**, a representative of defendant Toyota
Motor Sales USA, Inc. (TMS) before a notary public or other
officer authorized by law to administer oaths. The
examination(s) will take place at the offices of defendant
Toyota Motor Sales, U.S.A., Inc., located at 19001 S. Western
Ave., Torrance, CA 90509, beginning on **May 13, 2010 at 10:00**
a.m. and shall continue from day to day until completed.

Dated: New York, New York
January 27, 2010


Terrence E. McCartney, Esq.
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
Attorneys for Plaintiffs
113 East 37th Street
New York, New York 10016
(212) 684-1880

TO: Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

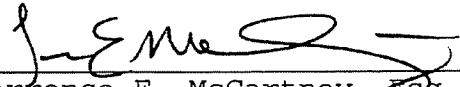
DEPOSITION NOTICE

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.
-----X

PLEASE TAKE NOTICE that, pursuant to CPLR 3106 and 3107,
plaintiffs Kong Iu Leong and Sio-Keng Leong by their undersigned
attorneys, will take the deposition upon oral examination of
Hiroyuki Yokoyama, a representative of defendant Toyota Motor
Corporation (TMC), before a notary public or other officer
authorized by law to administer oaths. The examination(s) will
take place at the offices of defendant Toyota Motor Sales,
U.S.A., Inc., located at 19001 S. Western Ave., Torrance, CA
90509, beginning on May 12, 2010 at 10:00 a.m. and shall
continue from day to day until completed.

Dated: New York, New York
January 27, 2010


Terrence E. McCartney, Esq.
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
Attorneys for Plaintiffs
113 East 37th Street
New York, New York 10016
(212) 684-1880

TO: Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Marybeth Fennelly being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age
and resides in Glendale, New York.

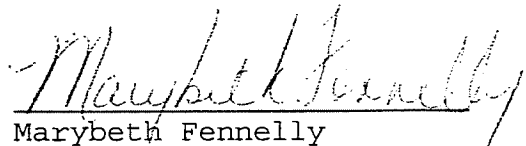
On January 27, 2010 deponent personally served the within:

Deposition Notice

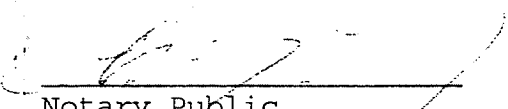
and upon the following individuals by depositing a true copy
thereof in a post-paid wrapper, in an official depository under
the exclusive care and custody of U.S. Postal Service within New
York State, addressed to each of the following persons at the
last known address set forth after each name:

TO: Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501


Marybeth Fennelly

Sworn to before me this 27th
day of January 2010


Notary Public

Charles Roby
Notary Public, State of New York
No. 6138939
Qualified in Kings County
Commission Expires 12 27 09

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

DEPOSITION NOTICE

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

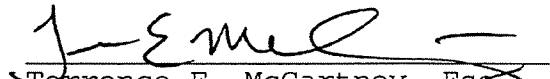
Defendants.
-----X

PLEASE TAKE NOTICE that, pursuant to CPLR 3106 and 3107,
plaintiffs Kong Iu Leong and Sio-Keng Leong, by their undersigned
attorneys, will take the deposition upon oral examination, before
a notary public or other officer authorized by law to administer
oaths, of defendants Toyota Motor Corporation (TMC), Toyota Motor
Sales USA, Inc. (TMS), Toyota Motor Engineering & Manufacturing
North America, Inc. (TME) (hereinafter collectively "Toyota"), on
the date and at the times set forth below, for the person(s) most
knowledgeable about:

- 1) the accelerator, the engine control module, the electronic
throttle control system and the associated sensors and components
in the 2009 RAV-4 and all substantially similar Toyota vehicles;
- 2) the alleged sudden unintended acceleration events in a Toyota
vehicle with a 2GR-FE engine;
- 3) Toyota's investigation of all alleged sudden unintended
acceleration events in any Toyota vehicle;
- 4) the reason(s) for the recalls of certain Toyota vehicles, and
not others, of September 2009 and January 2010.

The examination(s) will take place at the offices of defendant Toyota Motor Sales, U.S.A., Inc., located at 19001 S. Western Ave., Torrance, CA 90509, beginning on May 11, 2010 at 10:00 a.m. and shall continue from day to day until completed.

Dated: New York, New York
January 27, 2010


Terrence E. McCartney, Esq.
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
Attorneys for Plaintiffs
113 East 37th Street
New York, New York 10016
(212) 684-1880

TO: Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Marybeth Fennelly being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age
and resides in Glendale, New York.

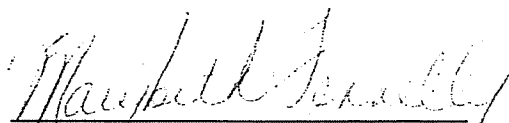
On January 27, 2010 deponent personally served the within:

Deposition Notice

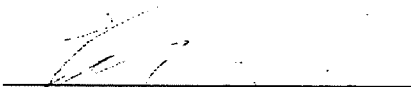
and upon the following individuals by depositing a true copy
thereof in a post-paid wrapper, in an official depository under
the exclusive care and custody of U.S. Postal Service within New
York State, addressed to each of the following persons at the
last known address set forth after each name:

TO: Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501


Marybeth Fennelly

Sworn to before me this 27th
day of January 2010



Notary Public

Charles Roby
Notary Public, State of New York
No. 6138939
Qualified in Kings County
Commission Expires 12 27 09

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

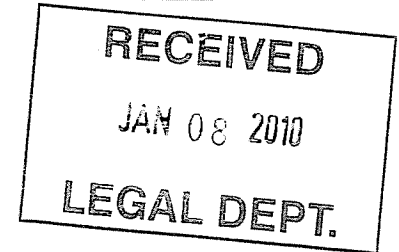
Plaintiffs,

-against-

COMBINED DEMANDS

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), through its counsel, issues the following Combined Demands:

NOTICE TO TAKE DEPOSITIONS UPON ORAL EXAMINATION

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of plaintiffs, KONG IU LEONG and SIO-KENG LEONG, and co-defendant will be taken before a Notary Public, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at a place and time to be mutually agreed upon and/or in compliance with a scheduling order of the Court, with respect to evidence material and necessary in the prosecution/defense of this proceeding.

That the said person to be examined is required to produce at such examination the following: all papers, documents and other instruments concerning the within action.

DEMAND FOR PRESERVATION OF EVIDENCE

The answering defendant demands that all parties preserve any and all evidence which involves the subject matter of this litigation, including, but not limited to, a certain 2009 Toyota RAV4 bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

DEMAND FOR FACT WITNESS INFORMATION

PLEASE TAKE NOTICE that pursuant to Article 31 of the CPLR, demand is hereby made to provide the undersigned with the name(s) and address(es) of any eyewitness(es) and or notice witness(es) of the subject accident or the alleged defective condition complained of.

DEMAND FOR EXPERT WITNESS INFORMATION

PLEASE TAKE NOTICE that pursuant to Article 31 of the CPLR, demand is hereby made upon all parties to serve expert disclosure in compliance with CPLR § 3101(d).

DEMAND FOR STATEMENTS

PLEASE TAKE NOTICE that, pursuant to CPLR § 3101(e), demand is hereby made upon you for a copy of all statements of the answering defendant and the employees and agents of said party. If there are no statements, please advise accordingly.

DEMAND FOR MEDICAL AND HOSPITAL RECORDS AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon plaintiffs:

1. Serve upon and deliver to the undersigned attorneys, copies of the medical reports and bills of those physicians who have previously treated or examined plaintiffs. These shall include a detailed recital of the injuries and conditions as to which testimony will be

offered at the trial, referring to and identifying those x-rays and technician's reports which will be offered at the trial; and

2. Serve upon and deliver to the undersigned attorneys, duly executed and acknowledged written authorizations, permitting all parties to obtain and make copies of all medical records of hospitals, treating physicians, and/or psychiatrist, psychologist, or other mental health care provider and such other records, including x-rays and technician's reports as referred to and identified in the statements of the plaintiffs' physicians.

DEMAND FOR INSURANCE AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon the plaintiffs:

1. Serve upon you and deliver to the undersigned attorneys, duly executed and acknowledged written authorizations permitting all parties to obtain and make copies of the No-Fault records for plaintiffs; and

2. Serve upon you and deliver to the undersigned attorneys, duly executed authorizations permitting all parties to obtain and make copies of the property damage claim file for the subject vehicle.

DEMAND FOR COLLATERAL SOURCE INFORMATION

PLEASE TAKE NOTICE that pursuant to § 4545(a) of the CPLR, the answering defendant demands that within twenty (20) days of the date hereof, plaintiffs serve upon the undersigned a verified statement setting forth:

1. Whether plaintiffs have been reimbursed or indemnified for economic loss claimed in this action from any collateral source.

- (a) If the answer to the foregoing is in the affirmative, state for which of such claims plaintiffs have received payment, the amount thereof, and the name and address of the person, firm, entity, or organization which made such payment;
- (b) If such payment was made by the insurance company, state the number of the policy under which it was paid.

2. Whether plaintiffs have made claim for payment for economic loss which has not as yet been paid:

- (a) If the answer is in the affirmative, state the name of the person, firm, entity, or organization to which such claim was presented, the date of presentation, and the amount claimed.
- (b) If such claim was presented to an insurance company, state the number of the policy under which the claim was made.

DEMAND FOR SOCIAL SECURITY ADMINISTRATION RECORDS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon plaintiffs to provide a duly executed and acknowledged written authorization permitting all parties to obtain and make copies of plaintiffs' Social Security Administration records, if any, or Social Security Disability Insurance records, if any.

DEMAND FOR EMPLOYMENT RECORDS AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, the answering defendant herein hereby demands that you furnish the undersigned with the required authorization(s) permitting us to obtain the employment records of the plaintiffs, if any, for loss of earnings.


DEMAND FOR INCOME TAX RECORDS

If plaintiffs are asserting a loss of earnings claim, pursuant to Article 31 of the CPLR, demand is hereby made upon the plaintiffs to:

1. Serve upon and deliver to the undersigned attorneys, copies of all plaintiffs' tax records for the years 2007 through 2009; and
2. Serve upon and deliver to the undersigned attorneys, duly executed IRS form 4506 for the years 2007 through 2009, permitting all parties to obtain and make copies of the plaintiffs' tax records. Please include two (2) pieces of identification to obtain plaintiffs' records.

Dated: White Plains, New York
January 5, 2010

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 5th day of January, 2010, deponent served the within **COMBINED DEMANDS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

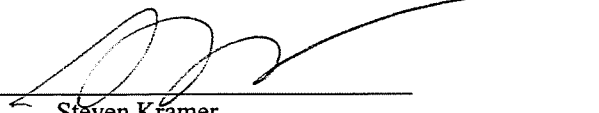
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
5th day of January, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IJ LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

COMBINED DEMAND

ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005091

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

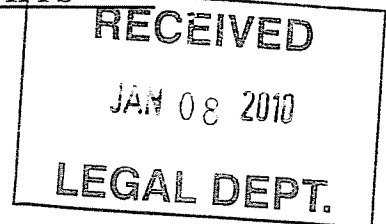
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

**INTERROGATORIES
ADDRESSED
TO PLAINTIFFS**



Defendant, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC , hereby requests that the plaintiffs answer fully, in writing and under oath, the following interrogatories pursuant to Article 31 of the CPLR.

DEFINITIONS AND INSTRUCTIONS

Unless negated by the context of the interrogatory, the following definitions are to be considered to be applicable to all interrogatories contained herein:

(A) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(B) With respect to documents, the term "identify" means to give the date, title, author and addressee; identify with respect to documents further means:

- (I) to describe a document sufficiently well to enable the interrogator to know what such document is and to retrieve it from a file or wherever it may be located;

{V0026946.1}

TOY-RQ-05E-00005092

- (II) to describe it in a manner suitable for use as a description in a subpoena;
- (III) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof.

(C) "Identify" when used in reference to an individual means:

- (I) to state his/her full name;
- (II) present residence address or last known residence;
- (III) present or last known business address;
- (IV) present employer or last known employer; and
- (V) whether ever employed by any party to this action and, if so, the dates he (she) was employed by such party, the name of such party, and the last position held as an employee of such party.

(D) Whenever the expression "and/or" is used in these interrogatories, the information called for should be set out in the conjunctive and disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

(E) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then the approximate date, amount or other computation or figure should be given or the best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

(F) No answer is to be left blank. If the answer to an interrogatory or subparagraph of an interrogatory is "none" or "unknown," such statement must be written in the answer. If the question is inapplicable, "N/A" must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of the privilege is to be stated.

(G) These interrogatories are continuing, and any information secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, are to be supplied by supplemental answers.

(H) "Plaintiffs" mean KONG IU LEONG and SIO-KENG LEONG, or any person or entity acting on their behalf.

(I) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

(J) "Subject accident" means the August 27, 2009 accident described in plaintiffs' complaint.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

1. Give the names and addresses of the following persons:

- (a) those who witnessed the occurrence giving rise to this suit; and
- (b) those who have any information or knowledge concerning the facts,

events, circumstances or conditions surrounding the happening of said occurrence.

ANSWER:

2. State whether any person gave any statement or prepared any document, memorandum, drawing or any other tangible thing pertaining to the occurrence giving rise to this suit.

(a) If your answer is in the affirmative, as to each person state the following:

- (1) Identify each person;
- (2) Describe the nature of what was done or produced; and
- (3) Give the name and address of the person having custody of each item described above.

ANSWER:

3. State whether any photographs were taken of the site of the occurrence, the subject vehicle or persons involved in the incident:

(a) If your answer is in the affirmative, state:

- (1) the subject matter of the photographs;
- (2) the date and time of day said photographs were taken;
- (3) the name, address and job classification of the person taking same, and the name and address of his employer, if not in your employ; and

- (4) the name, address and classification of the person having custody of the same.

ANSWER:

4. State whether any plans, drawings, blueprints, sketches or diagrams exist or were made of the site of the occurrence or the subject vehicle involved herein.

(a) If your answer is in the affirmative, state:

- (1) the identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;
- (2) the date and time of day when each of the same was made if subsequent to the occurrence;
- (3) the name, address and job classification of the person making same, if made subsequent to the occurrence; and
- (4) the name, address and job classification of the person having custody of the plans, drawings, blueprints, sketches or diagrams.

ANSWER:

5. State in detail and with particularity the damages you allege were sustained as a result of the occurrence here involved.

ANSWER:

6. Identify all persons whom you claim to have, or who claim to have a subrogation interest in the outcome of this litigation and for each such person, state the dollar value of the subrogation interest.

ANSWER:

7. Give the year, model, and serial number, of the subject vehicle at the time of the incident in question.

ANSWER:

8. State the date that the subject vehicle was purchased.

- (a) Identify the individual or entity which sold said vehicle;
- (b) Identify the individual or entity which purchased said vehicle;
- (c) Indicate whether said vehicle was purchased new or refurbished:
 - (1) if the vehicle was purchased refurbished, state the condition of the vehicle at the time of its last sale; and
- (d) Identify each previous owner of the subject vehicle from the date of its

purchase until the time of the incident in question.

ANSWER:

9. If anyone to your knowledge ever observed, noticed, or experienced anything unusual or complained about the subject vehicle prior to the incident in question:

- (a) Identify each such person;
- (b) State with particularity what was observed, noticed, or experienced about said vehicle; and
- (c) State when such observation was made.

ANSWER:

10. Identify each individual or business entity which performed any maintenance or repairs on the subject vehicle from the date of its acquisition to the present:

- (a) Set forth the date of each such maintenance or repair; and
- (b) Identify the precise work done.

ANSWER:

11. Trace the location of the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the subject vehicle was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the subject vehicle.

ANSWER:

12. Trace the location of any component part removed from the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the component part was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the component part.

ANSWER:

13. State whether the subject vehicle or any of its component parts has been examined, inspected, or tested since the time of the incident in question.

- (a) Identify each such person or entity conducting such examination, inspection, or testing;
- (b) Identify the parts of the vehicle examined, inspected, or tested;
- (c) Indicate the date of each such examination, inspection, or test; and
- (d) State whether a written report of same has been submitted to you or to anyone acting on your behalf.

ANSWER:

14. Identify each component part of the subject vehicle which you contend either was defective or malfunctioned at the time of the incident in question.

ANSWER:

15. State in detail the defective condition that allegedly existed in the subject vehicle and the manner in which said condition caused the incident in question.

ANSWER:

16. Do you contend that any aspect of the design of the subject vehicle was improper?

If so:

- (a) Identify each part that was improperly designed; and
- (b) Identify the specific elements of the design which were unsafe.

ANSWER:

17. Do you contend that, at the time of this incident, there was being sold, on the public marketplace, an alternate design(s) to the subject vehicle (or component or subcomponent thereof) which would have either prevented or reduced your injury? If so:

(a) Identify each and every alternate design. (Please include the year, model number(s), and/or serial number(s)).

ANSWER:


18. Do you contend that this answering defendant breached any warranty, whether express or implied, that it made concerning the subject vehicle. If so:

- (a) State whether the warranty was written or oral;
- (b) If oral, identify who made the warranty or representation;
- (c) If oral, identify when the warranty or representation was made;
- (d) If oral, identify where the warranty or representation was made; and
- (e) State the terms of the warranty or representation.

ANSWER:

Dated: White Plains, New York
January 5, 2010

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

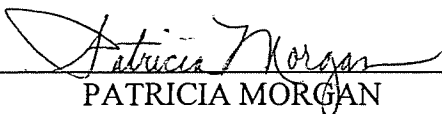
PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 5th day of January, 2010, deponent served the within **INTERROGATORIES ADDRESSED TO PLAINTIFFS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042


John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
5th day of January, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005102

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR
PRODUCTION OF
DOCUMENTS

RECEIVED

JAN 08 2010

LEGAL DEPT.

Defendant, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby requests that all parties, pursuant to Section 3120 of the CPLR, produce the following documents and tangible objects at the offices of Eckert Seamans Cherin & Mellott, LLC, 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(2) "Concerning" means relating to, referring to, describing, evidencing or constituting.

(3) "And/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

{V0026945.1}

TOY-RQ-05E-00005103

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR
PRODUCTION OF
DOCUMENTS

RECEIVED

JAN 08 2010

LEGAL DEPT.

Defendant, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TEMA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby requests that all parties, pursuant to Section 3120 of the CPLR, produce the following documents and tangible objects at the offices of Eckert Seamans Cherin & Mellott, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(2) "Concerning" means relating to, referring to, describing, evidencing or constituting.

(3) "And/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

{V0026945.1}

TOY-RQ-05E-00005104

(4) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts identified in plaintiffs' Complaint.

(5) "Incident" and "accident" mean the August 27, 2009 incident referred to in plaintiffs' Complaint.

ITEMS TO BE PRODUCED

1. Copies of any and all advertisements or vehicle brochures, in your possession, authored by this answering defendant, which you claim that you relied upon.
2. Copies of all invoices, receipts, warranties, or other writings concerning the purchase, ownership, registration, or title of the subject vehicle.
3. Copies of all work orders, receipts, warranties, or other documents concerning the service, repair, or maintenance of the subject vehicle.
4. All documents concerning the towing, storage, and disposition of the subject vehicle subsequent to the accident.
5. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to depict the accident scene or any aspect of the accident scene in this case.
6. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to the subject vehicle.
7. Duplicate original copies of any and all photographs, films, or videotapes, in your possession, which depict or purport to depict plaintiffs' damages.
8. All reports, memos, and/or documentation prepared by any municipal, county, or state law enforcement agency or other agency relating to the subject vehicle or accident.
9. All documents concerning the events which led to the alleged discovery of what you contend are defects in the subject vehicle as described in plaintiffs' Complaint.
10. Any repair estimates, property damage appraisals, or other documents reflecting damage to the subject vehicle as a result of the accident.
11. The subject vehicle and any component parts thereof.

12. The operator's manual and any other materials concerning the operation, maintenance, or service of the subject vehicle.

13. All documents concerning any warranty or representation made by this answering defendant concerning the subject vehicle.

14. All pleadings or other documents in any legal or administrative proceeding other than this litigation arising out of the accident.


15. Any release, covenant not to sue, or other documents entered into by plaintiffs, which relieves another person, party, or entity for liability and/or damages to plaintiff for losses and/or injuries arising out of the accident, giving rise to this litigation.

16. Documents depicting plaintiffs' alternative design(s).

17. Tests and test reports concerning plaintiffs' alternative design(s).

Dated: White Plains, New York
January 5, 2010

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 5th day of January, 2010, deponent served the within **REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

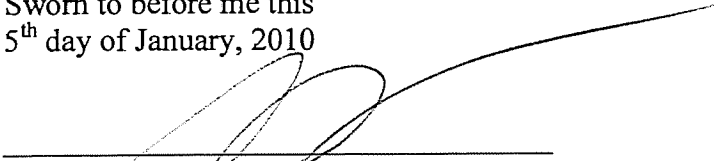
John J. Gentile, Esq.
BELLA VIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
5th day of January, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS.

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
**TOYOTA MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.**
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005110

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

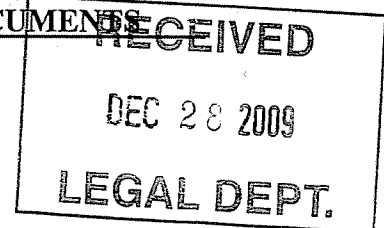
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR
PRODUCTION OF
DOCUMENTS



Defendant, TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), by its attorneys, Eckert
Seamans Cherin & Mellott, LLC, hereby requests that all parties, pursuant to Section 3120 of the
CPLR, produce the following documents and tangible objects at the offices of Eckert Seamans
Cherin & Mellott, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) "Documents" is an all-inclusive term referring to any writing and/or recorded or
graphic matter, however produced or reproduced. The term documents includes, without
limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes,
schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media,
tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders,
pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs,
recordings, telegrams, films, and all other such documents tangible or retrievable of any kind.
Documents also include any preliminary notes and drafts of all the foregoing, in whatever form,
for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon
blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other
form.

(2) "Concerning" means relating to, referring to, describing, evidencing or
constituting.

(3) "And/or" shall be construed either disjunctively or conjunctively as necessary to
bring within the scope of the discovery request all responses that might otherwise be construed to
be outside of its scope.

(4) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts identified in plaintiffs' Complaint.

(5) "Incident" and "accident" mean the August 27, 2009 incident referred to in plaintiffs' Complaint.

ITEMS TO BE PRODUCED

1. Copies of any and all advertisements or vehicle brochures, in your possession, authored by this answering defendant, which you claim that you relied upon.
2. Copies of all invoices, receipts, warranties, or other writings concerning the purchase, ownership, registration, or title of the subject vehicle.
3. Copies of all work orders, receipts, warranties, or other documents concerning the service, repair, or maintenance of the subject vehicle.
4. All documents concerning the towing, storage, and disposition of the subject vehicle subsequent to the accident.
5. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to depict the accident scene or any aspect of the accident scene in this case.
6. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to the subject vehicle.
7. Duplicate original copies of any and all photographs, films, or videotapes, in your possession, which depict or purport to depict plaintiffs' damages.
8. All reports, memos, and/or documentation prepared by any municipal, county, or state law enforcement agency or other agency relating to the subject vehicle or accident.
9. All documents concerning the events which led to the alleged discovery of what you contend are defects in the subject vehicle as described in plaintiffs' Complaint.
10. Any repair estimates, property damage appraisals, or other documents reflecting damage to the subject vehicle as a result of the accident.
11. The subject vehicle and any component parts thereof.

12. The operator's manual and any other materials concerning the operation, maintenance, or service of the subject vehicle.

13. All documents concerning any warranty or representation made by this answering defendant concerning the subject vehicle.

14. All pleadings or other documents in any legal or administrative proceeding other than this litigation arising out of the accident.

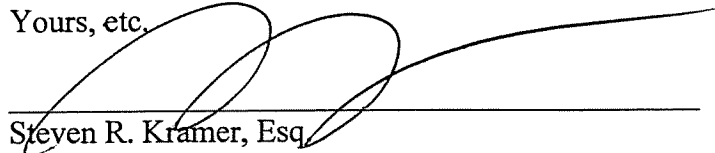
15. Any release, covenant not to sue, or other documents entered into by plaintiffs, which relieves another person, party, or entity for liability and/or damages to plaintiff for losses and/or injuries arising out of the accident, giving rise to this litigation.

16. Documents depicting plaintiffs' alternative design(s).

17. Tests and test reports concerning plaintiffs' alternative design(s).

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042


John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005117

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

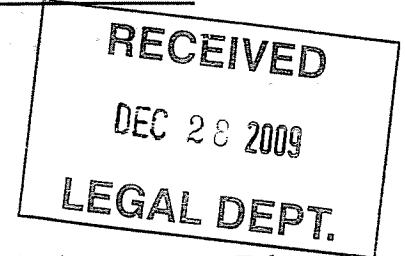
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

**INTERROGATORIES
ADDRESSED
TO PLAINTIFFS**



Defendant, TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), by its attorneys, Eckert

Seamans Cherin & Mellott, LLC , hereby requests that the plaintiffs answer fully, in writing and under oath, the following interrogatories pursuant to Article 31 of the CPLR.

DEFINITIONS AND INSTRUCTIONS

Unless negated by the context of the interrogatory, the following definitions are to be considered to be applicable to all interrogatories contained herein:

(A) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(B) With respect to documents, the term "identify" means to give the date, title, author and addressee; identify with respect to documents further means:

- (I) to describe a document sufficiently well to enable the interrogator to know what such document is and to retrieve it from a file or wherever it may be located;
- (II) to describe it in a manner suitable for use as a description in a subpoena;

{V0026713.1}

(III) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof.

(C) "Identify" when used in reference to an individual means:

(I) to state his/her full name;

(II) present residence address or last known residence;

(III) present or last known business address;

(IV) present employer or last known employer; and

(V) whether ever employed by any party to this action and, if so, the dates he (she) was employed by such party, the name of such party, and the last position held as an employee of such party.

(D) Whenever the expression "and/or" is used in these interrogatories, the information called for should be set out in the conjunctive and disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

(E) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then the approximate date, amount or other computation or figure should be given or the best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

(F) No answer is to be left blank. If the answer to an interrogatory or subparagraph of an interrogatory is "none" or "unknown," such statement must be written in the answer. If the question is inapplicable, "N/A" must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of the privilege is to be stated.

(G) These interrogatories are continuing, and any information secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, are to be supplied by supplemental answers.

(H) "Plaintiffs" mean KONG IU LEONG and SIO-KENG LEONG, or any person or entity acting on their behalf.

(I) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

(J) "Subject accident" means the August 27, 2009 accident described in plaintiffs' complaint.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

1. Give the names and addresses of the following persons:

- (a) those who witnessed the occurrence giving rise to this suit; and
- (b) those who have any information or knowledge concerning the facts,

events, circumstances or conditions surrounding the happening of said occurrence.

ANSWER:

2. State whether any person gave any statement or prepared any document, memorandum, drawing or any other tangible thing pertaining to the occurrence giving rise to this suit.

- (a) If your answer is in the affirmative, as to each person state the following:
 - (1) Identify each person;
 - (2) Describe the nature of what was done or produced; and
 - (3) Give the name and address of the person having custody of each item described above.

ANSWER:

3. State whether any photographs were taken of the site of the occurrence, the subject vehicle or persons involved in the incident:

- (a) If your answer is in the affirmative, state:
 - (1) the subject matter of the photographs;
 - (2) the date and time of day said photographs were taken;
 - (3) the name, address and job classification of the person taking same, and the name and address of his employer, if not in your employ; and

- (4) the name, address and classification of the person having custody of the same.

ANSWER:

4. State whether any plans, drawings, blueprints, sketches or diagrams exist or were made of the site of the occurrence or the subject vehicle involved herein.

(a) If your answer is in the affirmative, state:

- (1) the identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;
- (2) the date and time of day when each of the same was made if subsequent to the occurrence;
- (3) the name, address and job classification of the person making same, if made subsequent to the occurrence; and
- (4) the name, address and job classification of the person having custody of the plans, drawings, blueprints, sketches or diagrams.

ANSWER:

5. State in detail and with particularity the damages you allege were sustained as a result of the occurrence here involved.

ANSWER:

6. Identify all persons whom you claim to have, or who claim to have a subrogation interest in the outcome of this litigation and for each such person, state the dollar value of the subrogation interest.

ANSWER:

7. Give the year, model, and serial number, of the subject vehicle at the time of the incident in question.

ANSWER:

8. State the date that the subject vehicle was purchased.

- (a) Identify the individual or entity which sold said vehicle;
- (b) Identify the individual or entity which purchased said vehicle;
- (c) Indicate whether said vehicle was purchased new or refurbished:
 - (1) if the vehicle was purchased refurbished, state the condition of the vehicle at the time of its last sale; and
- (d) Identify each previous owner of the subject vehicle from the date of its

purchase until the time of the incident in question.

ANSWER:

9. If anyone to your knowledge ever observed, noticed, or experienced anything unusual or complained about the subject vehicle prior to the incident in question:

- (a) Identify each such person;
- (b) State with particularity what was observed, noticed, or experienced about said vehicle; and
- (c) State when such observation was made.

ANSWER:

10. Identify each individual or business entity which performed any maintenance or repairs on the subject vehicle from the date of its acquisition to the present:

- (a) Set forth the date of each such maintenance or repair; and
- (b) Identify the precise work done.

ANSWER:

11. Trace the location of the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the subject vehicle was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the subject vehicle.

ANSWER:

12. Trace the location of any component part removed from the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the component part was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the component part.

ANSWER:

13. State whether the subject vehicle or any of its component parts has been examined, inspected, or tested since the time of the incident in question.

(a) Identify each such person or entity conducting such examination, inspection, or testing;

(b) Identify the parts of the vehicle examined, inspected, or tested;

(c) Indicate the date of each such examination, inspection, or test; and

(d) State whether a written report of same has been submitted to you or to anyone acting on your behalf.

ANSWER:

14. Identify each component part of the subject vehicle which you contend either was defective or malfunctioned at the time of the incident in question.

ANSWER:

15. State in detail the defective condition that allegedly existed in the subject vehicle and the manner in which said condition caused the incident in question.

ANSWER:

16. Do you contend that any aspect of the design of the subject vehicle was improper?

If so:

(a) Identify each part that was improperly designed; and

(b) Identify the specific elements of the design which were unsafe.

ANSWER:

17. Do you contend that, at the time of this incident, there was being sold, on the public marketplace, an alternate design(s) to the subject vehicle (or component or subcomponent thereof) which would have either prevented or reduced your injury? If so:

(a) Identify each and every alternate design. (Please include the year, model number(s), and/or serial number(s)).

ANSWER:


18. Do you contend that this answering defendant breached any warranty, whether express or implied, that it made concerning the subject vehicle. If so:

- (a) State whether the warranty was written or oral;
- (b) If oral, identify who made the warranty or representation;
- (c) If oral, identify when the warranty or representation was made;
- (d) If oral, identify where the warranty or representation was made; and
- (e) State the terms of the warranty or representation.

ANSWER:

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **INTERROGATORIES ADDRESSED TO PLAINTIFFS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042


John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

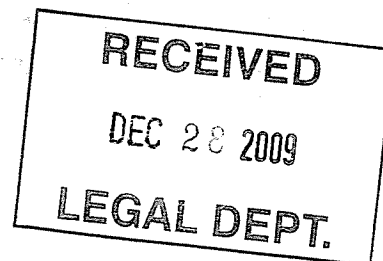
Plaintiffs,

-against-

COMBINED DEMANDS

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("TMS"), through its counsel,
issues the following Combined Demands:

NOTICE TO TAKE DEPOSITIONS UPON ORAL EXAMINATION

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of plaintiffs, KONG IU LEONG and SIO-KENG LEONG, and co-defendant will be taken before a Notary Public, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at a place and time to be mutually agreed upon and/or in compliance with a scheduling order of the Court, with respect to evidence material and necessary in the prosecution/defense of this proceeding.

That the said person to be examined is required to produce at such examination the following: all papers, documents and other instruments concerning the within action.

DEMAND FOR PRESERVATION OF EVIDENCE

The answering defendant demands that all parties preserve any and all evidence which involves the subject matter of this litigation, including, but not limited to, a certain 2009 Toyota RAV4 bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

DEMAND FOR FACT WITNESS INFORMATION

PLEASE TAKE NOTICE that pursuant to Article 31 of the CPLR, demand is hereby made to provide the undersigned with the name(s) and address(es) of any eyewitness(es) and or notice witness(es) of the subject accident or the alleged defective condition complained of.

DEMAND FOR EXPERT WITNESS INFORMATION

PLEASE TAKE NOTICE that pursuant to Article 31 of the CPLR, demand is hereby made upon all parties to serve expert disclosure in compliance with CPLR § 3101(d).

DEMAND FOR STATEMENTS

PLEASE TAKE NOTICE that, pursuant to CPLR § 3101(e), demand is hereby made upon you for a copy of all statements of the answering defendant and the employees and agents of said party. If there are no statements, please advise accordingly.

DEMAND FOR MEDICAL AND HOSPITAL RECORDS AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon plaintiffs:

1. Serve upon and deliver to the undersigned attorneys, copies of the medical reports and bills of those physicians who have previously treated or examined plaintiffs. These shall include a detailed recital of the injuries and conditions as to which testimony will be

offered at the trial, referring to and identifying those x-rays and technician's reports which will be offered at the trial; and

2. Serve upon and deliver to the undersigned attorneys, duly executed and acknowledged written authorizations, permitting all parties to obtain and make copies of all medical records of hospitals, treating physicians, and/or psychiatrist, psychologist, or other mental health care provider and such other records, including x-rays and technician's reports as referred to and identified in the statements of the plaintiffs' physicians.

DEMAND FOR INSURANCE AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon the plaintiffs:

1. Serve upon you and deliver to the undersigned attorneys, duly executed and acknowledged written authorizations permitting all parties to obtain and make copies of the No-Fault records for plaintiffs; and

2. Serve upon you and deliver to the undersigned attorneys, duly executed authorizations permitting all parties to obtain and make copies of the property damage claim file for the subject vehicle.

DEMAND FOR COLLATERAL SOURCE INFORMATION

PLEASE TAKE NOTICE that pursuant to § 4545(a) of the CPLR, the answering defendant demands that within twenty (20) days of the date hereof, plaintiffs serve upon the undersigned a verified statement setting forth:

1. Whether plaintiffs have been reimbursed or indemnified for economic loss claimed in this action from any collateral source.

- (a) If the answer to the foregoing is in the affirmative, state for which of such claims plaintiffs have received payment, the amount thereof, and the name and address of the person, firm, entity, or organization which made such payment;
- (b) If such payment was made by the insurance company, state the number of the policy under which it was paid.

2. Whether plaintiffs have made claim for payment for economic loss which has not as yet been paid:

- (a) If the answer is in the affirmative, state the name of the person, firm, entity, or organization to which such claim was presented, the date of presentation, and the amount claimed.
- (b) If such claim was presented to an insurance company, state the number of the policy under which the claim was made.

DEMAND FOR SOCIAL SECURITY ADMINISTRATION RECORDS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, demand is hereby made upon plaintiffs to provide a duly executed and acknowledged written authorization permitting all parties to obtain and make copies of plaintiffs' Social Security Administration records, if any, or Social Security Disability Insurance records, if any.

DEMAND FOR EMPLOYMENT RECORDS AUTHORIZATIONS

PLEASE TAKE NOTICE that, pursuant to Article 31 of the CPLR, the answering defendant herein hereby demands that you furnish the undersigned with the required authorization(s) permitting us to obtain the employment records of the plaintiffs, if any, for loss of earnings.

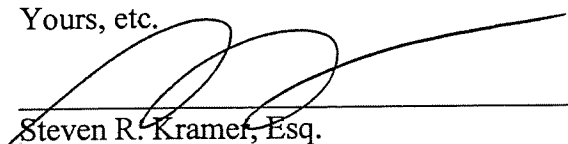
DEMAND FOR INCOME TAX RECORDS

If plaintiffs are asserting a loss of earnings claim, pursuant to Article 31 of the CPLR, demand is hereby made upon the plaintiffs to:

1. Serve upon and deliver to the undersigned attorneys, copies of all plaintiffs' tax records for the years 2007 through 2009; and
2. Serve upon and deliver to the undersigned attorneys, duly executed IRS form 4506 for the years 2007 through 2009, permitting all parties to obtain and make copies of the plaintiffs' tax records. Please include two (2) pieces of identification to obtain plaintiffs' records.

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **COMBINED DEMANDS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

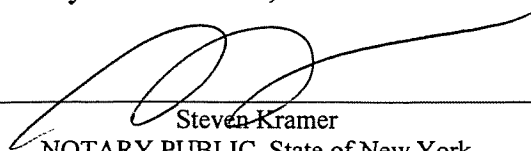
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG JU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

COMBINED DEMAND

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0026702.1}

TOY-RQ-05E-00005135

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

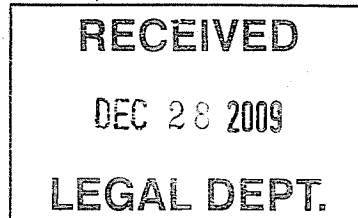
Plaintiffs,

-against-

COMBINED DEMANDS

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.



Defendant TOYOTA MOTOR CORPORATION ("TMC"), through its counsel, issues the following Combined Demands:

NOTICE TO TAKE DEPOSITIONS UPON ORAL EXAMINATION

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of plaintiffs, KONG IU LEONG and SIO-KENG LEONG, and co-defendant will be taken before a Notary Public, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at a place and time to be mutually agreed upon and/or in compliance with a scheduling order of the Court, with respect to evidence material and necessary in the prosecution/defense of this proceeding.

That the said person to be examined is required to produce at such examination the following: all papers, documents and other instruments concerning the within action.

DEMAND FOR PRESERVATION OF EVIDENCE

The answering defendant demands that all parties preserve any and all evidence which involves the subject matter of this litigation, including, but not limited to, a certain 2009 Toyota RAV4 bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

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offered at the trial, referring to and identifying those x-rays and technician's reports which will be offered at the trial; and

2. Serve upon and deliver to the undersigned attorneys, duly executed and acknowledged written authorizations, permitting all parties to obtain and make copies of all medical records of hospitals, treating physicians, and/or psychiatrist, psychologist, or other mental health care provider and such other records, including x-rays and technician's reports as referred to and identified in the statements of the plaintiffs' physicians.

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1. Whether plaintiffs have been reimbursed or indemnified for economic loss claimed in this action from any collateral source.

- (a) If the answer to the foregoing is in the affirmative, state for which of such claims plaintiffs have received payment, the amount thereof, and the name and address of the person, firm, entity, or organization which made such payment;
- (b) If such payment was made by the insurance company, state the number of the policy under which it was paid.

2. Whether plaintiffs have made claim for payment for economic loss which has not as yet been paid:

- (a) If the answer is in the affirmative, state the name of the person, firm, entity, or organization to which such claim was presented, the date of presentation, and the amount claimed.
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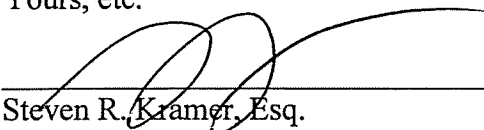
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Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **COMBINED DEMANDS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

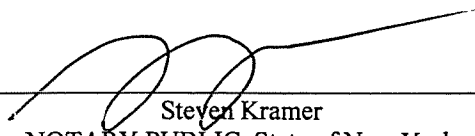
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND SIAR TOYOTA OF
BAYSIDE, INC..

Defendants.

COMBINED DEMANDS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

TOYOTA MOTOR CORPORATION

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0026703.1}

TOY-RQ-05E-00005142

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

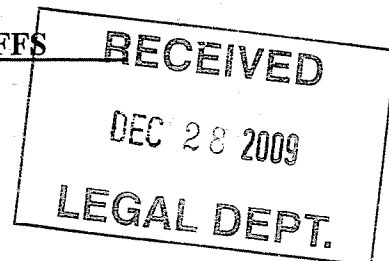
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

**INTERROGATORIES
ADDRESSED
TO PLAINTIFFS**



Defendant, TOYOTA MOTOR CORPORATION (“TMC”), by its attorneys, Eckert
Seamans Cherin & Mellott, LLC , hereby requests that the plaintiffs answer fully, in writing and
under oath, the following interrogatories pursuant to Article 31 of the CPLR.

DEFINITIONS AND INSTRUCTIONS

Unless negated by the context of the interrogatory, the following definitions are to be
considered to be applicable to all interrogatories contained herein:

(A) “Documents” is an all-inclusive term referring to any writing and/or recorded or
graphic matter, however produced or reproduced. The term documents includes, without
limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes,
schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media,
tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders,
pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs,
recordings, telegrams, films, and all other such documents tangible or retrievable of any kind.
Documents also include any preliminary notes and drafts of all the foregoing, in whatever form,
for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon
blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other
form.

(B) With respect to documents, the term “identify” means to give the date, title,
author and addressee; identify with respect to documents further means:

- (I) to describe a document sufficiently well to enable the interrogator to know
what such document is and to retrieve it from a file or wherever it may be
located;
- (II) to describe it in a manner suitable for use as a description in a subpoena;

{V0026714.1}

TOY-RQ-05E-00005143

(III) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof.

(C) "Identify" when used in reference to an individual means:

(I) to state his/her full name;

(II) present residence address or last known residence;

(III) present or last known business address;

(IV) present employer or last known employer; and

(V) whether ever employed by any party to this action and, if so, the dates he (she) was employed by such party, the name of such party, and the last position held as an employee of such party.

(D) Whenever the expression "and/or" is used in these interrogatories, the information called for should be set out in the conjunctive and disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

(E) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then the approximate date, amount or other computation or figure should be given or the best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

(F) No answer is to be left blank. If the answer to an interrogatory or subparagraph of an interrogatory is "none" or "unknown," such statement must be written in the answer. If the question is inapplicable, "N/A" must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of the privilege is to be stated.

(G) These interrogatories are continuing, and any information secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, are to be supplied by supplemental answers.

(H) "Plaintiffs" mean KONG IU LEONG and SIO-KENG LEONG, or any person or entity acting on their behalf.

(I) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts.

(J) "Subject accident" means the August 27, 2009 accident described in plaintiffs' complaint.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

1. Give the names and addresses of the following persons:

- (a) those who witnessed the occurrence giving rise to this suit; and
- (b) those who have any information or knowledge concerning the facts,

events, circumstances or conditions surrounding the happening of said occurrence.

ANSWER:

2. State whether any person gave any statement or prepared any document, memorandum, drawing or any other tangible thing pertaining to the occurrence giving rise to this suit.

- (a) If your answer is in the affirmative, as to each person state the following:
 - (1) Identify each person;
 - (2) Describe the nature of what was done or produced; and
 - (3) Give the name and address of the person having custody of each item described above.

ANSWER:

3. State whether any photographs were taken of the site of the occurrence, the subject vehicle or persons involved in the incident:

- (a) If your answer is in the affirmative, state:
 - (1) the subject matter of the photographs;
 - (2) the date and time of day said photographs were taken;
 - (3) the name, address and job classification of the person taking same, and the name and address of his employer, if not in your employ; and

- (4) the name, address and classification of the person having custody of the same.

ANSWER:

4. State whether any plans, drawings, blueprints, sketches or diagrams exist or were made of the site of the occurrence or the subject vehicle involved herein.

(a) If your answer is in the affirmative, state:

- (1) the identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;
- (2) the date and time of day when each of the same was made if subsequent to the occurrence;
- (3) the name, address and job classification of the person making same, if made subsequent to the occurrence; and
- (4) the name, address and job classification of the person having custody of the plans, drawings, blueprints, sketches or diagrams.

ANSWER:

5. State in detail and with particularity the damages you allege were sustained as a result of the occurrence here involved.

ANSWER:

6. Identify all persons whom you claim to have, or who claim to have a subrogation interest in the outcome of this litigation and for each such person, state the dollar value of the subrogation interest.

ANSWER:

7. Give the year, model, and serial number, of the subject vehicle at the time of the incident in question.

ANSWER:

8. State the date that the subject vehicle was purchased.

- (a) Identify the individual or entity which sold said vehicle;
- (b) Identify the individual or entity which purchased said vehicle;
- (c) Indicate whether said vehicle was purchased new or refurbished:
 - (1) if the vehicle was purchased refurbished, state the condition of the vehicle at the time of its last sale; and
- (d) Identify each previous owner of the subject vehicle from the date of its

purchase until the time of the incident in question.

ANSWER:

9. If anyone to your knowledge ever observed, noticed, or experienced anything unusual or complained about the subject vehicle prior to the incident in question:

- (a) Identify each such person;
- (b) State with particularity what was observed, noticed, or experienced about said vehicle; and
- (c) State when such observation was made.

ANSWER:

10. Identify each individual or business entity which performed any maintenance or repairs on the subject vehicle from the date of its acquisition to the present:

- (a) Set forth the date of each such maintenance or repair; and
- (b) Identify the precise work done.

ANSWER:

11. Trace the location of the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the subject vehicle was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the subject vehicle.

ANSWER:

12. Trace the location of any component part removed from the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the component part was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the component part.

ANSWER:

13. State whether the subject vehicle or any of its component parts has been examined, inspected, or tested since the time of the incident in question.

- (a) Identify each such person or entity conducting such examination, inspection, or testing;
- (b) Identify the parts of the vehicle examined, inspected, or tested;
- (c) Indicate the date of each such examination, inspection, or test; and
- (d) State whether a written report of same has been submitted to you or to anyone acting on your behalf.

ANSWER:

14. Identify each component part of the subject vehicle which you contend either was defective or malfunctioned at the time of the incident in question.

ANSWER:

15. State in detail the defective condition that allegedly existed in the subject vehicle and the manner in which said condition caused the incident in question.

ANSWER:

16. Do you contend that any aspect of the design of the subject vehicle was improper?

If so:

- (a) Identify each part that was improperly designed; and
- (b) Identify the specific elements of the design which were unsafe.

ANSWER:

17. Do you contend that, at the time of this incident, there was being sold, on the public marketplace, an alternate design(s) to the subject vehicle (or component or subcomponent thereof) which would have either prevented or reduced your injury? If so:

(a) Identify each and every alternate design. (Please include the year, model number(s), and/or serial number(s)).

ANSWER:

18. Do you contend that this answering defendant breached any warranty, whether express or implied, that it made concerning the subject vehicle. If so:

- (a) State whether the warranty was written or oral;
- (b) If oral, identify who made the warranty or representation;
- (c) If oral, identify when the warranty or representation was made;
- (d) If oral, identify where the warranty or representation was made; and
- (e) State the terms of the warranty or representation.

ANSWER:

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **INTERROGATORIES ADDRESSED TO PLAINTIFFS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

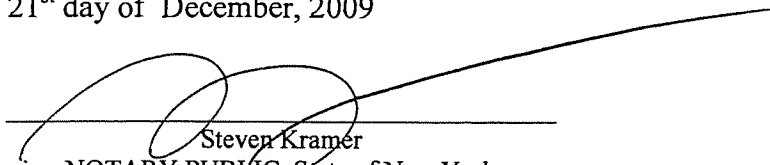
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

INTERROGATORIES ADDRESSED TO PLAINTIFFS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

TOYOTA MOTOR CORPORATION

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

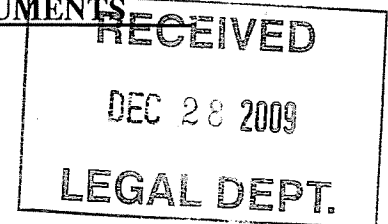
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR
PRODUCTION OF
DOCUMENTS



Defendant, TOYOTA MOTOR CORPORATION (“TMC”), by its attorneys, Eckert
Seamans Cherin & Mellott, LLC, hereby requests that all parties, pursuant to Section 3120 of the
CPLR, produce the following documents and tangible objects at the offices of Eckert Seamans
Cherin & Mellott, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) “Documents” is an all-inclusive term referring to any writing and/or recorded or
graphic matter, however produced or reproduced. The term documents includes, without
limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes,
schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media,
tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders,
pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs,
recordings, telegrams, films, and all other such documents tangible or retrievable of any kind.
Documents also include any preliminary notes and drafts of all the foregoing, in whatever form,
for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon
blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other
form.

(2) “Concerning” means relating to, referring to, describing, evidencing or
constituting.

(3) “And/or” shall be construed either disjunctively or conjunctively as necessary to
bring within the scope of the discovery request all responses that might otherwise be construed to
be outside of its scope.

{V0026710.1}

TOY-RQ-05E-00005154

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

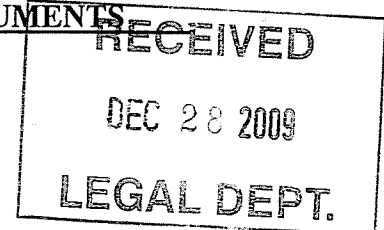
Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR
PRODUCTION OF
DOCUMENTS



Defendant, TOYOTA MOTOR CORPORATION (“TMC”), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby requests that all parties, pursuant to Section 3120 of the CPLR, produce the following documents and tangible objects at the offices of Eckert Seamans Cherin & Mellott, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) “Documents” is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(2) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(3) “And/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

(4) "Subject vehicle" means a certain 2009 Toyota RAV4, bearing Vehicle Identification Number JTMBK32V895080564, and any of its component parts identified in plaintiffs' Complaint.

(5) "Incident" and "accident" mean the August 27, 2009 incident referred to in plaintiffs' Complaint.

ITEMS TO BE PRODUCED

1. Copies of any and all advertisements or vehicle brochures, in your possession, authored by this answering defendant, which you claim that you relied upon.
2. Copies of all invoices, receipts, warranties, or other writings concerning the purchase, ownership, registration, or title of the subject vehicle.
3. Copies of all work orders, receipts, warranties, or other documents concerning the service, repair, or maintenance of the subject vehicle.
4. All documents concerning the towing, storage, and disposition of the subject vehicle subsequent to the accident.
5. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to depict the accident scene or any aspect of the accident scene in this case.
6. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to the subject vehicle.
7. Duplicate original copies of any and all photographs, films, or videotapes, in your possession, which depict or purport to depict plaintiffs' damages.
8. All reports, memos, and/or documentation prepared by any municipal, county, or state law enforcement agency or other agency relating to the subject vehicle or accident.
9. All documents concerning the events which led to the alleged discovery of what you contend are defects in the subject vehicle as described in plaintiffs' Complaint.
10. Any repair estimates, property damage appraisals, or other documents reflecting damage to the subject vehicle as a result of the accident.
11. The subject vehicle and any component parts thereof.

12. The operator's manual and any other materials concerning the operation, maintenance, or service of the subject vehicle.

13. All documents concerning any warranty or representation made by this answering defendant concerning the subject vehicle.

14. All pleadings or other documents in any legal or administrative proceeding other than this litigation arising out of the accident.


15. Any release, covenant not to sue, or other documents entered into by plaintiffs, which relieves another person, party, or entity for liability and/or damages to plaintiff for losses and/or injuries arising out of the accident, giving rise to this litigation.

16. Documents depicting plaintiffs' alternative design(s).

17. Tests and test reports concerning plaintiffs' alternative design(s).

Dated: White Plains, New York
December 21, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 21st day of December, 2009, deponent served the within **REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

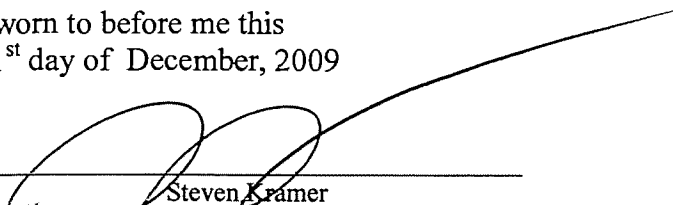
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
21st day of December, 2009



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

KONG IU LEONG and SIO-KENG LEONG,

Index No.. 27718/09

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

TOYOTA MOTOR CORPORATION

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CAROL S. LEONG,

Plaintiff,

- against -

TOYOTA MOTOR SALES USA, INC.,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., TOYOTA MOTOR CORPORATION,
STAR TOYOTA OF BAYSIDE, INC.
and KONG I. LEONG,

Defendants.
-----X

Index No: 550/00
Filed: 1/8/10

SUMMONS

2010 JAN -8 PM 2:21

QUEENS COUNTY CLERK
RECEIVED

TO THE ABOVE NAMED DEFENDANT(S) :

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

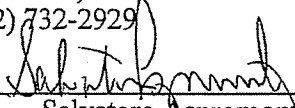
The basis of venue is plaintiff's residence

Plaintiff resides at:
84-31 55th Road
Elmhurst, NY 11373

Dated: New York, New York
January 8, 2010

Yours, etc.,

DANSKER & ASPROMONTE ASSOCIATES
Attorneys for Plaintiff
CAROL S. LEONG
30 Vesey Street-16th Floor
New York, New York 10007
(212) 732-2929

By: 
Salvatore Aspromonte

DEFENDANTS' ADDRESSES:

TOYOTA MOTOR SALES USA, INC.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Avenue
Erlinger, KY 41018

TOYOTA MOTOR CORPORATION
1 Toyota-cho, Toyota-shi
Aichi Prefecture
471-8571 Japan

STAR TOYOTA OF BAYSIDE, INC.
205-11 Northern Boulevard
Bayside, NY 11361

KONG I. LEONG
84-31 55th Road
Elmhurst, NY 11374-4815

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CAROL S. LEONG,

Plaintiff,

- against -

TOYOTA MOTOR SALES USA, INC.,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., TOYOTA MOTOR CORPORATION,
STAR TOYOTA OF BAYSIDE, INC.
and KONG I. LEONG,

Defendants.
-----X

Index No.

**VERIFIED
COMPLAINT**

2010-11-8 PM 2:21

QUEENS COUNTY CLERK
INDEXED

Plaintiff, by her attorneys, DANSKER & ASPROMONTE ASSOCIATES, complaining of the Defendants herein, respectfully alleges as follows:

GENERAL ALLGATIONS

1. Plaintiff CAROL S. LEONG, at all times herein mentioned, was and is a resident of Queens County, New York.
2. Defendant TOYOTA MOTOR SALES USA, INC. ("TMS"), at all times herein mentioned, was and is a California corporation, organized and existing under the laws of the State of California, maintaining corporate offices in the State of California but having sufficient contacts with the State of New York to give this court jurisdiction.
3. Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. ("TNA"), at all times mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.
4. Defendant TOYOTA MOTOR CORPORATION ("TMC"), at all times herein mentioned, was and is a foreign corporation maintaining corporate offices in Japan but having sufficient contacts with the State of New York to give this court jurisdiction.

5. Defendants TMS, TNA and TMC are collectively referred to herein as "the Toyota Defendants" and "Toyota."

6. Defendant STAR TOYOTA OF BAYSIDE, INC. ("STAR TOYOTA"), at all relevant times, was and is a New York corporation, organized under the laws of the State of New York, maintaining corporate offices in the State of New York and doing business in Queens County, New York.

7. Defendant KONG LEONG, at all times herein mentioned, was and is a resident of Queens County, New York.

8. On or about June 15, 2009 Defendant KONG I. LEONG purchased a 2009 Toyota RAV-4 5 Door Sport 4x4 SUV, VIN JTMBK32V895080564, ("the subject vehicle") which was made in Japan by the Toyota defendants from Defendant STAR TOYOTA in Bayside, Queens.

9. The Toyota Defendants designed, manufactured, distributed, promoted and placed the subject vehicle into the stream of commerce.

10. Defendant STAR TOYOTA promoted and sold the subject vehicle to Defendant KONG LEONG.

11. When Defendant KONG I. LEONG drove the new RAV-4 home from the dealership, it was equipped with Toyota original equipment all-weather floor mats which had been installed by Star Toyota personnel.

12. On or about August 27, 2009 Defendant KONG I. LEONG was driving the subject vehicle in the westbound lanes of the New York State Thruway (Interstate 90) in the vicinity of mile marker 338.3 in Ontario County, New York (near Rochester) en route to Buffalo to drop off Plaintiff CAROL LEONG who was about to start her freshman year in college at the State University of New York at Buffalo. The Plaintiff was seated in the right rear passenger seat directly behind her mother, Sio-Keng Leong.

13. At or about 10:00 a.m., while the subject vehicle was being driven in a foreseeable manner at normal highway speed with the driver's side floor mat in its proper as-installed position, the vehicle suddenly and unexpectedly accelerated, despite Defendant Leong removing his foot from

the accelerator and applying the brakes, including the emergency brake. Eyewitnesses to the accident saw the brake lights on the Leong vehicle illuminated as the vehicle continued to accelerate. The sudden unintended acceleration and failure of the brakes to engage forced Defendant Leong to quickly change lanes to avoid hitting other cars on the highway, until the vehicle was no longer controllable and it left the roadway and crashed into trees in the center median at a high rate of speed.

14. Despite the fact that Plaintiff CAROL S. LEONG was wearing her seat belt, she suffered severe and permanent injuries as a result of the accident.

15. Well before the Leongs' accident, Toyota was aware of the sudden unintended acceleration ("SUA") problem in its vehicles because of hundreds of other similar incidents involving Toyota vehicles reported to Toyota and the National Highway Traffic Safety Administration (NHTSA) since 2002.

16. The day after the Leongs' terrifying ordeal in New York, four people died in a fiery crash near San Diego, California in a Toyota vehicle, with the same engine and electronic throttle control components (known within Toyota as 2GR-FE with ETCS-i) as the Leong vehicle. That vehicle also suddenly accelerated and caused the driver, an experienced California Highway Patrol Officer, to lose control of his vehicle and leave the roadway at a high rate of speed. Speaking about the incident afterward, Toyota's President said "four precious lives have been lost. I offer my deepest condolences." According to press reports, he also said "customers bought our cars because they thought they were the safest. But now we have given them cause for grave concern. I can't begin to express my remorse."

17. When the ETCS-i system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe (or back-up) in the event of a problem with the electronic throttle control system. The Leong's 2009 RAV-4, despite being made 10 years later, had no such failsafe and, inexplicably, the system was not designed so that the application of the brakes would automatically disengage the accelerator.

18. About a month after the Leongs' accident, Toyota issued a Consumer Safety Advisory indicating that it was investigating the SUA problems in its vehicles saying that 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" and blaming out-of-position floor mats as the cause.

19. While publicly blaming floor mats for their SUA problem, tellingly, Toyota has recently indicated that it is considering software changes to the on-board computer systems as a solution to SUA which would cause the accelerator to disengage whenever the brakes are engaged - a simple design concept that other car manufacturers have used for years. Had that simple design been incorporated in the Leongs' 2009 RAV-4, their accident and plaintiff's injuries would have been avoided entirely.

FIRST CAUSE OF ACTION - STRICT PRODUCT LIABILITY

20. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

21. The subject vehicle was defective and unreasonably dangerous when the defendants placed it into the stream of commerce.

22. The defects in the subject vehicle were a proximate cause of the injuries suffered by the Plaintiff.

23. By engaging in said conduct, defendants are strictly liable to the Plaintiff.

24. The conduct of the Toyota defendants was so wilful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

SECOND CAUSE OF ACTION - BREACH OF WARRANTY

25. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

26. Defendants have breached applicable warranties, express and implied, and are therefore liable to the Plaintiff.

THIRD CAUSE OF ACTION - NEGLIGENCE

27. Plaintiff repeats each and every allegation contained in the prior paragraphs of this complaint.

28. The Toyota defendants were negligent in designing, manufacturing, assembling, inspecting, testing, labeling, monitoring, promoting, distributing and selling the subject vehicle.

29. Defendant Star Toyota was negligent in preparing, inspecting, installing optional features, promoting and selling the subject vehicle.

30. Defendant KONG I. LEONG was negligent in handling the vehicle during the accident.

31. As a proximate result of the foregoing, Plaintiff was severely injured, including, but not limited to, conscious pain and suffering.

32. Said defendants are therefore liable to the Plaintiff.

33. The conduct of the Toyota defendants was so willful, wanton, malicious, reckless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury and merits the imposition of punitive damages.

CPLR 1602 EXCEPTIONS

34. Plaintiff's lawsuit falls within one or more of the enumerated exceptions of article 1602 of the CPLR and specifically sections 1602(2) (iv), 1602(6), 1602(7), 1602 (10) and 1602(11).

DAMAGES

35. That the amount of damages sought exceeds the jurisdiction of all lower Courts that would otherwise have had jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants, severally and jointly:


- a. Compensatory damages;
- b. Punitive damages;

- c. All together with interest, costs and disbursements;
- d. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 8, 2010

Yours, etc.,

DANSKER & ASPROMONTE ASSOCIATES
Attorneys for Plaintiff
CAROL S. LEONG
30 Vesey Street, 16th Floor
New York, New York 10007
(212) 732-2929

By: 
Salvatore Aspromonte

VERIFICATION

SALVATORE ASPROMONTE, an attorney admitted to practice in the courts of New York State, state that I am the attorney of record for the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe it to be true.

The reason this verification is made by me and not by the Plaintiff is that Plaintiff is not presently in the county where the attorneys for the Plaintiff have their office.

The grounds of my belief as to all matters not stated upon my own knowledge are from investigations made on behalf of said Plaintiff.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
January 8, 2010



SALVATORE ASPROMONTE

Index No.:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CAROL S. LEONG,

Plaintiff,

- against -

TOYOTA MOTOR SALES USA, INC.,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., TOYOTA MOTOR CORPORATION,
STAR TOYOTA OF BAYSIDE, INC.
and KONG I. LEONG,

Defendants.

2010 JAN -8 PM 2:21

QUEENS COUNTY CLERK
RECEIVED

SUMMONS and VERIFIED COMPLAINT

DANSKER & ASPROMONTE ASSOCIATES
Attorneys for Plaintiff
CAROL S. LEONG
30 Vesey Street, 16th Floor
New York, New York 10007
(212) 732-2929
(212) 732-8795 (fax)

LAW OFFICES

RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & McCARTNEY LLP

A PARTNERSHIP CONSISTING OF ONE OR MORE PROFESSIONAL CORPORATIONS

PAUL D. RHEINGOLD
MEMBER N.Y., D.C., MASS. BARS
THOMAS P. VALET
HUNTER J. SHKOLNIK
MEMBER N.Y., NJ. BARS
DAVID B. RHEINGOLD
MEMBER N.Y., VA. BARS
TERRENCE E. McCARTNEY
LAURA PITTEr
MEMBER N.Y., CA. BARS

113 E. 37TH STREET
NEW YORK, NEW YORK 10016-3042
(212) 684-1880
FAX (212) 689-8156
E-MAIL: info@rheingoldlaw.com
<http://www.rheingoldlaw.com>

March 3, 2010

Steven Kramer, Esq.
Eckert Seamans
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
200 Old Country Road, Ste. 400
Mineola, NY 11501

Re: Leong v. Toyota
Index No.: 27718/09

Dear Sirs:

Please find enclosed Plaintiffs' Second Request for the Production of Documents to the Toyota Defendants.

Please feel free to contact me should you have any questions or if I can be of further assistance.

Very truly yours,



Marybeth Fennelly
Paralegal

/mbf

Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

Index No.: 27718/09

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.

**PLAINTIFFS' SECOND
REQUEST FOR THE
PRODUCTION OF
DOCUMENTS TO THE
TOYOTA DEFENDANTS**

-----X
Plaintiffs Kong Iu Leong and Sio-Keng Leong, by and through
their attorneys, Rheingold, Valet, Rheingold, Shkolnik &
McCartney LLP, hereby demand that Defendants Toyota Motor
Corporation ("TMC"), Toyota Motor Sales USA, Inc. ("TMS"), Toyota
Motor Engineering & Manufacturing North America, Inc. ("TME")
(hereinafter collectively "Toyota") produce and permit discovery
and inspection of the following documents and things pursuant to
Article 31 of the CPLR:

REQUESTS

Request No. 1

All documents and electronic files produced to the United
States House of Representatives Committee on Energy and Commerce
prior to the Hearing before that Committee on February 23, 2010.

Request No. 2

All documents and electronic files produced to the United States House of Representatives Committee on Oversight & Government Reform prior to the Hearing before that Committee held on February 24, 2010.

Request No. 3

All documents and electronic files produced to the Federal Grand Jury pursuant to subpoena from the United States Attorneys' Office of the Southern District of New York on February 8, 2010.

Request No. 4

All documents and electronic files produced to the New York Grand Jury pursuant to subpoena from the United States Securities and Exchange Commission on February 19, 2010.

Request No. 5

All documents and electronic files related to Toyota's investigations, both internally and by Exponent, of sudden unintended acceleration referred to by Akio Toyoda at the February 24, 2010 Congressional Hearing.

Request No. 6

All documents and electronic files used or present at the meeting between Toyota, their lawyer Vince Galvin, Exponent and Professor David W. Gilbert on March 2, 2010.


Request No. 7

All Toyota Books of Knowledge related to sudden unintended acceleration.

Request No. 8

All documents and electronic files produced to the United States Senate Committee on Science and Transportation prior to the Hearing before that Committee held on March 2, 2010.

Dated: New York, New York
March 3, 2010


Terrence E. McCartney
RHEINGOLD, VALET, RHEINGOLD
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiffs
113 East 37th Street
New York, NY 10016
(212) 684-1880

TO:
Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. ET AL.

Defendants.

Plaintiffs' Second Request for the Production of Documents to the Toyota Defendants

Law Offices
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

**VERIFIED
AMENDED ANSWER**

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. (“TEMA”), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs’ Verified Complaint (the “complaint”) as follows:

1. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “1” of the complaint.
2. TEMA denies the allegations contained in paragraph “2” of the complaint as stated and refers all questions of law to this Court. TEMA states that Toyota Motor Sales, U.S.A., Inc. (“TMS”) it is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.
3. TEMA denies the allegations contained in paragraph “3” of the complaint as stated and refers all questions of law to this Court. TEMA states it is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

{V0028623.1}

TOY-RQ-05E-00005178

4. TEMA denies the allegations contained in paragraph "4" of the complaint as stated and refers all questions of law to this Court. TEMA states that Toyota Motor Corporation ("TMC") is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TEMA as none of the allegations contained in paragraph "5" of the complaint are directed to TEMA. To the extent one is required, TEMA denies the allegations as stated.

6. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the complaint.

7. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the complaint concerning plaintiffs' purchase of the 2009 RAV4, VIN JTMBK32V895080564 ("subject vehicle"), but states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle. TEMA's involvement was limited to performing certain durability and driveability evaluations and audit testing of the 2006 RAV4..

8. TEMA denies the allegations contained in paragraph "8" of the complaint as stated. TEMA states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle. TEMA's involvement was limited to performing certain durability and driveability evaluations and audit testing for the 2006 RAV4

9. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the complaint.

10. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the complaint.

11. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the complaint.

12. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TEMA denies the allegations contained in paragraph "14" of the complaint.

15. TEMA denies the allegations contained in paragraph "15" of the complaint as stated.

16. TEMA denies the allegations contained in paragraph "16" of the complaint as stated.

17. TEMA denies the allegations contained in paragraph "17" of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TEMA refers to the terms of the September 29, 2009 advisory.

18. TEMA denies the allegations contained in paragraph "18" of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TEMA denies the allegations contained in paragraph "20" of the complaint.

21. TEMA denies the allegations contained in paragraph "21" of the complaint.

22. TEMA denies the allegations contained in paragraph "22" of the complaint.

23. TEMA denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "23" of the complaint with the same force and effect as though fully set forth herein.

25. TEMA denies the allegations contained in paragraph "25" of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE

26. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TEMA denies the allegations contained in paragraph "27" of the complaint.

28. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TEMA denies the allegations contained in paragraph "30" of the complaint.

31. TEMA denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TEMA repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TEMA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TEMA refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TEMA, and over whom TEMA exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TEMA or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TEMA denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TEMA, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TEMA is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TEMA was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TEMA.

ELEVENTH AFFIRMATIVE DEFENSE

47. TEMA hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TEMA, it being specifically denied that TEMA is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TEMA, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TEMA's liability, if any, is limited by the statutory operation of CPLR § 1601.

FIFTEENTH AFFIRMATIVE DEFENSE

51. TEMA reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

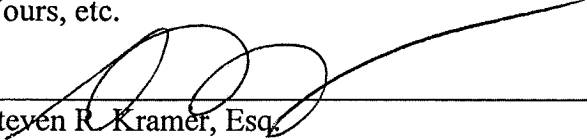
SIXTEENTH AFFIRMATIVE DEFENSE

52. Plaintiffs' claim for punitive damages is barred by the due process clause of the Fourteenth Amendment to the Constitution of the United States of America as applied to the States by the Fourteenth Amendment; the "double jeopardy" clause of the Fifth Amendment to the Constitution as applied to the States by the Fourteenth Amendment; and the comparable provisions of the New York Constitution.

WHEREFORE, defendant TEMA demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
February 25, 2010

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000


VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. in the within action. I have read the foregoing amended answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 25th day of February, 2010, deponent served the within **VERIFIED AMENDED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

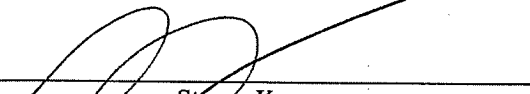
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
25th day of February, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

**VERIFIED
AMENDED ANSWER**

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

Defendant TOYOTA MOTOR CORPORATION (“TMC”), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs’ Verified Complaint (the “complaint”) as follows:

1. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “1” of the complaint.

2. TMC denies the allegations contained in paragraph “2” of the complaint as stated and refers all questions of law to this Court. TMC states that Toyota Motor Sales, U.S.A., Inc. (“TMS”) is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.

3. TMC denies the allegations contained in paragraph “3” of the complaint as stated and refers all questions of law to this Court. TMC states that Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

{V0028622.1}

TOY-RQ-05E-00005189

4. TMC denies the allegations contained in paragraph "4" of the complaint as stated and refers all questions of law to this Court. TMC states it is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TMC as none of the allegations contained in paragraph "5" of the complaint are directed to TMC. To the extent one is required, TMC denies the allegations as stated.

6. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the complaint.

7. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the complaint concerning plaintiffs' purchase of the 2009 RAV4, VIN JTMBK32V895080564 ("subject vehicle"), but states it was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

8. TMC denies the allegations contained in paragraph "8" of the complaint as stated. TMC states TMS is the authorized importer and distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMC also states it was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

9. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the complaint.

10. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the complaint.

11. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the complaint.

12. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TMC denies the allegations contained in paragraph "14" of the complaint.

15. TMC denies the allegations contained in paragraph "15" of the complaint as stated.

16. TMC denies the allegations contained in paragraph "16" of the complaint as stated.

17. TMC denies the allegations contained in paragraph "17" of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TMC refers to the terms of the September 29, 2009 advisory.

18. TMC denies the allegations contained in paragraph "18" of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TMC denies the allegations contained in paragraph "20" of the complaint.

21. TMC denies the allegations contained in paragraph "21" of the complaint.
22. TMC denies the allegations contained in paragraph "22" of the complaint.
23. TMC denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "24" of the complaint with the same force and effect as though fully set forth herein.

25. TMC denies the allegations contained in paragraph "25" of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE

26. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TMC denies the allegations contained in paragraph "27" of the complaint.

28. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TMC denies the allegations contained in paragraph "30" of the complaint.

31. TMC denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TMC repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TMC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TMC refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TMC, and over whom TMC exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TMC or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TMC denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TMC, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the

United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TMC is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TMC was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TMC.

ELEVENTH AFFIRMATIVE DEFENSE

47. TMC hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TMC, it being specifically denied that TMC is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TMC, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TMC's liability, if any, is limited by the statutory operation of CPLR § 1601.

FIFTEENTH AFFIRMATIVE DEFENSE

51. TMC reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

SIXTEENTH AFFIRMATIVE DEFENSE

52. Plaintiffs' claim for punitive damages is barred by the due process clause of the Fourteenth Amendment to the Constitution of the United States of America as applied to the States by the Fourteenth Amendment; the "double jeopardy" clause of the Fifth Amendment to the Constitution as applied to the States by the Fourteenth Amendment; and the comparable provisions of the New York Constitution.

WHEREFORE, defendant TMC demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
February 25, 2010

Yours, etc.



Steven R. Kramer, Esq.

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR CORPORATION
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000

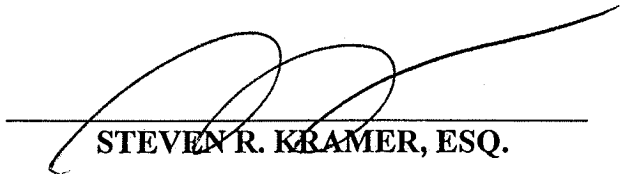
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR CORPORATION in the within action. I have read the foregoing amended answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR CORPORATION is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)


PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 25th day of February, 2010, deponent served the within **VERIFIED AMENDED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

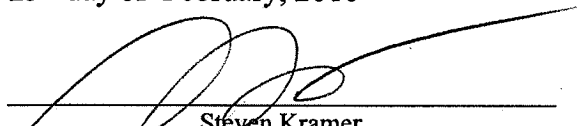
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
25th day of February, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

**VERIFIED
AMENDED ANSWER**

TOYOTA MOTOR SALES USA, INC. , TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION AND STAR TOYOTA OF
BAYSIDE, INC.,

Defendants.

Defendant TOYOTA MOTOR SALES, U.S.A., INC. (“TMS”), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, hereby answers plaintiffs’ Verified Complaint (the “complaint”) as follows:

1. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “1” of the complaint.

2. TMS denies the allegations contained in paragraph “2” of the complaint as stated and refers all questions of law to this Court. TMS states it is a corporation organized under the laws of the State of California with offices located at 19001 South Western Avenue, Torrance, California, and it is duly authorized to conduct business in the State of New York.

3. TMS denies the allegations contained in paragraph “3” of the complaint as stated and refers all questions of law to this Court. TMS states that Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) is a corporation organized under the laws of the State of Kentucky, whose principal place of business is located at 25 Atlantic Avenue, Erlanger, Kentucky.

4. TMS denies the allegations contained in paragraph “4” of the complaint as stated and refers all questions of law to this Court. TMS states that Toyota Motor Corporation (“TMC”) is a corporation organized under the laws of the Country of Japan, whose principal place of business is at 1 Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 Japan.

5. No response is required by TMS as none of the allegations contained in paragraph “5” of the complaint are directed to TMS. To the extent one is required, TMS denies the allegations as stated.

6. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the complaint.

7. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the complaint concerning plaintiffs’ purchase of the 2009 RAV4, VIN JTMBK32V895080564 (“subject vehicle”), but states that TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

8. TMS denies the allegations contained in paragraph “8” of the complaint as stated. TMS states it is the authorized importer and distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS also states TMC was responsible for the overall design, manufacture, assembly and developmental testing of the subject vehicle.

9. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the complaint.

10. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the complaint.

11. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the complaint.

12. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint concerning the accident, and denies the allegations to the extent they imply the subject vehicle was defective.

13. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and denies the allegations that imply occupant seat belt usage will prevent an occupant from sustaining any injury in any type of accident.

14. TMS denies the allegations contained in paragraph "14" of the complaint.

15. TMS denies the allegations contained in paragraph "15" of the complaint as stated.

16. TMS denies the allegations contained in paragraph "16" of the complaint as stated.

17. TMS denies the allegations contained in paragraph "17" of the complaint as stated, but admits that on September 29, 2009 TMS issued a consumer advisory regarding floor mats in certain Toyota vehicles and TMS refers to the terms of the September 29, 2009 advisory.

18. TMS denies the allegations contained in paragraph "18" of the complaint as stated.

AS AND FOR A FIRST CAUSE OF ACTION
STRICT PRODUCT LIABILITY

19. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "18" of the complaint with the same force and effect as though fully set forth herein.

20. TMS denies the allegations contained in paragraph "20" of the complaint.

21. TMS denies the allegations contained in paragraph "21" of the complaint.
22. TMS denies the allegations contained in paragraph "22" of the complaint.
23. TMS denies the allegations contained in paragraph "23" of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION
BREACH OF WARRANTY

24. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "23" of the complaint with the same force and effect as though fully set forth herein.

25. TMS denies the allegations contained in paragraph "25" of the complaint.

THIRD CAUSE OF ACTION - NEGLIGENCE

26. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "25" of the complaint with the same force and effect as though fully set forth herein.

27. TMS denies the allegations contained in paragraph "27" of the complaint.

28. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint, and denies the allegations to the extent they imply the subject vehicle was defective.

29. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

30. TMS denies the allegations contained in paragraph "30" of the complaint.

31. TMS denies the allegations contained in paragraph "31" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
LOSS OF CONSORTIUM

32. TMS repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "31" of the complaint with the same force and effect as though fully set forth herein.

33. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the complaint.

34. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the complaint concerning plaintiffs' injuries, and denies the allegations to the extent they imply the subject vehicle was defective.

35. TMS denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the complaint, and refers all questions of law to this Court.

36. TMS refers all questions of law to this Court.

FIRST AFFIRMATIVE DEFENSE

37. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. The incident described in the complaint may have been caused and/or contributed to by the negligence of plaintiffs thereby barring or reducing recovery by plaintiffs.

THIRD AFFIRMATIVE DEFENSE

39. The negligent acts or omissions of other individuals or entities may have constituted an intervening, superseding cause of the injuries and damages alleged to have to have been sustained by plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

40. The alleged injuries and losses sustained by plaintiffs may have been caused entirely by, or contributed to by, the negligent or liability-producing acts or omissions of individuals or entities other than TMS, and over whom TMS exercises no authority or control.

FIFTH AFFIRMATIVE DEFENSE

41. The injuries or damages alleged to have been sustained by plaintiffs were not proximately caused by any acts or omissions on the part of TMS or any of its authorized representatives.

SIXTH AFFIRMATIVE DEFENSE

42. Although TMS denies the existence of a defect as alleged by plaintiffs, if plaintiffs had knowledge of the defect and proceeded unreasonably to make use of the product, such use may bar recovery by plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

43. The subject vehicle may have been misused, thereby barring any recovery by plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

44. The subject vehicle may have been modified or altered after it left the control of TMS, thereby barring any recovery by plaintiffs.

NINTH AFFIRMATIVE DEFENSE

45. The product at issue in this lawsuit was in conformity with the generally recognized state-of-the-art applicable to the safety of the product at the time the product was designed, manufactured, and assembled, and the product complied with all applicable codes, standards, regulations and specifications, established, adopted, promulgated or approved by the

United States and/or by the State of New York and/or by any agency of the United States or the State of New York, and TMS is therefore entitled to a rebuttable presumption that the product which caused the alleged harm was not defective and TMS was not negligent.

TENTH AFFIRMATIVE DEFENSE

46. Plaintiffs may have failed to maintain or preserve portions of the subject vehicle in its immediate post-incident condition. Plaintiffs are guilty of spoliation of evidence and may not maintain any action against TMS.

ELEVENTH AFFIRMATIVE DEFENSE

47. TMS hereby pleads as a separate defense any and all releases entered into by plaintiffs or to be entered into by plaintiffs as a reduction, in whole or in part, of any damages that plaintiffs may be entitled to recover from TMS, it being specifically denied that TMS is liable to plaintiffs in any respect.

TWELFTH AFFIRMATIVE DEFENSE

48. In the event plaintiffs recover a verdict or judgment against TMS, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

THIRTEENTH AFFIRMATIVE DEFENSE

49. Plaintiff may have failed to use an available occupant restraint as required by New York Vehicle and Traffic Law § 1229-c and/or failed to use properly or misused an available occupant restraint in the vehicle at the time of the accident described in the complaint, as a result of which the alleged injuries were sustained or aggravated.

FOURTEENTH AFFIRMATIVE DEFENSE

50. That equitable share of TMS' liability, if any, is limited by the statutory operation of CPLR § 1601.

FIFTEENTH AFFIRMATIVE DEFENSE

51. TMS reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

SIXTEENTH AFFIRMATIVE DEFENSE

52. Plaintiffs' claim for punitive damages is barred by the due process clause of the Fourteenth Amendment to the Constitution of the United States of America as applied to the States by the Fourteenth Amendment; the "double jeopardy" clause of the Fifth Amendment to the Constitution as applied to the States by the Fourteenth Amendment; and the comparable provisions of the New York Constitution.

WHEREFORE, defendant TMS demands judgment dismissing plaintiffs' complaint and such other relief as the Court deems just and proper.

Dated: White Plains, New York
February 25, 2010

Yours, etc



Steven R. Kramer, Esq.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Attorneys for Defendant

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

10 Bank Street, Suite 1061

White Plains, NY 10606

(914) 949-2909

TO: Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501
(516) 873-3000


VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

STEVEN R. KRAMER, ESQ., pursuant to CPLR § 2106, hereby affirms:

I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, counsel to defendant TOYOTA MOTOR SALES, U.S.A., INC. in the within action. I have read the foregoing amended answer to the Verified Complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to matters not stated upon information and belief are review of public web-sites and databases and information provided by the defendant herein.

This verification is made pursuant to CPLR § 3020(d)(3) as TOYOTA MOTOR SALES, U.S.A., INC. is not located within the county where the office of my law firm is located.



STEVEN R. KRAMER, ESQ.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 25th day of February, 2010, deponent served the within **VERIFIED AMENDED ANSWER** upon:

Terrence E. McCartney, Esq.
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042

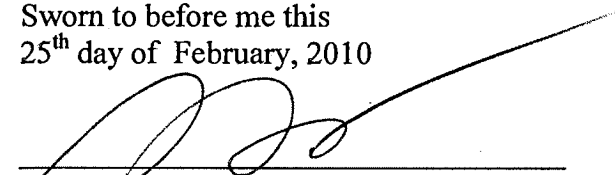
John J. Gentile, Esq.
BELLAVIA GENTILE & ASSOCIATES, LLP
Attorneys for Defendant
STAR TOYOTA OF BAYSIDE, INC.
200 Old Country Road, Suite 400
Mineola, New York 11501

- XX** By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery.



PATRICIA MORGAN

Sworn to before me this
25th day of February, 2010



Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

LAW OFFICES

RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & McCARTNEY LLP

A PARTNERSHIP CONSISTING OF ONE OR MORE PROFESSIONAL CORPORATIONS

PAUL D. RHEINGOLD
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113 E. 37TH STREET
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E-MAIL: info@rheingoldlaw.com
<http://www.rheingoldlaw.com>

March 3, 2010

Steven Kramer, Esq.
Eckert Seamans
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
200 Old Country Road, Ste. 400
Mineola, NY 11501

Re: Leong v. Toyota
Index No.: 27718/09

Dear Sirs:

Please find enclosed a Request for Judicial Intervention with regard to the above referenced matter.

Please feel free to contact me should you have any questions or if I can be of further assistance.

Very truly yours,



Marybeth Fennelly
Paralegal

/mbf

Enc.

REQUEST FOR JUDICIAL INTERVENTION

Index No. 27718/09

Supreme Court, Queens County

Date Purchased 10/15/2009

For Clerk Only

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR ENGINEERING AND
MANUFACTURING NORTH AMERICA, INC. TOYOTA MOTOR CORPORATION
and STAR TOYOTA OF BAYSIDE, INC.,

Defendants.

IAS entry date

Judge assigned

RJI Date

Date issue joined: 12/21/2009

Bill of particulars served: Yes No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- Request for preliminary conference
- Note of issue and/or certificate of readiness
- Notice of motion (return date _____)
- Relief sought _____
- Order to show cause
(Clerk enter return date _____)
- Relief sought _____
- Other ex parte application (specify _____)

- Notice of petition (return date _____)
- Relief sought _____
- Notice of medical or dental malpractice action (specify: _____)
- Statement of net worth
- Writ of habeas corpus
- Other (specify _____)

NATURE OF ACTION OR PROCEEDING (check ONE box only)

Matrimonial

- Contested -CM
- Uncontested -UM
- Commercial**
- Contract -CONT
- Corporate -CORP
- Insurance (where insurer is a party, except arbitration)-INS
- UCC (including sales, negotiable instruments) -U
CC
- *Other Commercial _____ -OC

Real Property

- Tax Certiorari -TAX
- Foreclosure -FOR
- Landlord/Tenant -IT
- *Other Real Property _____ -ORP

Other Matters

- * _____ -OTH

Torts

Malpractice

- Medical/Podiatric -MM
- Dental -DM
- *Other Professional _____ -OPM
- Motor Vehicle -MV
- *Products Liability - Toyota Sudden Acceleration Defect PL
- Environmental -EN
- Asbestos -ASB
- Breast Implant -BI
- *Other Negligence _____ -OTN
- *Other Tort (including intentional) _____ -OT

Special Proceedings

- Article 75 (Arbitration) -ART 75
- Article 77 (Trusts) -ART 77
- Article 78 -ART 78
- Election Law -ELEC
- Guardianship (MHL Art. 81) -GUARD 81
- *Other Mental Hygiene _____ -MHYG
- *Other Special Proceeding _____ -OSP

*If asterisk used, please specify further.

Check "YES" or "NO" for each of the following questions. As this action/proceeding against a:

YES NO Municipality: (specify _____
_____)

YES NO Public Authority: (specify _____
_____)

- YES NO Does this action/proceeding seek equitable relief?
- YES NO Does this action/proceeding seek recovery for personal injury?
- YES NO Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to ready for trial (from filing of RJI to filing of Note of Issue):

- Expedited 0-8 months
- Standard 9-12 months
- Complex 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

- Has summons been served? NO YES, Date: _____
- Was a Notice of No Necessity filed? NO YES, Date: _____

Attorney(s) for plaintiff(s):

<u>Name</u>	<u>Address</u>	<u>Phone</u>
RHEINGOLD, VALET, RHEINGOLD SHKOLNIK, & McCARTNEY LLP Attorneys for Plaintiff	113 East 37th Street New York, NY 10016	212-684-1880

Attorney(s) for defendant(s):

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Eckert Seamans Attorneys for Toyota Motor Sales, Toyota Motor Corp and Toyota Motor Engineering and Manufacturing	10 Bank Street White Plains, NY 10606	914-949-2909
Bellavia Gentile & Associates Attorneys for Star Toyota of Bayside	200 Old Country Road Mineola, NY 11501	516-873-3000

Parties appearing pro se (without attorney) should enter information in space provided above for attorneys.

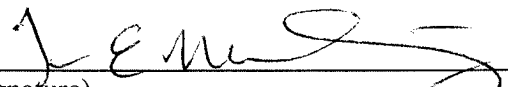
INSURANCE CARRIERS:

RELATED CASES: (If NONE, write "NONE" below)

<u>Name</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of relationship</u>
NONE			

I affirm under penalty of perjury that, to my knowledge, other than as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this action or proceeding.

Dated: March 1, 2010


(Signature)

Terrence E. McCartney Plaintiff
(Print or type name) (Attorney for)

Attach rider sheets if necessary to provide required information.

Queens County Clerk's Office
Paym 1445346 10/15/2009 10:53a

Fr. 1731921	6210.00
Other 27719/2609 LEONG, KONG IO ET ANO	5210.00
TOTAL:	5210.00
check	5210.00

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

Index No.: 27718/09

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

**REQUEST FOR
PRELIMINARY
CONFERENCE**

Defendants.
-----X

The undersigned requests a preliminary conference.

The nature of the action is for personal injuries.

Plaintiff's attorney's phone number and address is:


Terrence E. McCartney, Esq.
Rheingold, Valet, Rheingold,
Shkolnik & McCartney LLP
113 East 37th Street
New York, NY 10016
(212) 684-1880

Names and address for all appearing defendants:

Steven Kramer, Esq.
Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

Dated: New York, New York
March 1, 2010


Terrence E. McCartney
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, New York 10016
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Index No.: 27718/09

Plaintiffs,

-against-

**AFFIDAVIT OF
GOOD FAITH**

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

Defendants.

-----X
STATE OF NEW YORK
COUNTY OF NEW YORK


ss.:

The undersigned, an attorney admitted to practice in this state, affirms that the following statements are true under the penalties of perjury:

(1) I am the attorney for the plaintiff in the above entitled action.

(2) I have conferred in good faith with the other parties to resolve disclosure or other issues and the issues remain unresolved.

Dated: New York, New York
March 1, 2010


Terrence E. McCartney
RHEINGOLD, VALET, RHEINGOLD
SHKOLNIK & McCARTNEY LLP
113 East 37th Street
New York, NY 10016
(212) 684-1880

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

No. 27718/09

KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

-against-

TOYOTA MOTOR SALES USA, INC. ET AL,

Defendants.

Request for Judicial Intervention, Request for Preliminary Conference
and Affirmation of Good Faith

Law Offices
RHEINGOLD, VALET, RHEINGOLD,
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiff
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880

TOY-RQ-05E-00005219

LAW OFFICES
RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & McCARTNEY LLP
A PARTNERSHIP CONSISTING OF ONE OR MORE PROFESSIONAL CORPORATIONS

PAUL D. RHEINGOLD
MEMBER N.Y., D.C., MASS. BARS
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DAVID B. RHEINGOLD
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January 26, 2010

Steven Kramer, Esq.
Eckert Seamans
10 Bank Street, Ste. 1061
White Plains, NY 10606

Steven Blatt, Esq.
Bellavia Gentile & Associates
200 Old Country Road, Ste. 400
Mineola, NY 11501

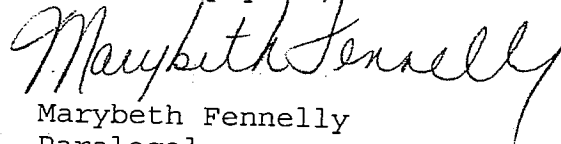
Re: Leong v. Toyota
Index No.: 27718/09

Dear Sirs:

Please find enclosed Plaintiffs' First Request for the
Production of Documents to the Toyota Defendants.

Please feel free to contact me should you have any questions
or if I can be of further assistance.

Very truly yours,


Marybeth Fennelly
Paralegal

/mbf

Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KONG IU LEONG and SIO-KENG LEONG,

Plaintiffs,

Index No.: 27718/09

-against-

TOYOTA MOTOR SALES USA, INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC., TOYOTA MOTOR
CORPORATION, STAR TOYOTA OF BAYSIDE,
INC.,

**PLAINTIFFS' FIRST
REQUEST FOR THE
PRODUCTION OF
DOCUMENTS TO THE
TOYOTA DEFENDANTS**

Defendants.
-----X

Plaintiffs Kong Iu Leong and Sio-Keng Leong, by and through their attorneys, Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP, hereby demand that Defendants Toyota Motor Corporation (TMC), Toyota Motor Sales USA, Inc. (TMS), Toyota Motor Engineering & Manufacturing North America, Inc. (TME) (hereinafter collectively "Toyota") produce and permit discovery and inspection of the following documents and things pursuant to Article 31 of the CPLR.

DEFINITIONS

1. SUBJECT VEHICLE refers to the 2009 Toyota RAV-4 described in plaintiffs' Complaint.
2. SUBJECT INCIDENT refers to the accident which occurred on August 27, 2009 described in the Complaint.
3. SIMILAR VEHICLES refers to the 2005-2010 Toyota Avalon, 2006-2010 RAV-4, 2007-2010 Toyota Camry, 2007-2010 Lexus ES350, 2007-2010 Lexus RX350, 2007-2010 Toyota Sienna, 2008-2010 Toyota Highlander, 2009-2010 Toyota Venza and any other vehicles with the 2GR-FE engine with an electronic throttle control system ("ETCS-i").

4. 2009 Recall refers to Toyota's "voluntary safety recall campaign" and/or "safety advisory" announced on or about September 29, 2009.
5. January 2010 Recall refers to Toyota's "voluntary safety recall campaign" and/or "safety advisory" announced on or about January 21, 2010.

REQUESTS

Request No. 1

All documents and electronic files related to how the vehicles included in the 2009 Recall were chosen by Toyota.

Request No. 2

All documents and electronic files related to why the 2006-2010 Toyota RAV-4, 2007-2010 Lexus RX350, 2007-2010 Toyota Sienna, 2008-2010 Toyota Highlander and 2009-2010 Toyota Venza were excluded from the 2009 Recall despite having the same engine and ETCS-i as the 2005-2010 Toyota Avalon, 2007-2010 Toyota Camry and 2007-2010 Lexus ES350 which were recalled.

Request No. 3

All documents and electronic files related to how the vehicles included in the January 2010 Recall were chosen by Toyota.

Request No. 4

All documents and electronic files related to the "field technical information from the U.S. and Canadian markets which indicated reports of sticking accelerator pedals had occurred" as stated in paragraph 7 of the Defect Information Report submitted to NHTSA as a part of the January 2010 Recall.

Request No. 5

All documents and electronic files related to a claim or allegation of "surging," "unwanted acceleration," and/or "sudden acceleration" in the SIMILAR VEHICLES.

Request No. 6

All documents and electronic files related to a claim or allegation of "surging," "unwanted acceleration," and/or "sudden acceleration" in 2006-2010 Toyota RAV-4s.

Request No. 7

All documents and electronic files related to a claim or allegation of "surging," "unwanted acceleration," and/or "sudden acceleration" in any Toyota or Lexus vehicle in which there was no driver's side floor mat present or in which the driver side floor mat was present but properly secured by the floor mat retaining hooks (clips).

Request No. 8

All documents and electronic files related to a claim or allegation of "surging," "unwanted acceleration," and/or "sudden acceleration" in any Toyota vehicle with an ETSC-i system substantially similar to the ETSC-i system in the 2009 Toyota RAV-4.

Request No. 9

All documents and electronic files related to the alleged sudden acceleration incident involving Kevin Haggerty of Pittstown, NJ.

Request No. 10

All documents and electronic files related to the alleged sudden acceleration incident involving Rosemary Moran and Brian Blackman of Vancouver, B.C., Canada.

Request No. 11

All documents and electronic files related to the alleged sudden acceleration incidents involving Francis and Walter McKinney of Childress, TX.

Request No. 12

All documents and electronic files related to SUBJECT VEHICLE.

Request No. 13

All non-privileged documents and electronic files related to the SUBJECT INCIDENT.

Request No. 14

All documents and electronic files containing Design Failure Mode and Effects Analysis ("DFMEA") or Failure Mode and Effects Analysis ("FMEA"), as those terms are used in SAE Surface Vehicle

Recommended Practice J1739, performed on the ETCS-i and its various components of the SIMILAR VEHICLES.

Request No. 15

All software definition documents applicable to the ETCS-i of the SIMILAR VEHICLES.

Request No. 16

All documents and electronic files containing the programming algorithms of the ETCS-i of the SIMILAR VEHICLES.

Request No. 17

All documents and electronic files describing changes made to the programming algorithms of the ETCS-i of the SIMILAR VEHICLES.

Request No. 18

All documents and electronic files containing testing or evaluation of the effects of electromagnetic interference (EMI) on the ETCS-i of the SIMILAR VEHICLES.

Request No. 19

All documents and electronic files supporting the need to provide warning regarding the installation of two-way radios in the 2009 Toyota RAV-4 Owner's Manual.

Request No. 20

All Technical Service Bulletins, as well as all other information provided to Toyota, Lexus and Scion dealers regarding how to deal with reports by customers of "surging," "unwanted acceleration," "sudden unintended acceleration" or other vehicle speed control problems in Toyota and Lexus passenger vehicles utilizing ETCS-i.

Request No. 21

All "early warning" or "TREAD Act" data provided to the U.S. Department of Transportation (DOT) pursuant to 49 CFR 579 regarding Toyota, Lexus and Scion vehicles which identifies reports of "surging," "unwanted acceleration," "break failure", or "sudden acceleration." This meant to include, but not limited to NHTSA defined category "18-speed control". Please provide data in a Microsoft Excel spreadsheet format, or in the native format as it was provided to the DOT.

Request No. 22

All documents, including, but not limited to, electronically stored data generated as a result of all inspections and/or testing of the electronic throttle control systems in competitor vehicles prior to 2009, including, but not limited to, Mercedes-Benz, BMW, and Volkswagen vehicles.

Request No. 23

All documents, including, but not limited to, electronically stored data, generated as a result of each FMEA performed on ETCS-i utilized in the first Toyota vehicle model utilizing the system.

Request No. 24

All correspondence, including, but not limited to, e-mails generated between any design team members for the electronic throttle control system in the 2009 Toyota RAV-4 where the ETCS-i was discussed.

Request No. 25

All correspondence, including but not limited to, e-mails generated between any design team members for the electronic throttle control system in the first Toyota vehicle which incorporated such system where the ETCS-i was discussed.

Request No. 26

All internal test procedures which Toyota Motor Sales or Toyota Motor Corporation has ever utilized which, in whole or in part, are designed to predict or determine whether or not the ETCS-i of the SIMILAR VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

Request No. 27

All documents generated, including, but not limited to, test protocols, tests set-up documents, test results, videotaping, and photographs from all tests performed by Toyota Motor Sales, Toyota Motor Corporation, or any outside agency on their behalf, which in whole or in part, are designed to predict or determine whether or not the ETCS-i of the SIMILAR VEHICLES may undergo "surging," "unwanted acceleration," and/or "sudden acceleration."

Request No. 28

All Toyota technical videos which provide details on the ETCS-i for the following vehicles:

- 1) 1998 Toyota Supra;
- 2) 2002 Toyota Camry (4 cylinder and 6 cylinder);
- 3) 2009 Toyota RAV-4 (with all engine types); and,
- 4) All other vehicles contained within the SIMILAR VEHICLES listing.

Request No. 29

All special service campaigns addressing accelerator pedal interferences in SIMILAR VEHICLES of Toyota, Lexus and Scion from 2002 to the present.

Request No. 30

Produce the manuals, guidelines, protocols, and training and instructional documents associated with each of Toyota's defect and crash surveillance systems, including but not limited to Early Warning Reporting (EWR).

Request No. 31

Produce an organizational chart or flow chart for each department or division involved with each defect and crash surveillance system.

Request No. 32

Produce all documents and electronic files related to how Toyota assigns the NHTSA defined categories to EWR claims.

Request No. 33

Produce all documents or communications related to quotas for the number of claims that can be added to an EWR database under a single category.

Request No. 34

Produce all documents and communications related to any alert, warning, or other mechanism, which would signify a threshold for the number of claims in any given EWR category.

Request No. 35

Toyota's corporate organizational chart or flow chart for the employees, who maintain, manage, organize and distribute EWR data to NHTSA.

Request No. 36

All FMEA and DFMEA documents and electronic files related to "cracked shaft throttle bodies" or a "broken throttle shaft" on all Toyota vehicles with ETCS-i.

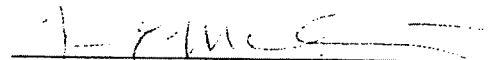
Request No. 37

All documents and electronic files in your possession related to the NHTSA ODI complaint number 10298108.

Request No. 38

All documents and electronic files related to the brake override system that Toyota will begin installing in new vehicles in 2010, including but not limited to, those which discuss when Toyota first considered utilizing brake override in any Toyota vehicle or why Toyota did not utilize brake override earlier and in all Toyota vehicles.

Dated: New York, New York
January 26, 2010


Terrence E. McCartney

RHEINGOLD, VALET, RHEINGOLD
SHKOLNIK & McCARTNEY LLP
Attorneys for Plaintiffs
113 East 37th Street
New York, NY 10016
(212) 684-1880

TO:
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Eckert Seamans
Attorneys for Defendants
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES &
TOYOTA MOTOR ENGINEERING AND MANUFACTURING
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White Plains, NY 10606

Steven Blatt, Esq.
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Attorneys for Defendant STAR TOYOTA OF BAYSIDE
200 Old Country Road, Ste. 400
Mineola, NY 11501

LEONG, KONG LU

PLEADINGS

LEONG, KONG LU

DSC TO TOYOTA

LEONG, KONG LU

DSC TO OTHERS

Leong, Kong

Police/Investigation

779268
Re open

CARR, JEROME

2006-12-41442
CLAIM



DISTRICT COURT OF MD. /LAND FOR

LOCATED AT (COURT ADDRESS)

501 E. Fayette St.
Baltimore, MD 21202

COMPLAINT \$5,000 or under over \$5,000 over \$10,000

Clerk: Please docket this case in an action of contract tort
 replevin detinue bad faith insurance claim

The particulars of this case are:

CASE NO.

CV

LEGAL SERVICES

PARTIES

OCT 19 2009

Plaintiff

Jerome D. Carr
5382 Winter Mass Court
Columbia, MD 21045

GROUP RECEIVED

See Continuation Sheet

VS.

Defendant(s):

1. Toyota Motor Sales, U.S.A., Inc.
2055 West 190th Street
Torrance, CA 90504

Serve by:
 Certified Mail
 Private Process
 Constable
 Sheriff

2. Serve on Resident Agent:
The Corporation Trust Incorporated
300 E. Lombard St.
Baltimore, MD 21202

Serve by:
 Certified Mail
 Private Process
 Constable
 Sheriff

3. Timonium Toyota Inc.
William Kidd
10401 York Road
Cockeysville, MD 21030

Serve by:
 Certified Mail
 Private Process
 Constable
 Sheriff

4. Serve on Resident Agent:
William Kidd
10401 York Road
Cockeysville, MD 21030

Serve by:
 Certified Mail
 Private Process
 Constable
 Sheriff

(See Continuation Sheet)

Legal
 Contractual _____ %

The Plaintiff claims:

\$ 3,004.63 plus interest of \$ _____ and attorney's fees of \$ _____ plus court costs.

Return of the property and damages of \$ _____ for its detention in an action of replevin.

Return of the property, or its value, plus damages of \$ _____ for its detention in action of detinue.

Other: _____ and demands judgment for relief.

Jerome D. Carr
Signature of Plaintiff/Attorney/Attorney Code

Telephone Number: 443-257-9929

ATTORNEYS

For Plaintiff - Name, Address, Telephone Number & Code

APPLICATION AND AFFIDAVIT IN SUPPORT OF JUDGMENT

Attached hereto are the indicated documents which contain sufficient detail as to liability and damage to apprise the Defendant clearly of the claim against the Defendant, including the amount of any interest claimed.

Property authenticated copy of any note, security agreement upon which claim is based Itemized statement of account Interest work
 Vouchers Check Other written document _____ Verified itemized repair bill or estimate

I HEREBY CERTIFY: That I am the Plaintiff _____ of the Plaintiff herein and am competent to testify to the matters stated in this complaint, which are made on my personal knowledge; that there is justly due and owing by the Defendant to the Plaintiff the sum set forth in the Complaint.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the above Complaint are true and I am competent to testify to these matters. The Defendant(s) is/are in the military service is/are not in the military service and the facts supporting this statement are: The Defendants are corporations.

I am unable to determine whether or not any Defendant is in military service.

October 8, 2009

Jerome D. Carr
Signature of Affiant

FILE START

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7 Attorneys for Plaintiffs
8 SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
9 PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
on behalf of themselves and all others similarly situated

10 *Additional counsel listed on page 2

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 SEONG BAE CHOI, CHRIS CHAN
14 PARK, SANDRA REECH, DONALD
15 PRITCHETT, UN JIN CHOI, and MARY
16 ANN PARKER, as individuals, and on
behalf of themselves and all others
similarly situated,
Plaintiffs,

17 v.
18 TOYOTA MOTOR CORPORATION,
19 TOYOTA MOTOR SALES, U.S.A., INC.,
and DOES 1 through 10,
20 Defendants.

Case No.: CV 09-08143 AHM (FMOx)

Judge Assigned: A. Howard Matz

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. VIOLATION OF CALIFORNIA
UNFAIR BUSINESS PRACTICES
ACT [CAL. BUS. & PROF. CODE
§ 17200, ET SEQ.];
2. FRAUD;
3. BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY [SONG-
BEVERELY CONSUMER
WARRANTY ACT, CAL. CIV.
CODE § 1792];
4. BREACH OF EXPRESS
WARRANTY

DEMAND FOR JURY TRIAL

Complaint Filed: November 5, 2009

25 Plaintiffs SEONG BAE CHOI CHRIS CHAN PARK, SANDRA REECH,
26 DONALD PRITCHETT, UN JIN CHOI, and MARY ANN PARKER as individuals, on
27 behalf of themselves and all others similarly situated (i.e., the members of the various
28 Plaintiff Classes described and defined, infra), herein alleges as follows:

1 Mitchell M. Breit (*Pro Hac Vice* App. Pending) mbreit@hanlyconroy.com
2 Andrea Bierstein (*Pro Hac Vice* App. Pending) abierstein@hanlyconroy.com
3 Jayne Conroy (*Pro Hac Vice* App. to be Submitted) jconroy@hanlyconroy.com
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10 Edward W. Choi, Esq. (SBN 211334) edward.choi@calaw.biz
11 LAW OFFICES OF CHOI & ASSOCIATES
12 A Professional Corporation
13 3435 Wilshire Boulevard, Suite 2410
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17 Attorneys for Plaintiffs
18 SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
19 PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
on behalf of themselves and all others similarly situated

20 ///

21 ///

Derek Y. Brandt (*Pro Hac Vice*
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East Alton, Illinois 62024
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DIVERSITY LAW GROUP, P.C.
444 S. Flower Street, Suite 1370
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

1 I.

2 JURISDICTION AND VENUE

3 1. This Court has original jurisdiction of this action under the Class Action
4 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
5 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
6 members of the class are citizens of a different state than any defendant as required by 28
7 U.S.C. § 1332(d)(2).

8 2. Venue as to Defendants is proper in this judicial district because Defendant
9 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
10 California, and a number of class members, including certain named Plaintiffs, purchased
11 vehicles in, and reside in, Los Angeles County, California.

12 II.

13 GENERAL ALLEGATIONS

14 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
15 Angeles County, California.

16 4. Plaintiff CHRIS CHAN PARK is a resident of the city of Carson, Los
17 Angeles County, California.

18 5. Plaintiff SANDRA REECH is a resident of Pennsylvania.

19 6. Plaintiff DONALD PRITCHETT is a resident of Georgia.

20 7. Plaintiff UN JIN CHOI is a resident of City of Irvine, Orange County,
21 California.

22 8. Plaintiff MARY ANN PARKER is a resident of Orange County, California.

23 9. Defendant, TOYOTA MOTOR CORPORATION (“TMC”), is, and at all
24 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
25 Prefecture, Japan.

26 10. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. (“TMS”), is, and at all
27 relevant times was, a California corporation with its principle place of business in Los
28 Angeles County, California.

1 11. The above-named Defendants are collectively referred to as the "Toyota
2 Defendants."

3 12. The Toyota Defendants conduct substantial business in all Counties within
4 the State of California as well as in all other States in the United States.

5 13. The true names and capacities of defendants sued herein as DOES 1 through
6 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by
7 such fictitious names. Each of the Defendants designated herein as a DOE is legally
8 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek
9 leave of Court to amend this Complaint to reflect the true names and capacities of the
10 Defendants designated herein as DOES when such identities become known.

11 14. Based on information and belief, Plaintiffs allege that at all times mentioned
12 herein, each and every Defendant was acting as an agent and/or employee of each of the
13 other Defendants, and at all times mentioned was acting within the course and scope of
14 said agency and/or employment with the full knowledge, permission and consent of each
15 of the other Defendants. In addition, each of the acts and/or omissions of each Defendant
16 alleged herein were made known to, and ratified by, each of the other Defendants.

17 **III.**

18 **FACTUAL ALLEGATIONS**

19 15. Defendant TOYOTA MOTOR CORPORATION is the world's largest
20 manufacturer of automobiles sold throughout the United States and the world.

21 16. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("TMS") is a wholly-
22 owned subsidiary of TMC.

23 17. The Toyota Defendants conduct substantial business in all Counties within
24 the State of California as well as in all other States in the United States.

25 18. This is a civil action against Defendants based upon information and belief
26 that Defendants, and each of them, designed, manufactured, distributed, and sold certain
27 automobiles equipped with the Electronic Throttle Control System with Intelligence
28

1 (“ETCS-i”) that is defective in that it will allow sudden unintended acceleration of the
2 vehicle engine.

3 **A. The Toyota Defendants’ Development of ETCS-i**

4 19. Beginning in 1998 and continuing to the present, Defendants designed,
5 manufactured, distributed, and sold certain automobiles equipped with Electronic
6 Throttle Control System with Intelligence (“ETCS-i”).

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

11 21. Initially, Defendants designed their vehicle with both an electronic throttle
12 control and a redundant mechanical linkage between the gas pedal and the engine throttle
13 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
14 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
15 by the mechanical linkage.

16 22. Beginning in or about 2001, however, Defendants designed, manufactured,
17 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
18 redundant mechanical linkage between the gas pedal and the engine throttle control.

19 **B. The Danger of Sudden Unintended Acceleration**

20 23. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
21 defective and unsafe in that such vehicles are susceptible to incidents of sudden
22 unintended acceleration rendering such vehicles uncontrollable.

23 24. The occurrence of this sudden unintended acceleration forces the driver to
24 lose control of the vehicle with the potential to cause, and actually have caused, collisions
25 with automobiles in front of the vehicle, loss of control at high freeway speeds resulting
26 in fatalities, and other circumstances.

27 25. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
28 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate

1 important failsafe measures critical to assisting a driver in maintaining control of the
2 vehicle during a sudden unintended acceleration event.

3 26. One such failsafe measure is a computer algorithm that will direct the
4 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
5 while the throttle is an open position. This failsafe measure has been incorporated by
6 other automobile manufacturers in vehicles designed with electronic throttle control for
7 years.

8 27. Plaintiffs allege on information and belief that the Toyota Defendants have
9 been fully aware of the recurring problem of sudden unintended acceleration in their
10 Toyota and Lexus vehicles equipped with ETCS-i.

11 **C. Plaintiffs' Incidents of Unintended Sudden Acceleration**

12 28. Each of the Plaintiffs own and were driving Toyota vehicles equipped with
13 Toyota's ETCS-i system.

14 **Plaintiff Seong Bae Choi**

15 29. Plaintiff SEONG BAE CHOI ("S. CHOI") is the owner of a 2004 Toyota
16 Camry that he purchased new from Longo Toyota, located in the city of El Monte, Los
17 Angeles County, California.

18 30. On numerous occasions, Plaintiff S. CHOI experienced the vehicle undergo
19 sudden unintended acceleration while in the process of applying his brakes, resulting in
20 engine revving and forward lurching of the vehicle. Plaintiff S. CHOI does not feel safe
21 driving the vehicle.

22 **Plaintiff Chris Chan Park**

23 31. Plaintiff CHRIS CHAN PARK ("PARK") is the owner of a 2008 FJ Cruiser
24 that he purchased new from Long Beach Toyota, located in the city of Long Beach, Los
25 Angeles County, California.

26 32. On numerous occasions, Plaintiff PARK experienced the vehicle undergo
27 sudden unintended accelerations while in the process of applying his brakes, resulting in
28

1 engine revving and forward lurching of the vehicle. Plaintiff PARK does not feel safe
2 driving the vehicle.

3 **Plaintiff Sandra Reech**

4 33. Plaintiff SANDRA REECH ("REECH") is the owner of a 2008 Toyota
5 Tacoma that was purchased new in April of 2008. On March 8, 2009, while accelerating
6 to pass a slowing moving vehicle, the accelerator stuck wide open. Plaintiff REECH
7 applied the brakes, and the vehicle did not slow down. She then put all her weight on the
8 brakes and shifted the vehicle into neutral. The engine continued to rev at very high
9 rpm's. She was finally able to steer off the road and stop the vehicle. After the vehicle
10 was turned off, Plaintiff REECH checked to see if the accelerator pedal was depressed
11 and it was not. She checked the floor mats and they were not near the gas pedal or brake.
12 The smell of overheated brakes was evident to her.

13 34. Plaintiff REECH restarted the vehicle and the engine worked normally. She
14 took the Toyota vehicle to the Toyota-Scion of Breensburg, PA dealership and reported
15 the incident. The service representative was unable to determine a cause for the incident.
16 Plaintiff REECH then contacted a Toyota representative who denied knowledge of
17 having heard of this type of problem. After she reported the incident to NHTSA, Plaintiff
18 REECH spoke with another Toyota representative that advised her that the problem was
19 caused by the floor mat, and refused to have a Toyota representative inspect the vehicle.
20 Instead the Toyota representative advised Plaintiff REECH that since she had
21 demonstrated her ability to stop the vehicle, she should just continue driving the vehicle
22 and if it happened again, Plaintiff REECH would know how to handle it.

23 35. The incident was not caused by the floor mat or unintended depressing the
24 accelerator. Plaintiff REECH is afraid to drive the Toyota vehicle because the vehicle is
25 unsafe, and as a result it is parked in the driveway and Plaintiff REECH is deprived of the
26 use of the vehicle because of her reasonable safety concerns about the Toyota vehicle.

27 **Plaintiff Donald Pritchett**

28 36. Plaintiff DONALD PRITCHETT ("PRITCHETT") is the owner of a 2006

1 Toyota Tacoma. On October 7, 2009, while driving on U.S. Route 29 in West Point,
2 Georgia, Plaintiff PRITCHETT's Toyota vehicle suddenly accelerated to a high rate of
3 speed. Plaintiff PRITCHETT was able to avoid several obstacles before plowing into a
4 ditch causing damage to the vehicle. The sudden acceleration occurred without Plaintiff
5 PRITCHETT depressing the accelerator. It also was not caused by the floor mat.

6 37. Plaintiff PRITCHETT reported the sudden unintended acceleration to both
7 the Toyota dealer and to Toyota's corporate representatives. After a vehicle inspection
8 insisted on by Plaintiff PRITCHETT, Toyota denied there was any problem with the
9 vehicle that caused the sudden unintended acceleration. Plaintiff PRITCHETT does not
10 feel safe driving the Toyota vehicle.

11 **Plaintiff Un Jin Choi**

12 38. Plaintiff UN JIN CHOI ("U. CHOI") is the owner of a 2004 Toyota Camry
13 that she purchased new in California. On November 9, 2009, while operating the vehicle
14 at slow speeds while preparing to park, Plaintiff U. CHOI's Toyota vehicle suddenly
15 accelerated. Plaintiff U. CHOI swerved to avoid hitting a building, and the vehicle then
16 sped across the street and struck a telephone pole. Plaintiff U. CHOI had standard floor
17 mats that were not trapped underneath the pedal. Plaintiff U. CHOI does not feel safe
18 driving the vehicle.

19 **Plaintiff Mary Ann Tucker**

20 39. Plaintiff MARY ANN TUCKER ("TUCKER") is the owner of a 2005
21 Toyota Camry. The vehicle was purchased primarily for Plaintiff TUCKER's teenage
22 daughter to drive. Plaintiff TUCKER has conducted significant research on the dangers
23 of sudden unintended acceleration for the 2005 Toyota Camry, and she is afraid to allow
24 her daughter to drive the vehicle because of reasonable concerns over its safety. As a
25 result, the vehicle is parked and Plaintiff TUCKER has lost use of the vehicle.

26 40. All Plaintiffs expected that their vehicles would not ever engage in
27 unintended and un-commanded acceleration which expose them to serious safety risks.
28 The information regarding the dangerous and defective feature of these vehicles were

1 concealed from and not disclosed by Defendants to all Plaintiffs. Had Plaintiffs been
2 informed by Defendants prior to purchasing their Toyota and Lexus vehicles of this
3 unexpected and dangerous defect, then Plaintiffs would not have purchased these
4 vehicles. As a result of Defendants' concealment of such information, Plaintiffs
5 purchased Toyota and Lexus vehicles while unaware of this dangerous defect, and are
6 now stuck with vehicles that they are afraid to drive and which pose a substantial safety
7 risk at any unexpected moment.

8 41. As a further consequence of Defendants' concealment of this defect, all
9 Plaintiffs were not aware that the latent defect involved the ETCS-i until shortly before
10 the filing of this Complaint.

11 42. As part of the purchase contracts for Plaintiffs' vehicles entered into by their
12 respective Toyota and Lexus dealerships, all Plaintiffs were also provided an express
13 warranty by Defendant TOYOTA MOTOR SALES, U.S.A., INC., for a period of seven
14 years or 70,000 miles, whichever comes first. According to the warranty guide which
15 accompanied the owner's manual that was provided to all Plaintiffs, this warranty covers
16 repairs and replacement of defective parts, including the engine control computer, at no
17 cost to the buyer.

18 **D, History of Sudden Unintended Acceleration**

19 43. The experiences of Plaintiffs are representative of a significant number of
20 Toyota owners that have experienced this unexplained sudden and dangerous acceleration
21 of their Toyota vehicle. There have been more than 2,000 complaints of sudden
22 unintended acceleration made to Toyota and government agencies related to Toyota and
23 Lexus vehicles equipped with ETCS-i. There have been reported 18 deaths and 304
24 injuries caused by the unintended acceleration. Those numbers are likely grossly
25 understated for incidents and accidents caused by sudden unintended acceleration where
26 the incident or accident is not reported or where the dealer indicates to the Toyota owner
27 that there is not anything wrong with their vehicle. Just the following sampling of
28

1 complaints, provided under information and belief, illustrates the dangers and scope of
2 the problem.

3 44. Toyota Owner 1 resides in Pittstown, New Jersey. He owns a 2007 Toyota
4 Avalon. He experienced numerous occasions of the engine racing even when the vehicle
5 was in neutral. On December 29, 2009, while driving on a highway, the vehicle
6 accelerator suddenly began to race at full throttle even though the brake pedal was not
7 activated. He was unable to stop the vehicle with braking. Toyota Owner 1 was able to
8 avoid an accident by putting the vehicle into neutral. The vehicle engine continued to
9 race at very high rpm's. He then drove the vehicle to the Toyota dealership by shifting in
10 and out of neutral. The dealer then was forced to document the incident as being caused
11 by something other than floor mats and inadvertent accelerator pedal activation.

12 45. Toyota Owner 2 was driving a 2005 Toyota Tacoma in Tennessee, when the
13 vehicle suddenly began accelerating reaching speeds of over 80 mph on curvy roads. It
14 took all the strength of the owner applying the brakes to bring the vehicle to a stop. The
15 brakes were on fire when the vehicle came to rest. The vehicle was towed to a Toyota
16 dealership which denied a vehicle malfunction caused the sudden and unintended
17 acceleration.

18 46. Toyota Owner 3 was driving a 2006 Lexus IS250 in Indiana at
19 approximately 20-25 mph when the vehicle suddenly accelerated despite the owner
20 taking her foot off the accelerator. This owner was unable to stop the vehicle despite
21 pressing the brake as hard as she could. The owner had to drive the vehicle into a tree to
22 stop the vehicle. The car was brought to a dealer who indicated that they found no defect
23 with the Toyota vehicle. The floor mats were not the cause of the acceleration.

24 47. Toyota Owner 4 purchased a new 2008 Toyota Tacoma. Within 16,000
25 miles, he had two instances of sudden unintended acceleration. The first instance
26 occurred when the owner routinely applied the brake for a stop light, and the Toyota
27 suddenly accelerated. Despite applying both feet to the brakes, the vehicle surged and
28 rear-ended another vehicle. The vehicle was provided to Toyota who indicated they

1 could find nothing wrong with the vehicle. The second instance occurred almost one
2 year later, when the owner was stopped at a light, and took his foot off the brake to
3 initiate a right hand turn when the Toyota suddenly accelerated forward. The owner
4 having already experienced this problem once before, was prepared when he felt the
5 acceleration and immediately turned the ignition off. He was thus able to avoid another
6 accident. Again the vehicle was provided to Toyota who denied there was anything
7 wrong with the vehicle. The floor mats were not in the vehicle in the second incident and
8 were not the cause of the first incident.

9 48. Toyota Owner 5 purchased a new 2005 Toyota Camry in Louisiana. On
10 January 25, 2007, the owner was entering a car wash and took her foot off the brake and
11 gently touched the accelerator when the car accelerated as if the accelerator had been
12 fully depressed. The owner took her foot off the accelerator and pressed the brake pedal
13 as hard as she could, including pumping the brakes. She sped through the car wash, went
14 across the street, missed gas pumps across the street and then intentionally drove into a
15 pole to stop her vehicle. A later vehicle inspection showed the accelerator at full open
16 position following the accident. The accident was reported to Toyota and they denied a
17 defect in the vehicle. The owner confirmed that the floor mats were not the cause of the
18 acceleration.

19 49. Toyota Owner 6 leased a new 2008 Lexus ES 350 in Connecticut. On
20 November 28, 2009, the owner was entering a parking lot when the vehicle suddenly
21 accelerated, which caused it to jump a curb and run into a tree. The owner reported the
22 accident to Toyota; Toyota responded that there was not a defect with the vehicle.

23 50. Toyota Owner 7 purchased a new 2007 Lexus ES 350 in Ohio. The owner
24 was driving approximately 35-40 mph on a highway when the vehicle suddenly
25 accelerated, rapidly reaching speeds of 80-85 mph. The owner applied his brakes, put on
26 his flashers, and as the brakes began to smoke, was able to put the vehicle into neutral
27 and pull the vehicle off the roadway. The brakes were ruined in the incident. Toyota was
28 notified of the incident and was told it was a floor mat problem even though there was no

1 sign the floor mat contributed to the incident. Toyota further indicated there was not a
2 defect or problem with the vehicle.

3 51. Toyota Owner 8 was a passenger in his 2003 Toyota Camry being driven by
4 his daughter in Michigan. While pulling into a parking spot with her foot lightly on the
5 brake, the Toyota engine revved and the vehicle jumped forward over an embankment
6 and hit a parked car. The driver's foot was on the brake the entire time. The floor mat
7 was not the cause of the surging. The vehicle was taken to a Toyota dealership and the
8 problem was reported. The dealership denied any problem with the vehicle.

9 52. Toyota Owner 9 purchased a 2006 Lexus ES 330. His wife was driving the
10 vehicle on either July 23 or 24, 2009 in California. She was gently slowing, when the
11 engine suddenly roared and the car shot forward, causing her to hit a low cement wall and
12 fence before the vehicle stalled. This was reported to their Toyota dealership; the
13 personnel at the dealership blamed the floor mat. The floor mat had nothing to do with
14 the accident.

15 53. Toyota Owner 10 owned a 2002 Toyota Camry. On July 22, 2004, while
16 proceeding toward a parking space with her foot on the brake, the vehicle suddenly
17 surged forward into a cement wall. The accident was reported to Toyota, but Toyota
18 denied any problem with the vehicle. The floor mat had nothing to do with the accident.

19 54. Toyota Owner 11 owned a 2005 Lexus SC 430. On November 17, 2009, the
20 owner was slowing the vehicle in Laguna Hills, CA when it suddenly accelerated,
21 jumped a curb and went down a ravine. This was the third occasion this vehicle had
22 experienced sudden acceleration. The accident had nothing to do with the floor mats.

23 55. Toyota Owner 12 owned a 2002 Lexus ES 300. In November or December
24 2008, as the driver was lightly applying the accelerator backing out of the driveway in
25 Newport Beach, CA, the vehicle suddenly accelerated. It took all the pressure the owner
26 was able to apply to the brakes to stop the vehicle. The floor mat did not cause this
27 incident.

28

1 56. As these reported incidents demonstrate, the problem of unexplained and
2 unexpected sudden acceleration occurs over a wide range of Toyota models and
3 circumstances.

4 **E. Defendants' Response to the Sudden Unintended Acceleration Danger**

5 57. Despite knowledge of over 2,000 complaints similar to those listed above,
6 the Toyota Defendants have consistently denied the problem to customers, their dealers
7 and the National Highway Traffic Safety Administration ("NHTSA").

8 58. When the Toyota Defendants were unable to continue denying the existence
9 of sudden unintended acceleration due to the high profile fatalities in the Saylor accident,
10 the Toyota Defendants then took the position that these sudden acceleration problems
11 were caused by a problem with floor mats. Based on information and belief, when it
12 made this public pronouncement after years of denying that there was a problem at all,
13 the Toyota Defendants knew the floor mats were not the explanation for the majority of
14 the sudden unintended accelerations accidents and complaints.

15 59. When the Toyota Defendants were unable to continue making the claim that
16 the sudden unintended acceleration was caused by floor mats because of the number of
17 reported sudden unintended acceleration with vehicles that did not have all-weather floor
18 mats, Defendants then claimed a problem with the brake pedal. Based on information
19 and belief, when the Toyota Defendants made the partial recall based on the brake pedal,
20 they knew the real problem was due to computer malfunctions with the ETCS-i system.

21 60. Based on information and belief, at all times relevant herein, the Toyota
22 Defendants had full knowledge that Toyota and Lexus vehicles equipped with ETCS-i
23 were susceptible to incidents of sudden unintended acceleration caused by computer
24 malfunction that posed a significant risk of injury and death to vehicle occupants and
25 other motorists and pedestrians alike.

26 61. Despite this knowledge, the Toyota Defendants continue to design,
27 manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i
28

1 that are susceptible to incidents of sudden unintended acceleration, and fail to incorporate
2 critical failsafe measures to assist the driver in such an event.

3 62. Throughout the relevant time periods, Defendants alone had access to the
4 aggregate data concerning this defect. Despite the number of complaints, accidents and
5 deaths that have resulted from this defect, Defendants never made any attempt to notify
6 other customers of the defect or effect a recall (until the misguided and ineffectual recall
7 of merely the floor mats in late 2009, which Defendants themselves admit was not
8 sufficient), and otherwise refused to provide effective remedies for customers who
9 complained of the problem, all the while denying the root cause of the unintended
10 acceleration problems was a defect in the vehicle.

11 63. Throughout this time, while Defendants actively concealed information of
12 this dangerous defect, Defendants sold massive numbers of the subject vehicles, which
13 resulted in Defendants garnering enormous profits and ultimately becoming the world's
14 largest car manufacturer.

15 IV.

16 CLASS ACTION ALLEGATIONS

17 64. Plaintiffs bring this action on behalf of themselves and all others similarly
18 situated in the State of California.

19 65. Plaintiffs initially define the "California Class" as follows:

20 a. **The California Class:** All persons who reside in California and
21 presently own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

22 Specifically excluded from this California Class are all persons who have suffered,
23 or possess a right of action for, any personal injury or wrongful death as a result of
24 sudden unintended acceleration. Also excluded from this class is any entity in which the
25 Toyota Defendants have a controlling interest, and officers or directors of the Toyota
26 Defendants. Plaintiffs, and those persons similarly situated as described in the preceding
27 paragraph, may be collectively referred to herein as the "California Class Plaintiffs."
28

1 66. Plaintiffs also bring this action on behalf of themselves and all others
2 similarly situated in the United States.

3 67. Plaintiffs initially define the "National Class" as follows:

4 a. **The National Class:** All persons in the United States and presently
5 own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

6 Specifically excluded from this National Class are all persons who have suffered,
7 or possess a right of action for, any personal injury or wrongful death as a result of
8 sudden unintended acceleration. Also excluded from this National Class is any entity in
9 which the Toyota Defendants have a controlling interest, and officers or directors of the
10 Toyota Defendants. Plaintiffs, and those persons similarly situated as described in the
11 preceding paragraph, may be collectively referred to herein as the "National Class
12 Plaintiffs."

13 68. This action is brought as a class action and may properly be so maintained
14 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
15 Plaintiffs reserve the right to modify the California Class and the National Class
16 definitions and the class period based on the results of discovery.

17 69. **Numerosity of the California Class and National Class** -- The members of
18 the California Class and the National Class are so numerous that their individual joinder
19 is impracticable. Plaintiffs are informed and believe that there are hundreds of thousands
20 of members in the classes. Because the class members may be identified through
21 business records regularly maintained by the Toyota Defendants and their employees and
22 agents, and through the records of public agencies, the number and identities of class
23 members can be ascertained. Members of the Classes can be notified of the pending
24 action by e-mail, mail and supplemented by published notice, if necessary.

25 70. **Existence and Predominance of Common Questions of Fact and Law** --
26 There are questions of law and fact common to both Classes. These questions
27 predominate over any questions affecting only individual class members. These common
28 legal and factual issues include, but are not limited to:

1 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are
2 dangerous when used as designed because the ETCS-i may cause sudden
3 unintended acceleration.

4 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are
5 dangerous when used as designed because the ETCS-i fails to incorporate critical
6 failsafe measures designed to assist the driver in maintaining control of the vehicle
7 in the event of a sudden unintended acceleration.

8 c. Whether the Toyota Defendants knew during the time that it sold
9 Toyota and Lexus vehicles equipped with ETCS-i that such vehicles were
10 susceptible to sudden unintended acceleration when used as designed.

11 d. Whether the Toyota Defendants' conduct as described above
12 constitutes unlawful, unfair, or fraudulent business acts or practices in violation of
13 Cal. Bus. & Prof. Code § 17200 et seq.;

14 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
15 unreasonably dangerous, constituting a breach of implied warranty;

16 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit
17 for their intended use, constituting a breach of implied warranty.

18 71. **Typicality** – The claims of the representative Plaintiffs are typical of the
19 claims of the members of both the California Class and the National Class. Plaintiffs,
20 like all other members of the Classes, have sustained damages arising from Defendants'
21 violations of the laws, as alleged herein. The representative Plaintiffs and the members
22 of the Classes were and are similarly or identically harmed by the same unlawful,
23 deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by
24 Defendants.

25 72. **Adequacy** – The representative Plaintiffs will fairly and adequately
26 represent and protect the interests of the Class members and have retained counsel who
27 are experienced and competent trial lawyers in complex litigation and class action
28 litigation. There are no material conflicts between the claims of the representative

1 Plaintiffs and the members of the Classes that would make class certification
2 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
3 members.

4 **73. Predominance and Superiority** – This suit may be maintained as a class
5 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
6 common to the Classes predominate over the questions affecting only individual
7 members of the Classes and a class action is superior to other available means for the fair
8 and efficient adjudication of this dispute. The damages suffered by individual class
9 members are small compared to the burden and expense of individual prosecution of the
10 complex and extensive litigation needed to address Defendants’ conduct. Further, it
11 would be virtually impossible for the members of the Classes to individually redress
12 effectively the wrongs done to them. Even if Class members themselves could afford
13 such individual litigation, the court system could not. In addition, individualized
14 litigation increases the delay and expense to all parties and to the court system resulting
15 from complex legal and factual issues of the case. Individualized litigation also presents
16 a potential for inconsistent or contradictory judgments. By contrast, the class action
17 device presents far fewer management difficulties; allows the hearing of claims which
18 might otherwise go unaddressed because of the relative expense of bringing individual
19 lawsuits; and provides the benefits of single adjudication, economies of scale, and
20 comprehensive supervision by a single court.

21 **74.** Plaintiffs contemplate the eventual issuance of notice to the proposed Class
22 members setting forth the subject and nature of the instant action. Upon information and
23 belief, Defendants’ own business records and electronic media can be utilized for the
24 contemplated notices. To the extent that any further notices may be required, the Class
25 Plaintiffs would contemplate the use of additional media and/or mailings.

26 **75.** In addition to meeting the statutory prerequisites to a Class Action, this
27 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
28 Rules of Civil Procedure, in that:

1 a. Without class certification and determination of declaratory,
2 injunctive, statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the Classes will create the risk of:

4 i. Inconsistent or varying adjudications with respect to individual
5 members of the Classes which would establish incompatible standards of
6 conduct for the parties opposing the Classes; or

7 ii. Adjudication with respect to individual members of the Classes
8 which would as a practical matter be dispositive of the interests of the other
9 members not parties to the adjudication or substantially impair or impede
10 their ability to protect their interests;

11 b. The parties opposing the Classes have acted or refused to act on
12 grounds generally applicable to each member of the Class, thereby making
13 appropriate final injunctive or corresponding declaratory relief with respect to the
14 Classes as a whole; or

15 c. Common questions of law and fact exist as to the members of the
16 Classes and predominate over any questions affecting only individual members,
17 and a Class Action is superior to other available methods of the fair and efficient
18 adjudication of the controversy, including consideration of:

19 i. The interests of the members of the Classes in individually
20 controlling the prosecution or defense of separate actions;

21 ii. The extent and nature of any litigation concerning controversy
22 already commenced by or against members of the Classes;

23 iii. The desirability or undesirability of concentrating the litigation
24 of the claims in the particular forum;

25 iv. The difficulties likely to be encountered in the management of a
26 Class Action.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Business and Professions Code § 17200 *et seq.* –**
3 **Unlawful, Fraudulent, and Unfair Business Act and Practices)**
4 **(Against all Defendants)**

5 76. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1 through 75 above as though fully set forth herein.

7 77. Codified in California Business and Professions Code §17200 *et seq.*, the
8 California Unfair Business Practices Act (the “Act”), defines unfair business competition
9 to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act
10 also provides for injunctive relief, restitution, and disgorgement of profits for violations.

11 78. Defendants’ acts and practices as described herein constitute unlawful,
12 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
13 described herein, violate each of the statutes set forth within this Complaint, and/or (2)
14 the justification for Defendants’ conduct is outweighed by the gravity of the
15 consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is
16 immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious
17 to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants
18 has a tendency to deceive Plaintiffs and the members of the Classes.

19 79. Defendants have engaged and are engaging in acts and practices that
20 constitute unlawful business practices in violation of the Act because they constitute a
21 violation and/or breach of, among other things:

22 a. The Defendants’ duty to disclose to consumers who have purchased or
23 leased one of the aforementioned Toyota or Lexus vehicles equipped with ETCS-i
24 of the unreasonable dangerous condition of such vehicles by virtue of their
25 susceptibility to sudden uncontrolled acceleration of which Defendants were aware
26 or should have been aware;

1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design outweigh the
3 risk inherent in the design;

4 c. The Defendants' duty to sell vehicles which would perform as safely
5 as an ordinary consumer would expect when used in a reasonably foreseeable
6 manner;

7 d. The Defendants' duty to notify of defects post-sale;

8 e. Civil Code § 1710 for deceit;

9 f. The Song-Beverly Consumer Warranty Act as alleged in the Second
10 and Third Causes of Action of this Complaint;

11 g. The implied warranty of merchantability as set forth in California
12 Commercial Code § 2-314;

13 h. The implied warranty of fitness for a particular purpose, as set forth in
14 California Commercial Code § 2-315; and

15 i. The Defendants' express warranties.

16 80. Defendants have engaged in fraudulent acts and practices, based on the
17 following grounds:

18 a. Defendants had exclusive knowledge of the defect, its dangerousness,
19 and the large number of complaints regarding sudden unintended acceleration;

20 b. Information as to this defect was material to all purchasers of the
21 subject vehicles as the defect poses a tremendous safety risk;

22 c. A reasonable consumer would not expect that Defendants' vehicle
23 would ever experience sudden, unintended acceleration;

24 d. Defendants actively concealed from Plaintiffs and members of the
25 Class information regarding this dangerous defect;

26 e. Plaintiffs and the Class members were not aware of this defect when
27 they purchased their vehicles;

28

1 f. Plaintiffs and the members of the Class reasonably would not have
2 purchased the defective and unreasonably dangerous Toyota vehicles had they
3 known of the defects; and

4 g. As a result of Defendants' concealment of this material information,
5 Plaintiffs and the members of the Class were induced to purchase or lease a Toyota
6 or Lexus vehicle that is unsafe to drive.

7 81. Plaintiffs, on behalf of themselves and the California Class and the National
8 Class, seek:

9 a. An injunction compelling Defendants to recall all Toyota and Lexus
10 vehicles equipped with ETCS-i and distributed and sold by Defendants and to
11 provide relief in the form of restitution and disgorgement of all profits and
12 compensation improperly obtained by Defendants as a result of such acts and
13 practices; or

14 b. Alternatively, an injunction requiring Defendants to create a fund
15 available to remedy the defect and to order Defendants to bear the cost of notice to
16 Class members, as approved by the Court, of the availability of funds to remedy
17 the defect.

18 c. Such recall or other injunctive relief may be an expansion of
19 Defendants' current recall of gas pedals and floor mats, or constitute a separate
20 recall operation.

21 82. Plaintiffs and the Class members are therefore entitled to the relief described
22 above.

23 83. The conduct of Defendants as described herein violates California Business
24 & Professions Code § 17200 *et seq.*, and other similar State unfair competition and
25 unlawful business practices statutes.

26 84. Pursuant to California Business & Professions Code §§ 17200 and 17203,
27 Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed
28 for below.

1 **SECOND CAUSE OF ACTION**

2 **(Fraud)**

3 **(Against all Defendants)**

4 85. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
5 1 through 84 above as though fully set forth herein.

6 86. The misrepresentations, nondisclosure, and/or concealment of material facts
7 made by Defendants to Plaintiffs and the members of the Class, as set forth above, were
8 known by Defendants to be false and material and were intended by Defendants to
9 mislead Plaintiffs and the members of the Class.

10 87. Each of the misrepresentations asserted herein were material to Plaintiffs
11 and the Class members, and Plaintiffs and the Class members justifiably relied on such
12 misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to
13 purchase or lease the defective vehicles identified herein. Moreover, at no time did
14 Defendants disclose to Plaintiffs and the Class members of the falsity of the
15 misrepresentations, or disclose the defective and dangerous condition of the subject
16 vehicles as discussed hereinabove.

17 88. As a result of the conduct of Defendants, Plaintiffs and the Class members
18 have been damaged. In addition to rescission or compensatory damages, pursuant to
19 California Civil Code § 3343, Plaintiffs seek punitive or exemplary damages, pursuant to
20 California Civil Code § 3294, in that Defendants engaged in “an intentional
21 misrepresentation, deceit, or concealment of a material fact known to the defendant[s]
22 with the intention on the part of the defendant[s] of thereby depriving a person of
23 property or legal rights or otherwise causing injury.”

24 ///

25 ///

1 **THIRD CAUSE OF ACTION**

2 **(Breach of the Implied Warranty of Merchantability,**
3 **California Civil Code § 1792 – Song-Beverly Consumer Warranty Act)**
4 **(Against all Defendants)**

5 89. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1 through 88 above as though fully set forth herein.

7 90. At all times herein mentioned, Defendants impliedly warranted that Toyota
8 and Lexus vehicles equipped with ETCS-i were not unreasonably dangerous and were
9 safe when used as designed by Defendants.

10 91. Defendants breached their implied warranty as the products were not safe for
11 their expected use and were not merchantable.

12 92. The latent defect involved the ETCS-i system, which was not reasonably
13 discovered by Plaintiffs until shortly before the filing of this Complaint.

14 93. As a legal result of said breach of the implied warranties, Plaintiffs and the
15 members of the California Class and National Class have been damaged by having
16 purchased vehicles that are not safe for driving, in an amount to be proven at trial.
17 Therefore, Plaintiffs are entitled to damages and equitable relief as set forth in California
18 Civil Code § 1794.

19
20 **FOURTH CAUSE OF ACTION**

21 **(Breach of Express Warranty)**

22 **(Against all Defendants)**

23 94. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
24 1 through 93 above as though fully set forth herein.

25 95. The Toyota Defendants provided express warranties to repair or replace the
26 ETCS-i system, which is part of the engine control computer, for a period of seven years
27 or 70,000 miles, whichever comes first. Such express warranties were part of the sales
28 and lease contracts for Defendants' vehicles. Defendants breached this express warranty

1 by failing to properly fix or remedy the ETCS-i defect. Each Plaintiff and putative Class
2 member either directly notified Toyota of the sudden, unintended acceleration problem
3 shortly after experiencing the problem and were given inadequate responses by
4 Defendants which fail to remedy the issue, or otherwise did not directly purchase their
5 vehicle from manufacturer Defendants and therefore, were not required to give notice to
6 Defendants of the defect. The express warranties provided by Defendants constituted
7 material terms to each Plaintiff in deciding to purchase the vehicles.

8 96. Plaintiffs have therefore been damaged by having purchased vehicles that are
9 not safe for driving.

10 97. As a legal result of said breach of the implied warranties, Plaintiffs and the
11 members of the California Class and National Class have been damaged in an amount to
12 be proven at trial.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the California
16 Class and National Class pray for relief as follows:

17 A. For an order certifying the California Class and appointing Plaintiffs and
18 their counsel to represent the California Class;

19 B. For an order certifying the National Class and appointing Plaintiffs and their
20 counsel to represent the National Class;

21 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
22 equipped with ETCS-i and provide restitution of all funds improperly obtained by
23 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
24 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
25 or constituting unfair competition;

26 D. An order requiring Defendants to create a fund available to remedy the
27 defect and to order Defendants to bear the cost of notice to Class members, as approved
28 by the Court, of the availability of funds to remedy the defect

1 E. An order for disgorgement of all profits and compensation improperly
2 obtained by Defendants as a result of such acts and practices declared by this Court to be
3 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
4 regulations, or constituting unfair competition;

5 F. For an order of restitution;

6 G. For compensatory damages according to proof;

7 H. For rescission and/or compensatory damages, California Civil Code § 3343;

8 I. For punitive or exemplary damages, pursuant to California Civil Code
9 §3294;

10 J. For economic damages and equitable relief according to proof under the
11 Song-Beverly Consumer Warranty Act, California Civil Code § 1790 *et seq.*;

12 K. For punitive damages, pursuant to California Civil Code § 1780;

13 L. For reasonable attorney's fees and costs;

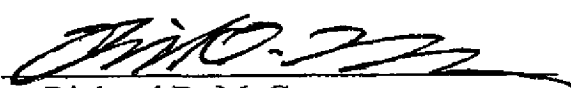
14 M. For prejudgment interest to the extent allowed by law;

15 N. For costs of suit incurred herein;

16 O. For such other and further relief as the Court deems appropriate.

17
18 Dated: January 18, 2010

MCCUNEWRIGHT LLP

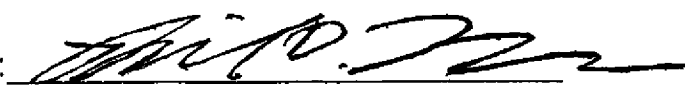
19
20 By: 
21 Richard D. McCune
22 Attorney for Plaintiffs

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

25 Dated: January 18, 2010

MCCUNEWRIGHT LLP

26
27 By: 
28 Richard D. McCune
Attorney for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age
4 of 18 and not a party to the following action. My business address is 444 S. Flower Street,
5 Suite 1370, Los Angeles, California 90071.

6 On January 19, 2010, I caused the following document(s) described as: **FIRST**
7 **AMENDED CLASS ACTION COMPLAINT** to be served on all interested parties in this action by
8 placing the original true and correct copies thereof in sealed envelope(s) addressed as
9 follows:

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11 Alston & Bird, LLP
12 333 S. Hope Street, 16th Floor
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15 *U.S.A., Inc. and Toyota Motor Corporation*

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VIA MAIL:

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with prepaid postage affixed thereon.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice and in the ordinary course of business, it would be deposited with the U.S. postal service on that same day with fully pre-paid postage affixed thereon at Los Angeles, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in the affidavit.

PROOF OF SERVICE

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VIA OVERNIGHT COURIER: I am readily familiar with the practice of DIVERSITY LAW GROUP, P.C. for collection and processing of documents for overnight delivery and know that the document(s) described above was/were deposited in a facility regularly maintained by such overnight delivery company.

VIA PERSONAL SERVICE: I caused said envelope to be delivered by hand to the following address(es):

SEE ATTACHMENT "A"

[State] I declare under penalty of perjury under the laws of the State of California that the above-stated is true and correct.

[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 on January 19, 2010, at Los Angeles, California.


LINDA LEE

FILED

2009 NOV -5 PM 3:54

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

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7 Attorneys for Plaintiffs
SEONG BAE CHOI and CHRIS CHAN PARK,
8 on behalf of themselves and all others similarly situated

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 CV 09 - 08143

13 SEONG BAE CHOI and CHRIS CHAN
14 PARK, as individuals, and on behalf of
themselves and all others similarly situated,

Case No.:

Judge Assigned:

AHM

FMOx

15 Plaintiffs,

CLASS ACTION COMPLAINT

16 v.

17 TOYOTA MOTOR CORPORATION,
18 TOYOTA MOTOR SALES, U.S.A., INC.,
and DOES 1 through 10,

19 Defendants.

1. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17200, ET SEQ.]
2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792]
3. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792.2]
4. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17500, ET SEQ.]

28 DEMAND FOR JURY TRIAL

1 Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, as individuals, on behalf
2 of themselves and all others similarly situated (i.e., the members of the various Plaintiff
3 Classes described and defined, *infra*), herein alleges as follows:

4 **I**

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction of this action under the Class Action
7 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
8 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
9 members of the class are citizens of a different state than any defendant as required by 28
10 U.S.C. § 1332(d)(2).

11 2. Venue as to Defendants is proper in this judicial district because Defendant
12 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
13 California, and Plaintiffs purchased vehicles in, and reside in, Los Angeles County,
14 California.

15 **II**

16 **GENERAL ALLEGATIONS**

17 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
18 Angeles County, California.

19 4. Plaintiff CHRIS CHAN PARK is a resident of Los Angeles County,
20 California.

21 5. Defendant, TOYOTA MOTOR CORPORATION (“TMC”), is, and at all
22 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
23 Prefecture, Japan.

24 6. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. (“TMS”), is, and at all
25 relevant times was, a California corporation with its principle place of business in Los
26 Angeles County, California.

27 7. The above-named Defendants are collectively referred to as the “Toyota
28 Defendants.”

1 15. Plaintiff SEONG BAE CHOI is the owner of a 2004 Toyota Camry that he
2 purchased new from Longo Toyota, located in the city of El Monte, Los Angeles County,
3 California.

4 16. Plaintiff's Toyota Camry is designed, manufactured, and sold with Toyota's
5 ETCS-i.

6 17. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
7 unintended accelerations while in the process of applying his brakes, resulting in engine
8 revving and forward lurching of the vehicle.

9 18. Plaintiff CHRIS CHAN PARK is the owner of a 2008 FJ Cruiser that he
10 purchased new from Long Beach Toyota, located in the city of Long Beach, Los Angeles
11 County, California.

12 19. Plaintiff's Toyota FJ Cruiser is designed, manufactured, and sold with
13 Toyota's Electronic "ETCS-i.

14 20. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
15 unintended accelerations while in the process of applying his brakes, resulting in engine
16 revving and forward lurching of the vehicle.

17 **The Toyota Defendants' Development of ETCS-i**

18 21. Beginning in 1998 and continuing to the present, Defendants designed,
19 manufactured, distributed, and sold certain automobiles equipped with Electronic
20 Throttle Control System with Intelligence ("ETCS-i").

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

25 23. Initially, Defendants designed their vehicle with both an electronic throttle
26 control and a redundant mechanical linkage between the gas pedal and the engine throttle
27 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
28

1 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
2 by the mechanical linkage.

3 24. Beginning in or about 2001, however, Defendants designed, manufactured,
4 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
5 redundant mechanical linkage between the gas pedal and the engine throttle control.

6 **The Danger of Sudden Unintended Acceleration**

7 25. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
8 defective and unsafe in that such vehicles are susceptible to incidents of sudden
9 unintended acceleration rendering such vehicles uncontrollable.

10 26. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
11 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate
12 important failsafe measures critical to assisting a driver in maintaining control of the
13 vehicle during a sudden unintended acceleration event.

14 27. One such failsafe measure is a computer algorithm that will direct the
15 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
16 while the throttle is an open position. This failsafe measure has been incorporated by
17 other automobile manufacturers in vehicles designed with electronic throttle control for
18 years.

19 28. Plaintiffs allege on information and belief that the Toyota Defendants have
20 been fully aware of the recurring problem of sudden unintended acceleration in their
21 Toyota and Lexus vehicles equipped with ETCS-i.

22 **Defendants' Knowledge of the Sudden Unintended Acceleration Danger**

23 29. Plaintiffs allege on information and belief that since the introduction of
24 ETCS-i, more than 2,000 complaints of sudden unintended acceleration have been made
25 by Toyota and Lexus owners to Toyota and government agencies.

26 30. Plaintiffs further allege on information and belief that sudden unintended
27 accelerations in Toyota and Lexus vehicles equipped with ETCS-i have resulted in
28 automobile accidents causing 16 deaths and 243 injuries.

1 Specifically excluded from this Class are all persons who have suffered, or possess
2 a right of action for, any personal injury or wrongful death as a result of sudden
3 unintended acceleration. Also excluded from this class is any entity in which Defendant
4 has a controlling interest, and officers or directors of Defendants. Plaintiffs, and those
5 persons similarly situated as described in the preceding paragraph, may be collectively
6 referred to herein as the “National Class Plaintiffs.”

7 38. This action is brought as a class action and may properly be so maintained
8 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
9 Plaintiffs reserve the right to modify the “California Class” and the “National Class”
10 definitions and the class period based on the results of discovery.

11 39. **Numerosity of the “California Class” and “National Class”** – The
12 members of the “California Class” and the “National Class” are so numerous that their
13 individual joinder is impracticable. Plaintiffs are informed and believe that there are at
14 least hundreds of thousands of members in the classes. Because the class members may
15 be identified through business records regularly maintained by the Toyota Defendants
16 and its employees and agents, and through the records of public agencies, the number and
17 identities of class members can be ascertained. Members of the Classes can be notified
18 of the pending action by e-mail, mail and supplemented by published notice, if necessary.

19 40. **Existence and Predominance of Common Questions of Fact and Law** –
20 There are questions of law and fact common to both Classes. These questions
21 predominate over any questions affecting only individual class members. These common
22 legal and factual issues include, but are not limited to:

- 23 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
24 when used as designed because the ETCS-i may cause sudden unintended
25 acceleration.
- 26 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
27 when used as designed because the ETCS-i fails to incorporate critical
28

1 failsafe measures designed to assist the driver in maintaining control of
2 the vehicle in the event of a sudden unintended acceleration.

- 3 c. Whether the Toyota Defendants knew during the time that it sold Toyota
4 and Lexus vehicles equipped with ETCS-i that such vehicles were
5 susceptible to sudden unintended acceleration when used as designed.
- 6 d. Whether the Toyota Defendants' conduct as described above constitutes
7 unlawful, unfair, or fraudulent business acts or practices in violation of
8 Cal. Bus. & Prof. Code § 17200 et seq.;
- 9 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
10 unreasonably dangerous, constituting a breach of implied warranty;
- 11 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit for
12 their intended use, constituting a breach of implied warranty.

13 41. **Typicality** – The claims of the representative Plaintiffs are typical of the
14 claims of the members of both the “California Class” and the “National Class”.
15 Plaintiffs, like all other members of the Classes, have sustained damages arising from
16 Defendants’ violations of the laws, as alleged herein. The representative Plaintiffs and
17 the members of the Classes were and are similarly or identically harmed by the same
18 unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in
19 by Defendants.

20 42. **Adequacy** – The representative Plaintiffs will fairly and adequately
21 represent and protect the interests of the Class members and have retained counsel who
22 are experienced and competent trial lawyers in complex litigation and class action
23 litigation. There are no material conflicts between the claims of the representative
24 Plaintiffs and the members of the Classes that would make class certification
25 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
26 members.

27 43. **Predominance and Superiority** – This suit may be maintained as a class
28 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact

1 common to the Classes predominate over the questions affecting only individual
2 members of the Classes and a class action is superior to other available means for the fair
3 and efficient adjudication of this dispute. The damages suffered by individual class
4 members are small compared to the burden and expense of individual prosecution of the
5 complex and extensive litigation needed to address Defendants' conduct. Further, it
6 would be virtually impossible for the members of the Classes to individually redress
7 effectively the wrongs done to them. Even if Class members themselves could afford
8 such individual litigation, the court system could not. In addition, individualized
9 litigation increases the delay and expense to all parties and to the court system resulting
10 from complex legal and factual issues of the case. Individualized litigation also presents
11 a potential for inconsistent or contradictory judgments. By contrast, the class action
12 device presents far fewer management difficulties; allows the hearing of claims which
13 might otherwise go unaddressed because of the relative expense of bringing individual
14 lawsuits; and provides the benefits of single adjudication, economies of scale, and
15 comprehensive supervision by a single court.

16 44. The Class Plaintiffs contemplate the eventual issuance of notice to the
17 proposed Class members setting forth the subject and nature of the instant action. Upon
18 information and belief, Defendants' own business records and electronic media can be
19 utilized for the contemplated notices. To the extent that any further notices may be
20 required, the Class Plaintiffs would contemplate the use of additional media and/or
21 mailings.

22 45. In addition to meeting the statutory prerequisites to a Class Action, this
23 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
24 Rules of Civil Procedure, in that:

25 a. Without class certification and determination of declaratory,
26 injunctive, statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the Classes will create the risk of:

28 i. Inconsistent or varying adjudications with respect to individual

1 members of the Classes which would establish incompatible standards of conduct for the
2 parties opposing the Classes; or

3 ii. Adjudication with respect to individual members of the Classes
4 which would as a practical matter be dispositive of the interests of the other members not
5 parties to the adjudication or substantially impair or impede their ability to protect their
6 interests;

7 b. The parties opposing the Classes have acted or refused to act on
8 grounds generally applicable to each member of the Class, thereby making appropriate
9 final injunctive or corresponding declaratory relief with respect to the Classes as a whole;
10 or

11 c. Common questions of law and fact exist as to the members of the
12 Classes and predominate over any questions affecting only individual members, and a
13 Class Action is superior to other available methods of the fair and efficient adjudication
14 of the controversy, including consideration of:

15 i. The interests of the members of the Classes in individually
16 controlling the prosecution or defense of separate actions;

17 ii. The extent and nature of any litigation concerning controversy
18 already commenced by or against members of the Classes;

19 iii. The desirability or undesirability of concentrating the litigation
20 of the claims in the particular forum;

21 iv. The difficulties likely to be encountered in the management of a
22 Class Action.

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IV

FIRST CAUSE OF ACTION

**(Violation of Cal. Bus. and Prof. Code § 17200 *et seq.* – Unlawful, Fraudulent, and
Unfair Business Act and Practices)
(Against all Defendants)**

46. Plaintiffs incorporate by reference and re-allege all paragraphs previously alleged herein.

47. The California Unfair Business Practices Act defines unfair business competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act also provides for injunctive relief, restitution, and disgorgement of profits for violations.

48. Defendants’ acts and practices as described herein constitute unlawful, fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as described herein, violate each of the statutes set forth within this Complaint, and/or (2) the justification for Defendants’ conduct is outweighed by the gravity of the consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants has a tendency to deceive Plaintiffs and the members of the Classes.

49. Defendants have engaged and are engaging in acts and practices that constitute unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, because they constitute a violation and/or breach of, among other things:

- a. The Defendants’ duty to disclose to purchasers of the aforementioned Toyota and Lexus vehicles equipped with ETCS-i of the unreasonable dangerousness of such vehicles by virtue of their susceptibility to sudden uncontrolled acceleration of which Defendants were aware or should have been aware;

- 1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design
3 outweigh the risk inherent in the design;
4 c. The Defendants' duty to sell vehicles which would perform as safely as
5 an ordinary consumer would expect when used in a reasonably
6 foreseeable manner;
7 d. The Song-Beverly Consumer Warranty Act as alleged in Counts 2 and 3
8 of this Complaint;
9 e. The implied warranty of merchantability as set forth in Cal. Comm. Code
10 § 2-314; and
11 f. The implied warranty of fitness for a particular purpose, as set forth in
12 Cal. Comm. Code § 2-315.

13 50. Plaintiffs, on behalf of themselves and both the California Class and
14 National Class, seek:

- 15 a. An injunction compelling Defendants to recall all Toyota and Lexus
16 vehicles equipped with ETCS-i and distributed and sold by Defendants
17 and to provide relief in the form of restitution and disgorgement of all
18 profits and compensation improperly obtained by Defendants as a result
19 of such acts and practices.

20 51. Plaintiffs and the Class members are therefore entitled to the relief described
21 above.

22 52. The conduct of Defendants as described herein violates Cal. Bus. & Prof.
23 Code § 17200 *et seq.*, and other similar State unfair competition and unlawful business
24 practices statutes.

25 53. Pursuant to Cal. Bus. & Prof. Code §§ 17200 and 17203, Plaintiffs, on
26 behalf of themselves and all others similarly situated, seek relief as prayed for below.

27 //

28 //

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the "California
3 Class" and "National Class" pray for relief as follows:

4 A. For an order certifying the "California Class" and appointing Plaintiffs and
5 their counsel to represent the "California Class";

6 B. For an order certifying the "National Class" and appointing Plaintiffs and
7 their counsel to represent the "National Class";

8 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
9 equipped with ETCS-i and provide restitution of all funds improperly obtained by
10 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
11 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
12 or constituting unfair competition;

13 D. An order for disgorgement of all profits and compensation improperly
14 obtained by Defendants as a result of such acts and practices declared by this Court to be
15 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
16 regulations, or constituting unfair competition;

17 E. For an order of restitution;

18 F. For compensatory damages according to proof;

19 G. For economic damages according to proof under the Song-Beverly
20 Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.*;

21 H. For punitive damages, pursuant to Cal. Civ. Code § 1780;

22 I. For reasonable attorney's fees and costs;

23 J. For prejudgment interest to the extent allowed by law;

24 K. For costs of suit incurred herein;

25 L. For such other and further relief as the Court deems appropriate.

26 DATED: November 5, 2009

McCUNEWRIGHT LLP

27 By: 

28 Richard D. McCune
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

DATED: November 5, 2009

MCCUNEWRIGHT LLP

By: 

Richard D. McCune
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge A. Howard Matz and the assigned discovery Magistrate Judge is Fernando M. Olguin.

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

CV09- 8143 AHM (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

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

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address: T: 909/557-1250; F: 909/557-1275
Richard D. McCune, Esq., SBN 132124
David C. Wright, Esq., SBN 177468
McCuneWright, LLP
2068 Orange Tree Lane, Suite 216
Redlands, CA 92374

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEONG BAE CHOI and CHRIS CHAN PARK, as
individuals, and on behalf of themselves and all others
similarly situated,

PLAINTIFF(S)

v.

TOYOTA MOTOR CORPORATION, TOYOTA
MOTOR SALES, U.S.A., INC., and DOES 1 through
10,

DEFENDANT(S).

CASE NUMBER

CV 09 - 08143 AHM FMOX

SUMMONS

TO: DEFENDANT(S): Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and DOES 1 through 10

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, Richard D. McCune, whose address is 2068 Orange Tree Lane, Suite 216, Redlands, CA 92374. 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.

TERRY NAFISI

Clerk, U.S. District Court

Dated: NOV - 5 2009

By: _____

L. MURRAY
Deputy Clerk

SEAL
(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)].

FILED

2009 NOV -5 PM 3:54

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

1 Richard D. McCune, Esq., State Bar No. 132124
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2 David C. Wright, Esq., State Bar No. 177468
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4 MCCUNEWRIGHT LLP
2068 Orange Tree Lane, Suite 216
5 Redlands, California 92374
Telephone: (909) 557-1250
6 Facsimile: (909) 557-1275

7 Attorneys for Plaintiffs
SEONG BAE CHOI and CHRIS CHAN PARK,
8 on behalf of themselves and all others similarly situated

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 **CV 09 - 08143**

13 SEONG BAE CHOI and CHRIS CHAN
14 PARK, as individuals, and on behalf of
themselves and all others similarly situated,

Case No.:

Judge Assigned:

AHM

FMOx

15 Plaintiffs,

CLASS ACTION COMPLAINT

16 v.

17 TOYOTA MOTOR CORPORATION,
18 TOYOTA MOTOR SALES, U.S.A., INC.,
and DOES 1 through 10,

19 Defendants.

1. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17200, ET SEQ.]
2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792]
3. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792.2]
4. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17500, ET SEQ.]

DEMAND FOR JURY TRIAL

1 Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, as individuals, on behalf
2 of themselves and all others similarly situated (i.e., the members of the various Plaintiff
3 Classes described and defined, *infra*), herein alleges as follows:

4 **I**

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction of this action under the Class Action
7 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
8 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
9 members of the class are citizens of a different state than any defendant as required by 28
10 U.S.C. § 1332(d)(2).

11 2. Venue as to Defendants is proper in this judicial district because Defendant
12 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
13 California, and Plaintiffs purchased vehicles in, and reside in, Los Angeles County,
14 California.

15 **II**

16 **GENERAL ALLEGATIONS**

17 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
18 Angeles County, California.

19 4. Plaintiff CHRIS CHAN PARK is a resident of Los Angeles County,
20 California.

21 5. Defendant, TOYOTA MOTOR CORPORATION (“TMC”), is, and at all
22 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
23 Prefecture, Japan.

24 6. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. (“TMS”), is, and at all
25 relevant times was, a California corporation with its principle place of business in Los
26 Angeles County, California.

27 7. The above-named Defendants are collectively referred to as the “Toyota
28 Defendants.”

1 15. Plaintiff SEONG BAE CHOI is the owner of a 2004 Toyota Camry that he
2 purchased new from Longo Toyota, located in the city of El Monte, Los Angeles County,
3 California.

4 16. Plaintiff's Toyota Camry is designed, manufactured, and sold with Toyota's
5 ETCS-i.

6 17. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
7 unintended accelerations while in the process of applying his brakes, resulting in engine
8 revving and forward lurching of the vehicle.

9 18. Plaintiff CHRIS CHAN PARK is the owner of a 2008 FJ Cruiser that he
10 purchased new from Long Beach Toyota, located in the city of Long Beach, Los Angeles
11 County, California.

12 19. Plaintiff's Toyota FJ Cruiser is designed, manufactured, and sold with
13 Toyota's Electronic "ETCS-i.

14 20. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
15 unintended accelerations while in the process of applying his brakes, resulting in engine
16 revving and forward lurching of the vehicle.

17 **The Toyota Defendants' Development of ETCS-i**

18 21. Beginning in 1998 and continuing to the present, Defendants designed,
19 manufactured, distributed, and sold certain automobiles equipped with Electronic
20 Throttle Control System with Intelligence ("ETCS-i").

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

25 23. Initially, Defendants designed their vehicle with both an electronic throttle
26 control and a redundant mechanical linkage between the gas pedal and the engine throttle
27 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
28

1 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
2 by the mechanical linkage.

3 24. Beginning in or about 2001, however, Defendants designed, manufactured,
4 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
5 redundant mechanical linkage between the gas pedal and the engine throttle control.

6 **The Danger of Sudden Unintended Acceleration**

7 25. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
8 defective and unsafe in that such vehicles are susceptible to incidents of sudden
9 unintended acceleration rendering such vehicles uncontrollable.

10 26. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
11 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate
12 important failsafe measures critical to assisting a driver in maintaining control of the
13 vehicle during a sudden unintended acceleration event.

14 27. One such failsafe measure is a computer algorithm that will direct the
15 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
16 while the throttle is an open position. This failsafe measure has been incorporated by
17 other automobile manufacturers in vehicles designed with electronic throttle control for
18 years.

19 28. Plaintiffs allege on information and belief that the Toyota Defendants have
20 been fully aware of the recurring problem of sudden unintended acceleration in their
21 Toyota and Lexus vehicles equipped with ETCS-i.

22 **Defendants' Knowledge of the Sudden Unintended Acceleration Danger**

23 29. Plaintiffs allege on information and belief that since the introduction of
24 ETCS-i, more than 2,000 complaints of sudden unintended acceleration have been made
25 by Toyota and Lexus owners to Toyota and government agencies.

26 30. Plaintiffs further allege on information and belief that sudden unintended
27 accelerations in Toyota and Lexus vehicles equipped with ETCS-i have resulted in
28 automobile accidents causing 16 deaths and 243 injuries.

1 31. These complaints have resulted in numerous inquiries from the National
2 Highway Traffic Safety Administration.

3 32. At all times relevant herein, the Toyota Defendants had full knowledge that
4 Toyota and Lexus vehicles equipped with ETCS-i were susceptible to incidents of sudden
5 unintended acceleration that posed a significant risk of injury and death to vehicle
6 occupants and other motorists and pedestrians alike.

7 33. Despite this knowledge, the Toyota Defendants continue to design,
8 manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i
9 that are susceptible to incidents of sudden unintended acceleration and fail to incorporate
10 critical failsafe measures to assist the driver in such an event.

11 IV

12 CLASS ACTION ALLEGATIONS

13 34. Plaintiffs bring this action on behalf of themselves and all others similarly
14 situated in the State of California.

15 35. Plaintiffs initially define the "California Class" as follows:

- 16 a. **The California Class:** All persons who reside in California and presently
17 own Toyota and Lexus vehicles equipped with ETCS-i.

18 Specifically excluded from this Class are all persons who have suffered, or possess
19 a right of action for, any personal injury or wrongful death as a result of sudden
20 unintended acceleration. Also excluded from this class is any entity in which Defendants
21 have a controlling interest, and officers or directors of Defendants. Plaintiffs, and those
22 persons similarly situated as described in the preceding paragraph, may be collectively
23 referred to herein as the "California Class Plaintiffs."

24 36. Plaintiffs also bring this action on behalf of themselves and all others
25 similarly situated in the United States.

26 37. Plaintiffs initially define the "National Class" as follows:

- 27 a. **The National Class:** All persons in the United States and presently own
28 Toyota and Lexus vehicles equipped with ETCS-i.

1 Specifically excluded from this Class are all persons who have suffered, or possess
2 a right of action for, any personal injury or wrongful death as a result of sudden
3 unintended acceleration. Also excluded from this class is any entity in which Defendant
4 has a controlling interest, and officers or directors of Defendants. Plaintiffs, and those
5 persons similarly situated as described in the preceding paragraph, may be collectively
6 referred to herein as the “National Class Plaintiffs.”

7 38. This action is brought as a class action and may properly be so maintained
8 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
9 Plaintiffs reserve the right to modify the “California Class” and the “National Class”
10 definitions and the class period based on the results of discovery.

11 39. **Numerosity of the “California Class” and “National Class”** – The
12 members of the “California Class” and the “National Class” are so numerous that their
13 individual joinder is impracticable. Plaintiffs are informed and believe that there are at
14 least hundreds of thousands of members in the classes. Because the class members may
15 be identified through business records regularly maintained by the Toyota Defendants
16 and its employees and agents, and through the records of public agencies, the number and
17 identities of class members can be ascertained. Members of the Classes can be notified
18 of the pending action by e-mail, mail and supplemented by published notice, if necessary.

19 40. **Existence and Predominance of Common Questions of Fact and Law** –
20 There are questions of law and fact common to both Classes. These questions
21 predominate over any questions affecting only individual class members. These common
22 legal and factual issues include, but are not limited to:

- 23 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
24 when used as designed because the ETCS-i may cause sudden unintended
25 acceleration.
- 26 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
27 when used as designed because the ETCS-i fails to incorporate critical
28

1 failsafe measures designed to assist the driver in maintaining control of
2 the vehicle in the event of a sudden unintended acceleration.

- 3 c. Whether the Toyota Defendants knew during the time that it sold Toyota
4 and Lexus vehicles equipped with ETCS-i that such vehicles were
5 susceptible to sudden unintended acceleration when used as designed.
6 d. Whether the Toyota Defendants' conduct as described above constitutes
7 unlawful, unfair, or fraudulent business acts or practices in violation of
8 Cal. Bus. & Prof. Code § 17200 et seq.;
- 9 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
10 unreasonably dangerous, constituting a breach of implied warranty;
11 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit for
12 their intended use, constituting a breach of implied warranty.

13 41. **Typicality** – The claims of the representative Plaintiffs are typical of the
14 claims of the members of both the “California Class” and the “National Class”.
15 Plaintiffs, like all other members of the Classes, have sustained damages arising from
16 Defendants' violations of the laws, as alleged herein. The representative Plaintiffs and
17 the members of the Classes were and are similarly or identically harmed by the same
18 unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in
19 by Defendants.

20 42. **Adequacy** – The representative Plaintiffs will fairly and adequately
21 represent and protect the interests of the Class members and have retained counsel who
22 are experienced and competent trial lawyers in complex litigation and class action
23 litigation. There are no material conflicts between the claims of the representative
24 Plaintiffs and the members of the Classes that would make class certification
25 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
26 members.

27 43. **Predominance and Superiority** – This suit may be maintained as a class
28 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact

1 common to the Classes predominate over the questions affecting only individual
2 members of the Classes and a class action is superior to other available means for the fair
3 and efficient adjudication of this dispute. The damages suffered by individual class
4 members are small compared to the burden and expense of individual prosecution of the
5 complex and extensive litigation needed to address Defendants' conduct. Further, it
6 would be virtually impossible for the members of the Classes to individually redress
7 effectively the wrongs done to them. Even if Class members themselves could afford
8 such individual litigation, the court system could not. In addition, individualized
9 litigation increases the delay and expense to all parties and to the court system resulting
10 from complex legal and factual issues of the case. Individualized litigation also presents
11 a potential for inconsistent or contradictory judgments. By contrast, the class action
12 device presents far fewer management difficulties; allows the hearing of claims which
13 might otherwise go unaddressed because of the relative expense of bringing individual
14 lawsuits; and provides the benefits of single adjudication, economies of scale, and
15 comprehensive supervision by a single court.

16 44. The Class Plaintiffs contemplate the eventual issuance of notice to the
17 proposed Class members setting forth the subject and nature of the instant action. Upon
18 information and belief, Defendants' own business records and electronic media can be
19 utilized for the contemplated notices. To the extent that any further notices may be
20 required, the Class Plaintiffs would contemplate the use of additional media and/or
21 mailings.

22 45. In addition to meeting the statutory prerequisites to a Class Action, this
23 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
24 Rules of Civil Procedure, in that:

25 a. Without class certification and determination of declaratory,
26 injunctive, statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the Classes will create the risk of:

28 i. Inconsistent or varying adjudications with respect to individual

1 members of the Classes which would establish incompatible standards of conduct for the
2 parties opposing the Classes; or

3 ii. Adjudication with respect to individual members of the Classes
4 which would as a practical matter be dispositive of the interests of the other members not
5 parties to the adjudication or substantially impair or impede their ability to protect their
6 interests;

7 b. The parties opposing the Classes have acted or refused to act on
8 grounds generally applicable to each member of the Class, thereby making appropriate
9 final injunctive or corresponding declaratory relief with respect to the Classes as a whole;
10 or

11 c. Common questions of law and fact exist as to the members of the
12 Classes and predominate over any questions affecting only individual members, and a
13 Class Action is superior to other available methods of the fair and efficient adjudication
14 of the controversy, including consideration of:

15 i. The interests of the members of the Classes in individually
16 controlling the prosecution or defense of separate actions;

17 ii. The extent and nature of any litigation concerning controversy
18 already commenced by or against members of the Classes;

19 iii. The desirability or undesirability of concentrating the litigation
20 of the claims in the particular forum;

21 iv. The difficulties likely to be encountered in the management of a
22 Class Action.

23 ///

24 ///

1 IV

2 FIRST CAUSE OF ACTION

3 (Violation of Cal. Bus. and Prof. Code § 17200 *et seq.* – Unlawful, Fraudulent, and
4 Unfair Business Act and Practices)

5 (Against all Defendants)

6 46. Plaintiffs incorporate by reference and re-allege all paragraphs previously
7 alleged herein.

8 47. The California Unfair Business Practices Act defines unfair business
9 competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice.
10 The Act also provides for injunctive relief, restitution, and disgorgement of profits for
11 violations.

12 48. Defendants’ acts and practices as described herein constitute unlawful,
13 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
14 described herein, violate each of the statutes set forth within this Complaint, and/or (2)
15 the justification for Defendants’ conduct is outweighed by the gravity of the
16 consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is
17 immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious
18 to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants
19 has a tendency to deceive Plaintiffs and the members of the Classes.

20 49. Defendants have engaged and are engaging in acts and practices that
21 constitute unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200, *et*
22 *seq.*, because they constitute a violation and/or breach of, among other things:

- 23 a. The Defendants’ duty to disclose to purchasers of the aforementioned
24 Toyota and Lexus vehicles equipped with ETCS-i of the unreasonable
25 dangerousness of such vehicles by virtue of their susceptibility to sudden
26 uncontrolled acceleration of which Defendants were aware or should
27 have been aware;

28

- 1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design
3 outweigh the risk inherent in the design;
4 c. The Defendants' duty to sell vehicles which would perform as safely as
5 an ordinary consumer would expect when used in a reasonably
6 foreseeable manner;
7 d. The Song-Beverly Consumer Warranty Act as alleged in Counts 2 and 3
8 of this Complaint;
9 e. The implied warranty of merchantability as set forth in Cal. Comm. Code
10 § 2-314; and
11 f. The implied warranty of fitness for a particular purpose, as set forth in
12 Cal. Comm. Code § 2-315.

13 50. Plaintiffs, on behalf of themselves and both the California Class and
14 National Class, seek:

- 15 a. An injunction compelling Defendants to recall all Toyota and Lexus
16 vehicles equipped with ETCS-i and distributed and sold by Defendants
17 and to provide relief in the form of restitution and disgorgement of all
18 profits and compensation improperly obtained by Defendants as a result
19 of such acts and practices.

20 51. Plaintiffs and the Class members are therefore entitled to the relief described
21 above.

22 52. The conduct of Defendants as described herein violates Cal. Bus. & Prof.
23 Code § 17200 *et seq.*, and other similar State unfair competition and unlawful business
24 practices statutes.

25 53. Pursuant to Cal. Bus. & Prof. Code §§ 17200 and 17203, Plaintiffs, on
26 behalf of themselves and all others similarly situated, seek relief as prayed for below.

27 //

28 //

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the "California
3 Class" and "National Class" pray for relief as follows:

4 A. For an order certifying the "California Class" and appointing Plaintiffs and
5 their counsel to represent the "California Class";

6 B. For an order certifying the "National Class" and appointing Plaintiffs and
7 their counsel to represent the "National Class";

8 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
9 equipped with ETCS-i and provide restitution of all funds improperly obtained by
10 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
11 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
12 or constituting unfair competition;

13 D. An order for disgorgement of all profits and compensation improperly
14 obtained by Defendants as a result of such acts and practices declared by this Court to be
15 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
16 regulations, or constituting unfair competition;

17 E. For an order of restitution;

18 F. For compensatory damages according to proof;

19 G. For economic damages according to proof under the Song-Beverly
20 Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.*;

21 H. For punitive damages, pursuant to Cal. Civ. Code § 1780;

22 I. For reasonable attorney's fees and costs;

23 J. For prejudgment interest to the extent allowed by law;

24 K. For costs of suit incurred herein;

25 L. For such other and further relief as the Court deems appropriate.

26 DATED: November 5, 2009

MCCUNEWRIGHT LLP

27 By: 

28 Richard D. McCune
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

DATED: November 5, 2009

MCCUNEWRIGHT LLP

By: 

Richard D. McCune
Attorney for Plaintiffs

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7 Attorneys for Plaintiffs
SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
8 PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
9 on behalf of themselves and all others similarly situated

*Additional counsel listed on page 2

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 SEONG BAE CHOI, CHRIS CHAN
PARK, SANDRA REECH, DONALD
14 PRITCHETT, UN JIN CHOI, and MARY
ANN PARKER, as individuals, and on
15 behalf of themselves and all others
similarly situated,
16 Plaintiffs,

17 v.
TOYOTA MOTOR CORPORATION,
18 TOYOTA MOTOR SALES, U.S.A., INC.,
and DOES 1 through 10,
19 Defendants.
20
21
22
23
24

Case No.: CV 09-08143 AHM (FMOx)

Judge Assigned: A. Howard Matz

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. VIOLATION OF CALIFORNIA
UNFAIR BUSINESS PRACTICES
ACT [CAL. BUS. & PROF. CODE
§ 17200, ET SEQ.];
2. FRAUD;
3. BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY [SONG-
BEVERLY CONSUMER
WARRANTY ACT, CAL. CIV.
CODE § 1792];
4. BREACH OF EXPRESS
WARRANTY

DEMAND FOR JURY TRIAL

Complaint Filed: November 5, 2009

25 Plaintiffs SEONG BAE CHOI CHRIS CHAN PARK, SANDRA REECH,
26 DONALD PRITCHETT, UN JIN CHOI, and MARY ANN PARKER as individuals, on
27 behalf of themselves and all others similarly situated (i.e., the members of the various
28 Plaintiff Classes described and defined, infra), herein alleges as follows:

1 Mitchell M. Breit (*Pro Hac Vice* App. Pending) mbreit@hanlyconroy.com
2 Andrea Bierstein (*Pro Hac Vice* App. Pending) abierstein@hanlyconroy.com
3 Jayne Conroy (*Pro Hac Vice* App. to be Submitted) jconroy@hanlyconroy.com
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17 Attorneys for Plaintiffs
18 SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
19 PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
on behalf of themselves and all others similarly situated

20 ///

21 ///

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1 **I.**

2 **JURISDICTION AND VENUE**

3 1. This Court has original jurisdiction of this action under the Class Action
4 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
5 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
6 members of the class are citizens of a different state than any defendant as required by 28
7 U.S.C. § 1332(d)(2).

8 2. Venue as to Defendants is proper in this judicial district because Defendant
9 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
10 California, and a number of class members, including certain named Plaintiffs, purchased
11 vehicles in, and reside in, Los Angeles County, California.

12 **II.**

13 **GENERAL ALLEGATIONS**

14 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
15 Angeles County, California.

16 4. Plaintiff CHRIS CHAN PARK is a resident of the city of Carson, Los
17 Angeles County, California.

18 5. Plaintiff SANDRA REECH is a resident of Pennsylvania.

19 6. Plaintiff DONALD PRITCHETT is a resident of Georgia.

20 7. Plaintiff UN JIN CHOI is a resident of City of Irvine, Orange County,
21 California.

22 8. Plaintiff MARY ANN PARKER is a resident of Orange County, California.

23 9. Defendant, TOYOTA MOTOR CORPORATION ("TMC"), is, and at all
24 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
25 Prefecture, Japan.

26 10. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. ("TMS"), is, and at all
27 relevant times was, a California corporation with its principle place of business in Los
28 Angeles County, California.

1 (“ETCS-i”) that is defective in that it will allow sudden unintended acceleration of the
2 vehicle engine.

3 **A. The Toyota Defendants’ Development of ETCS-i**

4 19. Beginning in 1998 and continuing to the present, Defendants designed,
5 manufactured, distributed, and sold certain automobiles equipped with Electronic
6 Throttle Control System with Intelligence (“ETCS-i”).

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

11 21. Initially, Defendants designed their vehicle with both an electronic throttle
12 control and a redundant mechanical linkage between the gas pedal and the engine throttle
13 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
14 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
15 by the mechanical linkage.

16 22. Beginning in or about 2001, however, Defendants designed, manufactured,
17 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
18 redundant mechanical linkage between the gas pedal and the engine throttle control.

19 **B. The Danger of Sudden Unintended Acceleration**

20 23. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
21 defective and unsafe in that such vehicles are susceptible to incidents of sudden
22 unintended acceleration rendering such vehicles uncontrollable.

23 24. The occurrence of this sudden unintended acceleration forces the driver to
24 lose control of the vehicle with the potential to cause, and actually have caused, collisions
25 with automobiles in front of the vehicle, loss of control at high freeway speeds resulting
26 in fatalities, and other circumstances.

27 25. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
28 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate

1 important failsafe measures critical to assisting a driver in maintaining control of the
2 vehicle during a sudden unintended acceleration event.

3 26. One such failsafe measure is a computer algorithm that will direct the
4 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
5 while the throttle is an open position. This failsafe measure has been incorporated by
6 other automobile manufacturers in vehicles designed with electronic throttle control for
7 years.

8 27. Plaintiffs allege on information and belief that the Toyota Defendants have
9 been fully aware of the recurring problem of sudden unintended acceleration in their
10 Toyota and Lexus vehicles equipped with ETCS-i.

11 **C. Plaintiffs' Incidents of Unintended Sudden Acceleration**

12 28. Each of the Plaintiffs own and were driving Toyota vehicles equipped with
13 Toyota's ETCS-i system.

14 **Plaintiff Seong Bae Choi**

15 29. Plaintiff SEONG BAE CHOI ("S. CHOI") is the owner of a 2004 Toyota
16 Camry that he purchased new from Longo Toyota, located in the city of El Monte, Los
17 Angeles County, California.

18 30. On numerous occasions, Plaintiff S. CHOI experienced the vehicle undergo
19 sudden unintended acceleration while in the process of applying his brakes, resulting in
20 engine revving and forward lurching of the vehicle. Plaintiff S. CHOI does not feel safe
21 driving the vehicle.

22 **Plaintiff Chris Chan Park**

23 31. Plaintiff CHRIS CHAN PARK ("PARK") is the owner of a 2008 FJ Cruiser
24 that he purchased new from Long Beach Toyota, located in the city of Long Beach, Los
25 Angeles County, California.

26 32. On numerous occasions, Plaintiff PARK experienced the vehicle undergo
27 sudden unintended accelerations while in the process of applying his brakes, resulting in
28

1 engine revving and forward lurching of the vehicle. Plaintiff PARK does not feel safe
2 driving the vehicle.

3 **Plaintiff Sandra Reech**

4 33. Plaintiff SANDRA REECH ("REECH") is the owner of a 2008 Toyota
5 Tacoma that was purchased new in April of 2008. On March 8, 2009, while accelerating
6 to pass a slowing moving vehicle, the accelerator stuck wide open. Plaintiff REECH
7 applied the brakes, and the vehicle did not slow down. She then put all her weight on the
8 brakes and shifted the vehicle into neutral. The engine continued to rev at very high
9 rpm's. She was finally able to steer off the road and stop the vehicle. After the vehicle
10 was turned off, Plaintiff REECH checked to see if the accelerator pedal was depressed
11 and it was not. She checked the floor mats and they were not near the gas pedal or brake.
12 The smell of overheated brakes was evident to her.

13 34. Plaintiff REECH restarted the vehicle and the engine worked normally. She
14 took the Toyota vehicle to the Toyota-Scion of Breensburg, PA dealership and reported
15 the incident. The service representative was unable to determine a cause for the incident.
16 Plaintiff REECH then contacted a Toyota representative who denied knowledge of
17 having heard of this type of problem. After she reported the incident to NHTSA, Plaintiff
18 REECH spoke with another Toyota representative that advised her that the problem was
19 caused by the floor mat, and refused to have a Toyota representative inspect the vehicle.
20 Instead the Toyota representative advised Plaintiff REECH that since she had
21 demonstrated her ability to stop the vehicle, she should just continue driving the vehicle
22 and if it happened again, Plaintiff REECH would know how to handle it.

23 35. The incident was not caused by the floor mat or unintended depressing the
24 accelerator. Plaintiff REECH is afraid to drive the Toyota vehicle because the vehicle is
25 unsafe, and as a result it is parked in the driveway and Plaintiff REECH is deprived of the
26 use of the vehicle because of her reasonable safety concerns about the Toyota vehicle.

27 **Plaintiff Donald Pritchett**

28 36. Plaintiff DONALD PRITCHETT ("PRITCHETT") is the owner of a 2006

1 Toyota Tacoma. On October 7, 2009, while driving on U.S. Route 29 in West Point,
2 Georgia, Plaintiff PRITCHETT's Toyota vehicle suddenly accelerated to a high rate of
3 speed. Plaintiff PRITCHETT was able to avoid several obstacles before plowing into a
4 ditch causing damage to the vehicle. The sudden acceleration occurred without Plaintiff
5 PRITCHETT depressing the accelerator. It also was not caused by the floor mat.

6 37. Plaintiff PRITCHETT reported the sudden unintended acceleration to both
7 the Toyota dealer and to Toyota's corporate representatives. After a vehicle inspection
8 insisted on by Plaintiff PRITCHETT, Toyota denied there was any problem with the
9 vehicle that caused the sudden unintended acceleration. Plaintiff PRITCHETT does not
10 feel safe driving the Toyota vehicle.

11 **Plaintiff Un Jin Choi**

12 38. Plaintiff UN JIN CHOI ("U. CHOI") is the owner of a 2004 Toyota Camry
13 that she purchased new in California. On November 9, 2009, while operating the vehicle
14 at slow speeds while preparing to park, Plaintiff U. CHOI's Toyota vehicle suddenly
15 accelerated. Plaintiff U. CHOI swerved to avoid hitting a building, and the vehicle then
16 sped across the street and struck a telephone pole. Plaintiff U. CHOI had standard floor
17 mats that were not trapped underneath the pedal. Plaintiff U. CHOI does not feel safe
18 driving the vehicle.

19 **Plaintiff Mary Ann Tucker**

20 39. Plaintiff MARY ANN TUCKER ("TUCKER") is the owner of a 2005
21 Toyota Camry. The vehicle was purchased primarily for Plaintiff TUCKER's teenage
22 daughter to drive. Plaintiff TUCKER has conducted significant research on the dangers
23 of sudden unintended acceleration for the 2005 Toyota Camry, and she is afraid to allow
24 her daughter to drive the vehicle because of reasonable concerns over its safety. As a
25 result, the vehicle is parked and Plaintiff TUCKER has lost use of the vehicle.

26 40. All Plaintiffs expected that their vehicles would not ever engage in
27 unintended and un-commanded acceleration which expose them to serious safety risks.
28 The information regarding the dangerous and defective feature of these vehicles were

1 concealed from and not disclosed by Defendants to all Plaintiffs. Had Plaintiffs been
2 informed by Defendants prior to purchasing their Toyota and Lexus vehicles of this
3 unexpected and dangerous defect, then Plaintiffs would not have purchased these
4 vehicles. As a result of Defendants' concealment of such information, Plaintiffs
5 purchased Toyota and Lexus vehicles while unaware of this dangerous defect, and are
6 now stuck with vehicles that they are afraid to drive and which pose a substantial safety
7 risk at any unexpected moment.

8 41. As a further consequence of Defendants' concealment of this defect, all
9 Plaintiffs were not aware that the latent defect involved the ETCS-i until shortly before
10 the filing of this Complaint.

11 42. As part of the purchase contracts for Plaintiffs' vehicles entered into by their
12 respective Toyota and Lexus dealerships, all Plaintiffs were also provided an express
13 warranty by Defendant TOYOTA MOTOR SALES, U.S.A., INC., for a period of seven
14 years or 70,000 miles, whichever comes first. According to the warranty guide which
15 accompanied the owner's manual that was provided to all Plaintiffs, this warranty covers
16 repairs and replacement of defective parts, including the engine control computer, at no
17 cost to the buyer.

18 **D, History of Sudden Unintended Acceleration**

19 43. The experiences of Plaintiffs are representative of a significant number of
20 Toyota owners that have experienced this unexplained sudden and dangerous acceleration
21 of their Toyota vehicle. There have been more than 2,000 complaints of sudden
22 unintended acceleration made to Toyota and government agencies related to Toyota and
23 Lexus vehicles equipped with ETCS-i. There have been reported 18 deaths and 304
24 injuries caused by the unintended acceleration. Those numbers are likely grossly
25 understated for incidents and accidents caused by sudden unintended acceleration where
26 the incident or accident is not reported or where the dealer indicates to the Toyota owner
27 that there is not anything wrong with their vehicle. Just the following sampling of
28

1 complaints, provided under information and belief, illustrates the dangers and scope of
2 the problem.

3 44. Toyota Owner 1 resides in Pittstown, New Jersey. He owns a 2007 Toyota
4 Avalon. He experienced numerous occasions of the engine racing even when the vehicle
5 was in neutral. On December 29, 2009, while driving on a highway, the vehicle
6 accelerator suddenly began to race at full throttle even though the brake pedal was not
7 activated. He was unable to stop the vehicle with braking. Toyota Owner 1 was able to
8 avoid an accident by putting the vehicle into neutral. The vehicle engine continued to
9 race at very high rpm's. He then drove the vehicle to the Toyota dealership by shifting in
10 and out of neutral. The dealer then was forced to document the incident as being caused
11 by something other than floor mats and inadvertent accelerator pedal activation.

12 45. Toyota Owner 2 was driving a 2005 Toyota Tacoma in Tennessee, when the
13 vehicle suddenly began accelerating reaching speeds of over 80 mph on curvy roads. It
14 took all the strength of the owner applying the brakes to bring the vehicle to a stop. The
15 brakes were on fire when the vehicle came to rest. The vehicle was towed to a Toyota
16 dealership which denied a vehicle malfunction caused the sudden and unintended
17 acceleration.

18 46. Toyota Owner 3 was driving a 2006 Lexus IS250 in Indiana at
19 approximately 20-25 mph when the vehicle suddenly accelerated despite the owner
20 taking her foot off the accelerator. This owner was unable to stop the vehicle despite
21 pressing the brake as hard as she could. The owner had to drive the vehicle into a tree to
22 stop the vehicle. The car was brought to a dealer who indicated that they found no defect
23 with the Toyota vehicle. The floor mats were not the cause of the acceleration.

24 47. Toyota Owner 4 purchased a new 2008 Toyota Tacoma. Within 16,000
25 miles, he had two instances of sudden unintended acceleration. The first instance
26 occurred when the owner routinely applied the brake for a stop light, and the Toyota
27 suddenly accelerated. Despite applying both feet to the brakes, the vehicle surged and
28 rear-ended another vehicle. The vehicle was provided to Toyota who indicated they

1 could find nothing wrong with the vehicle. The second instance occurred almost one
2 year later, when the owner was stopped at a light, and took his foot off the brake to
3 initiate a right hand turn when the Toyota suddenly accelerated forward. The owner
4 having already experienced this problem once before, was prepared when he felt the
5 acceleration and immediately turned the ignition off. He was thus able to avoid another
6 accident. Again the vehicle was provided to Toyota who denied there was anything
7 wrong with the vehicle. The floor mats were not in the vehicle in the second incident and
8 were not the cause of the first incident.

9 48. Toyota Owner 5 purchased a new 2005 Toyota Camry in Louisiana. On
10 January 25, 2007, the owner was entering a car wash and took her foot off the brake and
11 gently touched the accelerator when the car accelerated as if the accelerator had been
12 fully depressed. The owner took her foot off the accelerator and pressed the brake pedal
13 as hard as she could, including pumping the brakes. She sped through the car wash, went
14 across the street, missed gas pumps across the street and then intentionally drove into a
15 pole to stop her vehicle. A later vehicle inspection showed the accelerator at full open
16 position following the accident. The accident was reported to Toyota and they denied a
17 defect in the vehicle. The owner confirmed that the floor mats were not the cause of the
18 acceleration.

19 49. Toyota Owner 6 leased a new 2008 Lexus ES 350 in Connecticut. On
20 November 28, 2009, the owner was entering a parking lot when the vehicle suddenly
21 accelerated, which caused it to jump a curb and run into a tree. The owner reported the
22 accident to Toyota; Toyota responded that there was not a defect with the vehicle.

23 50. Toyota Owner 7 purchased a new 2007 Lexus ES 350 in Ohio. The owner
24 was driving approximately 35-40 mph on a highway when the vehicle suddenly
25 accelerated, rapidly reaching speeds of 80-85 mph. The owner applied his brakes, put on
26 his flashers, and as the brakes began to smoke, was able to put the vehicle into neutral
27 and pull the vehicle off the roadway. The brakes were ruined in the incident. Toyota was
28 notified of the incident and was told it was a floor mat problem even though there was no

1 sign the floor mat contributed to the incident. Toyota further indicated there was not a
2 defect or problem with the vehicle.

3 51. Toyota Owner 8 was a passenger in his 2003 Toyota Camry being driven by
4 his daughter in Michigan. While pulling into a parking spot with her foot lightly on the
5 brake, the Toyota engine revved and the vehicle jumped forward over an embankment
6 and hit a parked car. The driver's foot was on the brake the entire time. The floor mat
7 was not the cause of the surging. The vehicle was taken to a Toyota dealership and the
8 problem was reported. The dealership denied any problem with the vehicle.

9 52. Toyota Owner 9 purchased a 2006 Lexus ES 330. His wife was driving the
10 vehicle on either July 23 or 24, 2009 in California. She was gently slowing, when the
11 engine suddenly roared and the car shot forward, causing her to hit a low cement wall and
12 fence before the vehicle stalled. This was reported to their Toyota dealership; the
13 personnel at the dealership blamed the floor mat. The floor mat had nothing to do with
14 the accident.

15 53. Toyota Owner 10 owned a 2002 Toyota Camry. On July 22, 2004, while
16 proceeding toward a parking space with her foot on the brake, the vehicle suddenly
17 surged forward into a cement wall. The accident was reported to Toyota, but Toyota
18 denied any problem with the vehicle. The floor mat had nothing to do with the accident.

19 54. Toyota Owner 11 owned a 2005 Lexus SC 430. On November 17, 2009, the
20 owner was slowing the vehicle in Laguna Hills, CA when it suddenly accelerated,
21 jumped a curb and went down a ravine. This was the third occasion this vehicle had
22 experienced sudden acceleration. The accident had nothing to do with the floor mats.

23 55. Toyota Owner 12 owned a 2002 Lexus ES 300. In November or December
24 2008, as the driver was lightly applying the accelerator backing out of the driveway in
25 Newport Beach, CA, the vehicle suddenly accelerated. It took all the pressure the owner
26 was able to apply to the brakes to stop the vehicle. The floor mat did not cause this
27 incident.

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1 56. As these reported incidents demonstrate, the problem of unexplained and
2 unexpected sudden acceleration occurs over a wide range of Toyota models and
3 circumstances.

4 **E. Defendants' Response to the Sudden Unintended Acceleration Danger**

5 57. Despite knowledge of over 2,000 complaints similar to those listed above,
6 the Toyota Defendants have consistently denied the problem to customers, their dealers
7 and the National Highway Traffic Safety Administration ("NHTSA").

8 58. When the Toyota Defendants were unable to continue denying the existence
9 of sudden unintended acceleration due to the high profile fatalities in the Saylor accident,
10 the Toyota Defendants then took the position that these sudden acceleration problems
11 were caused by a problem with floor mats. Based on information and belief, when it
12 made this public pronouncement after years of denying that there was a problem at all,
13 the Toyota Defendants knew the floor mats were not the explanation for the majority of
14 the sudden unintended accelerations accidents and complaints.

15 59. When the Toyota Defendants were unable to continue making the claim that
16 the sudden unintended acceleration was caused by floor mats because of the number of
17 reported sudden unintended acceleration with vehicles that did not have all-weather floor
18 mats, Defendants then claimed a problem with the brake pedal. Based on information
19 and belief, when the Toyota Defendants made the partial recall based on the brake pedal,
20 they knew the real problem was due to computer malfunctions with the ETCS-i system.

21 60. Based on information and belief, at all times relevant herein, the Toyota
22 Defendants had full knowledge that Toyota and Lexus vehicles equipped with ETCS-i
23 were susceptible to incidents of sudden unintended acceleration caused by computer
24 malfunction that posed a significant risk of injury and death to vehicle occupants and
25 other motorists and pedestrians alike.

26 61. Despite this knowledge, the Toyota Defendants continue to design,
27 manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i
28

1 that are susceptible to incidents of sudden unintended acceleration, and fail to incorporate
2 critical failsafe measures to assist the driver in such an event.

3 62. Throughout the relevant time periods, Defendants alone had access to the
4 aggregate data concerning this defect. Despite the number of complaints, accidents and
5 deaths that have resulted from this defect, Defendants never made any attempt to notify
6 other customers of the defect or effect a recall (until the misguided and ineffectual recall
7 of merely the floor mats in late 2009, which Defendants themselves admit was not
8 sufficient), and otherwise refused to provide effective remedies for customers who
9 complained of the problem, all the while denying the root cause of the unintended
10 acceleration problems was a defect in the vehicle.

11 63. Throughout this time, while Defendants actively concealed information of
12 this dangerous defect, Defendants sold massive numbers of the subject vehicles, which
13 resulted in Defendants garnering enormous profits and ultimately becoming the world's
14 largest car manufacturer.

15 IV.

16 CLASS ACTION ALLEGATIONS

17 64. Plaintiffs bring this action on behalf of themselves and all others similarly
18 situated in the State of California.

19 65. Plaintiffs initially define the "California Class" as follows:

20 a. **The California Class:** All persons who reside in California and
21 presently own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

22 Specifically excluded from this California Class are all persons who have suffered,
23 or possess a right of action for, any personal injury or wrongful death as a result of
24 sudden unintended acceleration. Also excluded from this class is any entity in which the
25 Toyota Defendants have a controlling interest, and officers or directors of the Toyota
26 Defendants. Plaintiffs, and those persons similarly situated as described in the preceding
27 paragraph, may be collectively referred to herein as the "California Class Plaintiffs."
28

1 66. Plaintiffs also bring this action on behalf of themselves and all others
2 similarly situated in the United States.

3 67. Plaintiffs initially define the “National Class” as follows:

4 a. **The National Class:** All persons in the United States and presently
5 own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

6 Specifically excluded from this National Class are all persons who have suffered,
7 or possess a right of action for, any personal injury or wrongful death as a result of
8 sudden unintended acceleration. Also excluded from this National Class is any entity in
9 which the Toyota Defendants have a controlling interest, and officers or directors of the
10 Toyota Defendants. Plaintiffs, and those persons similarly situated as described in the
11 preceding paragraph, may be collectively referred to herein as the “National Class
12 Plaintiffs.”

13 68. This action is brought as a class action and may properly be so maintained
14 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
15 Plaintiffs reserve the right to modify the California Class and the National Class
16 definitions and the class period based on the results of discovery.

17 69. **Numerosity of the California Class and National Class** – The members of
18 the California Class and the National Class are so numerous that their individual joinder
19 is impracticable. Plaintiffs are informed and believe that there are hundreds of thousands
20 of members in the classes. Because the class members may be identified through
21 business records regularly maintained by the Toyota Defendants and their employees and
22 agents, and through the records of public agencies, the number and identities of class
23 members can be ascertained. Members of the Classes can be notified of the pending
24 action by e-mail, mail and supplemented by published notice, if necessary.

25 70. **Existence and Predominance of Common Questions of Fact and Law** –
26 There are questions of law and fact common to both Classes. These questions
27 predominate over any questions affecting only individual class members. These common
28 legal and factual issues include, but are not limited to:

1 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are
2 dangerous when used as designed because the ETCS-i may cause sudden
3 unintended acceleration.

4 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are
5 dangerous when used as designed because the ETCS-i fails to incorporate critical
6 failsafe measures designed to assist the driver in maintaining control of the vehicle
7 in the event of a sudden unintended acceleration.

8 c. Whether the Toyota Defendants knew during the time that it sold
9 Toyota and Lexus vehicles equipped with ETCS-i that such vehicles were
10 susceptible to sudden unintended acceleration when used as designed.

11 d. Whether the Toyota Defendants' conduct as described above
12 constitutes unlawful, unfair, or fraudulent business acts or practices in violation of
13 Cal. Bus. & Prof. Code § 17200 et seq.;

14 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
15 unreasonably dangerous, constituting a breach of implied warranty;

16 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit
17 for their intended use, constituting a breach of implied warranty.

18 71. **Typicality** – The claims of the representative Plaintiffs are typical of the
19 claims of the members of both the California Class and the National Class. Plaintiffs,
20 like all other members of the Classes, have sustained damages arising from Defendants'
21 violations of the laws, as alleged herein. The representative Plaintiffs and the members
22 of the Classes were and are similarly or identically harmed by the same unlawful,
23 deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by
24 Defendants.

25 72. **Adequacy** – The representative Plaintiffs will fairly and adequately
26 represent and protect the interests of the Class members and have retained counsel who
27 are experienced and competent trial lawyers in complex litigation and class action
28 litigation. There are no material conflicts between the claims of the representative

1 Plaintiffs and the members of the Classes that would make class certification
2 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
3 members.

4 73. **Predominance and Superiority** – This suit may be maintained as a class
5 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
6 common to the Classes predominate over the questions affecting only individual
7 members of the Classes and a class action is superior to other available means for the fair
8 and efficient adjudication of this dispute. The damages suffered by individual class
9 members are small compared to the burden and expense of individual prosecution of the
10 complex and extensive litigation needed to address Defendants’ conduct. Further, it
11 would be virtually impossible for the members of the Classes to individually redress
12 effectively the wrongs done to them. Even if Class members themselves could afford
13 such individual litigation, the court system could not. In addition, individualized
14 litigation increases the delay and expense to all parties and to the court system resulting
15 from complex legal and factual issues of the case. Individualized litigation also presents
16 a potential for inconsistent or contradictory judgments. By contrast, the class action
17 device presents far fewer management difficulties; allows the hearing of claims which
18 might otherwise go unaddressed because of the relative expense of bringing individual
19 lawsuits; and provides the benefits of single adjudication, economies of scale, and
20 comprehensive supervision by a single court.

21 74. Plaintiffs contemplate the eventual issuance of notice to the proposed Class
22 members setting forth the subject and nature of the instant action. Upon information and
23 belief, Defendants’ own business records and electronic media can be utilized for the
24 contemplated notices. To the extent that any further notices may be required, the Class
25 Plaintiffs would contemplate the use of additional media and/or mailings.

26 75. In addition to meeting the statutory prerequisites to a Class Action, this
27 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
28 Rules of Civil Procedure, in that:

1 a. Without class certification and determination of declaratory,
2 injunctive, statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the Classes will create the risk of:

4 i. Inconsistent or varying adjudications with respect to individual
5 members of the Classes which would establish incompatible standards of
6 conduct for the parties opposing the Classes; or

7 ii. Adjudication with respect to individual members of the Classes
8 which would as a practical matter be dispositive of the interests of the other
9 members not parties to the adjudication or substantially impair or impede
10 their ability to protect their interests;

11 b. The parties opposing the Classes have acted or refused to act on
12 grounds generally applicable to each member of the Class, thereby making
13 appropriate final injunctive or corresponding declaratory relief with respect to the
14 Classes as a whole; or

15 c. Common questions of law and fact exist as to the members of the
16 Classes and predominate over any questions affecting only individual members,
17 and a Class Action is superior to other available methods of the fair and efficient
18 adjudication of the controversy, including consideration of:

19 i. The interests of the members of the Classes in individually
20 controlling the prosecution or defense of separate actions;

21 ii. The extent and nature of any litigation concerning controversy
22 already commenced by or against members of the Classes;

23 iii. The desirability or undesirability of concentrating the litigation
24 of the claims in the particular forum;

25 iv. The difficulties likely to be encountered in the management of a
26 Class Action.
27
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Business and Professions Code § 17200 *et seq.* –**
3 **Unlawful, Fraudulent, and Unfair Business Act and Practices)**
4 **(Against all Defendants)**

5 76. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1 through 75 above as though fully set forth herein.

7 77. Codified in California Business and Professions Code §17200 *et seq.*, the
8 California Unfair Business Practices Act (the “Act”), defines unfair business competition
9 to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act
10 also provides for injunctive relief, restitution, and disgorgement of profits for violations.

11 78. Defendants’ acts and practices as described herein constitute unlawful,
12 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
13 described herein, violate each of the statutes set forth within this Complaint, and/or (2)
14 the justification for Defendants’ conduct is outweighed by the gravity of the
15 consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is
16 immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious
17 to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants
18 has a tendency to deceive Plaintiffs and the members of the Classes.

19 79. Defendants have engaged and are engaging in acts and practices that
20 constitute unlawful business practices in violation of the Act because they constitute a
21 violation and/or breach of, among other things:

22 a. The Defendants’ duty to disclose to consumers who have purchased or
23 leased one of the aforementioned Toyota or Lexus vehicles equipped with ETCS-i
24 of the unreasonable dangerous condition of such vehicles by virtue of their
25 susceptibility to sudden uncontrolled acceleration of which Defendants were aware
26 or should have been aware;

1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design outweigh the
3 risk inherent in the design;

4 c. The Defendants' duty to sell vehicles which would perform as safely
5 as an ordinary consumer would expect when used in a reasonably foreseeable
6 manner;

7 d. The Defendants' duty to notify of defects post-sale;

8 e. Civil Code § 1710 for deceit;

9 f. The Song-Beverly Consumer Warranty Act as alleged in the Second
10 and Third Causes of Action of this Complaint;

11 g. The implied warranty of merchantability as set forth in California
12 Commercial Code § 2-314;

13 h. The implied warranty of fitness for a particular purpose, as set forth in
14 California Commercial Code § 2-315; and

15 i. The Defendants' express warranties.

16 80. Defendants have engaged in fraudulent acts and practices, based on the
17 following grounds:

18 a. Defendants had exclusive knowledge of the defect, its dangerousness,
19 and the large number of complaints regarding sudden unintended acceleration;

20 b. Information as to this defect was material to all purchasers of the
21 subject vehicles as the defect poses a tremendous safety risk;

22 c. A reasonable consumer would not expect that Defendants' vehicle
23 would ever experience sudden, unintended acceleration;

24 d. Defendants actively concealed from Plaintiffs and members of the
25 Class information regarding this dangerous defect;

26 e. Plaintiffs and the Class members were not aware of this defect when
27 they purchased their vehicles;

28

1 f. Plaintiffs and the members of the Class reasonably would not have
2 purchased the defective and unreasonably dangerous Toyota vehicles had they
3 known of the defects; and

4 g. As a result of Defendants' concealment of this material information,
5 Plaintiffs and the members of the Class were induced to purchase or lease a Toyota
6 or Lexus vehicle that is unsafe to drive.

7 81. Plaintiffs, on behalf of themselves and the California Class and the National
8 Class, seek:

9 a. An injunction compelling Defendants to recall all Toyota and Lexus
10 vehicles equipped with ETCS-i and distributed and sold by Defendants and to
11 provide relief in the form of restitution and disgorgement of all profits and
12 compensation improperly obtained by Defendants as a result of such acts and
13 practices; or

14 b. Alternatively, an injunction requiring Defendants to create a fund
15 available to remedy the defect and to order Defendants to bear the cost of notice to
16 Class members, as approved by the Court, of the availability of funds to remedy
17 the defect.

18 c. Such recall or other injunctive relief may be an expansion of
19 Defendants' current recall of gas pedals and floor mats, or constitute a separate
20 recall operation.

21 82. Plaintiffs and the Class members are therefore entitled to the relief described
22 above.

23 83. The conduct of Defendants as described herein violates California Business
24 & Professions Code § 17200 *et seq.*, and other similar State unfair competition and
25 unlawful business practices statutes.

26 84. Pursuant to California Business & Professions Code §§ 17200 and 17203,
27 Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed
28 for below.

1 **SECOND CAUSE OF ACTION**

2 **(Fraud)**

3 **(Against all Defendants)**

4 85. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
5 1 through 84 above as though fully set forth herein.

6 86. The misrepresentations, nondisclosure, and/or concealment of material facts
7 made by Defendants to Plaintiffs and the members of the Class, as set forth above, were
8 known by Defendants to be false and material and were intended by Defendants to
9 mislead Plaintiffs and the members of the Class.

10 87. Each of the misrepresentations asserted herein were material to Plaintiffs
11 and the Class members, and Plaintiffs and the Class members justifiably relied on such
12 misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to
13 purchase or lease the defective vehicles identified herein. Moreover, at no time did
14 Defendants disclose to Plaintiffs and the Class members of the falsity of the
15 misrepresentations, or disclose the defective and dangerous condition of the subject
16 vehicles as discussed hereinabove.

17 88. As a result of the conduct of Defendants, Plaintiffs and the Class members
18 have been damaged. In addition to rescission or compensatory damages, pursuant to
19 California Civil Code § 3343, Plaintiffs seek punitive or exemplary damages, pursuant to
20 California Civil Code § 3294, in that Defendants engaged in “an intentional
21 misrepresentation, deceit, or concealment of a material fact known to the defendant[s]
22 with the intention on the part of the defendant[s] of thereby depriving a person of
23 property or legal rights or otherwise causing injury.”

24 ///

25 ///

1 **THIRD CAUSE OF ACTION**

2 **(Breach of the Implied Warranty of Merchantability,**

3 **California Civil Code § 1792 – Song-Beverly Consumer Warranty Act)**

4 **(Against all Defendants)**

5 89. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1 through 88 above as though fully set forth herein.

7 90. At all times herein mentioned, Defendants impliedly warranted that Toyota
8 and Lexus vehicles equipped with ETCS-i were not unreasonably dangerous and were
9 safe when used as designed by Defendants.

10 91. Defendants breached their implied warranty as the products were not safe for
11 their expected use and were not merchantable.

12 92. The latent defect involved the ETCS-i system, which was not reasonably
13 discovered by Plaintiffs until shortly before the filing of this Complaint.

14 93. As a legal result of said breach of the implied warranties, Plaintiffs and the
15 members of the California Class and National Class have been damaged by having
16 purchased vehicles that are not safe for driving, in an amount to be proven at trial.
17 Therefore, Plaintiffs are entitled to damages and equitable relief as set forth in California
18 Civil Code § 1794.

19
20 **FOURTH CAUSE OF ACTION**

21 **(Breach of Express Warranty)**

22 **(Against all Defendants)**

23 94. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
24 1 through 93 above as though fully set forth herein.

25 95. The Toyota Defendants provided express warranties to repair or replace the
26 ETCS-i system, which is part of the engine control computer, for a period of seven years
27 or 70,000 miles, whichever comes first. Such express warranties were part of the sales
28 and lease contracts for Defendants' vehicles. Defendants breached this express warranty

1 by failing to properly fix or remedy the ETCS-i defect. Each Plaintiff and putative Class
2 member either directly notified Toyota of the sudden, unintended acceleration problem
3 shortly after experiencing the problem and were given inadequate responses by
4 Defendants which fail to remedy the issue, or otherwise did not directly purchase their
5 vehicle from manufacturer Defendants and therefore, were not required to give notice to
6 Defendants of the defect. The express warranties provided by Defendants constituted
7 material terms to each Plaintiff in deciding to purchase the vehicles.

8 96. Plaintiffs have therefore been damaged by having purchased vehicles that are
9 not safe for driving.

10 97. As a legal result of said breach of the implied warranties, Plaintiffs and the
11 members of the California Class and National Class have been damaged in an amount to
12 be proven at trial.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the California
16 Class and National Class pray for relief as follows:

17 A. For an order certifying the California Class and appointing Plaintiffs and
18 their counsel to represent the California Class;

19 B. For an order certifying the National Class and appointing Plaintiffs and their
20 counsel to represent the National Class;

21 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
22 equipped with ETCS-i and provide restitution of all funds improperly obtained by
23 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
24 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
25 or constituting unfair competition;

26 D. An order requiring Defendants to create a fund available to remedy the
27 defect and to order Defendants to bear the cost of notice to Class members, as approved
28 by the Court, of the availability of funds to remedy the defect

1 E. An order for disgorgement of all profits and compensation improperly
2 obtained by Defendants as a result of such acts and practices declared by this Court to be
3 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
4 regulations, or constituting unfair competition;

5 F. For an order of restitution;

6 G. For compensatory damages according to proof;

7 H. For rescission and/or compensatory damages, California Civil Code § 3343;

8 I. For punitive or exemplary damages, pursuant to California Civil Code
9 §3294;

10 J. For economic damages and equitable relief according to proof under the
11 Song-Beverly Consumer Warranty Act, California Civil Code § 1790 *et seq.*;

12 K. For punitive damages, pursuant to California Civil Code § 1780;

13 L. For reasonable attorney's fees and costs;

14 M. For prejudgment interest to the extent allowed by law;

15 N. For costs of suit incurred herein;

16 O. For such other and further relief as the Court deems appropriate.

17
18 Dated: January 18, 2010

MCCUNEWRIGHT LLP

19
20 By: 

Richard D. McCune

Attorney for Plaintiffs

21
22
23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

25 Dated: January 18, 2010

MCCUNEWRIGHT LLP

26
27 By: 

Richard D. McCune

Attorney for Plaintiffs

DIVERSITY LAW GROUP, A PROFESSIONAL CORPORATION
444 S. Flower Street, Suite 1370, Los Angeles, CA 90071
Telephone: (213) 488-6555 · Facsimile: (213) 488-6554

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age
4 of 18 and not a party to the following action. My business address is 444 S. Flower Street,
5 Suite 1370, Los Angeles, California 90071.

6 On January 19, 2010, I caused the following document(s) described as: **FIRST**
7 **AMENDED CLASS ACTION COMPLAINT** to be served on all interested parties in this action by
8 placing the original true and correct copies thereof in sealed envelope(s) addressed as
9 follows:

10 Lisa M. Gilford, Esq.
11 Alston & Bird, LLP
12 333 S. Hope Street, 16th Floor
13 Los Angeles, CA 90071
14 *Attorneys for Defendants Toyota Motor Sales,*
15 *U.S.A., Inc. and Toyota Motor Corporation*

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17 Bowman and Brooke
18 1741 Technology Drive, Suite 200
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21 *U.S.A., Inc. and Toyota Motor Corporation*

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VIA MAIL:

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with prepaid postage affixed thereon.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice and in the ordinary course of business, it would be deposited with the U.S. postal service on that same day with fully pre-paid postage affixed thereon at Los Angeles, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in the affidavit.

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VIA OVERNIGHT COURIER: I am readily familiar with the practice of DIVERSITY LAW GROUP, P.C. for collection and processing of documents for overnight delivery and know that the document(s) described above was/were deposited in a facility regularly maintained by such overnight delivery company.

VIA PERSONAL SERVICE: I caused said envelope to be delivered by hand to the following address(es):

SEE ATTACHMENT "A"

[State] I declare under penalty of perjury under the laws of the State of California that the above-stated is true and correct.

[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 on January 19, 2010, at Los Angeles, California.


LINDA LEE

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7 Attorneys for Plaintiffs
8 SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
9 on behalf of themselves and all others similarly situated

10 *Additional counsel listed on page 2

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 SEONG BAE CHOI, CHRIS CHAN
14 PARK, SANDRA REECH, DONALD
15 PRITCHETT, UN JIN CHOI, and MARY
ANN PARKER, as individuals, and on
16 behalf of themselves and all others
similarly situated,
Plaintiffs,

17 v.
18 TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.,
19 and DOES 1 through 10,
20 Defendants.

Case No.: CV 09-08143 AHM (FMOx)

Judge Assigned: A. Howard Matz

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. VIOLATION OF CALIFORNIA
UNFAIR BUSINESS PRACTICES
ACT [CAL. BUS. & PROF. CODE
§ 17200, ET SEQ.];
2. FRAUD;
3. BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY [SONG-
BEVERLY CONSUMER
WARRANTY ACT, CAL. CIV.
CODE § 1792];
4. BREACH OF EXPRESS
WARRANTY

DEMAND FOR JURY TRIAL

Complaint Filed: November 5, 2009

25 Plaintiffs SEONG BAE CHOI CHRIS CHAN PARK, SANDRA REECH,
26 DONALD PRITCHETT, UN JIN CHOI, and MARY ANN PARKER as individuals, on
27 behalf of themselves and all others similarly situated (i.e., the members of the various
28 Plaintiff Classes described and defined, infra), herein alleges as follows:

FILED

2010 JAN 19 PM 2:44

CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
REDAWOOD CITY, CALIFORNIA

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17 Attorneys for Plaintiffs
18 SEONG BAE CHOI, CHRIS CHAN PARK, SANDRA REECH, DONALD
19 PRITCHETT, UN JIN CHOI, and MARY ANN PARKER
on behalf of themselves and all others similarly situated

20 ///

21 ///

1 I.

2 JURISDICTION AND VENUE

3 1. This Court has original jurisdiction of this action under the Class Action
4 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
5 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
6 members of the class are citizens of a different state than any defendant as required by 28
7 U.S.C. § 1332(d)(2).

8 2. Venue as to Defendants is proper in this judicial district because Defendant
9 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
10 California, and a number of class members, including certain named Plaintiffs, purchased
11 vehicles in, and reside in, Los Angeles County, California.

12 II.

13 GENERAL ALLEGATIONS

14 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
15 Angeles County, California.

16 4. Plaintiff CHRIS CHAN PARK is a resident of the city of Carson, Los
17 Angeles County, California.

18 5. Plaintiff SANDRA REECH is a resident of Pennsylvania.

19 6. Plaintiff DONALD PRITCHETT is a resident of Georgia.

20 7. Plaintiff UN JIN CHOI is a resident of City of Irvine, Orange County,
21 California.

22 8. Plaintiff MARY ANN PARKER is a resident of Orange County, California.

23 9. Defendant, TOYOTA MOTOR CORPORATION ("TMC"), is, and at all
24 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
25 Prefecture, Japan.

26 10. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. ("TMS"), is, and at all
27 relevant times was, a California corporation with its principle place of business in Los
28 Angeles County, California.

1 11. The above-named Defendants are collectively referred to as the "Toyota
2 Defendants."

3 12. The Toyota Defendants conduct substantial business in all Counties within
4 the State of California as well as in all other States in the United States.

5 13. The true names and capacities of defendants sued herein as DOES 1 through
6 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by
7 such fictitious names. Each of the Defendants designated herein as a DOE is legally
8 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek
9 leave of Court to amend this Complaint to reflect the true names and capacities of the
10 Defendants designated herein as DOES when such identities become known.

11 14. Based on information and belief, Plaintiffs allege that at all times mentioned
12 herein, each and every Defendant was acting as an agent and/or employee of each of the
13 other Defendants, and at all times mentioned was acting within the course and scope of
14 said agency and/or employment with the full knowledge, permission and consent of each
15 of the other Defendants. In addition, each of the acts and/or omissions of each Defendant
16 alleged herein were made known to, and ratified by, each of the other Defendants.

17 III.

18 FACTUAL ALLEGATIONS

19 15. Defendant TOYOTA MOTOR CORPORATION is the world's largest
20 manufacturer of automobiles sold throughout the United States and the world.

21 16. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("TMS") is a wholly-
22 owned subsidiary of TMC.

23 17. The Toyota Defendants conduct substantial business in all Counties within
24 the State of California as well as in all other States in the United States.

25 18. This is a civil action against Defendants based upon information and belief
26 that Defendants, and each of them, designed, manufactured, distributed, and sold certain
27 automobiles equipped with the Electronic Throttle Control System with Intelligence
28

1 (“ETCS-i”) that is defective in that it will allow sudden unintended acceleration of the
2 vehicle engine.

3 **A. The Toyota Defendants’ Development of ETCS-i**

4 19. Beginning in 1998 and continuing to the present, Defendants designed,
5 manufactured, distributed, and sold certain automobiles equipped with Electronic
6 Throttle Control System with Intelligence (“ETCS-i”).

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

11 21. Initially, Defendants designed their vehicle with both an electronic throttle
12 control and a redundant mechanical linkage between the gas pedal and the engine throttle
13 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
14 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
15 by the mechanical linkage.

16 22. Beginning in or about 2001, however, Defendants designed, manufactured,
17 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
18 redundant mechanical linkage between the gas pedal and the engine throttle control.

19 **B. The Danger of Sudden Unintended Acceleration**

20 23. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
21 defective and unsafe in that such vehicles are susceptible to incidents of sudden
22 unintended acceleration rendering such vehicles uncontrollable.

23 24. The occurrence of this sudden unintended acceleration forces the driver to
24 lose control of the vehicle with the potential to cause, and actually have caused, collisions
25 with automobiles in front of the vehicle, loss of control at high freeway speeds resulting
26 in fatalities, and other circumstances.

27 25. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
28 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate

1 important failsafe measures critical to assisting a driver in maintaining control of the
2 vehicle during a sudden unintended acceleration event.

3 26. One such failsafe measure is a computer algorithm that will direct the
4 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
5 while the throttle is an open position. This failsafe measure has been incorporated by
6 other automobile manufacturers in vehicles designed with electronic throttle control for
7 years.

8 27. Plaintiffs allege on information and belief that the Toyota Defendants have
9 been fully aware of the recurring problem of sudden unintended acceleration in their
10 Toyota and Lexus vehicles equipped with ETCS-i.

11 **C. Plaintiffs' Incidents of Unintended Sudden Acceleration**

12 28. Each of the Plaintiffs own and were driving Toyota vehicles equipped with
13 Toyota's ETCS-i system.

14 **Plaintiff Seong Bae Choi**

15 29. Plaintiff SEONG BAE CHOI ("S. CHOI") is the owner of a 2004 Toyota
16 Camry that he purchased new from Longo Toyota, located in the city of El Monte, Los
17 Angeles County, California.

18 30. On numerous occasions, Plaintiff S. CHOI experienced the vehicle undergo
19 sudden unintended acceleration while in the process of applying his brakes, resulting in
20 engine revving and forward lurching of the vehicle. Plaintiff S. CHOI does not feel safe
21 driving the vehicle.

22 **Plaintiff Chris Chan Park**

23 31. Plaintiff CHRIS CHAN PARK ("PARK") is the owner of a 2008 FJ Cruiser
24 that he purchased new from Long Beach Toyota, located in the city of Long Beach, Los
25 Angeles County, California.

26 32. On numerous occasions, Plaintiff PARK experienced the vehicle undergo
27 sudden unintended accelerations while in the process of applying his brakes, resulting in
28

1 engine revving and forward lurching of the vehicle. Plaintiff PARK does not feel safe
2 driving the vehicle.

3 **Plaintiff Sandra Reech**

4 33. Plaintiff SANDRA REECH ("REECH") is the owner of a 2008 Toyota
5 Tacoma that was purchased new in April of 2008. On March 8, 2009, while accelerating
6 to pass a slowing moving vehicle, the accelerator stuck wide open. Plaintiff REECH
7 applied the brakes, and the vehicle did not slow down. She then put all her weight on the
8 brakes and shifted the vehicle into neutral. The engine continued to rev at very high
9 rpm's. She was finally able to steer off the road and stop the vehicle. After the vehicle
10 was turned off, Plaintiff REECH checked to see if the accelerator pedal was depressed
11 and it was not. She checked the floor mats and they were not near the gas pedal or brake.
12 The smell of overheated brakes was evident to her.

13 34. Plaintiff REECH restarted the vehicle and the engine worked normally. She
14 took the Toyota vehicle to the Toyota-Scion of Breensburg, PA dealership and reported
15 the incident. The service representative was unable to determine a cause for the incident.
16 Plaintiff REECH then contacted a Toyota representative who denied knowledge of
17 having heard of this type of problem. After she reported the incident to NHTSA, Plaintiff
18 REECH spoke with another Toyota representative that advised her that the problem was
19 caused by the floor mat, and refused to have a Toyota representative inspect the vehicle.
20 Instead the Toyota representative advised Plaintiff REECH that since she had
21 demonstrated her ability to stop the vehicle, she should just continue driving the vehicle
22 and if it happened again, Plaintiff REECH would know how to handle it.

23 35. The incident was not caused by the floor mat or unintended depressing the
24 accelerator. Plaintiff REECH is afraid to drive the Toyota vehicle because the vehicle is
25 unsafe, and as a result it is parked in the driveway and Plaintiff REECH is deprived of the
26 use of the vehicle because of her reasonable safety concerns about the Toyota vehicle.

27 **Plaintiff Donald Pritchett**

28 36. Plaintiff DONALD PRITCHETT ("PRITCHETT") is the owner of a 2006

1 Toyota Tacoma. On October 7, 2009, while driving on U.S. Route 29 in West Point,
2 Georgia, Plaintiff PRITCHETT's Toyota vehicle suddenly accelerated to a high rate of
3 speed. Plaintiff PRITCHETT was able to avoid several obstacles before plowing into a
4 ditch causing damage to the vehicle. The sudden acceleration occurred without Plaintiff
5 PRITCHETT depressing the accelerator. It also was not caused by the floor mat.

6 37. Plaintiff PRITCHETT reported the sudden unintended acceleration to both
7 the Toyota dealer and to Toyota's corporate representatives. After a vehicle inspection
8 insisted on by Plaintiff PRITCHETT, Toyota denied there was any problem with the
9 vehicle that caused the sudden unintended acceleration. Plaintiff PRITCHETT does not
10 feel safe driving the Toyota vehicle.

11 **Plaintiff Un Jin Choi**

12 38. Plaintiff UN JIN CHOI ("U. CHOI") is the owner of a 2004 Toyota Camry
13 that she purchased new in California. On November 9, 2009, while operating the vehicle
14 at slow speeds while preparing to park, Plaintiff U. CHOI's Toyota vehicle suddenly
15 accelerated. Plaintiff U. CHOI swerved to avoid hitting a building, and the vehicle then
16 sped across the street and struck a telephone pole. Plaintiff U. CHOI had standard floor
17 mats that were not trapped underneath the pedal. Plaintiff U. CHOI does not feel safe
18 driving the vehicle.

19 **Plaintiff Mary Ann Tucker**

20 39. Plaintiff MARY ANN TUCKER ("TUCKER") is the owner of a 2005
21 Toyota Camry. The vehicle was purchased primarily for Plaintiff TUCKER's teenage
22 daughter to drive. Plaintiff TUCKER has conducted significant research on the dangers
23 of sudden unintended acceleration for the 2005 Toyota Camry, and she is afraid to allow
24 her daughter to drive the vehicle because of reasonable concerns over its safety. As a
25 result, the vehicle is parked and Plaintiff TUCKER has lost use of the vehicle.

26 40. All Plaintiffs expected that their vehicles would not ever engage in
27 unintended and un-commanded acceleration which expose them to serious safety risks.
28 The information regarding the dangerous and defective feature of these vehicles were

1 concealed from and not disclosed by Defendants to all Plaintiffs. Had Plaintiffs been
2 informed by Defendants prior to purchasing their Toyota and Lexus vehicles of this
3 unexpected and dangerous defect, then Plaintiffs would not have purchased these
4 vehicles. As a result of Defendants' concealment of such information, Plaintiffs
5 purchased Toyota and Lexus vehicles while unaware of this dangerous defect, and are
6 now stuck with vehicles that they are afraid to drive and which pose a substantial safety
7 risk at any unexpected moment.

8 41. As a further consequence of Defendants' concealment of this defect, all
9 Plaintiffs were not aware that the latent defect involved the ETCS-i until shortly before
10 the filing of this Complaint.

11 42. As part of the purchase contracts for Plaintiffs' vehicles entered into by their
12 respective Toyota and Lexus dealerships, all Plaintiffs were also provided an express
13 warranty by Defendant TOYOTA MOTOR SALES, U.S.A., INC., for a period of seven
14 years or 70,000 miles, whichever comes first. According to the warranty guide which
15 accompanied the owner's manual that was provided to all Plaintiffs, this warranty covers
16 repairs and replacement of defective parts, including the engine control computer, at no
17 cost to the buyer.

18 **D, History of Sudden Unintended Acceleration**

19 43. The experiences of Plaintiffs are representative of a significant number of
20 Toyota owners that have experienced this unexplained sudden and dangerous acceleration
21 of their Toyota vehicle. There have been more than 2,000 complaints of sudden
22 unintended acceleration made to Toyota and government agencies related to Toyota and
23 Lexus vehicles equipped with ETCS-i. There have been reported 18 deaths and 304
24 injuries caused by the unintended acceleration. Those numbers are likely grossly
25 understated for incidents and accidents caused by sudden unintended acceleration where
26 the incident or accident is not reported or where the dealer indicates to the Toyota owner
27 that there is not anything wrong with their vehicle. Just the following sampling of
28

1 complaints, provided under information and belief, illustrates the dangers and scope of
2 the problem.

3 44. Toyota Owner 1 resides in Pittstown, New Jersey. He owns a 2007 Toyota
4 Avalon. He experienced numerous occasions of the engine racing even when the vehicle
5 was in neutral. On December 29, 2009, while driving on a highway, the vehicle
6 accelerator suddenly began to race at full throttle even though the brake pedal was not
7 activated. He was unable to stop the vehicle with braking. Toyota Owner 1 was able to
8 avoid an accident by putting the vehicle into neutral. The vehicle engine continued to
9 race at very high rpm's. He then drove the vehicle to the Toyota dealership by shifting in
10 and out of neutral. The dealer then was forced to document the incident as being caused
11 by something other than floor mats and inadvertent accelerator pedal activation.

12 45. Toyota Owner 2 was driving a 2005 Toyota Tacoma in Tennessee, when the
13 vehicle suddenly began accelerating reaching speeds of over 80 mph on curvy roads. It
14 took all the strength of the owner applying the brakes to bring the vehicle to a stop. The
15 brakes were on fire when the vehicle came to rest. The vehicle was towed to a Toyota
16 dealership which denied a vehicle malfunction caused the sudden and unintended
17 acceleration.

18 46. Toyota Owner 3 was driving a 2006 Lexus IS250 in Indiana at
19 approximately 20-25 mph when the vehicle suddenly accelerated despite the owner
20 taking her foot off the accelerator. This owner was unable to stop the vehicle despite
21 pressing the brake as hard as she could. The owner had to drive the vehicle into a tree to
22 stop the vehicle. The car was brought to a dealer who indicated that they found no defect
23 with the Toyota vehicle. The floor mats were not the cause of the acceleration.

24 47. Toyota Owner 4 purchased a new 2008 Toyota Tacoma. Within 16,000
25 miles, he had two instances of sudden unintended acceleration. The first instance
26 occurred when the owner routinely applied the brake for a stop light, and the Toyota
27 suddenly accelerated. Despite applying both feet to the brakes, the vehicle surged and
28 rear-ended another vehicle. The vehicle was provided to Toyota who indicated they

1 could find nothing wrong with the vehicle. The second instance occurred almost one
2 year later, when the owner was stopped at a light, and took his foot off the brake to
3 initiate a right hand turn when the Toyota suddenly accelerated forward. The owner
4 having already experienced this problem once before, was prepared when he felt the
5 acceleration and immediately turned the ignition off. He was thus able to avoid another
6 accident. Again the vehicle was provided to Toyota who denied there was anything
7 wrong with the vehicle. The floor mats were not in the vehicle in the second incident and
8 were not the cause of the first incident.

9 48. Toyota Owner 5 purchased a new 2005 Toyota Camry in Louisiana. On
10 January 25, 2007, the owner was entering a car wash and took her foot off the brake and
11 gently touched the accelerator when the car accelerated as if the accelerator had been
12 fully depressed. The owner took her foot off the accelerator and pressed the brake pedal
13 as hard as she could, including pumping the brakes. She sped through the car wash, went
14 across the street, missed gas pumps across the street and then intentionally drove into a
15 pole to stop her vehicle. A later vehicle inspection showed the accelerator at full open
16 position following the accident. The accident was reported to Toyota and they denied a
17 defect in the vehicle. The owner confirmed that the floor mats were not the cause of the
18 acceleration.

19 49. Toyota Owner 6 leased a new 2008 Lexus ES 350 in Connecticut. On
20 November 28, 2009, the owner was entering a parking lot when the vehicle suddenly
21 accelerated, which caused it to jump a curb and run into a tree. The owner reported the
22 accident to Toyota; Toyota responded that there was not a defect with the vehicle.

23 50. Toyota Owner 7 purchased a new 2007 Lexus ES 350 in Ohio. The owner
24 was driving approximately 35-40 mph on a highway when the vehicle suddenly
25 accelerated, rapidly reaching speeds of 80-85 mph. The owner applied his brakes, put on
26 his flashers, and as the brakes began to smoke, was able to put the vehicle into neutral
27 and pull the vehicle off the roadway. The brakes were ruined in the incident. Toyota was
28 notified of the incident and was told it was a floor mat problem even though there was no

1 sign the floor mat contributed to the incident. Toyota further indicated there was not a
2 defect or problem with the vehicle.

3 51. Toyota Owner 8 was a passenger in his 2003 Toyota Camry being driven by
4 his daughter in Michigan. While pulling into a parking spot with her foot lightly on the
5 brake, the Toyota engine revved and the vehicle jumped forward over an embankment
6 and hit a parked car. The driver's foot was on the brake the entire time. The floor mat
7 was not the cause of the surging. The vehicle was taken to a Toyota dealership and the
8 problem was reported. The dealership denied any problem with the vehicle.

9 52. Toyota Owner 9 purchased a 2006 Lexus ES 330. His wife was driving the
10 vehicle on either July 23 or 24, 2009 in California. She was gently slowing, when the
11 engine suddenly roared and the car shot forward, causing her to hit a low cement wall and
12 fence before the vehicle stalled. This was reported to their Toyota dealership; the
13 personnel at the dealership blamed the floor mat. The floor mat had nothing to do with
14 the accident.

15 53. Toyota Owner 10 owned a 2002 Toyota Camry. On July 22, 2004, while
16 proceeding toward a parking space with her foot on the brake, the vehicle suddenly
17 surged forward into a cement wall. The accident was reported to Toyota, but Toyota
18 denied any problem with the vehicle. The floor mat had nothing to do with the accident.

19 54. Toyota Owner 11 owned a 2005 Lexus SC 430. On November 17, 2009, the
20 owner was slowing the vehicle in Laguna Hills, CA when it suddenly accelerated,
21 jumped a curb and went down a ravine. This was the third occasion this vehicle had
22 experienced sudden acceleration. The accident had nothing to do with the floor mats.

23 55. Toyota Owner 12 owned a 2002 Lexus ES 300. In November or December
24 2008, as the driver was lightly applying the accelerator backing out of the driveway in
25 Newport Beach, CA, the vehicle suddenly accelerated. It took all the pressure the owner
26 was able to apply to the brakes to stop the vehicle. The floor mat did not cause this
27 incident.

28

1 56. As these reported incidents demonstrate, the problem of unexplained and
2 unexpected sudden acceleration occurs over a wide range of Toyota models and
3 circumstances.

4 **E. Defendants' Response to the Sudden Unintended Acceleration Danger**

5 57. Despite knowledge of over 2,000 complaints similar to those listed above,
6 the Toyota Defendants have consistently denied the problem to customers, their dealers
7 and the National Highway Traffic Safety Administration ("NHTSA").

8 58. When the Toyota Defendants were unable to continue denying the existence
9 of sudden unintended acceleration due to the high profile fatalities in the Saylor accident,
10 the Toyota Defendants then took the position that these sudden acceleration problems
11 were caused by a problem with floor mats. Based on information and belief, when it
12 made this public pronouncement after years of denying that there was a problem at all,
13 the Toyota Defendants knew the floor mats were not the explanation for the majority of
14 the sudden unintended accelerations accidents and complaints.

15 59. When the Toyota Defendants were unable to continue making the claim that
16 the sudden unintended acceleration was caused by floor mats because of the number of
17 reported sudden unintended acceleration with vehicles that did not have all-weather floor
18 mats, Defendants then claimed a problem with the brake pedal. Based on information
19 and belief, when the Toyota Defendants made the partial recall based on the brake pedal,
20 they knew the real problem was due to computer malfunctions with the ETCS-i system.

21 60. Based on information and belief, at all times relevant herein, the Toyota
22 Defendants had full knowledge that Toyota and Lexus vehicles equipped with ETCS-i
23 were susceptible to incidents of sudden unintended acceleration caused by computer
24 malfunction that posed a significant risk of injury and death to vehicle occupants and
25 other motorists and pedestrians alike.

26 61. Despite this knowledge, the Toyota Defendants continue to design,
27 manufacture, advertise, and distribute Toyota and Lexus vehicles equipped with ETCS-i
28

1 that are susceptible to incidents of sudden unintended acceleration, and fail to incorporate
2 critical failsafe measures to assist the driver in such an event.

3 62. Throughout the relevant time periods, Defendants alone had access to the
4 aggregate data concerning this defect. Despite the number of complaints, accidents and
5 deaths that have resulted from this defect, Defendants never made any attempt to notify
6 other customers of the defect or effect a recall (until the misguided and ineffectual recall
7 of merely the floor mats in late 2009, which Defendants themselves admit was not
8 sufficient), and otherwise refused to provide effective remedies for customers who
9 complained of the problem, all the while denying the root cause of the unintended
10 acceleration problems was a defect in the vehicle.

11 63. Throughout this time, while Defendants actively concealed information of
12 this dangerous defect, Defendants sold massive numbers of the subject vehicles, which
13 resulted in Defendants garnering enormous profits and ultimately becoming the world's
14 largest car manufacturer.

15 IV.

16 CLASS ACTION ALLEGATIONS

17 64. Plaintiffs bring this action on behalf of themselves and all others similarly
18 situated in the State of California.

19 65. Plaintiffs initially define the "California Class" as follows:

20 a. **The California Class:** All persons who reside in California and
21 presently own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

22 Specifically excluded from this California Class are all persons who have suffered,
23 or possess a right of action for, any personal injury or wrongful death as a result of
24 sudden unintended acceleration. Also excluded from this class is any entity in which the
25 Toyota Defendants have a controlling interest, and officers or directors of the Toyota
26 Defendants. Plaintiffs, and those persons similarly situated as described in the preceding
27 paragraph, may be collectively referred to herein as the "California Class Plaintiffs."
28

1 66. Plaintiffs also bring this action on behalf of themselves and all others
2 similarly situated in the United States.

3 67. Plaintiffs initially define the “National Class” as follows:

4 a. **The National Class:** All persons in the United States and presently
5 own or lease a Toyota and/or Lexus vehicle equipped with ETCS-i.

6 Specifically excluded from this National Class are all persons who have suffered,
7 or possess a right of action for, any personal injury or wrongful death as a result of
8 sudden unintended acceleration. Also excluded from this National Class is any entity in
9 which the Toyota Defendants have a controlling interest, and officers or directors of the
10 Toyota Defendants. Plaintiffs, and those persons similarly situated as described in the
11 preceding paragraph, may be collectively referred to herein as the “National Class
12 Plaintiffs.”

13 68. This action is brought as a class action and may properly be so maintained
14 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
15 Plaintiffs reserve the right to modify the California Class and the National Class
16 definitions and the class period based on the results of discovery.

17 69. **Numerosity of the California Class and National Class** – The members of
18 the California Class and the National Class are so numerous that their individual joinder
19 is impracticable. Plaintiffs are informed and believe that there are hundreds of thousands
20 of members in the classes. Because the class members may be identified through
21 business records regularly maintained by the Toyota Defendants and their employees and
22 agents, and through the records of public agencies, the number and identities of class
23 members can be ascertained. Members of the Classes can be notified of the pending
24 action by e-mail, mail and supplemented by published notice, if necessary.

25 70. **Existence and Predominance of Common Questions of Fact and Law** –
26 There are questions of law and fact common to both Classes. These questions
27 predominate over any questions affecting only individual class members. These common
28 legal and factual issues include, but are not limited to:

1 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are
2 dangerous when used as designed because the ETCS-i may cause sudden
3 unintended acceleration.

4 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are
5 dangerous when used as designed because the ETCS-i fails to incorporate critical
6 failsafe measures designed to assist the driver in maintaining control of the vehicle
7 in the event of a sudden unintended acceleration.

8 c. Whether the Toyota Defendants knew during the time that it sold
9 Toyota and Lexus vehicles equipped with ETCS-i that such vehicles were
10 susceptible to sudden unintended acceleration when used as designed.

11 d. Whether the Toyota Defendants' conduct as described above
12 constitutes unlawful, unfair, or fraudulent business acts or practices in violation of
13 Cal. Bus. & Prof. Code § 17200 et seq.;

14 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
15 unreasonably dangerous, constituting a breach of implied warranty;

16 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit
17 for their intended use, constituting a breach of implied warranty.

18 71. **Typicality** – The claims of the representative Plaintiffs are typical of the
19 claims of the members of both the California Class and the National Class. Plaintiffs,
20 like all other members of the Classes, have sustained damages arising from Defendants'
21 violations of the laws, as alleged herein. The representative Plaintiffs and the members
22 of the Classes were and are similarly or identically harmed by the same unlawful,
23 deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by
24 Defendants.

25 72. **Adequacy** – The representative Plaintiffs will fairly and adequately
26 represent and protect the interests of the Class members and have retained counsel who
27 are experienced and competent trial lawyers in complex litigation and class action
28 litigation. There are no material conflicts between the claims of the representative

1 Plaintiffs and the members of the Classes that would make class certification
2 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
3 members.

4 **73. Predominance and Superiority** – This suit may be maintained as a class
5 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
6 common to the Classes predominate over the questions affecting only individual
7 members of the Classes and a class action is superior to other available means for the fair
8 and efficient adjudication of this dispute. The damages suffered by individual class
9 members are small compared to the burden and expense of individual prosecution of the
10 complex and extensive litigation needed to address Defendants’ conduct. Further, it
11 would be virtually impossible for the members of the Classes to individually redress
12 effectively the wrongs done to them. Even if Class members themselves could afford
13 such individual litigation, the court system could not. In addition, individualized
14 litigation increases the delay and expense to all parties and to the court system resulting
15 from complex legal and factual issues of the case. Individualized litigation also presents
16 a potential for inconsistent or contradictory judgments. By contrast, the class action
17 device presents far fewer management difficulties; allows the hearing of claims which
18 might otherwise go unaddressed because of the relative expense of bringing individual
19 lawsuits; and provides the benefits of single adjudication, economies of scale, and
20 comprehensive supervision by a single court.

21 **74.** Plaintiffs contemplate the eventual issuance of notice to the proposed Class
22 members setting forth the subject and nature of the instant action. Upon information and
23 belief, Defendants’ own business records and electronic media can be utilized for the
24 contemplated notices. To the extent that any further notices may be required, the Class
25 Plaintiffs would contemplate the use of additional media and/or mailings.

26 **75.** In addition to meeting the statutory prerequisites to a Class Action, this
27 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
28 Rules of Civil Procedure, in that:

1 a. Without class certification and determination of declaratory,
2 injunctive, statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the Classes will create the risk of:

4 i. Inconsistent or varying adjudications with respect to individual
5 members of the Classes which would establish incompatible standards of
6 conduct for the parties opposing the Classes; or

7 ii. Adjudication with respect to individual members of the Classes
8 which would as a practical matter be dispositive of the interests of the other
9 members not parties to the adjudication or substantially impair or impede
10 their ability to protect their interests;

11 b. The parties opposing the Classes have acted or refused to act on
12 grounds generally applicable to each member of the Class, thereby making
13 appropriate final injunctive or corresponding declaratory relief with respect to the
14 Classes as a whole; or

15 c. Common questions of law and fact exist as to the members of the
16 Classes and predominate over any questions affecting only individual members,
17 and a Class Action is superior to other available methods of the fair and efficient
18 adjudication of the controversy, including consideration of:

19 i. The interests of the members of the Classes in individually
20 controlling the prosecution or defense of separate actions;

21 ii. The extent and nature of any litigation concerning controversy
22 already commenced by or against members of the Classes;

23 iii. The desirability or undesirability of concentrating the litigation
24 of the claims in the particular forum;

25 iv. The difficulties likely to be encountered in the management of a
26 Class Action.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Business and Professions Code § 17200 *et seq.* –**
3 **Unlawful, Fraudulent, and Unfair Business Act and Practices)**
4 **(Against all Defendants)**

5 76. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1 through 75 above as though fully set forth herein.

7 77. Codified in California Business and Professions Code §17200 *et seq.*, the
8 California Unfair Business Practices Act (the “Act”), defines unfair business competition
9 to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act
10 also provides for injunctive relief, restitution, and disgorgement of profits for violations.

11 78. Defendants’ acts and practices as described herein constitute unlawful,
12 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
13 described herein, violate each of the statutes set forth within this Complaint, and/or (2)
14 the justification for Defendants’ conduct is outweighed by the gravity of the
15 consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is
16 immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious
17 to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants
18 has a tendency to deceive Plaintiffs and the members of the Classes.

19 79. Defendants have engaged and are engaging in acts and practices that
20 constitute unlawful business practices in violation of the Act because they constitute a
21 violation and/or breach of, among other things:

22 a. The Defendants’ duty to disclose to consumers who have purchased or
23 leased one of the aforementioned Toyota or Lexus vehicles equipped with ETCS-i
24 of the unreasonable dangerous condition of such vehicles by virtue of their
25 susceptibility to sudden uncontrolled acceleration of which Defendants were aware
26 or should have been aware;

1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design outweigh the
3 risk inherent in the design;

4 c. The Defendants' duty to sell vehicles which would perform as safely
5 as an ordinary consumer would expect when used in a reasonably foreseeable
6 manner;

7 d. The Defendants' duty to notify of defects post-sale;

8 e. Civil Code § 1710 for deceit;

9 f. The Song-Beverly Consumer Warranty Act as alleged in the Second
10 and Third Causes of Action of this Complaint;

11 g. The implied warranty of merchantability as set forth in California
12 Commercial Code § 2-314;

13 h. The implied warranty of fitness for a particular purpose, as set forth in
14 California Commercial Code § 2-315; and

15 i. The Defendants' express warranties.

16 80. Defendants have engaged in fraudulent acts and practices, based on the
17 following grounds:

18 a. Defendants had exclusive knowledge of the defect, its dangerousness,
19 and the large number of complaints regarding sudden unintended acceleration;

20 b. Information as to this defect was material to all purchasers of the
21 subject vehicles as the defect poses a tremendous safety risk;

22 c. A reasonable consumer would not expect that Defendants' vehicle
23 would ever experience sudden, unintended acceleration;

24 d. Defendants actively concealed from Plaintiffs and members of the
25 Class information regarding this dangerous defect;

26 e. Plaintiffs and the Class members were not aware of this defect when
27 they purchased their vehicles;
28

1 f. Plaintiffs and the members of the Class reasonably would not have
2 purchased the defective and unreasonably dangerous Toyota vehicles had they
3 known of the defects; and

4 g. As a result of Defendants' concealment of this material information,
5 Plaintiffs and the members of the Class were induced to purchase or lease a Toyota
6 or Lexus vehicle that is unsafe to drive.

7 81. Plaintiffs, on behalf of themselves and the California Class and the National
8 Class, seek:

9 a. An injunction compelling Defendants to recall all Toyota and Lexus
10 vehicles equipped with ETCS-i and distributed and sold by Defendants and to
11 provide relief in the form of restitution and disgorgement of all profits and
12 compensation improperly obtained by Defendants as a result of such acts and
13 practices; or

14 b. Alternatively, an injunction requiring Defendants to create a fund
15 available to remedy the defect and to order Defendants to bear the cost of notice to
16 Class members, as approved by the Court, of the availability of funds to remedy
17 the defect.

18 c. Such recall or other injunctive relief may be an expansion of
19 Defendants' current recall of gas pedals and floor mats, or constitute a separate
20 recall operation.

21 82. Plaintiffs and the Class members are therefore entitled to the relief described
22 above.

23 83. The conduct of Defendants as described herein violates California Business
24 & Professions Code § 17200 *et seq.*, and other similar State unfair competition and
25 unlawful business practices statutes.

26 84. Pursuant to California Business & Professions Code §§ 17200 and 17203,
27 Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed
28 for below.

1 **SECOND CAUSE OF ACTION**

2 **(Fraud)**

3 **(Against all Defendants)**

4 85. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
5 1 through 84 above as though fully set forth herein.

6 86. The misrepresentations, nondisclosure, and/or concealment of material facts
7 made by Defendants to Plaintiffs and the members of the Class, as set forth above, were
8 known by Defendants to be false and material and were intended by Defendants to
9 mislead Plaintiffs and the members of the Class.

10 87. Each of the misrepresentations asserted herein were material to Plaintiffs
11 and the Class members, and Plaintiffs and the Class members justifiably relied on such
12 misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to
13 purchase or lease the defective vehicles identified herein. Moreover, at no time did
14 Defendants disclose to Plaintiffs and the Class members of the falsity of the
15 misrepresentations, or disclose the defective and dangerous condition of the subject
16 vehicles as discussed hereinabove.

17 88. As a result of the conduct of Defendants, Plaintiffs and the Class members
18 have been damaged. In addition to rescission or compensatory damages, pursuant to
19 California Civil Code § 3343, Plaintiffs seek punitive or exemplary damages, pursuant to
20 California Civil Code § 3294, in that Defendants engaged in “an intentional
21 misrepresentation, deceit, or concealment of a material fact known to the defendant[s]
22 with the intention on the part of the defendant[s] of thereby depriving a person of
23 property or legal rights or otherwise causing injury.”

24 ///

25 ///

1 by failing to properly fix or remedy the ETCS-i defect. Each Plaintiff and putative Class
2 member either directly notified Toyota of the sudden, unintended acceleration problem
3 shortly after experiencing the problem and were given inadequate responses by
4 Defendants which fail to remedy the issue, or otherwise did not directly purchase their
5 vehicle from manufacturer Defendants and therefore, were not required to give notice to
6 Defendants of the defect. The express warranties provided by Defendants constituted
7 material terms to each Plaintiff in deciding to purchase the vehicles.

8 96. Plaintiffs have therefore been damaged by having purchased vehicles that are
9 not safe for driving.

10 97. As a legal result of said breach of the implied warranties, Plaintiffs and the
11 members of the California Class and National Class have been damaged in an amount to
12 be proven at trial.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the California
16 Class and National Class pray for relief as follows:

17 A. For an order certifying the California Class and appointing Plaintiffs and
18 their counsel to represent the California Class;

19 B. For an order certifying the National Class and appointing Plaintiffs and their
20 counsel to represent the National Class;

21 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
22 equipped with ETCS-i and provide restitution of all funds improperly obtained by
23 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
24 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
25 or constituting unfair competition;

26 D. An order requiring Defendants to create a fund available to remedy the
27 defect and to order Defendants to bear the cost of notice to Class members, as approved
28 by the Court, of the availability of funds to remedy the defect

1 E. An order for disgorgement of all profits and compensation improperly
2 obtained by Defendants as a result of such acts and practices declared by this Court to be
3 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
4 regulations, or constituting unfair competition;

5 F. For an order of restitution;

6 G. For compensatory damages according to proof;

7 H. For rescission and/or compensatory damages, California Civil Code § 3343;

8 I. For punitive or exemplary damages, pursuant to California Civil Code
9 §3294;

10 J. For economic damages and equitable relief according to proof under the
11 Song-Beverly Consumer Warranty Act, California Civil Code § 1790 *et seq.*;

12 K. For punitive damages, pursuant to California Civil Code § 1780;

13 L. For reasonable attorney's fees and costs;

14 M. For prejudgment interest to the extent allowed by law;

15 N. For costs of suit incurred herein;

16 O. For such other and further relief as the Court deems appropriate.

17
18 Dated: January 18, 2010

MCCUNEWRIGHT LLP

19
20 By: 

21 Richard D. McCune
22 Attorney for Plaintiffs

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

25 Dated: January 18, 2010

MCCUNEWRIGHT LLP

26
27 By: 

28 Richard D. McCune
Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the following action. My business address is 444 S. Flower Street, Suite 1370, Los Angeles, California 90071.

On January 19, 2010, I caused the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT** to be served on all interested parties in this action by placing the original true and correct copies thereof in sealed envelope(s) addressed as follows:

Lisa M. Gilford, Esq.
Alston & Bird, LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071
Attorneys for Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation

Richard D. McCune, Esq.
David C. Wright, Esq.
Kristy M. Arevalo, Esq.
McCune Wright, LLP
2068 Orange Tree Lane, Suite 216
Redlands, CA 92374
Attorneys for Plaintiff Seong Bae Choi, et al.

Vincent Gavlin, Jr.
Bowman and Brooke
1741 Technology Drive, Suite 200
San Jose, CA 95110
Attorneys for Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation

Edward W. Choi, Esq.
Law Offices of Choi & Associates
3435 Wilshire Boulevard, Suite 2410
Los Angeles, CA 90010
Attorneys for Plaintiff Seong Bae Choi, et al.

Mitchell M. Breit, Esq.
Andrea Bierstein, Esq.
Jayne Conroy, Esq.
Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP
112 Madison Avenue
New York, NY 10016
Attorneys for Plaintiff Seong Bae Choi, et al.

Derek Y. Brandt, Esq.
Simmons Browder Gianaris Angelides & Barnerd, LLC
707 Berkshire Boulevard
East Alton, IL 62024
Attorneys for Plaintiff Seong Bae Choi, et al.

VIA MAIL:

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with prepaid postage affixed thereon.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice and in the ordinary course of business, it would be deposited with the U.S. postal service on that same day with fully pre-paid postage affixed thereon at Los Angeles, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in the affidavit.

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VIA OVERNIGHT COURIER: I am readily familiar with the practice of DIVERSITY LAW GROUP, P.C. for collection and processing of documents for overnight delivery and know that the document(s) described above was/were deposited in a facility regularly maintained by such overnight delivery company.

VIA PERSONAL SERVICE: I caused said envelope to be delivered by hand to the following address(es):

SEE ATTACHMENT "A"

[State] I declare under penalty of perjury under the laws of the State of California that the above-stated is true and correct.

[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 on January 19, 2010, at Los Angeles, California.


LINDA LEE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-8143 AHM (FMOx) Date November 9, 2009
Title SEONG BAE CHOI et al. v. TOYOTA MOTOR CORPORATION et al.

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

S. Eagle

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys NOT Present for Plaintiffs:

Attorneys NOT Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court owns a 2000 Toyota Avalon XLS. The Court ORDERS Plaintiffs' counsel to specify whether such a vehicle is equipped with ETCS-i, and to do so by not later than Friday, November 13, 2009.

Initials of Preparer

se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-8143 AHM (FMOx) Date November 9, 2009
Title SEONG BAE CHOI et al. v. TOYOTA MOTOR CORPORATION et al.

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

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Not Reported

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Tape No.

Attorneys NOT Present for Plaintiffs:

Attorneys NOT Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court owns a 2000 Toyota Avalon XLS. The Court ORDERS Plaintiffs' counsel to specify whether such a vehicle is equipped with ETCS-i, and to do so by not later than Friday, November 13, 2009.

Initials of Preparer

se

1 Richard D. McCune, Esq., State Bar No. 132124
rdm@mccunewright.com
2 David C. Wright, Esq., State Bar No. 177468
dcw@mccunewright.com
3 MCCUNEWRIGHT LLP
2068 Orange Tree Lane, Suite 216
4 Redlands, California 92374
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

6 Attorneys for Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, on behalf of
7 themselves and all others similarly situated

8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 SEONG BAE CHOI and CHRIS CHAN)
12 PARK, as individuals, and on behalf of)
13 themselves and all others similarly situated,)

14 Plaintiffs,)

15 v.)

16 TOYOTA MOTOR CORPORATION,)
17 TOYOTA MOTOR SALES, U.S.A., INC.,)
18 and DOES 1 through 10,)

19 Defendants.)

Case No.: CV-09-08143-AHM(FMOx)

Judge Assigned: Hon. Judge A. Howard Matz

**PLAINTIFFS' RESPONSE TO
11/10/2009 ORDER REQUESTING
FURTHER INFORMATION**

19 Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, by and through their
20 counsel of record, McCuneWright LLP, hereby submit the following response to the
21 Court's Order of November 10, 2009, requesting Plaintiffs' provide the Court with
22 information regarding the 2000 Toyota Avalon XLS:

23 The model year 2000 Toyota Avalon XLS is not equipped with Toyota's
24 Electronic Throttle Control System with Intelligence (ETCS-i).

25 DATED: November 12, 2009

MCCUNEWRIGHT LLP

27 By: /s/

28 David C. Wright
Attorneys for Plaintiffs

1 Richard D. McCune, Esq., State Bar No. 132124
rdm@mccunewright.com
2 David C. Wright, Esq., State Bar No. 177468
dcw@mccunewright.com
3 MCCUNEWRIGHT LLP
2068 Orange Tree Lane, Suite 216
4 Redlands, California 92374
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

6 Attorneys for Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, on behalf of
7 themselves and all others similarly situated

8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 SEONG BAE CHOI and CHRIS CHAN)
12 PARK, as individuals, and on behalf of)
13 themselves and all others similarly situated,)

14 Plaintiffs,

15 v.

16 TOYOTA MOTOR CORPORATION,)
17 TOYOTA MOTOR SALES, U.S.A., INC.,)
18 and DOES 1 through 10,)

19 Defendants.

Case No.: CV-09-08143-AHM(FMOx)

Judge Assigned: Hon. Judge A. Howard Matz

**PLAINTIFFS' RESPONSE TO
11/10/2009 ORDER REQUESTING
FURTHER INFORMATION**

19 Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, by and through their
20 counsel of record, McCuneWright LLP, hereby submit the following response to the
21 Court's Order of November 10, 2009, requesting Plaintiffs' provide the Court with
22 information regarding the 2000 Toyota Avalon XLS:

23 The model year 2000 Toyota Avalon XLS is not equipped with Toyota's
24 Electronic Throttle Control System with Intelligence (ETCS-i).

25 DATED: November 12, 2009

MCCUNEWRIGHT LLP

27 By: /s/

28 David C. Wright
Attorneys for Plaintiffs

1 MICHAEL L. MALLOW (SBN 188745)
 mmallow@loeb.com
 2 MARK D. CAMPBELL (SBN 180528)
 mcampbell@loeb.com
 3 DARLENE M. CHO (SBN 251167)
 dcho@loeb.com
 4 LOEB & LOEB LLP
 10100 Santa Monica Boulevard, Suite 2200
 5 Los Angeles, California 90067-4120
 Telephone: 310-282-2000
 6 Facsimile: 310-282-2200
 7 Attorneys for Defendants
 Toyota Motor Corporation,
 8 Toyota Motor Sales, U.S.A., Inc.

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 SEONG BAE CHOI and CHRIS CHAN)
 PARK, as individuals and on behalf of)
 14 themselves and all others similarly)
 situated,)
 15 Plaintiffs,)
 16 v.)
 17 TOYOTA MOTOR CORPORATION,)
 18 TOYOTA MOTOR SALES, U.S.A.,)
 INC., and DOES 1 through 10,)
 19 Defendants.)
 20

Case No. CV08143-09
 Assigned to Hon. A. Howard Matz
**STIPULATION TO EXTEND TIME
 TO RESPOND TO INITIAL
 COMPLAINT**
 Complaint served: November 13, 2009
 Current response date: December 3,
 2009
 New response date: January 4, 2010

1 Pursuant to Civil Local Rule 8-3 of the United States District Court, Central
2 District of California, Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota
3 Motor Corporation, and Plaintiffs Seong Bae Choi and Chris Chan Park, by and
4 through their respective counsel of record, hereby stipulate to extend Defendants'
5 time within which to respond to the Complaint in this matter by thirty (30) days.

6 The new deadline for Defendants to file an Answer or otherwise respond to
7 the Complaint is January 4, 2010.

8 It is further stipulated that Toyota Motor Corporation ("TMC") will be
9 deemed to be served as of the date this Stipulation is filed with the Court.

10 In exchange for this agreement to forego the formalities of the Hague Service
11 Convention otherwise required for service on TMC, Plaintiffs and TMC agree to the
12 following: (i) TMC will have an additional 60 days to respond to all written
13 discovery requests; (ii) any TMC corporate representative deposition noticed under

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1 FRCP 30(b)(6) will be done on at least 90 days notice; and (iii) at Defendants'
2 election, any depositions of a corporate representative noticed under FRCP 30(b)(6)
3 shall be conducted at a law office selected by Defendants in the Los Angeles area.

4
5 Dated: November 20, 2009

LOEB & LOEB LLP

6 /s/ Michael L. Mallow
7 Michael L. Mallow
8 Mark D. Campbell
9 Darlene M. Cho
10 10100 Santa Monica Blvd., Ste. 2200
11 Los Angeles, California 90067-4120

12
13
14
15 Attorneys for Defendants
16 Toyota Motor Corporation, Toyota
17 Motor Sales, U.S.A., Inc.

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19
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21
22
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27
28 Dated: November 20, 2009

McCUNEWRIGHT LLP

By: /s/ David C. Wright
David C. Wright
2068 Orange Tree Lane, Suite 216
Redlands, California 92374

Attorneys for Plaintiffs
Seong Bae Choi and Chris Chan
Park

Name and address of DERIN B. DICKERSON
 ALSTON & BIRD LLP
 1201 W. PEACHTREE ST
 ATLANTA, GA 30309
 (404) 881-7000

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SEONG BAE CHOI and CHRIS CHAN PARK, <p align="right">Plaintiff(s)</p> v. TOYOTA MOTOR SALES, U.S.A., et al., <p align="right">Defendant(s).</p>	CASE NUMBER <p align="center">2:09-cv-08143-AHM-FMO</p> <hr/> <p align="center">APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE</p>
---	--

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is \$185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Derin B. Dickerson, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of Plaintiff Defendant: Toyota Motor Sales, U.S.A., Inc. , et al by whom I have been retained.

My *out-of-state* business information is as follows:

<u>Alston & Bird LLP</u>	<i>Firm Name</i>
<u>1201 W. Peachtree Street</u>	<i>Street Address</i>
<u>Atlanta, GA 30309</u>	<u>derm.dickerson@alston.com</u>
<i>City, State, Zip</i>	<i>E-Mail Address</i>
<u>(404) 881-7000</u>	<u>(404) 881-7777</u>
<i>Telephone Number</i>	<i>Fax Number</i>

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

<i>Title of Court</i>	<i>Date of Admission</i>
<u>See attached</u>	
<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

<i>Case Number</i>	<i>Title of Action</i>	<i>Date of Application</i>	<i>Application Granted or Denied</i>

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

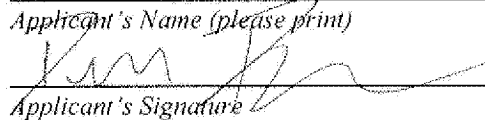
I designate Lisa Gilford as local counsel, whose business information is as follows:

<u>Alston & Bird LLP</u>	<i>Firm Name</i>
<u>333 South Hope Street - 16th Floor</u>	<i>Street Address</i>
<u>Los Angeles, CA 90071</u>	<u>lisa.gilford@alston.com</u>
<i>City, State, Zip</i>	<i>E-Mail Address</i>
<u>(213) 576-1114</u>	<u>(213) 576-1100</u>
<i>Telephone Number</i>	<i>Fax Number</i>

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

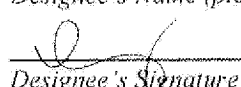
I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 26, 2009

Derin B. Dickerson
Applicant's Name (please print)

Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 18, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature
171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE (G-64 ORDER) ALONG WITH THIS APPLICATION.

DERIN B. DICKERSON

[Georgia Bar No. 220620]

<u>Bar/Court</u>	<u>Date Admitted</u>
Georgia Court of Appeals	2004
US Court of Appeals – 3 rd Circuit	2007
US District Court – Northern District of Georgia	2008
US Court of Appeals – 11 th Circuit	2008
State Bar of Georgia	
Georgia Supreme Court	



CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA	}
	} ss.
NORTHERN DISTRICT OF GEORGIA	}

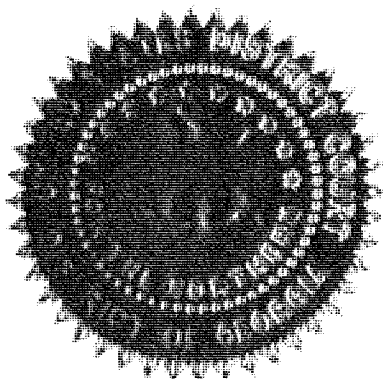
I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **DERIN BRONSON DICKERSON** , State Bar No. **220620**, was duly admitted to practice in said Court on March 22, 2004, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.

JAMES N. HATTEN
CLERK OF COURT

By: *Jamee Green*
Jamee Green
Deputy Clerk



Name and address of KYLIE G. A. WALLACE
 ALSTON & BIRD LLP
 1201 W. PEACHTREE ST
 ATLANTA, GA 30309
 (404) 881-7000

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SEONG BAE CHOI and CHRIS CHAN PARK, Plaintiff(s)	CASE NUMBER 2:09-cv-08143-AHM-FMO
v. TOYOTA MOTOR SALES, U.S.A., et al., Defendant(s).	<p align="center">APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE</p>

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is \$185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Kyle G.A. Wallace, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of Plaintiff Defendant: Toyota Motor Sales, U.S.A., Inc., et al by whom I have been retained.

My *out-of-state* business information is as follows:

<u>Alston & Bird LLP</u>		<i>Firm Name</i>
<u>1201 W. Peachtree Street</u>		<i>Street Address</i>
<u>Atlanta, GA 30309</u>	<u>kyle.wallace@alston.com</u>	<i>E-Mail Address</i>
<u>(404) 881-7000</u>	<u>(404) 881-7777</u>	<i>Fax Number</i>
<i>Telephone Number</i>		

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

<i>Title of Court</i>	<i>Date of Admission</i>
<u>See attached</u>	

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

<i>Case Number</i>	<i>Title of Action</i>	<i>Date of Application</i>	<i>Application Granted or Denied</i>

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

I designate Lisa Gilford as local counsel, whose business information is as follows:

Alston & Bird LLP
Firm Name

333 South Hope Street - 16th Floor
Street Address

Los Angeles, CA 90071
City, State, Zip

(213) 576-1114
Telephone Number

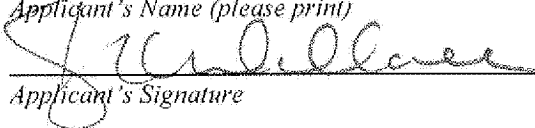
lisa.gilford@alston.com
E-Mail Address

(213) 576-1100
Fax Number

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

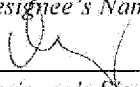
I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 16, 2009

Kyle G.A. Wallace
Applicant's Name (please print)

Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 18, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature
171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE (G-64 ORDER) ALONG WITH THIS APPLICATION.

KYLE G.A. WALLACE

[Georgia Bar No. 734167]

<u>Bar/Court</u>	<u>Date Admitted</u>
All State Courts of Georgia	2002
Supreme Court of Georgia	2004
Court of Appeals of Georgia	2004
US Court of Appeals – 11 th Circuit	2004
US District Court – Middle District of Georgia	2004
US District Court – Southern District of Georgia	2005
US District Court – Northern District of Georgia	2008



CERTIFICATE OF GOOD STANDING

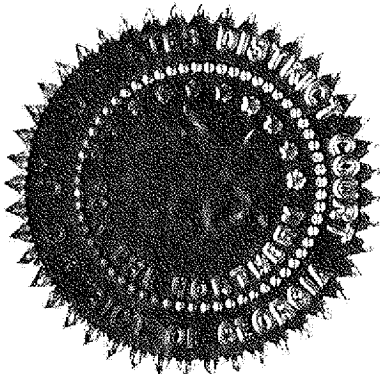
UNITED STATES OF AMERICA	}
	} ss.
NORTHERN DISTRICT OF GEORGIA	}

I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **KYLE G.A. WALLACE**, State Bar No. 734167, was duly admitted to practice in said Court on February 25, 2008, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.

JAMES N. HATTEN
CLERK OF COURT



By: *Jamee Green*
Jamee Green
Deputy Clerk

ALSTON & BIRD LLP
 1201 W. PEACHTREE ST
 ATLANTA, GA 30309
 (404) 881-7000

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SEONG BAE CHOI and CHRIS CHAN
 PARK,

Plaintiff(s)

v.

TOYOTA MOTOR SALES, U.S.A., et al.,

Defendant(s).

CASE NUMBER

2:09-cv-08143-AHM-FMO

**APPLICATION OF NON-RESIDENT
 ATTORNEY TO APPEAR IN A SPECIFIC CASE**

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is \$185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Cari K. Dawson, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of Plaintiff Defendant: Toyota Motor Sales, U.S.A., Inc., et al by whom I have been retained.

My *out-of-state* business information is as follows:

Alston & Bird LLP

Firm Name

1201 W. Peachtree Street

Street Address

Atlanta, GA 30309

cari.dawson@alston.com

E-Mail Address

City, State, Zip
(404) 881-7000

Telephone Number

(404) 881-7777

Fax Number

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

<i>Title of Court</i>	<i>Date of Admission</i>
<u>See attached</u>	_____
_____	_____
_____	_____
_____	_____

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

<i>Case Number</i>	<i>Title of Action</i>	<i>Date of Application</i>	<i>Application Granted or Denied</i>

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

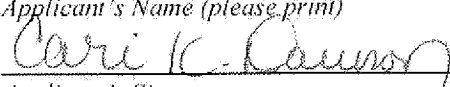
I designate Lisa Gilford as local counsel, whose business information is as follows:

<u>Alston & Bird LLP</u>		<i>Firm Name</i>
<u>333 South Hope Street - 16th Floor</u>		<i>Street Address</i>
<u>Los Angeles, CA 90071</u>	<u>lisa.gilford@alston.com</u>	<i>E-Mail Address</i>
<i>City, State, Zip</i>	<u>(213) 576-1114</u>	<i>Telephone Number</i>
	<u>(213) 576-1100</u>	<i>Fax Number</i>

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

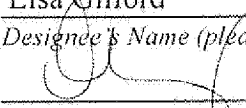
I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 18, 2009

Cari K. Dawson
Applicant's Name (please print)

Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 18, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature
171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE (G-64 ORDER) ALONG WITH THIS APPLICATION.

CARI K. DAWSON
[Georgia Bar No. 213490]

<u>Bar/Court</u>	<u>Date Admitted</u>
All State Courts of Georgia	
Supreme Court of the State of Georgia	1995
Court of Appeals of the State of Georgia	1995
United States District Court for the Northern District of Georgia	1995
U.S. Court of Appeals for the Fifth Circuit	1999
U.S. Court of Appeals for the Eleventh Circuit	1999
U.S. Court of Appeals for the Eighth Circuit	2000
United States District Court for the District of Vermont	2000
United States District Court, District of Colorado	2001
United States District Court for the Middle District of Georgia	2005
U.S. Court of Appeals for the Ninth Circuit	2006
Supreme Court of the United States	2006
U.S. Court of Appeals for the Third Circuit	2007
U.S. Court of Appeals for the Sixth Circuit	2008



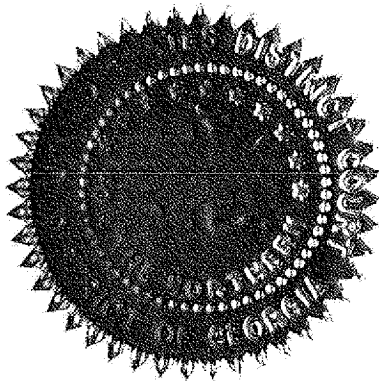
CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA	}
	} ss.
NORTHERN DISTRICT OF GEORGIA	}

I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **CARI K. DAWSON** , State Bar No. 213490, was duly admitted to practice in said Court on May 31, 1995, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.



JAMES N. HATTEN
CLERK OF COURT

By: *Jamee Green*
Jamee Green
Deputy Clerk

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SEONG BAE CHOI and CHRIS CHAN
PARK, as individuals, and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION;
TOYOTA MOTOR SALES, U.S.A., INC.,
and DOES DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08143 AHM
(FMOx)

**ORDER RE TIME FOR FILING OF
FIRST AMENDED COMPLAINT
AND DEFENDANTS' RESPONSE**

The parties having stipulated to the deadlines relating to the time for
filing the First Amended Complaint and Defendants' Response, and good cause
appearing therefore,

IT IS HEREBY ORDERED that the deadline is extended as follows:

Plaintiffs shall file a First Amended Complaint on or before **January 18,**

1 **2010.**

2 The Defendants shall Answer or otherwise respond to the First Amended
3 Complaint on or before **February 8, 2010.**

4 By so stipulating, Defendants do not waive any defenses with respect to
5 the amendment, or any other claim or issue raised by the First Amended Complaint.

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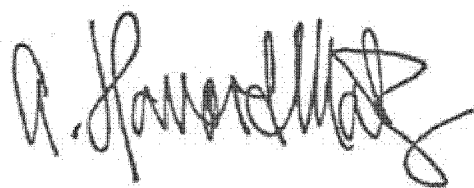
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Dated: January 04, 2010

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UNITED STATES DISTRICT JUDGE

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(FMOx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-08143-AHM-FMO

Seong Bae Choi et al v. Toyota Motor Corporation et al

Assigned to: Judge A. Howard Matz

Referred to: Magistrate Judge Fernando M. Olguin

Related Cases: [2:10-cv-00710-AHM-FMO](#)[8:10-cv-00105-AHM-FMO](#)[2:09-cv-08478-AHM-FMO](#)[2:10-cv-00947-AHM-FMO](#)[2:10-cv-01234-AHM-FMO](#)[2:10-cv-00849-AHM-FMO](#)[2:10-cv-00706-AHM-FMO](#)[2:10-cv-00799-AHM-FMO](#)

Cause: 28:1332 Diversity-Product Liability

Date Filed: 11/05/2009

Jury Demand: Plaintiff

Nature of Suit: 355 Motor Vehicle Prod.
Liability

Jurisdiction: Diversity

Plaintiff**Seong Bae Choi***as individuals, and on behalf of
themselves and all others similarly
situated*represented by **Andrea Bierstein**Hanly Conroy Bierstein Sheridan Fisher &
Hayes LLP

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ATTORNEY TO BE NOTICED

Plaintiff

Chris Chan Park

*as individuals, and on behalf of
themselves and all others similarly
situated*

represented by **Andrea Bierstein**
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Clinton B Fisher
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*ATTORNEY TO BE NOTICED***Edward Wonkyu Choi**

(See above for address)

*ATTORNEY TO BE NOTICED***Jae Kook Kim**

(See above for address)

*ATTORNEY TO BE NOTICED***Plaintiff****Sandra Reech***as an individual, an on behalf of herself
and all others similarly situated*represented by **Andrea Bierstein**

(See above for address)

*LEAD ATTORNEY**PRO HAC VICE**ATTORNEY TO BE NOTICED***Clinton B Fisher**

(See above for address)

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Daniel H Chang
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Edward Wonkyu Choi
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ATTORNEY TO BE NOTICED

Plaintiff

Donald Pritchett
*as an individual, and on behalf of himself
and all others similarly situated*

represented by **Andrea Bierstein**
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Daniel H Chang
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Edward Wonkyu Choi
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ATTORNEY TO BE NOTICED

Plaintiff

Un Jin Choi

*as an individual, and on behalf of herself
and all others similarly situated*

represented by **Andrea Bierstein**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

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Edward Wonkyu Choi
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ATTORNEY TO BE NOTICED

Plaintiff

Mary Ann Parker
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and all others similarly situated

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ATTORNEY TO BE NOTICED

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PRO HAC VICE
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(See above for address)

*ATTORNEY TO BE NOTICED***Edward Wonkyu Choi**

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ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

represented by **Cari K Dawson**

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 Email: mmallow@loeb.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

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

represented by **Cari K Dawson**
 (See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B Dickerson
 (See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G A Wallace
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa Gilford
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael L Mallow
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DOES

1 through 10

Date Filed	#	Docket Text
11/05/2009	<u>1</u>	COMPLAINT against Defendants Toyota Motor Sales, U.S.A., Inc., DOES 1 through 10, Toyota Motor Corporation.(Filing fee \$ 350 PAID) Jury Demanded, filed by plaintiffs Seong Bae Choi, Chris Chan Park.(car) Modified on 11/10/2009 (car). (ds). (Additional attachment(s) added on 11/12/2009: # <u>1</u> Civil Cover Sheet) (ds). (Entered: 11/10/2009)

11/05/2009	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Seong Bae Choi, Chris Chan Park (car) (ds). (Entered: 11/10/2009)
11/05/2009		20 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to Defendants Toyota Motor Sales, U.S.A., Inc., DOES 1 through 10, Toyota Motor Corporation. (car) (Entered: 11/10/2009)
11/09/2009	<u>4</u>	MINUTES IN CHAMBERS by Judge A. Howard Matz: The Court owns a 2000 Toyota Avalon XLS. The Court ORDERS Plaintiffs' counsel to specify whether such a vehicle is equipped with ETCS-i, and to do so by not later than Friday, November 13, 2009. (jp) (Entered: 11/10/2009)
11/10/2009	<u>3</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case has been assigned to the calendar of Judge A. Howard Matz (see document for further details). All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. (jp) (Entered: 11/10/2009)
11/12/2009	<u>5</u>	RESPONSE filed by Plaintiffs Seong Bae Choi, Chris Chan Park to Minutes of In Chambers Order/Directive - no proceeding held <u>4</u> (Wright, David) (Entered: 11/12/2009)
11/23/2009	<u>6</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Sales, U.S.A., Inc. answer now due 1/4/2010; Toyota Motor Corporation answer now due 1/4/2010, filed by Defendants Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation.(Mallow, Michael) (Entered: 11/23/2009)
11/30/2009	<u>7</u>	REQUEST to Substitute attorney Lisa Gilford in place of attorney Michael L. Mallow filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Attachments: # <u>1</u> Proposed Order Order on Request for Approval)(Mallow, Michael) (Entered: 11/30/2009)
11/30/2009	<u>8</u>	Notice of Withdrawal of Request to Substitute Attorney (G-01) <u>7</u> filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Mallow, Michael) (Entered: 11/30/2009)
11/30/2009	<u>9</u>	REQUEST to Substitute attorney Lisa Gilford in place of attorney Michael L. Mallow filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Attachments: # <u>1</u> Proposed Order)(Mallow, Michael) (Entered: 11/30/2009)
12/15/2009	<u>10</u>	PROOF OF SERVICE Executed by Plaintiffs Seong Bae Choi, Chris Chan Park, upon Toyota Motor Sales, U.S.A., Inc. served on 11/13/2009, answer due 1/4/2010. The Summons and Complaint were served by personal service, by Federal statute, upon Margaret Wilson, Authorized Agent for Service of Process. Due Dilligence declaration not attached. Original Summons not returned. (Wright, David) (Entered: 12/15/2009)

12/29/2009	<u>11</u>	APPLICATION for attorney Cari K. Dawson to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006333668 paid.) filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>12</u>	APPLICATION for attorney Derin B. Dickerson to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006333777 paid.) filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>13</u>	APPLICATION for attorney Kyle G.A. Wallace to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006333820 paid.) filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>14</u>	STIPULATION for Extension of Time to File Answer to 02/08/2010 filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Attachments: # <u>1</u> Proposed Order)(Gilford, Lisa) (Entered: 12/29/2009)
12/30/2009	<u>15</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Cari K Dawson on behalf of defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, designating Lisa Gilford as local counsel (PHV FEE PAID) <u>11</u> . (jp) (Entered: 12/30/2009)
12/30/2009	<u>16</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Derin B. Dickerson on behalf of defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, designating Lisa Gilford as local counsel (PHV FEE PAID) <u>12</u> . (jp) (Entered: 12/30/2009)
12/30/2009	<u>17</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Kyle G.A. Wallace on behalf of defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, designating Lisa Gilford as local counsel (PHV FEE PAID) <u>13</u> . (jp) (Entered: 12/30/2009)
01/04/2010	<u>18</u>	STIPULATION AND ORDER by Judge A. Howard Matz GRANTING Stipulation to Extend Time to respond to First amended complaint <u>14</u> : ORDER granting defendants Toyota Motor Sales, U.S.A., Inc. answer due 2/8/2010; Toyota Motor Corporation answer due 2/8/2010 by Judge A. Howard Matz. (se) (Entered: 01/04/2010)
01/14/2010	<u>19</u>	STIPULATION to Clarify Due Date for Filing First Amended Complaint, Re: Stipulation and Order, Order Extending Answer Due Deadline,, <u>18</u> , filed by Attorney Seong Bae Choi, Chris Chan Park. (Attachments: # <u>1</u> Proposed Order)(Kim, Jae) (Entered: 01/14/2010)
01/15/2010	<u>20</u>	ORDER by Judge A. Howard Matz GRANTING Stipulation to Clarify <u>19</u> Due Date for filing First Amended Complaint; Plaintiffs shall file First Amended Complaint by 1/19/10; defendants shall respond by 2/8/10. (se) (Entered: 01/15/2010)
01/19/2010	<u>21</u>	FIRST AMENDED COMPLAINT against Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and DOES; amending Complaint <u>1</u> ; filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker. Demand for Jury Trial. (mg) (jp). (Entered: 01/20/2010)
02/03/2010	<u>22</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. Motion set for hearing on 3/8/2010 at 10:00 AM before Judge A. Howard Matz. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Wright, David) (Entered: 02/03/2010)

02/03/2010	<u>23</u>	DECLARATION of Richard D. McCune in support of MOTION for Preliminary Injunction <u>22</u> filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13 part 1 of 2, # <u>14</u> Exhibit 13 part 2 of 2, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit 16, # <u>18</u> Exhibit 17, # <u>19</u> Exhibit 18, # <u>20</u> Exhibit 19, # <u>21</u> Exhibit 20, # <u>22</u> Exhibit 21, # <u>23</u> Exhibit 22, # <u>24</u> Proposed Order)(Wright, David) (Entered: 02/03/2010)
02/03/2010	<u>24</u>	NOTICE of Manual Filing filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker of Exhibits 1, 2, 6 and 21 to Declaration of Richard D. McCune in Support of Motion for Preliminary Injunction. (Wright, David) (Entered: 02/03/2010)
02/04/2010	<u>25</u>	APPLICATION for attorney Derek Y. Brandt to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006492111 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>26</u>	ORDER by Judge A. Howard Matz granting <u>25</u> Application to Appear Pro Hac Vice by Attorney Derek Y. Brandt on behalf of Plaintiff, designating Richard D. McCune as local counsel. (kbr) (Entered: 02/04/2010)
02/04/2010	<u>27</u>	APPLICATION for attorney Clinton B. Fisher to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006494653 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>28</u>	APPLICATION for attorney Paul J. Hanly, Jr. to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006494833 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>29</u>	APPLICATION for attorney Thomas I. Sheridan, III to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006495088 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>30</u>	ORDER by Judge A. Howard Matz granting <u>27</u> Application to Appear Pro Hac Vice by Attorney Clinton B. Fisher on behalf of Plaintiff, designating Richard D. McCune as local counsel. (kbr) (Entered: 02/04/2010)
02/04/2010	<u>31</u>	APPLICATION for attorney Mitchell M. Breit to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006495297 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>32</u>	APPLICATION for attorney Jayne Conroy to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006495524 paid.) filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>33</u>	APPLICATION for attorney Andrea Bierstein to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 09730000000006495642 paid.) filed by plaintiffs Seong Bae Choi,

		Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Proposed Order)(Wright, David) (Entered: 02/04/2010)
02/04/2010	<u>34</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Paul J. Hanly, Jr., on behalf of Plaintiff Seong Bae Choi, designating Richard D. McCune as local counsel <u>28</u> . (jp) (Entered: 02/04/2010)
02/05/2010	<u>35</u>	ORDER by Judge A. Howard Matz granting <u>33</u> Application to Appear Pro Hac Vice by Attorney Andrea Bierstein on behalf of Plaintiff, designating Richard D. McCune as local counsel. (kbr) (Entered: 02/05/2010)
02/05/2010	<u>36</u>	ORDER by Judge A. Howard Matz granting <u>32</u> Application to Appear Pro Hac Vice by Attorney Jayne Conroy on behalf of Plaintiff, Seong Bae Choi, designating Richard D. McCune as local counsel. (kbr) (Entered: 02/05/2010)
02/05/2010	<u>37</u>	ORDER by Judge A. Howard Matz granting <u>31</u> Application to Appear Pro Hac Vice by Attorney Mitchell M. Breit on behalf of Plaintiff, Seong Bae Choi, designating Richard D. McCune as local counsel. (kbr) (Entered: 02/05/2010)
02/05/2010	<u>38</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Thomas I. Sheridan, III., on behalf of plaintiff Seong Bae, designating Richard D. McCune as local counsel <u>29</u> . (jp) (Entered: 02/05/2010)
02/08/2010	<u>39</u>	NOTICE OF MOTION AND MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] filed by plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. Motion set for hearing on 3/8/2010 at 10:00 AM before Judge A. Howard Matz. (Wright, David) (Entered: 02/08/2010)
02/08/2010	<u>40</u>	DECLARATION of Richard D. McCune in support of MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] <u>39</u> filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Proposed Order)(Wright, David) (Entered: 02/08/2010)
02/08/2010	<u>41</u>	NOTICE OF MOTION AND MOTION to Dismiss Plaintiffs' First Amended Complaint filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. Motion set for hearing on 3/15/2010 at 10:00 AM before Judge A. Howard Matz. (Attachments: # <u>1</u> Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiffs' first Amended Complaint, # <u>2</u> Proposed Order)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	<u>42</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Plaintiffs' First Amended Complaint <u>41</u> filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Attachments: # <u>1</u> Exhibit Exh A to Request for Judicial Notice)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	<u>43</u>	Certification of Interested Parties filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, identifying Seong Bae Choi, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	<u>44</u>	DECLARATION of Richard D. McCune in support of MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] <u>39</u> [<i>CORRECTED</i>] filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra

		Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Proposed Order)(Wright, David) (Entered: 02/08/2010)
02/08/2010	<u>45</u>	NOTICE OF MOTION AND MOTION to Strike All Class Allegations From Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiffs' First Amended Complaint <u>41</u> filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. Motion set for hearing on 3/15/2010 at 10:00 AM before Judge A. Howard Matz. (Attachments: # <u>1</u> Memorandum of Law to Mtn to Strike, # <u>2</u> Proposed Order)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	<u>46</u>	APPENDIX filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. Re: MOTION to Dismiss Plaintiffs' First Amended Complaint <u>41</u> , MOTION to Strike All Class Allegations From Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiffs' First Amended Complaint <u>41</u> MOTION to Strike All Class Allegations From Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiffs' First Amended Complaint <u>41</u> <u>45</u> (Attachments: # <u>1</u> Exhibit 1 to Appendix of Non-Federal Out-of State Authorities, # <u>2</u> Exhibit 2 to Appendix of Non-Federal Out-of State Authorities, # <u>3</u> Exhibit 3 to Appendix of Non-Federal Out-of State Authorities, # <u>4</u> Exhibit 4 to Appendix of Non-Federal Out-of State Authorities, # <u>5</u> Exhibit 5 to Appendix of Non-Federal Out-of State Authorities, # <u>6</u> Exhibit 6 to Appendix of Non-Federal Out-of State Authorities, # <u>7</u> Exhibit 7 to Appendix of Non-Federal Out-of State Authorities, # <u>8</u> Exhibit 8 to Appendix of Non-Federal Out-of State Authorities, # <u>9</u> Exhibit 9 to Appendix of Non-Federal Out-of State Authorities, # <u>10</u> Exhibit 10 to Appendix of Non-Federal Out-of State Authorities, # <u>11</u> Exhibit 11 to Appendix of Non-Federal Out-of State Authorities, # <u>12</u> Exhibit 12 to Appendix of Non-Federal Out-of State Authorities, # <u>13</u> Exhibit 13 to Appendix of Non-Federal Out-of State Authorities, # <u>14</u> Exhibit 14 to Appendix of Non-Federal Out-of State Authorities, # <u>15</u> Exhibit 15 to Appendix of Non-Federal Out-of State Authorities, # <u>16</u> Exhibit 16 to Appendix of Non-Federal Out-of State Authorities, # <u>17</u> Exhibit 17 to Appendix of Non-Federal Out-of State Authorities, # <u>18</u> Exhibit 18 to Appendix of Non-Federal Out-of State Authorities, # <u>19</u> Exhibit 19 to Appendix of Non-Federal Out-of State Authorities, # <u>20</u> Exhibit 20 to Appendix of Non-Federal Out-of State Authorities, # <u>21</u> Exhibit 21 to Appendix of Non-Federal Out-of State Authorities, # <u>22</u> Exhibit 22 to Appendix of Non-Federal Out-of State Authorities, # <u>23</u> Exhibit 23 to Appendix of Non-Federal Out-of State Authorities, # <u>24</u> Exhibit 24 to Appendix of Non-Federal Out-of State Authorities, # <u>25</u> Exhibit 25 to Appendix of Non-Federal Out-of State Authorities, # <u>26</u> Exhibit 26 to Appendix of Non-Federal Out-of State Authorities, # <u>27</u> Exhibit 27 to Appendix of Non-Federal Out-of State Authorities, # <u>28</u> Exhibit 28 to Appendix of Non-Federal Out-of State Authorities, # <u>29</u> Exhibit 29 to Appendix of Non-Federal Out-of State Authorities, # <u>30</u> Exhibit 30 to Appendix of Non-Federal Out-of State Authorities, # <u>31</u> Exhibit 31 to Appendix of Non-Federal Out-of State Authorities, # <u>32</u> Exhibit 32 to Appendix of Non-Federal Out-of State Authorities, # <u>33</u> Exhibit 33 to Appendix of Non-Federal Out-of State Authorities, # <u>34</u> Exhibit 34 to Appendix of Non-Federal Out-of State Authorities, # <u>35</u> Exhibit 35 to Appendix of Non-Federal Out-of State Authorities, # <u>36</u> Exhibit 36 to Appendix of Non-Federal Out-of State Authorities, # <u>37</u> Exhibit 37 to Appendix of Non-Federal Out-of State Authorities, # <u>38</u> Exhibit 38 to Appendix of Non-Federal Out-of State Authorities, # <u>39</u> Exhibit 39 to Appendix of Non-Federal Out-of State Authorities, # <u>40</u> Exhibit 40 to Appendix of Non-Federal Out-of State Authorities, # <u>41</u> Exhibit 41 to Appendix of

		Non-Federal Out-of State Authorities, # <u>42</u> Exhibit 42 to Appendix of Non-Federal Out-of State Authorities, # <u>43</u> Exhibit 43 to Appendix of Non-Federal Out-of State Authorities)(Gilford, Lisa) (Entered: 02/08/2010)
02/09/2010	<u>47</u>	EX PARTE APPLICATION to Continue Hearing from March 8, 2010 to April 5, 2010 Re: MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] <u>39</u> , MOTION for Preliminary Injunction <u>22</u> filed by Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation. (Attachments: # <u>1</u> Declaration of Lisa Gilford, # <u>2</u> Proposed Order)(Gilford, Lisa) (Entered: 02/09/2010)
02/10/2010	<u>48</u>	OPPOSITION to EX PARTE APPLICATION to Continue Hearing from March 8, 2010 to April 5, 2010 Re: MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] <u>39</u> , MOTION for Preliminary Injunction <u>22</u> EX PARTE APPLICATION to Continue Hearing from March 8, 2010 to April 5, 2010 Re: MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] MOTION to Certify Class [<i>FED.R.CIV.P. 23; L.R. 23-3</i>] <u>39</u> , MOTION for Preliminary Injunction <u>22</u> <u>47</u> filed by Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker. (Attachments: # <u>1</u> Affidavit Declaration of David C, Wright)(Wright, David) (Entered: 02/10/2010)
02/11/2010	<u>49</u>	MINUTES (IN CHAMBERS): ORDER by Judge A. Howard Matz: granting <u>47</u> Ex Parte Application to Continue. The Court CONTINUES the hearing dates on four motions <u>22</u> , <u>39</u> , <u>41</u> and <u>45</u> to March 22, 2010 at 10:00 a.m. (kbr) (Entered: 02/11/2010)
02/16/2010	<u>50</u>	NOTICE of Association of Counsel Filed by Plaintiffs Seong Bae Choi, Un Jin Choi, Chris Chan Park, Mary Ann Parker, Donald Pritchett, Sandra Reech (Wright, David) (Entered: 02/16/2010)
02/17/2010	<u>51</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case have been assigned to the calendar of Judge A. Howard Matz. (kbr) (Entered: 02/17/2010)

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PACER Login:	wb0242	Client Code:	056707-383593
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Billable Pages:	17	Cost:	1.36

**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: TOYOTA SUDDEN UNINTENDED) MDL Docket No. _____
ACCELERATION)
)

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR TRANSFER,
COORDINATION AND CONSOLIDATION PURSUANT TO 28 U.S.C. §1407**

Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker submit this Memorandum of Law in support of their petition, pursuant to 28 U.S.C. 1407 and Rule 7.1 of the Rules of the Judicial Panel on Multidistrict Litigation, for transfer and consolidation of the sixteen actions listed on Schedule of Actions to the petition. Each of the actions listed in the Schedule of Actions arises from damages caused by certain Toyota and Lexus vehicles equipped with ETCS-i, which have yielded reports of at least 11 deaths and over 200 injuries caused by the unintended acceleration of the vehicles. These actions satisfy all of the requirements for transfer: they are “pending in different districts” and they involve “common questions of fact.” *See* 28 U.S.C. § 1407(a). Moreover, their transfer and consolidation will further the “convenience of parties and witnesses” and will “promote the just and efficient conduct of the litigation,” *see* § 1407(a), by (1) eliminating duplicative discovery; (2) preventing conflicting pretrial rulings; (3) conserving judicial resources; (4) reducing the costs of litigation for the parties involved; and (5) allowing the cases to proceed more efficiently. These efficiencies will especially be realized if the consolidated cases are transferred to the Central District of California, where six of them currently are pending, and assigned to Judge A. Howard Matz as the transferee judge.

BACKGROUND OF THE LITIGATION

These are consumer class actions and mass tort motor vehicle products liability lawsuits. The sixteen actions listed in Schedule of Actions have been filed by plaintiffs who allege damages from their experience of the unexplained sudden and dangerous acceleration of their Toyota or Lexus vehicle. Plaintiffs in the various actions contend that defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and other related entities (collectively, "Toyota") are liable for these injuries because Toyota (1) by its acts and practices as described in the complaints constituted unlawful, fraudulent, and unfair business acts and practices in violation of various consumer fraud statutes; (2) made material misrepresentations to consumers which caused them to justifiably rely on such misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to purchase or lease the defective subject vehicles; and (3) impliedly and/or expressly warranted that the subject vehicles were not unreasonably dangerous and were safe when used as designed by Defendants.

The cases are pending in nine different federal district courts around the country. The highest concentration of cases is in the Central District of California, in which six cases are pending. The cases are of two types: (1) class actions on behalf of Toyota owners seeking damages and/or injunctive relief for breaches of warranty and/or fraudulent, deceptive or unfair practices relating to SUA; and (2) personal injury actions arising from accidents caused by SUA that resulted in injuries or death. The *Choi* action¹, in which Petitioners are the plaintiffs, is a

¹ *Choi et al v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, Case No. 2:09-08143 AHM (FMOx). The full names of all of the *Choi* Plaintiffs are set forth in the Schedule of Actions.

class action seeking injunctive relief and damages on behalf of a California-wide and a nation-wide class of Toyota owners; it was the first of the class actions to be filed. Petitioners have filed a motion for a preliminary injunction in the *Choi* action. The other cases are believed to be in preliminary stages of litigation. Petitioners now seek to consolidate all of these cases for the remainder of pretrial proceedings, in the interest of justice, economy, and efficiency.

ARGUMENT

I. THESE ACTIONS WARRANT TRANSFER AND CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

Consolidation of the Toyota cases under §1407 is proper because these cases involve common questions of fact and consolidation will promote the convenience of witnesses and parties and the just and efficient conduct of these actions.

First, it is clear that there are common questions of fact. All of the plaintiffs were owners of the subject vehicles that are subject to unintended acceleration. The factual bases for the various claims – including defendants’ full awareness of the recurring problem of sudden unintended acceleration in plaintiffs’ Toyota and Lexus vehicles equipped with ETCS-i and failure to incorporate important failsafe measures critical to assisting a driver in maintaining control of the vehicle during a sudden unintended acceleration event – are common to all the cases. These common issues satisfy the “common questions of fact” requirement of § 1407. *See Daffin v. Ford Motor Co.*, 458 F.3d 549 (J.P.M.L. 2006) (finding whether the question of whether the throttle body was defective was common to all van owners because they all had the same throttle body and warranty, and the legal question of whether the warranty contract was properly read to contain a promise to repair the type of common “defect” in all throttle body assemblies, regardless of whether or not manifested during the warranty period, was also common to the class); *see also In re Zyprexa Products Liability Litigation*, (J.P.M.L. Apr. 14,

2004) (finding common issues warranting transfer and consolidation because all the actions “share allegations concerning the safety of Zyprexa”); *In re Ford Motor Co. Crown Victoria Police Interceptor Products Liability Litigation*, 229 F.Supp.2d 1377, 1378 (J.P.M.L. 2002) (explaining that common factual questions arise because all actions focus on allegations regarding the design and placement of the car’s fuel tanks); *In re Inter-op Hip Prosthesis Liability Litigation*, 204 F.R.D. 330 (D.C.Ohio 2001) (finding that all the claims involved questions of whether the hip-implant components had a defect, whether the manufacturer adequately tested the safety of the product, when the manufacturer learned of the defect, and whether it took timely action upon learning that the defect might exist, and questions of fact and law idiosyncratic to each plaintiff did not outweigh questions common to the class members); *In re General Motors Corp. Dex-Cool Products Liability Litigation*, 293 F.Supp.2d 1381, 1382 (J.P.M.L. 2003) (transfer ordered where all actions involved “allegations that the Dex-Cool engine coolant in certain GM vehicles cause significant damage to the vehicles and/or did not perform as warranted.”); *In re Heritage Bonds Litigation*, 217 F.Supp.2d 1369, 1370 (J.P.M.L. 2002) (“transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer”). These cases seek to impose liability based on the alleged defective design or manufacture of the accelerators and/or throttle control systems used in the all of the subject vehicles. Thus, there will be overlapping factual questions and discovery related to the design, manufacture, testing, installation, and performance of the accelerators and related components. As is true in the other motor vehicle product liability cases consolidated by this Panel, the common questions here can more efficiently be addressed in a coordinated and consolidated proceeding, rather than being litigated multiple times, in multiple forums around the country.

Second, as this Panel has noted in consolidating other class action cases, centralization of pretrial proceedings in such cases is necessary “in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings.” *In re A. H. Robins CO., INC. ‘Dalkon Shield’ IUD Products Liability Litigation*, 406 F.Supp 540, 542 (J.P.M.L. 1975); accord *In re Zyprexa Products Liability Litigation*, MDL 1596, *slip op.* (J.P.M.L. Apr. 14, 2004); *In re Cooper Tire & Rubber Co. Tires Products Liability Litigation*, 2001 WL 253115, *3 (J.P.M.L. 2001) (“Motion practice and relevant discovery will overlap substantially in each action. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent rulings, and conserve the resources of the parties, their counsel and the judiciary.”) Given the number of motor vehicle product liability cases which this Panel has coordinated in recent years, there appears little doubt about the propriety of coordinating and consolidating the litigation in this case. Like other motor vehicle product liability cases, the Toyota cases involve a single product alleged to have damaged numerous people in essentially the same way. There is a groundswell of federal litigation already on file, and anticipated in this case, and the number and similarity of cases calls for consolidated pre-trial proceedings. Extensive duplicative discovery will result if these actions are not consolidated and coordinated. Consolidation will efficiently and effectively utilize judicial resources as well as the resources of the parties.

Without consolidation and transfer, at least nine federal jurisdictions (and, most likely, more, as additional cases are filed), will be making individual decisions on similar issues of fact and law that apply to these cases. This will waste unnecessarily the time and resources of many judges and their staffs. Furthermore, these rulings will be duplicative, as they will be made on the same issues in many courts. Finally, there is a strong possibility that the various courts will rule inconsistently on the same issues. The risk of potentially inconsistent pretrial rulings is an

especially important factor given that these are putative class actions. The Panel has “consistently held that transfer of actions under section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists.” *In re Sugar Indus. Antitrust Litigation*, 395 F.Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Mutual Funds Sales Anti-Trust Litigation*, 361 F.Supp 638, 639-40 (J.P.M.L. 1973) (“[W]e have frequently held that the possibility for conflicting class determinations under [Fed.R.Civ.P. 23] is an important factor favoring transfer of all actions to a single district”).

Petitioners submit that consolidation and coordination of the Toyota cases is necessary to prevent duplicative litigation around the country of cases alleging the same injury from a single product.

II. THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA IS THE MOST APPROPRIATE FORUM FOR THE TOYOTA CASES

The Central District of California is the most appropriate transferee forum for holding consolidated pretrial proceedings of these actions because (1) Toyota’s U.S. headquarters are located in this district; (2) the *Choi* action, which is pending in the Central District of California and was the first class action filed and is further advanced than the other cases; and (3) the Central District of California has more of these cases on file than any other district, which would add to its familiarity in becoming the transferee venue to litigate all other pending and future Toyota unintended acceleration cases.

In *In re Phenylpropanolamine Products Liability Litigation*, this Panel held:

Given the range of locations of parties and witnesses in this docket, the geographic dispersal of current and anticipated constituent actions, and the wide array already of suggested transferee districts, it is clear that any one of a large number of districts would qualify as an appropriate transferee forum for this litigation nationwide in scope. In concluding that the Western District of Washington is the appropriate forum for this docket, we note that centralization in 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.

MDL 1407, *slip op.* (J.P.M.L. Aug. 28, 2001). Petitioners believe the factors described for the Western District of Washington, in *In re Phenylpropanolamine*, apply equally well, if not better, to the Central District of California in this litigation.

First, this Panel often considers as a relevant factor the situs of the first filed action in determining the appropriate venue for an MDL proceeding. See *In re Ortho Evra Products Liability Litigation*, 2006 WL 538724 (J.P.M.L. 2006) (transferee district contained the first filed action which was progressing well); *In re Veeco Instruments Inc., Securities Litigation*, 387 F.Supp.2d 1365, 1366 (J.P.M.L. 2005) (selecting the Southern District of New York because it contained the first-filed action and has favorable caseload statistics); *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, 398 F.Supp.2d 1365, 1367 (J.P.M.L. 2005) (selecting the Eastern District of Michigan in part because it contained the first-filed action). The *Choi* action, filed on November 5, 2009, is the first-filed of the sixteen unintended accelerated actions and is progressing on schedule. This Panel also considers venues where the cases are more procedurally advanced. See *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litigation*, 484 F.Supp.2d 1355 (J.P.M.L. 2007) (although either suggested district was appropriate, Panel chose Central District of California because action located there appeared slightly broader and more procedurally advanced). Here, the Petitioners filed an Amended Complaint on January 19, 2010, and subsequently filed their motion for a preliminary injunction on February 3, 2010 seeking expansion of Defendants' current recalls of Toyota subject vehicles at issue in these cases.

Second, six of the sixteen cases currently filed have been filed in the Central District of California. No other district has more than three.² Thus, among federal district courts, the Central District of California is already the venue holding the largest number of unintended acceleration cases at this time. This Panel has found the Central District of California to be the appropriate venue for litigation when one or more actions are already pending there. *See In re Capital One Bank Credit Card Terms Litigation*, 201 F.Supp.2d 1377 (J.P.M.L. 2002) (Central District of California most appropriate transferee forum as one action and one potential tag-along already were pending there). The same reasoning applies here with even greater force because of the larger number of cases pending in the Central District of California. Two of these cases have been assigned to Judge A. Howard Matz; no other judge in the Central District has more than more. His familiarity with these cases will make him the best suited to be the transferee judge.

Finally, the Central District of California is located in the City of Los Angeles, California, which is well served as a transportation hub. Los Angeles International Airport is one of the busiest airports in the world, serving 88 airlines through nine terminals. Moreover, the Toyota defendants conduct substantial business in all Counties within the State of California and Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), has its principal place of business located at 19001 South Western Avenue, Torrance, CA 90501, which is approximately 18 miles from the Western Division - Spring Street Courthouse of the Central District of California. This Panel has transferred cases where the defendant's headquarters was located in the same district for venue transfer because of the convenience and likelihood of defendant's headquartered site containing documents and witnesses. *See In re Express Scripts, Inc., Pharmacy Benefits*

² Three cases are pending in the Eastern District of Louisiana. All three were filed on January 29, 2010 by the same law firm and seek substantially overlapping relief.

Management Litigation, 368 F.Supp.2d 1356 (J.P.M.L. 2005); *In re Thaxton Group Inc. Secs. Litigation*, 323 F.Supp.2d 1374 (J.P.M.L. 2004).

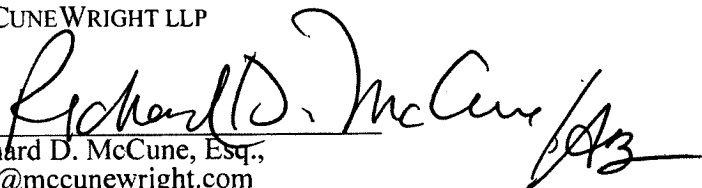
CONCLUSION

For the foregoing reasons, this Panel should grant the Petition for transfer and consolidation of the Toyota cases to the United States District Court for the Central District of California before the Honorable A. Howard Matz.

Dated: February 5, 2010

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL-_____ – TOYOTA SUDDEN UNINTENDED ACCELERATION

SCHEDULE OF ACTIONS

<u>CASE CAPTION</u>	<u>COURT</u>	<u>CIVIL ACTION NO.</u>	<u>JUDGE</u>	<u>CASE TYPE</u>
1. Plaintiffs: Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	C.D. California	2:09-cv-08143	A. Howard Matz	Class action
2. Plaintiffs: Eric Kmetz and Joe Morris Defendants: Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	C.D. California	2:09-cv-08478	A. Howard Matz	Class action
3. Plaintiff: Heather A. Lane Defendants: Toyota Motor Sales, U.S.A., Inc.	C.D. California	2:09-cv-09158	Fernando M. Olguin	Class action
4. Plaintiff: Dale Baldiseri 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.	C.D. California	2:09-cv-09386	Gary A. Feess	Class action
5. Plaintiff: Roz Schwartz Defendants: Toyota Motor Sales USA Inc, Toyota Motor Corp	C.D. California	2:10-cv-00710	Ronald S. W. Lew	Class action

6. Plaintiffs: Joseph Hauter and Frank Palomares Defendants: Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	C.D. California	8:10-cv-00105	Cormac J. Carney	Class action
7. Plaintiff: Michelle Lynch Defendants: Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc.	M.D. Florida	8:10-cv-00326	Steven D. Merryday	Class action
8. Plaintiffs: Lata Mehta, Jim Heidenreich Defendants: Toyota Motor North America Inc, Toyota Motor Sales Usa Inc	N.D. Florida	4:10-cv-00035	Robert L Hinkle	Class action
9. Plaintiff: Jonathan Gellman Defendants: Toyota Motor Sales U.S.A., Inc.	S.D. Florida	1:10-cv-20006	Marcia G. Cooke	Class action
10. Plaintiffs: Daniel Weimer, Jr., Colby Wenck and Ann Cavalier Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00219	Ivan L. R. Lemelle	Class action
11. Plaintiff: Amanda R. Maillho Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00279	Mary Ann Vial Lemmon	Class action

12. Plaintiff: Gary T. Brock Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc.	E.D. Louisiana	2:10-cv-00281	Eldon E. Fallon	Class action
13. Plaintiffs: Robert Elmes Defendants: Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	W.D. Penn.	2:2008cv01300	Alan N. Bloch	Personal Injury
14. Plaintiff: Linda Alford Wooten Defendants: Toyota Motor North America Inc, Toyota Motor Engineering & Manufacturing North America Inc, Toyota Motor Manufacturing Kentucky Inc, Toyota Motor Sales USA Inc, Toyota Motor Corporation	D. South Carolina	3:10-cv-00229	Matthew J Perry, Jr	Class action
15. Plaintiffs: Albert A. Pena, III and Sylvia Pena Defendants: Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	S.D. Texas	2:10-cv-00037	Janis Graham Jack	Class action
16. Plaintiffs: Michael Graves, Michael C. Graves and 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	S.D. West Virginia	2:09-cv-01247	Joseph R. Goodwin	Class action

**BEFORE THE JUDICIAL PANEL
OF MULTIDISTRICT LITIGATION**

IN RE:

MDL DOCKET No. _____

TOYOTA VEHICLES UNINTENDED
ACCELERATION PRODUCTS
LIABILITY LITIGATION

APPENDIX OF COMPLAINTS AND DOCKET SHEETS

**BEFORE THE JUDICIAL PANEL
OF MULTIDISTRICT LITIGATION**

IN RE:

MDL DOCKET No. _____

TOYOTA VEHICLES UNINTENDED
ACCELERATION PRODUCTS
LIABILITY LITIGATION

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge	Exhibit
<p>Plaintiffs Seong Bae Choi and Chris Chan Park, as individuals, and on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10</p>	C.D. California	09-cv-08143	Judge A. Howard Matz	A
<p>Plaintiffs Eric Kmetz and Joe Morris, on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p>	C.D. California	09-cv-08478	Judge A. Howard Matz	B
<p>Plaintiff Heather A. Lane, individually and on behalf of all others similarly situated</p> <p>Defendant Toyota Motor Sales, U.S.A., Inc., a California corporation</p>	C.D. California	09-cv-09158	Judge Gary A. Feess	C

<p>Plaintiff Dale Baldisseri, on behalf of himself and all others similarly situated and the general public</p> <p>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.</p>	C.D. California	09-cv-09386	Judge Gary A. Feess	D
<p>Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated</p> <p>Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10</p>	C.D. California	10-cv-00105	Judge Cormac J. Carney	E
<p>Plaintiffs Jonathan Gellman, an individual, on behalf of himself and all others similarly situated</p> <p>Defendants Toyota Motor Sales, USA, Inc., a California corporation</p>	S.D. Florida	10-cv-20006	Judge Marcia G. Cooke	F
<p>Plaintiffs Michael Graves, and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated</p> <p>Defendants Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia corporation; Toyota Motor North America Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation;</p>	S.D. West Virginia	09-cv-1247	Judge Joseph R. Goodwin	G

Toyota Motor Sales U.S.A., Inc., a California Corporation; and Toyota Motor Corporation, a Japanese corporation				
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Exhibit A

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 SEONG BAE CHOI and CHRIS CHAN PARK,
 8 on behalf of themselves and all others similarly situated

9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 09 - 08143

13 SEONG BAE CHOI and CHRIS CHAN
 14 PARK, as individuals, and on behalf of
 themselves and all others similarly situated,

Case No.:

AHM

Judge Assigned:

FMOx

Plaintiffs,

CLASS ACTION COMPLAINT

v.

17 TOYOTA MOTOR CORPORATION,
 18 TOYOTA MOTOR SALES, U.S.A., INC.,
 and DOES 1 through 10,

Defendants.

1. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17200, ET SEQ.]
2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792]
3. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE [SONG-BEVERLY CONSUMER WARRANTY ACT, CAL. CIV. CODE § 1792.2]
4. VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17500, ET SEQ.]

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiffs SEONG BAE CHOI and CHRIS CHAN PARK, as individuals, on behalf
2 of themselves and all others similarly situated (i.e., the members of the various Plaintiff
3 Classes described and defined, infra), herein alleges as follows:

4 **I**

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction of this action under the Class Action
7 Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of
8 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain
9 members of the class are citizens of a different state than any defendant as required by 28
10 U.S.C. § 1332(d)(2).

11 2. Venue as to Defendants is proper in this judicial district because Defendant
12 TOYOTA MOTOR SALES, USA, INC. is headquartered in Los Angeles County,
13 California, and Plaintiffs purchased vehicles in, and reside in, Los Angeles County,
14 California.

15 **II**

16 **GENERAL ALLEGATIONS**

17 3. Plaintiff SEONG BAE CHOI is a resident of the city of Artesia, Los
18 Angeles County, California.

19 4. Plaintiff CHRIS CHAN PARK is a resident of Los Angeles County,
20 California.

21 5. Defendant, TOYOTA MOTOR CORPORATION ("TMC"), is, and at all
22 relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi
23 Prefecture, Japan.

24 6. Defendant, TOYOTA MOTOR SALES, U.S.A, INC. ("TMS"), is, and at all
25 relevant times was, a California corporation with its principle place of business in Los
26 Angeles County, California.

27 7. The above-named Defendants are collectively referred to as the "Toyota
28 Defendants."

1 15. Plaintiff SEONG BAE CHOI is the owner of a 2004 Toyota Camry that he
2 purchased new from Longo Toyota, located in the city of El Monte, Los Angeles County,
3 California.

4 16. Plaintiff's Toyota Camry is designed, manufactured, and sold with Toyota's
5 ETCS-i.

6 17. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
7 unintended accelerations while in the process of applying his brakes, resulting in engine
8 revving and forward lurching of the vehicle.

9 18. Plaintiff CHRIS CHAN PARK is the owner of a 2008 FJ Cruiser that he
10 purchased new from Long Beach Toyota, located in the city of Long Beach, Los Angeles
11 County, California.

12 19. Plaintiff's Toyota FJ Cruiser is designed, manufactured, and sold with
13 Toyota's Electronic "ETCS-i.

14 20. On numerous occasions, Plaintiff experienced the vehicle undergo sudden
15 unintended accelerations while in the process of applying his brakes, resulting in engine
16 revving and forward lurching of the vehicle.

17 **The Toyota Defendants' Development of ETCS-i**

18 21. Beginning in 1998 and continuing to the present, Defendants designed,
19 manufactured, distributed, and sold certain automobiles equipped with Electronic
20 Throttle Control System with Intelligence ("ETCS-i").

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

25 23. Initially, Defendants designed their vehicle with both an electronic throttle
26 control and a redundant mechanical linkage between the gas pedal and the engine throttle
27 control as a failsafe in the event of a sudden unintended acceleration. This failsafe
28

1 system would disconnect the ETCS-i and automatically allow the throttle to be controlled
2 by the mechanical linkage.

3 24. Beginning in or about 2001, however, Defendants designed, manufactured,
4 distributed, and sold Toyota and Lexus automobiles equipped with ETCS-i without any
5 redundant mechanical linkage between the gas pedal and the engine throttle control.

6 **The Danger of Sudden Unintended Acceleration**

7 25. Plaintiffs allege that Toyota and Lexus vehicles equipped with ETCS-i are
8 defective and unsafe in that such vehicles are susceptible to incidents of sudden
9 unintended acceleration rendering such vehicles uncontrollable.

10 26. Plaintiffs further allege that Toyota and Lexus vehicles equipped with
11 ETCS-i are defective and unsafe in that the Toyota Defendants failed to incorporate
12 important failsafe measures critical to assisting a driver in maintaining control of the
13 vehicle during a sudden unintended acceleration event.

14 27. One such failsafe measure is a computer algorithm that will direct the
15 ETCS-i to automatically reduce the engine to idle when the brakes are being applied
16 while the throttle is an open position. This failsafe measure has been incorporated by
17 other automobile manufacturers in vehicles designed with electronic throttle control for
18 years.

19 28. Plaintiffs allege on information and belief that the Toyota Defendants have
20 been fully aware of the recurring problem of sudden unintended acceleration in their
21 Toyota and Lexus vehicles equipped with ETCS-i.

22 **Defendants' Knowledge of the Sudden Unintended Acceleration Danger**

23 29. Plaintiffs allege on information and belief that since the introduction of
24 ETCS-i, more than 2,000 complaints of sudden unintended acceleration have been made
25 by Toyota and Lexus owners to Toyota and government agencies.

26 30. Plaintiffs further allege on information and belief that sudden unintended
27 accelerations in Toyota and Lexus vehicles equipped with ETCS-i have resulted in
28 automobile accidents causing 16 deaths and 243 injuries.

1 Specifically excluded from this Class are all persons who have suffered, or possess
2 a right of action for, any personal injury or wrongful death as a result of sudden
3 unintended acceleration. Also excluded from this class is any entity in which Defendant
4 has a controlling interest, and officers or directors of Defendants. Plaintiffs, and those
5 persons similarly situated as described in the preceding paragraph, may be collectively
6 referred to herein as the "National Class Plaintiffs."

7 38. This action is brought as a class action and may properly be so maintained
8 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
9 Plaintiffs reserve the right to modify the "California Class" and the "National Class"
10 definitions and the class period based on the results of discovery.

11 39. **Numerosity of the "California Class" and "National Class"** – The
12 members of the "California Class" and the "National Class" are so numerous that their
13 individual joinder is impracticable. Plaintiffs are informed and believe that there are at
14 least hundreds of thousands of members in the classes. Because the class members may
15 be identified through business records regularly maintained by the Toyota Defendants
16 and its employees and agents, and through the records of public agencies, the number and
17 identities of class members can be ascertained. Members of the Classes can be notified
18 of the pending action by e-mail, mail and supplemented by published notice, if necessary.

19 40. **Existence and Predominance of Common Questions of Fact and Law** –
20 There are questions of law and fact common to both Classes. These questions
21 predominate over any questions affecting only individual class members. These common
22 legal and factual issues include, but are not limited to:

- 23 a. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
24 when used as designed because the ETCS-i may cause sudden unintended
25 acceleration.
26 b. Whether Toyota and Lexus vehicles equipped with ETCS-i are dangerous
27 when used as designed because the ETCS-i fails to incorporate critical
28

1 failsafe measures designed to assist the driver in maintaining control of
2 the vehicle in the event of a sudden unintended acceleration.

- 3 c. Whether the Toyota Defendants knew during the time that it sold Toyota
4 and Lexus vehicles equipped with ETCS-i that such vehicles were
5 susceptible to sudden unintended acceleration when used as designed.
6 d. Whether the Toyota Defendants' conduct as described above constitutes
7 unlawful, unfair, or fraudulent business acts or practices in violation of
8 Cal. Bus. & Prof. Code § 17200 et seq.;
- 9 e. Whether Toyota and Lexus vehicles equipped with ETCS-i are
10 unreasonably dangerous, constituting a breach of implied warranty;
11 f. Whether Toyota and Lexus vehicles equipped with ETCS-i are not fit for
12 their intended use, constituting a breach of implied warranty.

13 41. **Typicality** – The claims of the representative Plaintiffs are typical of the
14 claims of the members of both the “California Class” and the “National Class”.
15 Plaintiffs, like all other members of the Classes, have sustained damages arising from
16 Defendants’ violations of the laws, as alleged herein. The representative Plaintiffs and
17 the members of the Classes were and are similarly or identically harmed by the same
18 unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in
19 by Defendants.

20 42. **Adequacy** – The representative Plaintiffs will fairly and adequately
21 represent and protect the interests of the Class members and have retained counsel who
22 are experienced and competent trial lawyers in complex litigation and class action
23 litigation. There are no material conflicts between the claims of the representative
24 Plaintiffs and the members of the Classes that would make class certification
25 inappropriate. Counsel for the Classes will vigorously assert the claims of all Class
26 members.

27 43. **Predominance and Superiority** – This suit may be maintained as a class
28 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact

1 common to the Classes predominate over the questions affecting only individual
2 members of the Classes and a class action is superior to other available means for the fair
3 and efficient adjudication of this dispute. The damages suffered by individual class
4 members are small compared to the burden and expense of individual prosecution of the
5 complex and extensive litigation needed to address Defendants' conduct. Further, it
6 would be virtually impossible for the members of the Classes to individually redress
7 effectively the wrongs done to them. Even if Class members themselves could afford
8 such individual litigation, the court system could not. In addition, individualized
9 litigation increases the delay and expense to all parties and to the court system resulting
10 from complex legal and factual issues of the case. Individualized litigation also presents
11 a potential for inconsistent or contradictory judgments. By contrast, the class action
12 device presents far fewer management difficulties; allows the hearing of claims which
13 might otherwise go unaddressed because of the relative expense of bringing individual
14 lawsuits; and provides the benefits of single adjudication, economies of scale, and
15 comprehensive supervision by a single court.

16 44. The Class Plaintiffs contemplate the eventual issuance of notice to the
17 proposed Class members setting forth the subject and nature of the instant action. Upon
18 information and belief, Defendants' own business records and electronic media can be
19 utilized for the contemplated notices. To the extent that any further notices may be
20 required, the Class Plaintiffs would contemplate the use of additional media and/or
21 mailings.

22 45. In addition to meeting the statutory prerequisites to a Class Action, this
23 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
24 Rules of Civil Procedure, in that:

25 a. Without class certification and determination of declaratory,
26 injunctive, statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the Classes will create the risk of:

28 i. Inconsistent or varying adjudications with respect to individual

1 members of the Classes which would establish incompatible standards of conduct for the
2 parties opposing the Classes; or

3 ii. Adjudication with respect to individual members of the Classes
4 which would as a practical matter be dispositive of the interests of the other members not
5 parties to the adjudication or substantially impair or impede their ability to protect their
6 interests;

7 b. The parties opposing the Classes have acted or refused to act on
8 grounds generally applicable to each member of the Class, thereby making appropriate
9 final injunctive or corresponding declaratory relief with respect to the Classes as a whole;

10 or

11 c. Common questions of law and fact exist as to the members of the
12 Classes and predominate over any questions affecting only individual members, and a
13 Class Action is superior to other available methods of the fair and efficient adjudication
14 of the controversy, including consideration of:

15 i. The interests of the members of the Classes in individually
16 controlling the prosecution or defense of separate actions;

17 ii. The extent and nature of any litigation concerning controversy
18 already commenced by or against members of the Classes;

19 iii. The desirability or undesirability of concentrating the litigation
20 of the claims in the particular forum;

21 iv. The difficulties likely to be encountered in the management of a
22 Class Action.

23 ///

24 ///

1
2
3 **IV**
4 **FIRST CAUSE OF ACTION**
5 **(Violation of Cal. Bus. and Prof. Code § 17200 et seq. – Unlawful, Fraudulent, and**
6 **Unfair Business Act and Practices)**
7 **(Against all Defendants)**

8 46. Plaintiffs incorporate by reference and re-allege all paragraphs previously
9 alleged herein.

10 47. The California Unfair Business Practices Act defines unfair business
11 competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice.
12 The Act also provides for injunctive relief, restitution, and disgorgement of profits for
13 violations.

14 48. Defendants’ acts and practices as described herein constitute unlawful,
15 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
16 described herein, violate each of the statutes set forth within this Complaint, and/or (2)
17 the justification for Defendants’ conduct is outweighed by the gravity of the
18 consequences to Plaintiffs and members of the Classes, and/or (3) Defendants’ conduct is
19 immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious
20 to Plaintiffs and members of the Classes, and/or (4) the uniform conduct of Defendants
21 has a tendency to deceive Plaintiffs and the members of the Classes.

22 49. Defendants have engaged and are engaging in acts and practices that
23 constitute unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200, *et*
24 *seq.*, because they constitute a violation and/or breach of, among other things:

- 25 a. The Defendants’ duty to disclose to purchasers of the aforementioned
26 Toyota and Lexus vehicles equipped with ETCS-i of the unreasonable
27 dangerousness of such vehicles by virtue of their susceptibility to sudden
28 uncontrolled acceleration of which Defendants were aware or should
have been aware;

- 1 b. The Defendants' duty to design, manufacture, and distribute vehicles
2 with throttle control units in such a way that the benefits of the design
3 outweigh the risk inherent in the design;
4 c. The Defendants' duty to sell vehicles which would perform as safely as
5 an ordinary consumer would expect when used in a reasonably
6 foreseeable manner;
7 d. The Song-Beverly Consumer Warranty Act as alleged in Counts 2 and 3
8 of this Complaint;
9 e. The implied warranty of merchantability as set forth in Cal. Comm. Code
10 § 2-314; and
11 f. The implied warranty of fitness for a particular purpose, as set forth in
12 Cal. Comm. Code § 2-315.

13 50. Plaintiffs, on behalf of themselves and both the California Class and
14 National Class, seek:

- 15 a. An injunction compelling Defendants to recall all Toyota and Lexus
16 vehicles equipped with ETCS-i and distributed and sold by Defendants
17 and to provide relief in the form of restitution and disgorgement of all
18 profits and compensation improperly obtained by Defendants as a result
19 of such acts and practices.

20 51. Plaintiffs and the Class members are therefore entitled to the relief described
21 above.

22 52. The conduct of Defendants as described herein violates Cal. Bus. & Prof.
23 Code § 17200 *et seq.*, and other similar State unfair competition and unlawful business
24 practices statutes.

25 53. Pursuant to Cal. Bus. & Prof. Code §§ 17200 and 17203, Plaintiffs, on
26 behalf of themselves and all others similarly situated, seek relief as prayed for below.

27 //

28 //

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the "California
3 Class" and "National Class" pray for relief as follows:

4 A. For an order certifying the "California Class" and appointing Plaintiffs and
5 their counsel to represent the "California Class";

6 B. For an order certifying the "National Class" and appointing Plaintiffs and
7 their counsel to represent the "National Class";

8 C. An order requiring Defendants to recall all Toyota and Lexus vehicles
9 equipped with ETCS-i and provide restitution of all funds improperly obtained by
10 Defendants as a result of such acts and practices declared by this Court to be an unlawful,
11 fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations,
12 or constituting unfair competition;

13 D. An order for disgorgement of all profits and compensation improperly
14 obtained by Defendants as a result of such acts and practices declared by this Court to be
15 an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or
16 regulations, or constituting unfair competition;

17 E. For an order of restitution;

18 F. For compensatory damages according to proof;

19 G. For economic damages according to proof under the Song-Beverly
20 Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.*;

21 H. For punitive damages, pursuant to Cal. Civ. Code § 1780;

22 I. For reasonable attorney's fees and costs;

23 J. For prejudgment interest to the extent allowed by law;

24 K. For costs of suit incurred herein;

25 L. For such other and further relief as the Court deems appropriate.

26 DATED: November 5, 2009

MCCUNEWRIGHT LLP

27 By: 

28 Richard D. McCune
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

DATED: November 5, 2009

MCCUNEWRIGHT LLP

By: 

Richard D. McCune
Attorney for Plaintiffs

(FMOx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-08143-AHM-FMO

Seong Bae Choi et al v. Toyota Motor Corporation et al
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-08478-AHM-FMO
Cause: 28:1332 Diversity-Product Liability

Date Filed: 11/05/2009
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod.
Liability
Jurisdiction: Diversity

Plaintiff

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themselves and all others similarly
situated*

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Plaintiff

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V.

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Defendant

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Michael L Mallow
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Defendant

DOES

1 through 10

Date Filed	#	Docket Text
11/05/2009	<u>1</u>	COMPLAINT against Defendants Toyota Motor Sales, U.S.A., Inc., DOES 1 through 10, Toyota Motor Corporation.(Filing fee \$ 350 PAID) Jury Demanded, filed by plaintiffs Seong Bae Choi, Chris Chan Park.(car) Modified on 11/10/2009 (car). (ds). (Additional attachment(s) added on 11/12/2009: # <u>1</u> Civil Cover Sheet) (ds). (Entered: 11/10/2009)
11/05/2009	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Seong Bae Choi, Chris Chan Park (car) (ds). (Entered: 11/10/2009)
11/05/2009		20 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to Defendants Toyota

		Motor Sales, U.S.A., Inc., DOES 1 through 10, Toyota Motor Corporation. (car) (Entered: 11/10/2009)
11/09/2009	<u>4</u>	MINUTES IN CHAMBERS by Judge A. Howard Matz: The Court owns a 2000 Toyota Avalon XLS. The Court ORDERS Plaintiffs' counsel to specify whether such a vehicle is equipped with ETCS-i, and to do so by not later than Friday, November 13, 2009. (jp) (Entered: 11/10/2009)
11/10/2009	<u>3</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case has been assigned to the calendar of Judge A. Howard Matz (see document for further details). All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. (jp) (Entered: 11/10/2009)

Exhibit B

1 Michael Louis Kelly - State Bar No. 82063
2 mlk@kirtlandpackard.com
3 Behram V. Parekh - State Bar No. 180361
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5 Heather M. Peterson - State Bar No. 261303
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8 2361 Rosecrans Avenue
9 Fourth Floor
10 El Segundo, California 90245
11 Telephone: (310) 536-1000
12 Facsimile: (310) 536-1001

13 *Counsel for Plaintiffs and all*
14 *others similarly situated*

BY _____

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

2010 JAN 19 PM 1:49

FILED

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA

LAW OFFICES
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13 ERIC KMETZ, and JOE MORRIS, on)
14 behalf of themselves and all others)
15 similarly situated,)
16 Plaintiffs,)
17 v.)
18 TOYOTA MOTOR SALES, U.S.A.,)
19 INC., TOYOTA MOTOR)
20 CORPORATION, and DOE)
21 DEFENDANTS 1-10)
22 Defendants.)

Case No. 2:09-CV-08478 AHM-FMO
Assigned to the Honorable A. Howard Matz

**CLASS ACTION
FIRST AMENDED COMPLAINT
FOR:**

- 1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;
 - 2. VIOLATION OF THE UNFAIR COMPETITION LAWS;
 - 3. VIOLATION OF THE FALSE ADVERTISING LAWS;
 - 4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;
 - 5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;
 - 6. NEGLIGENCE
- DEMAND FOR JURY TRIAL

1 Plaintiffs Eric Kmetz and Joe Morris (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, allege the following upon information and belief
3 based upon investigation of counsel and published reports, except to their own acts,
4 which they allege upon personal knowledge:

5 **JURISDICTION AND VENUE**

- 6 1. This Court has diversity jurisdiction over this class action pursuant to 28
7 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because
8 the matter in controversy exceeds \$5,000,000, exclusive of interest and costs,
9 and is a class action in which some members of the class are citizens of
10 different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).
11 2. This Court also has personal jurisdiction over Defendants because Defendants
12 are authorized to do business, and currently do business, in this state.
13 3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
14 Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District
15 and is subject to personal jurisdiction and a substantial portion of the conduct
16 complained of herein occurred in this District.

17 **PARTIES**

- 18 4. Plaintiff Eric Kmetz is a resident of Los Angeles County. Plaintiff purchased
19 his Lexus IS 300 in 2001. Plaintiff purchased his vehicle from Jim Faulk
20 Lexus, located in Los Angeles, California. Plaintiff’s vehicle is equipped
21 with Toyota’s electronic throttle control system. Plaintiff has experienced
22 sudden, unexpected acceleration of his vehicle while in the normal process of
23 operating his vehicle. Plaintiff’s vehicle has further suffered a diminution in
24 resale value due to press reports and recalls related to the sudden, unexpected
25 acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota’s main
26 selling points for its vehicles is that such cars are reputed to be safe and
27 reliable. Plaintiff Kmetz relied upon Toyota’s carefully crafted reputation for
28 safety and reliability in choosing his vehicle. But for Toyota’s failure to

- 1 disclose that its vehicles are susceptible to incidents of sudden, unintended
2 acceleration, and thus such vehicles posed a significant risk of injury and
3 death to vehicle occupants, other motorists, and pedestrians, Plaintiff Kmetz
4 would not have purchased his vehicle, or would not have purchased his
5 vehicle for the price paid.
- 6 5. Plaintiff Joe Morris is a resident of Orange County. Plaintiff owns and drives
7 a Toyota Prius. Plaintiff purchased his vehicle from a dealership in Orange
8 County, California. Plaintiff's vehicle is equipped with Toyota's electronic
9 throttle control system. Plaintiff's vehicle has suffered a diminution in resale
10 value due to press reports and recalls related to the sudden, unexpected
11 acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main
12 selling points for its vehicles is that such cars are reputed to be safe and
13 reliable. Plaintiff Morris relied upon Toyota's carefully crafted reputation
14 for safety and reliability in choosing his vehicle. But for Toyota's failure to
15 disclose that its vehicles are susceptible to incidents of sudden, unintended
16 acceleration, and thus such vehicles posed a significant risk of injury and
17 death to vehicle occupants, other motorists, and pedestrians, Plaintiff Morris
18 would not have purchased his vehicle, or would not have purchased his
19 vehicle for the price paid.
- 20 6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all
21 relevant times was, a California Corporation headquartered in Los Angeles,
22 California. Defendant TMS-USA is a wholly owned subsidiary of Toyota
23 Motor Corporation, and is responsible for the manufacture, distribution, and
24 sale of all Toyota and Lexus automobiles and trucks in the United States.
- 25 7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant
26 times was, a Japanese Corporation with its headquarters in Japan. Toyota
27 Motor Corporation, at all relevant times, wholly owned and controlled TMS-
28 USA, and thus, conducted business in Los Angeles County and is subject to

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1 the personal jurisdiction of this Court.

2 8. The above named Defendants, and their subsidiaries and agents, are
3 collectively referred to as "Toyota."

4 9. The true names and capacities of the Defendants sued herein as DOE
5 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs,
6 who therefore sue such Defendants by fictitious names. Each of the
7 Defendants designated herein as a DOE is legally responsible for the unlawful
8 acts alleged herein. Plaintiffs will seek leave of Court to amend this
9 Complaint to reflect the true names and capacities of the DOE Defendants
10 when such identities become known.

11 10. At all relevant times, each and every Defendant was acting as an agent and/or
12 employee of each of the other Defendants and was acting within the course of
13 scope of said agency and/or employment with the full knowledge and consent
14 of each of the other Defendants. Each of the acts and/or omissions
15 complained of herein were alleged and made known to, and ratified by, each
16 of the other Defendants.

17 **FACTUAL ALLEGATIONS**

18 11. Toyota is currently the world's largest manufacturer of vehicles with net
19 revenues in 2009 of over 227 billion dollars.

20 12. Toyota has carefully crafted and attempted to maintain a reputation for quality
21 and safety in order to increase sales of its cars.

22 13. Evidence of this include various advertisements by Toyota regarding their
23 vehicles crash safety ratings, design, quality, and resale value.

24 14. As the Los Angeles Times reported in a front page story on December 23,
25 2009:

26 A peerless reputation for quality and safety has helped
27 Toyota become the world's largest automaker. But even
28 as its sales have soared, the company has delayed recalls,

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1 kept a tight lid on disclosure of potential problems and
2 attempted to blame human error in cases where owners
3 claimed vehicles were defective. After Toyota this fall
4 announced its biggest recall to address the sudden-
5 acceleration problem, it insisted publicly that no defect
6 existed. This drew a rare public rebuke from the National
7 Highway Traffic Safety Administration, which chastised
8 the automaker for making 'inaccurate and misleading
9 statements.'

10 15. Toyota's carefully crafted attempts to minimize any public revelation of the
11 problems with its vehicles are further discussed in that same Los Angeles
12 Times article: "The automaker knew of a dangerous steering defect in
13 vehicles, including the 4Runner sport utility vehicle, for years before issuing a
14 recall in Japan in 2004." However, in 2004, it told U.S. regulators that no
15 such recall was necessary in here because Toyota "has received field
16 information from the Japanese market, but no similar information from the
17 U.S. markets has been received." This statement to regulators was false, as
18 "company records show that Toyota had received numerous complaints about
19 the problem before that date," including ones as far back as the year 2000. In
20 2005, it was finally forced to recall over 1 million vehicles with that part, a
21 full five years after it knew of such complaints in the United States.

22 "Japanese police, in an investigation of the defect, said that Toyota employees
23 had known about the problem *since 1992*, and should have initiated a recall
24 immediately" (emphasis added).

25 16. The same Los Angeles Times article reports that a former Toyota lawyer who
26 handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it
27 engaged in a "calculated conspiracy to prevent the disclosure of damaging
28 evidence" as part of a scheme to "prevent evidence of its vehicles

- 1 shortcomings from becoming known.”
- 2 17. Beginning in the late 1990s, Toyota manufactured, distributed and sold
- 3 vehicles with an electronic throttle control system (“ETC”).
- 4 18. Unlike that of traditional throttle control systems, where a physical cable
- 5 connected the accelerator pedal to the engine throttle, under the ETC system,
- 6 the engine throttle is controlled by electronic signals sent from the gas pedal
- 7 to the engine throttle. A sensor at the accelerator detects how far the gas
- 8 pedal is depressed and transmits that information to a computer module which
- 9 controls a motorized engine throttle. The computer module determines how
- 10 far the accelerator is depressed, and, in turn, tells the engine throttle motor
- 11 how far to open the throttle valve.
- 12 19. When Toyota first introduced the ETC, they continued to include a
- 13 mechanical linkage between the accelerator and the engine throttle control.
- 14 20. Beginning with the 2001 model year, however, Defendants began
- 15 manufacturing, distributing, and selling vehicles without such mechanical
- 16 linkage.
- 17 21. Further, Defendants’ ETC system also fails to include a failsafe measure
- 18 incorporated by other vehicle manufacturers which instructs the ETC system
- 19 to automatically reduce the engine to idle whenever the brakes are applied.
- 20 22. The combination of the lack of these two safety systems allows the ETC to set
- 21 the engine throttle to any position regardless of the position of the accelerator,
- 22 and with no mechanical or electronic failsafe mechanism to allow the driver
- 23 to effectively stop or slow the car in such circumstances.
- 24 23. According to an article in the November 8, 2009 issue of the Los Angeles
- 25 Times (“Times”), the Times located federal and other records of 19 fatalities
- 26 and over 1,000 reports by owners involving the unintended acceleration of
- 27 Toyota vehicles from the 2002 model year and newer.
- 28 24. The Times further quotes an independent safety expert as stating that he had

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- 1 identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built
2 since 2001.
- 3 25. The Times further states that other experts believe the numbers may be far
4 higher, citing to a 2007 National Highway Traffic and Safety Administration
5 (“NHTSA”) survey of 600 Lexus owners that found that 10% complained
6 they had experienced sudden acceleration.
- 7 26. The Times further states that when Toyota reported complaint data to
8 NHTSA, Toyota eliminated all reports claiming that the sudden acceleration
9 occurred for “a long duration” or more than a few seconds.
- 10 27. The Times further states that in an investigation of reports of sudden
11 acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota
12 eliminated all reports in five broad categories when responding to NHTSA’s
13 request, including all cases in which the drivers said they were unable to
14 control a runaway engine by applying the brakes.
- 15 28. Thus, at all relevant times, Toyota had full knowledge of the numerous
16 complaints regarding its vehicles, that such vehicles were susceptible to
17 incidents of sudden, unintended acceleration, and thus such vehicles posed a
18 significant risk of injury and death to vehicle occupants, other motorists, and
19 pedestrians.
- 20 29. Regardless of this knowledge, Toyota has taken no steps to remedy this
21 dangerous condition.
- 22 30. Toyota had a duty to disclose this vehicle defect because 1) it publicly
23 created, through its marketing campaign, the image of its vehicles as safe and
24 reliable; and 2) the vehicle defect causes Toyota’s vehicles to become
25 inherently dangerous products to the driver, passengers, and the general
26 public.

27 **CLASS ACTION ALLEGATIONS**

- 28 31. Plaintiffs bring this action on behalf of themselves and all others similarly

1 situated, as a member of the proposed nationwide plaintiff class and
2 California class (collectively hereafter the "Class") defined as follows:
3 Nationwide class: All persons who reside in the United States and who
4 presently own a Toyota vehicle equipped with an electronic throttle control system.

5 California class: All persons who reside in California or are California
6 citizens and who presently own a Toyota vehicle equipped with an electronic
7 throttle control system.

8 32. Specifically excluded from the proposed Class are Defendants, any entities in
9 which Defendants have a controlling interest, and the officers, directors,
10 affiliates, legal representatives, successors, subsidiaries and/or assigns of
11 Defendant. Also specifically excluded from the proposed Class are any
12 claims by any persons who have suffered or possess a right of action for
13 personal injury or wrongful death as a result of the sudden unintended
14 acceleration of their Toyota vehicle.

15 33. This action is brought and may be properly maintained as a class action
16 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and
17 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
18 predominance and superiority requirements of those provisions.

19 34. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
20 joinder of all of its members is impractical. While the exact number and
21 identities of Class members are unknown to Plaintiff at this time and can only
22 be ascertained through appropriate discovery, Plaintiff is informed and
23 believes the Class includes many thousands of members. Plaintiffs allege that
24 the Class may be ascertained by the records maintained by Toyota and its
25 network of dealerships, and/or through the records of public agencies.

26 35. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
27 members of the Class which predominate over any questions affecting only
28 individual members of the Class. These common legal and factual questions,

- 1 which do not vary from class member to class member, and which may be
2 determined without reference to the individual circumstances of any class
3 member, include, but are not limited to, the following:
- 4 a. Whether Toyota vehicles equipped with electronic throttle control
5 systems cause sudden unintended acceleration;
 - 6 b. Whether Toyota vehicles equipped with electronic throttle control
7 systems are dangerous when used as designed due to such sudden
8 unintended acceleration;
 - 9 c. Whether Toyota vehicles equipped with electronic throttle control
10 systems are dangerous when used as designed because they fail to
11 incorporate safety systems that would allow drivers to control their
12 vehicle in the case of sudden unintended acceleration;
 - 13 d. Whether Toyota knew of the dangerous propensity of its vehicles
14 equipped with an electronic throttle control system;
 - 15 e. Whether Toyota failed to remedy the dangerous propensity of its
16 vehicles equipped with an electronic throttle control system;
 - 17 f. Whether Toyota vehicles equipped with ETC are unreasonably
18 dangerous, constituting a breach of the implied warranty;
 - 19 g. Whether Toyota vehicles equipped with ETC are not fit for their
20 intended use, constituting a breach of the implied warranty;
 - 21 h. Whether Toyota was negligent in the manufacture, distribution, and
22 sale of vehicles equipped with ETC;
 - 23 i. Whether Toyota's conduct described herein violated California's
24 Unfair Competition Law;
 - 25 j. Whether Toyota's conduct described herein violated California's False
26 Advertising Act;
 - 27 k. Whether Toyota's conduct described herein violated California's
28 Consumer Legal Remedies Act;

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- 1 l. Whether Toyota's conduct described herein violated the Magnusson-
2 Moss Consumer Warranty Act.
- 3 m. The nature and extent of damages and other remedies to which the
4 conduct of Toyota entitles the Class members.
- 5 36. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the
6 members of the Class. Plaintiffs and all members of the Class have sustained
7 injury and are facing irreparable harm arising out of Defendants' common
8 course of conduct as complained of herein. The losses of each member of the
9 Class were caused directly by Defendants' wrongful conduct as alleged
10 herein.
- 11 37. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the
12 interests of the members of the Class. Plaintiffs have retained attorneys
13 experienced in the prosecution of class actions, including complex consumer
14 and mass tort litigation.
- 15 38. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods
16 of fair and efficient adjudication of this controversy, since individual
17 litigation of the claims of all Class members is impracticable. Even if every
18 Class member could afford individual litigation, the court system could not.
19 It would be unduly burdensome to the courts in which individual litigation of
20 numerous issues would proceed. Individualized litigation would also present
21 the potential for varying, inconsistent, or contradictory judgments and would
22 magnify the delay and expense to all parties and to the court system resulting
23 from multiple trials of the same complex factual issues. By contrast, the
24 conduct of this action as a class action, with respect to some or all of the
25 issues presented herein, presents fewer management difficulties, conserves the
26 resources of the parties and of the court system, and protects the rights of each
27 Class member.
- 28 39. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by

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1 thousands of individual Class members would create the risk of inconsistent
2 or varying adjudications with respect to, among other things, the need for and
3 the nature of proper notice which Defendants must provide to all Class
4 members.

5 40. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
6 individual class members would create a risk of adjudications with respect to
7 them that would, as a practical matter, be dispositive of the interests of the
8 other Class members not parties to such adjudications or that would
9 substantially impair or impede the ability of such non-party Class members to
10 protect their interests.

11 41. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects
12 generally applicable to the Class, thereby making appropriate final and
13 injunctive relief with regard to the members of the Class as a whole.

14 **FIRST CAUSE OF ACTION**
15 **VIOLATION OF CALIFORNIA'S**
16 **CONSUMERS LEGAL REMEDIES ACT**

17 (By Plaintiffs and the Class Against All Defendants)

18 42. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
19 above.

20 43. The Defendants' acts and omissions violate the following portions of the
21 *California Consumers Legal Remedies Act*:

- 22 • *Civil Code* § 1770(a)(5) "Representing that goods or
23 services have ... characteristics ... uses, benefits ... which
24 they do not have ..."
- 25 • *Civil Code* § 1770(a)(7) "Representing that goods or
26 services are of a particular standard, quality, or grade ... if
27 they are of another"
- 28 • *Civil Code* § 1770(a)(9) "Advertising goods or services

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1 with intent not to sell them as advertised.”
2 44. Plaintiffs and the members of the Class risk irreparable injury as a result of
3 the Defendants’ acts and omission in violation of the CLRA and these
4 violations present a continuing risk to the class and members of the public.
5 45. Plaintiffs have filed concurrently herewith the venue affidavit required by
6 *Civil Code* § 1780(c). In addition Plaintiffs concurrently provided the notice
7 to Defendants required under *Civil Code* § 1782(a) with the sending of a
8 letter, sent via certified mail return receipt requested on November 24, 2009.
9 Over 30 days have passed since the notice was given and Defendants have
10 failed to take or agree to take the remedies asked for in the notice. Thus,
11 Plaintiffs and the putative class are entitled to damages in addition to all other
12 appropriate remedies.
13 46. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining
14 Defendants from selling any vehicles with an electronic throttle control in the
15 United States which has not been revised in such a manner as to eliminate the
16 possibility of sudden unintended acceleration and to which have been added
17 such safety measures that in the case of sudden unintended acceleration, the
18 driver will be able to take measures to slow and stop the vehicle. Plaintiffs
19 further seek restitution from Defendants for the cost paid for their inherently
20 unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory
21 injunction against Defendants requiring them to repair and/or replace
22 Plaintiffs’ and the putative Class’ vehicles, at Defendants’ expense, to
23 eliminate the possibility of sudden unintended acceleration and to add such
24 safety measures that in the case of sudden unintended acceleration, the driver
25 will be able to take measures to safely slow and stop the vehicle. Unless
26 Defendants are enjoined from violations of the CLRA alleged herein, the
27 members of the class and the general public, who lack an adequate remedy at
28 law to deter Defendants’ wrongful conduct, will be irreparably harmed.

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1 47. Plaintiffs have suffered economic damage as a result of Defendant's
 2 violations of *Civil Code* § 1770 in that they now own a vehicle which is
 3 defective and inherently dangerous, regardless of the manifestation of the
 4 defect. Plaintiffs have further suffered economic damage in that their
 5 vehicle's resale value has been reduced. As the factual allegations make
 6 clear, Defendants have known of the inherently dangerous defect for a long
 7 period of time and have, during that time, not only failed to correct it, but
 8 actively suppressed evidence of its existence. Defendants' conduct is
 9 sufficiently blameworthy to merit the imposition of punitive damages
 10 pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of
 11 Defendants. In addition, Plaintiffs and the class are entitled to an award of
 12 attorneys' fees and costs against Defendants pursuant to the provisions of
 13 *Civil Code* § 1780(d).

14 **SECOND CAUSE OF ACTION**
 15 **VIOLATION OF CALIFORNIA'S**
 16 **UNFAIR COMPETITION LAW**

17 (By Plaintiffs and the Class Against All Defendants)

18 48. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
 19 above.

20 49. California *Business and Professions Code* § 17200 *et seq.*, also known as the
 21 California Unfair Competition Law ("UCL"), prohibits acts of "unfair
 22 competition," including any unlawful, unfair, fraudulent or deceptive business
 23 act or practice as well as "unfair, deceptive, untrue or misleading advertising."

24 50. Defendants violated and continue to violate the UCL through one or more of
 25 the following unfair, unlawful, or fraudulent practices:

- 26 a. Selling to Plaintiffs and Class members vehicles which contain a defect
 27 or design which makes them inherently more dangerous than other
 28 similar vehicles;

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- 1 b. Failing to disclose to Plaintiffs and Class members that the vehicles
2 sold to such consumers contain a defect or design which makes them
3 inherently more dangerous than other similar vehicles;
4 c. Failing to remedy the defect or design which makes Defendants'
5 vehicles inherently more dangerous than other similar vehicles;
6 d. Failing to manufacture, distribute, and sell a product which would
7 perform in a safe manner when used in a reasonably foreseeable
8 manner by a reasonable consumer;
9 e. Violating the other statutes and common law causes of action as alleged
10 in the instant Complaint.
- 11 51. As a direct and proximate result of Defendants' illegal business practices,
12 Plaintiffs and the members of the Class have suffered injury and have lost
13 money or property.
- 14 52. Defendants' conduct has further injured Plaintiffs and Class members by
15 impairing competition within the motor vehicle markets and preventing
16 Plaintiffs and Class members from making fully informed decisions about the
17 motor vehicles they purchase.
- 18 53. Plaintiffs respectfully request that the Court enjoin Defendants from engaging
19 in the unlawful conduct alleged herein and require Defendants to a) stop
20 selling any vehicles with an electronic throttle control in the United States
21 which has not been revised in such a manner as to eliminate the possibility of
22 sudden unintended acceleration and to which have been added such safety
23 measures that in the case of sudden unintended acceleration, the driver will be
24 able to take measures to slow and stop the vehicle; b) require Defendants to
25 repair and/or replace Plaintiffs' and the putative Class' vehicles, at
26 Defendants' expense, to eliminate the possibility of sudden unintended
27 acceleration and to add such safety measures that, in the case of sudden
28 unintended acceleration, would allow the driver to take measures to safely

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1 slow and stop the vehicle; c) in the interim time period, provide immediate
2 notice to Plaintiffs and Class members of the potential for sudden unintended
3 acceleration of their vehicle and provide instructions for how best to mitigate
4 the situation were it to occur; d) require Defendants to notify all affected
5 persons affected of the Court's injunction; e) require Defendants to provide
6 restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class
7 members reasonable attorneys' fees and expenses, and g) award such other
8 relief as the Court may deem just and proper.

9 54. The illegal business practices described herein present a continuing threat to
10 Plaintiffs, members of the Class, and members of the general public in that
11 Defendants continue to engage in these practices, and will not cease doing so
12 unless and until forced to do so by this Court. Defendants' conduct will
13 continue to cause irreparable injury to Plaintiffs and the Class unless enjoined
14 or restrained.

15 **THIRD CAUSE OF ACTION**
16 **VIOLATION OF CALIFORNIA'S**
17 **FALSE ADVERTISING LAWS**

18 (By Plaintiffs and the Class Against All Defendants)

19 55. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
20 above.

21 56. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any
22 ... corporation ... with intent ... to dispose of ... personal property ... to induce
23 the public to enter into any obligation relating thereto, to make or disseminate
24 or cause to be made or disseminated ... from this state before the public in any
25 state, in any newspaper or other publication, or any advertising device, or by
26 public outcry or proclamation, or in any other manner or means whatever,
27 including over the Internet, any statement ... which is untrue or misleading,
28 and which is known, or which by the exercise of reasonable care should be

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1 known, to be untrue or misleading....”

2 57. Defendants’ representations, including statements made in Defendants’
3 television, radio, and print advertising, websites, brochures, and all other
4 written and oral materials disseminated by Defendants to promote their
5 vehicles constitute advertising for purposes of this cause of action.

6 58. Such advertising contained statements which were false, misleading, or which
7 omitted material information which Defendants were under a duty to disclose
8 and which were known or should have been known to Defendants to be false,
9 misleading, or deceptive.

10 59. As a direct and proximate result of Defendants’ misleading advertising,
11 Plaintiffs and the members of the putative Class have suffered injury in fact
12 and have lost money or property.

13 60. The misleading advertising described herein presents a continuing threat to
14 Plaintiffs, the Class, and members of the public in that Defendants persist and
15 continue to engage in these practices, and will not cease doing so unless and
16 until forced to do so by this Court. Defendants’ conduct will continue to
17 cause irreparable injury to plaintiff and the class unless enjoined or restrained.

18 **FOURTH CAUSE OF ACTION**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

20 (By Plaintiffs and the Class Against All Defendants)

21 61. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
22 above.

23 62. Defendants impliedly warrant that their vehicles are fit for the ordinary
24 purpose for which the product is sold.

25 63. The ordinary purpose for which Defendants’ vehicles are sold is to provide
26 the purchaser with a vehicle that is capable of transporting the driver and
27 passengers in reasonable safety, and without unduly endangering them or
28 members of the public.

1 64. Defendants breached their implied warranty of merchantability by selling a
2 vehicle which has a propensity to suddenly and unintentionally accelerate,
3 and which does not contain safety systems which would 1) prevent such
4 acceleration from happening at all; and 2) which would allow a driver, in case
5 of such acceleration, to safely slow and stop the vehicle.

6 65. Plaintiffs, and every member of the classes alleged herein, have been similarly
7 damaged as a result of this breach of warranty.

8 **FIFTH CAUSE OF ACTION**
9 **BREACH OF IMPLIED WARRANTY**
10 **OF FITNESS FOR A PARTICULAR PURPOSE**

11 (By Plaintiffs and the Class Against All Defendants)

12 66. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
13 above.

14 67. Toyota is, and at all relevant times has been, in the business of designing,
15 manufacturing, distributing, and selling vehicles to consumers.

16 68. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles
17 would be used by Plaintiffs and putative Class members for the specific
18 purpose of attempting to safely transport the driver and passengers from one
19 point to another.

20 69. Toyota knew that consumers who purchased their vehicles relied upon
21 Defendants' expertise and skill, judgment and knowledge in furnishing
22 vehicles which were capable of transporting the driver and passengers of such
23 vehicle without unreasonable risk of harm to them or to members of the
24 general public.

25 70. Toyota's vehicles are not fit for that purpose in that their design or
26 manufacture is so defective as to cause such vehicles to suddenly and
27 unintentionally accelerate and, subsequent to such acceleration, provide an
28 insufficient safety mechanism to allow the driver to slow and stop the vehicle

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1 safely.

2 71. Plaintiffs, and every member of the classes alleged herein, have been similarly
3 damaged as a result of this breach of warranty.

4 **SIXTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 (By Plaintiffs and the Class Against All Defendants)

7 72. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41
8 above.

9 73. Defendants had a duty to their consumers, as a manufacturer of motor
10 vehicles, to provide vehicles which, in their ordinary operation, would be
11 safe. Defendants also had a duty to sufficiently test their vehicles' safety
12 before selling hundreds or thousands of vehicles. Defendants had further
13 duties once they were on notice by consumers of the propensity of their
14 vehicles to suddenly and unintentionally accelerate, and of the inability of the
15 driver to slow or stop such vehicles.

16 74. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and
17 class members have been and are currently dealing with vehicles that are
18 inherently unsafe and more dangerous than similar vehicles manufactured by
19 other companies.

20 75. Defendants' breach proximately caused the damages to Plaintiffs and class
21 members, namely that Plaintiffs and Class members have been financially and
22 economically damaged by owning vehicles which are inherently unsafe, and
23 have also been further damaged in the potential risk of injury to themselves
24 and others every time they operate their vehicles.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, on behalf of themselves and all others similarly situated,
27 Plaintiffs pray for the following relief:

28 1. An order certifying this action as a plaintiff class action, as set forth

- 1 herein above;
- 2 2. For compensatory damages as to all causes of action where
- 3 compensatory damages are available;
- 4 3. For restitution;
- 5 4. For disgorgement of all wrongfully obtained compensation;
- 6 5. For preliminary and permanent injunctive relief prohibiting Defendants
- 7 from continuing the wrongful practices alleged in the Complaint;
- 8 6. For punitive damages;
- 9 7. For reasonable costs and attorneys' fees as permitted by law; and
- 10 8. For such other and further relief as the Court may deem proper.

11
12 DATED: January 19, 2009

13 Respectfully submitted,
14 KIRTLAND & PACKARD LLP

15
16 By: Michael Kelly

17 MICHAEL LOUIS KELLY
18 BEHRAM V. PAREKH
19 HEATHER M. PETERSON

20 *Counsel for Plaintiffs and all others*
21 *similarly situated.*

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 19, 2010

Respectfully submitted,
KIRTLAND & PACKARD LLP

By: Heather Peterson

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

*Counsel for Plaintiffs and all others
similarly situated.*

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AFFIDAVIT OF JOE MORRIS

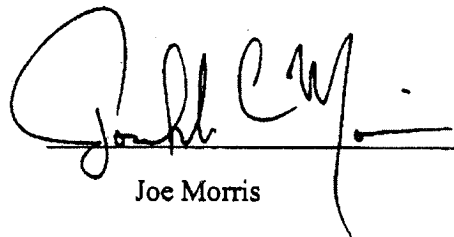
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1. I, Joe Morris, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Orange County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Orange County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.



Joe Morris

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AFFIDAVIT OF ERIC KMETZ


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1. I, Eric Kmetz, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.


Eric Kmetz

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On January 19, 2010, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein:

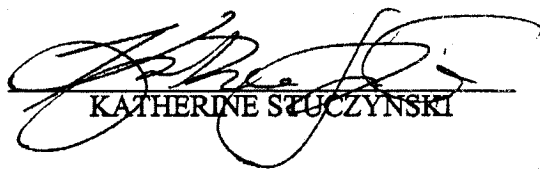
FIRST AMENDED COMPLAINT (CLASS ACTION)

- OVERNIGHT DELIVERY:** The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business.
- ELECTRONIC TRANSMISSION:** The correspondence or documents were transmitted via email on this same date in the ordinary course of business. The transmission was reported as "sent" and a record of the transmission was recorded as outgoing (sent) mail by the transmitting email program.

PERSONS OR PARTIES SERVED:

**** See attached service list ****

- (State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 19, 2010.
- (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.



KATHERINE STUCZYNSKI

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SERVICE LIST

(VIA OVERNIGHT MAIL AND EMAIL)

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Attorneys for Defendant

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(FMOx), DISCOVERY, RELATED-G

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-08478-AHM-FMO

Eric Kmetz et al v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-08143-AHM-FMO
Cause: 28:1332 Diversity-Fraud

Date Filed: 11/18/2009
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Eric Kmetz
*on behalf of themselves and all others
similarly situated*

represented by **Behram V Parekh**
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Plaintiff

Joe Morris

represented by **Behram V Parekh**

*on behalf of themselves and all other
similarly situated*

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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Heather Marie Peterson
(See above for address)
*LEAD ATTORNEY
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Michael L Kelly
(See above for address)
*LEAD ATTORNEY
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V.

Defendant

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Defendant

Toyota Motor Corporation

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B Dickerson
 (See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G A Wallace
 (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

Doe Defendants
 1-10

Date Filed	#	Docket Text
11/18/2009	<u>1</u>	COMPLAINT against Defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales, U.S.A., Inc. (Filing fee \$ 350 PAID.) Jury Demanded., filed by Plaintiffs Eric Kmetz, Joe Morris. (et) (ds). (Entered: 11/20/2009)
11/18/2009		20 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to Defendants Toyota Motor Corporation, Doe Defendants 1-10, Toyota Motor Sales, U.S.A., Inc. (et) (Entered: 11/20/2009)
11/18/2009	<u>2</u>	CERTIFICATE of Interested Parties filed by Plaintiff Eric Kmetz, Joe Morris. (et) (ds). (Entered: 11/20/2009)

11/24/2009	<u>3</u>	PROOF OF SERVICE Executed by Plaintiffs Eric Kmetz, Joe Morris, upon Toyota Motor Sales, U.S.A., Inc. served on 11/19/2009, answer due 12/9/2009. The Summons and Complaint were served by Personal service, by Federal statute, upon CT Corporation, Margaret Wilson, Agent for Service of Process. Due Dilligence declaration not attached. Original Summons not returned. (Parekh, Behram) (Entered: 11/24/2009)
11/25/2009	<u>4</u>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 - Related Case- filed. Related Case No: CV09-08143 AHM(FMOx). Case transferred from Magistrate Judge Robert N. Block and Judge Christina A. Snyder to Judge A. Howard Matz and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 09-08478 AHM (FMOx).Signed by Judge A. Howard Matz (rn) (Entered: 11/25/2009)
12/02/2009	<u>5</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Corporation answer now due 1/4/2010; Toyota Motor Sales, U.S.A., Inc. answer now due 1/4/2010, filed by defendants Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc..(Gilford, Lisa) (Entered: 12/02/2009)
12/03/2009	<u>6</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case has been assigned to the calendar of Judge A. Howard Matz (see document for further details). All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. (jp) (Entered: 12/03/2009)
12/29/2009	<u>7</u>	APPLICATION for attorney Cari K. Dawson to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 0973000000006333911 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>8</u>	APPLICATION for attorney Derin B. Dickerson to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 0973000000006333979 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>9</u>	APPLICATION for attorney Kyle G.A. Wallace to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 0973000000006334040 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	<u>10</u>	STIPULATION for Extension of Time to File Answer to 02/08/2010 filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc..

		(Attachments: # <u>1</u> Proposed Order)(Gilford, Lisa) (Entered: 12/29/2009)
12/30/2009	<u>11</u>	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Derin B. Dickerson on behalf of defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, designating Lisa Gilford as local counsel (PHV FEE PAID) <u>8</u> . (jp) (Entered: 12/30/2009)
12/30/2009	<u>13</u>	ORDER by Judge A. Howard Matz: granting <u>7</u> Application to Appear Pro Hac Vice by Attorney Cari K. Dawson on behalf of defendant Toyota Motor Sales UA, Inc., et al, designating Lisa Gilford as local counsel. (se) (Entered: 01/05/2010)
12/30/2009	<u>14</u>	ORDER by Judge A. Howard Matz: granting <u>9</u> Application to Appear Pro Hac Vice by Attorney Kyle G.A. Wallace on behalf of defendant Toyota Motor Sales USA, Inc., et al., designating Kisa Gilford as local counsel. (se) (Entered: 01/05/2010)
01/04/2010	<u>12</u>	STIPULATION AND ORDER by Judge A. Howard Matz GRANTING Order for Plaintiffs to File First Amended Complaint and Stipulation to Extend Time to Answer <u>10</u> on or before 2/8/10. (se) (Entered: 01/04/2010)
01/11/2010	<u>15</u>	STIPULATION for Extension of Time to Amend filed by Plaintiff Eric Kmetz, Joe Morris. (Attachments: # <u>1</u> Proposed Order Clarifying Due Date for Filing of First Amended Complaint)(Peterson, Heather) (Entered: 01/11/2010)
01/12/2010	<u>16</u>	ORDER by Judge A. Howard Matz GRANTING Stipulation Clarifying Extension of Time to File FAC <u>15</u> : First Amended Complaint shall be filed by 1/19/2010. Defendants shall answer or respond to FAC by 2/8/10. (se) (Entered: 01/12/2010)
01/19/2010	<u>17</u>	FIRST AMENDED COMPLAINT against Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Doe Defendants; amending Complaint <u>1</u> ; filed by Plaintiffs Eric Kmetz, Joe Morris. Demand for Jury Trial. (mg) (jp). (Entered: 01/20/2010)

PACER Service Center			
Transaction Receipt			
02/01/2010 11:49:04			
PACER Login:	bg0149	Client Code:	Toyota
Description:	Docket Report	Search Criteria:	2:09-cv-08478-AHM-FMO End date: 2/1/2010
Billable Pages:	4	Cost:	0.32

Exhibit C

1 Gene J. Stonebarger, State Bar No. 209461
gstonebarger@lindstonelaw.com
2 LINDSAY & STONEBARGER
A Professional Corporation
3 620 Coolidge Drive, Suite 225
Folsom, CA 95630
4 Telephone: (916) 294-0002
Facsimile: (916) 294-0012
5

6 Attorneys for Plaintiffs and the Class
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11
12 HEATHER A. LANE, individually and
on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 TOYOTA MOTOR SALES, U.S.A.,
16 Inc., a California corporation,

17 Defendant.
18

2009 DEC 14 PM 2:17
FILED
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
CASE NO. **CV09-9158 CAF**
CLASS ACTION

CLASS ACTION COMPLAINT
19

Jury Trial Demanded

20 Plaintiff, Heather A. Lane ("Plaintiff"), individually and on behalf of all
21 others similarly situated, and for her Class Action Complaint, states and alleges as
follows:

22 **Jurisdiction and Venue**

23 1. This Court has subject matter jurisdiction over this action pursuant to
24 28 U.S.C. § 1331 because this action presents a federal question under 15 USCA §
25 2310. This Court also has subject matter jurisdiction over this action pursuant to

26 RECEIVED
CLERK, U.S. DISTRICT COURT

27 U.S.C. § 1332(d) because: Defendant Toyota Motor Sales, U.S.A., Inc., is a
California corporation with its corporate headquarters in Torrance, California;
28 1 2009
members of the putative national class are citizens of a foreign state; the

CENTRAL DISTRICT OF CALIFORNIA
BY _____ CLERK, U.S. DISTRICT COURT
DEPUTY

1 aggregated claims of the plaintiff and putative class members meet or exceed the
2 statutory minimum of \$5,000,000 in controversy; there are more than 100 putative
3 class members; no states, no officials, or other governmental entities are
4 defendants in this action; and, this action does not include any of the claims
5 enumerated in 28 U.S.C. § 1332(d)(9).

6 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.
7 Defendant resides in this district and a substantial part of the challenged actions
8 took place in this district.

9 **Nature of Case**

10 3. On November 2, 2009, Toyota Motor Sales, U.S.A., Inc., announced a
11 voluntary safety recall related to floor mats in certain Toyota and Lexus models of
12 its automobiles. The recall was announced because the driver's floor mat could
13 interfere with the accelerator pedal and cause it to get stuck in the wide-open
14 position causing unintended acceleration of the vehicle. On November 25, 2009,
15 Toyota announced details of a vehicle-based remedy, including reconfiguring the
16 shape of the accelerator pedal, providing newly-designed replacement driver and
17 front passenger side all-weather floor mats, and installing a brake override system
18 in certain models. Toyota will start notifying owners of ES350, Camry, and
19 Avalon models by the end of 2009 and will notify owners of the other models on a
20 rolling schedule during 2010. Plaintiff seeks damages resulting from the recall on
21 behalf of herself and all others similarly situated.

22 **Parties**

23 4. Plaintiff Heather A. Lane ("Plaintiff") is a citizen of the State of
24 California. Plaintiff resides in San Francisco, California. Plaintiff owns a 2008
25 Toyota Prius model automobile, which is subject to the recall announced by
26 Toyota Motor Sales, U.S.A., Inc.

27
28

1 c) whether TMS has reimbursed or compensated Plaintiff and
2 Class members for the loss of the use of the driver's floor mats;

3 d) whether the floor mats are rendered worthless to Plaintiff and
4 Class members as a result of the recall;

5 e) whether the vehicle based remedy adequately compensates
6 Plaintiff and Class member for their damages;

7 f) whether TMS has breached its contracts with Plaintiff and Class
8 members;

9 g) whether TMS has breached the implied warranty of
10 merchantability; and

11 h) whether TMS has been unjustly enriched.

12 10. Plaintiff will fairly and adequately protect the interests of the Class.
13 Plaintiff seeks no relief which is antagonistic to the interests of the Class. In
14 addition, Plaintiff is represented by counsel who are competent and experienced in
15 the prosecution of class actions.

16 11. A class action is superior to other available methods for the fair and
17 efficient adjudication of this controversy because the named representative has the
18 same interest as other members of the Class and will vigorously prosecute this
19 action on behalf of the Class. In addition, it is desirable to concentrate the
20 litigation in this forum because the damages suffered by individual members of the
21 Class may be relatively small, and the expense and burden of individual litigation
22 make it impracticable for individual members of the Class to pursue separate
23 litigation.

24 12. No difficulties are likely to be encountered in the management of this
25 litigation as a class action.

26 13. The prosecution of separate actions by individual members of the
27 Class would create a risk of inconsistent and varying adjudications concerning the
28 subject of this action, which would establish incompatible standards of conduct for

1 Defendant under the laws alleged herein.

2 **Factual Background**

3 14. Plaintiff purchased new and presently owns a 2008 Prius Touring
4 Edition automobile. She purchased her vehicle from Piercey Toyota in Milpitas,
5 California. When she purchased her Prius from the Toyota dealership, she also
6 paid for a driver's floor mat, which was an optional accessory.

7 15. TMS issued its recall because it decided that a defect that relates to
8 motor vehicle safety exists in certain Toyota and Lexus models of automobiles.
9 TMS explains that the defect concerns the driver's floor mat which can interfere
10 with the accelerator pedal and cause it to get stuck in the wide-open position
11 causing unintended acceleration of the vehicle.

12 16. According to information on its website, TMS's recall affects the
13 following makes, models, and years of automobiles: 2005 – 2010 Toyota Avalon,
14 2007 – 2010 Toyota Camry, 2004 – 2009 Toyota Prius, 2005 - 2010 Toyota
15 Tacoma, 2007 – 2010 Toyota Tundra, 2007 – 2010 Toyota ES350, 2006 – 2010
16 Lexus IS250 and IS350.

17 17. TMS has asked that owners of affected Toyota and Lexus models take
18 out any removable driver's floor mat and not replace it with any other floor mat.
19 TMS also provides instructions for what to do should a vehicle's floor mat become
20 stuck and interfere with the accelerator pedal.

21 18. Given the potential for unintended acceleration and TMS's
22 instructions to remove driver's floor mats, said mats are now worthless to Plaintiff
23 and members of the Class. Plaintiff and members of the Class have suffered
24 damages as a result.

25 19. On November 25, 2009, TMS announced details of a remedy,
26 including reconfiguring the shape of the accelerator pedal, providing newly-
27 designed replacement driver and front passenger side all-weather floor mats, and
28 installing a brake override system in certain models. However, the remedy does

1 not fully compensate Plaintiff and Class members for their damages; for example,
2 the remedy announced by TMS does not provide for alternative transportation
3 while consumers' vehicles are being repaired.

4 20. TMS has not stated when the newly-designed replacement driver and
5 front passenger side all-weather floor mats will be provided or when the vehicle-
6 based remedy will be provided, except to say that TMS will start notifying owners
7 of ES350, Camry, and Avalon models by the end of 2009 of the remedy process
8 and will notify owners of the other models on a rolling schedule during 2010.
9 TMS has not offered any compensation to Plaintiff and members of the Class for
10 the loss of the use of the driver's floor mat. Additionally, Plaintiff and members of
11 the Class are left with no protection for the carpeting in their automobiles, which,
12 without a floor mat, will become dirty and worn from exposure to water, snow, and
13 dirt.

14 21. TMS has violated applicable law, as set forth below, by actions and
15 inactions as described herein.

16 COUNT I

17 Breach of Implied Warranty of Merchantability

18 22. Plaintiff incorporates by reference the allegations in all preceding
19 paragraphs of this Class Action Complaint ("Complaint").

20 23. In its sale of the concerned automobiles and accessories, TMS
21 impliedly warranted to Plaintiff and members of the Class that the floor mats
22 purchased for use in certain Toyota and Lexus models and accelerator pedals,
23 which are subject to the recall described herein, were fit for their ordinary purpose.

24 24. TMS, its agents and its employees knew or should have known that its
25 driver's floor mats and accelerator pedals were defective and unfit for their
26 ordinary use.

27 25. Under the Uniform Commercial Code in California there exists an
28 implied warranty of merchantability.

1 26. TMS has breached the warranty of merchantability by having sold its
2 automobiles with defective floor mats and accelerator pedals that were not fit for
3 their ordinary purpose. As stated herein, the floor mats can interfere with the
4 operation of the accelerator pedal and cause unintended acceleration. TMS has
5 acknowledged that the floor mats are not fit for their ordinary purpose, as it has
6 instructed owners of subject automobiles to remove the driver's floor mats and not
7 replace them. TMS has also acknowledged that its accelerator pedals are not fit for
8 their ordinary purpose, as it has agreed to reconfigure them as part of its vehicle-
9 based remedy.

10 27. Plaintiff and the Class members have been damaged as stated herein,
11 in that the floor mats and accelerator pedals are not fit for their ordinary purpose.

12 WHEREFORE Plaintiff requests that judgment be granted against
13 Defendant in an amount that is fair and reasonable, together with prejudgment
14 interest as provided by law, and that Plaintiffs receive such other relief as the Court
15 deems proper and just under the circumstances, including payment of costs and
16 expenses incurred in filing this suit, and reasonable attorney's fees.

17 **COUNT II**

18 **Breach of Implied Warranty of Merchantability**

19 **Under the Magnuson-Moss Act, 15 U.S.C. § 2310**

20 28. Plaintiff incorporates by reference all allegations in all preceding
21 paragraphs of this Complaint.

22 29. Under the Uniform Commercial Code in California there exists an
23 implied warranty of merchantability.

24 30. The Magnuson-Moss Warranty Act provides for a civil action by
25 consumers for failure to comply with an implied warranty arising under state law.
26 *See* 15 USCA § 2310 (d)(1)(A) (1976).

27 31. Defendant breached the implied warranty of merchantability by
28 selling goods which were not merchantable. TMS has breached the warranty of

1 merchantability by having sold its automobiles with defective floor mats and
2 accelerator pedals that were not fit for their ordinary purpose. As stated herein, the
3 floor mats can interfere with the operation of the accelerator pedal and cause
4 unintended acceleration. TMS has acknowledged that the floor mats are not fit for
5 their ordinary purpose, as it has instructed owners of subject automobiles to
6 remove the driver's floor mats and not replace them. TMS has also acknowledged
7 that its accelerator pedals are not fit for their ordinary purpose, as it has agreed to
8 reconfigure them as part of its vehicle-based remedy.

9 32. Plaintiff and the Class have been damaged and have suffered direct
10 economic loss as the floor mats they purchased and the accelerator pedals in their
11 vehicles are not fit for their ordinary purpose.

12 WHEREFORE Plaintiff requests that judgment be granted against
13 Defendant in an amount that is fair and reasonable, together with prejudgment
14 interest as provided by law, and that Plaintiff receives such other relief as the Court
15 deems proper and just under the circumstances, including payment of costs and
16 expenses incurred in filing this suit, and reasonable attorney's fees.

17 **COUNT III**

18 **Violation Of Business And Professions Code §17200 Et Seq.**

19 33. Plaintiff incorporates by reference all allegations in all preceding
20 paragraphs of this Complaint.

21 34. This cause of action is brought on behalf of Plaintiffs and members of
22 the Class pursuant to California Business and Professions Code §17200, *et seq.*

23 35. Plaintiff has standing to bring this action under the UCL because she
24 has suffered injury in fact and has lost money or property because of the
25 Defendant's conduct.

26 36. By reason of the conduct alleged herein, Plaintiff alleges that
27 Defendant committed unlawful and unfair practices within the meaning of the
28 California Business and Professions Code §17200, *et seq.* The conduct alleged

1 herein is a "business practice" within the meaning of California Business and
2 Professions Code §17200, *et seq.*

3 37. As a result of Defendant's violation, Plaintiff and the Class are
4 entitled to restitution for the economic harm they have suffered by purchasing
5 Defendant's automobiles and paying certain sums for the defective floor mats and
6 accelerator pedals.

7 WHEREFORE Plaintiff requests that judgment be granted against
8 Defendant in an amount that is fair and reasonable, together with prejudgment
9 interest as provided by law, and that Plaintiff receives such other relief as the Court
10 deems proper and just under the circumstances, including payment of costs and
11 expenses incurred in filing this suit, and reasonable attorney's fees.

12 **COUNT IV**

13 **UNJUST ENRICHMENT**

14 38. Plaintiff incorporates by reference all allegations in all preceding
15 paragraphs of this Complaint.

16 39. In purchasing Defendant's automobiles, Plaintiff and members of the
17 Class paid certain sums for said automobiles, which include defective floor mats
18 and accelerator pedals, thereby conferring a benefit on Defendant that is unjust and
19 excessive given that the floor mats have been recalled and are now worthless to
20 Plaintiff and members of the Class, and that the accelerator pedals need to be
21 reconfigured.

22 40. Defendant has knowingly received and retained these benefits.

23 41. It would be manifestly unjust for Defendant to retain said benefits.

24 42. Plaintiff and members of the Class are entitled to an amount equal to
25 the amount each of them enriched Defendant and for which Defendant has been
26 unjustly enriched.

27 ///

28 ///

1 WHEREFORE Plaintiff requests that judgment be granted against
2 Defendant in an amount that is fair and reasonable, together with prejudgment
3 interest as provided by law, and that Plaintiff receives such other relief as the Court
4 deems proper and just under the circumstances, including payment of costs and
5 expenses incurred in filing this suit, and reasonable attorney's fees.

6 **Prayer for Relief**

7 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
8 situated, prays for:


- 9 A. an order certifying this matter as a class action with Plaintiff as class
10 representative and designating Plaintiff's counsel as Class Counsel;
- 11 B. judgment in favor of Plaintiff and the Class in the amount of actual
12 and compensatory damages;
- 13 C. prejudgment interest as provided by law;
- 14 D. requiring Defendant to pay the reasonable attorneys' fees and costs of
15 Plaintiffs and the Class; and
- 16 E. such other and further relief as the nature of the case may require or as
17 may be determined to be just, equitable, and proper by this Court.

18 **Jury Demand**

19 Plaintiff demands a trial by jury on all issues so triable.

20 DATED: December 10, 2009

LINDSAY & STONEBARGER

21
22 
23 By: /s/ Gene J. Stonebarger
24 Gene J. Stonebarger
25 Attorneys for Plaintiff and the Class

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OF COUNSEL:

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Attorneys for Plaintiff Heather A. Lane and the Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Gary A. Feess and the assigned discovery Magistrate Judge is Fernando M. Olguin.

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

CV09- 9158 GAF (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

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

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Gene J. Stonebarger, SBN 209461
gstonebarger@lindstonelaw.com
LINDSAY & STONEBARGER APC
620 Coolidge Drive, Suite 225
Folsom, CA 95630 (916) 294-0002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEATHER A. LANE, individually and on behalf of
all others similarly situated

PLAINTIFF(S),

v.

TOYOTA MOTOR SALES, U.S.A., Inc., a California
corporation

DEFENDANT(S).

CASE NUMBER

CV09-9158 GAF FMOx

SUMMONS

TO: DEFENDANT(S): TOYOTA MOTOR SALES, U.S.A., Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gene J. Stonebarger, Esq., whose address is 620 Coolidge Drive, Suite 225, Folsom, CA 95630. 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: December 14, 2009

By: *Shia Berger*

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)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

(a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) HEATHER A. LANE, individually and on behalf of all others similarly situated	DEFENDANTS TOYOTA MOTOR SALES, U.S.A., Inc., a California corporation
--	---

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Gene J. Stonebarger LINDSAY & STONEBARGER 620 Coolidge Drive, Suite 225, Folsom, CA 95630 (916) 294-0002	Attorneys (If Known)
--	----------------------

BASIS OF JURISDICTION (Place an X in one box only.) 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td align="center">PTF</td> <td align="center">DEF</td> <td></td> <td align="center">PTF</td> <td align="center">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

7. **ORIGIN** (Place an X in one box only.)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

LASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

I. **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.)
 15 U.S.C. § 2310

II. **NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Act 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Info. Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV09-9158

FOR OFFICE USE ONLY: Case Number: _____

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



CIVIL COVER SHEET

II(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 res. list case number(s): _____

II(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 res. list case number(s) 2:09-cv-08143-AHM-FMO

Will cases be deemed related if a previously filed case and the present case:

- Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

VENUE: (When completing the following information, use an additional sheet if necessary.)

List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Francisco County, California

List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County, California	

List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County, California	San Francisco County, California

Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved.

SIGNATURE OF ATTORNEY (OR PRO PER):  Date December 10, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

(FMOx), DISCOVERY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-09158-GAF-FMO**

Heather A. Lane v. Toyota Motor Sales, U.S.A., Inc.
Assigned to: Judge Gary A. Feess
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-09386-GAF-FMO
Cause: 28:1332 Diversity-Motor Vehicle Product Liability

Date Filed: 12/14/2009
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod.
Liability
Jurisdiction: Diversity

Plaintiff

Heather A. Lane
*individually and on behalf of all others
similarly situated*

represented by **Gene J Stonebarger**
Stonebarger Law, APC
75 Iron Point Circle, Suite 145
Folsom , CA 95630
916-235-7140
Fax: 916-235-7141
Email:
gstonebarger@stonebargerlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Sales, U.S.A., Inc.
a California corporation

represented by **Cari K Dawson**
Alston & Bird LLP
1201 West Peachtree Street
Atlanta , GA 30309
404-881-7000
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Lisa Gilford
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Email: lisa.gilford@alston.com

LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/14/2009	<u>1</u>	CLASS ACTION COMPLAINT against Defendant Toyota Motor Sales, U.S.A., Inc. (Filing fee \$ 350 PAID.) Jury Demanded., filed by Plaintiff Heather A. Lane. (et) (ds). (Entered: 12/16/2009)
12/14/2009		21 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to Defendant Toyota Motor Sales, U.S.A., Inc. (et) (Entered: 12/16/2009)
12/14/2009	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Heather A. Lane. (et) (ds). (Entered: 12/16/2009)
12/23/2009	<u>3</u>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 (Related Case) filed. Transfer of case declined by Judge A. Howard Matz, for the reasons set forth on this order. Related Case No. CV09-08143 AHM (FMOx) (at) (Entered: 12/23/2009)
01/05/2010	<u>4</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Sales, U.S.A., Inc. answer now due 2/11/2010, filed by Defendant Toyota Motor Sales, U.S.A., Inc..(Gilford, Lisa) (Entered: 01/05/2010)
01/12/2010	<u>5</u>	APPLICATION for attorney Cari K. Dawson to Appear Pro Hac Vice (PHV Fee of \$185 receipt number 0973000000006389530 paid.) filed by Defendant Toyota Motor Sales, U.S.A., Inc.. (Attachments: # <u>1</u> Proposed Order)(Gilford, Lisa) (Entered: 01/12/2010)
01/14/2010	<u>6</u>	PROOF OF SERVICE filed by plaintiff Heather A. Lane, re Complaint - (Discovery) <u>1</u> , Certificate/Notice of Interested Parties <u>2</u> , Summons Issued 12/14/2009 served on 12/24/2009. (Stonebarger, Gene) (Entered: 01/14/2010)
01/15/2010	<u>7</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Incorrect event selected. Correct event to be used is Service of summons and complaints RE: Proof of Service (subsequent documents) <u>6</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (bp) (Entered: 01/15/2010)
01/19/2010	<u>8</u>	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE by Judge Gary A. Fees: The Court, having reviewed the accompanying Application of Cari K. Dawson granting <u>5</u> Application to Appear Pro Hac Vice by Attorney Cari K. Dawson on behalf of Defendant, Toyota Motor Sales, U.S.A., Inc., designating Lisa Gilford as local counsel. (bp) (Entered: 01/19/2010)

PACER Service Center
Transaction Receipt
02/01/2010 13:02:31

PACER Login:	bg0149	Client Code:	Toyota
Description:	Docket Report	Search Criteria:	2:09-cv-09158-GAF-FMO End date: 2/1/2010
Billable Pages:	2	Cost:	0.16

Exhibit D

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 11 Attorneys for Plaintiff DALE BALDISSERI

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 DALE BALDISSERI, on behalf of)
 12 himself and all others similarly situated)
 13 and the general public,)

Case No. CV 09-9386 GAF(FMOx)

CLASS ACTION

Plaintiff,

Assigned to Hon. Gary A. Feess

v.

FIRST AMENDED COMPLAINT

15 TOYOTA MOTOR SALES, U.S.A.,
 16 INC.;

DEMAND FOR JURY TRIAL

17 TOYOTA MOTOR NORTH AMERICA,
 18 INC.;

19 TOYOTA MOTOR
 20 MANUFACTURING, CALIFORNIA,
 21 INC.;

22 TOYOTA MOTOR ENGINEERING &
 23 MANUFACTURING NORTH
 24 AMERICA, INC.;

and DOES 1 THROUGH 20

Defendants.

ORIGINAL

1 **I. INTRODUCTORY FACTS**

2 1. Toyota's vehicles have a defective condition that causes uncontrolled
3 acceleration to speeds up to 100 m.p.h and more. The defective condition is deadly.
4 Data compiled by the safety research organization, Safety Research and Strategies,
5 shows that since 2001, Toyota uncontrolled acceleration incidents have accounted for
6 725 crashes, 304 injuries, and 18 fatalities. This summer, an off-duty California
7 Highway Patrol officer and his family were killed when the Toyota-made Lexus he was
8 driving sped out of control and crashed.

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

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

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

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

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

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

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

11 8. On October 30, 2009, Toyota began mailing a letter to owners¹ of only some
12 of its models that have experienced high incidence of unintended acceleration, not to
13 owners of all Toyota models that have experienced it. Toyota calls the letter an "Interim
14 Notice." The letter contains the statement about "compatible, properly secured" floor
15 mats quoted above.

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

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

26

27

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

1 **II. SOME DEFINITIONS**

2 11. In this pleading:

3 a. **“Toyota”** and **“Defendants”** both mean all the defendants, jointly and
4 individually.

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

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

13 d. **“Subject Vehicles”** means the 2009 Notice Vehicles together with the 2002
14 - 2010 Vehicles.

15 12. The allegations in this pleading are made without any admission that, as to
16 any particular allegation, plaintiff bears the burden of pleading, proof, or persuasion.
17 plaintiff reserves all rights to plead in the alternative.
18

19 **III. JURISDICTION AND VENUE**

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

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

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

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

3 14. Also, this Court has original federal question jurisdiction under 28 U.S.C.
4 § 1331 because this case arises under the laws of the United States federal law. Rights
5 to relief for plaintiff and the class depend on the resolution of substantial questions of
6 federal law.

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

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

17 18 **IV. PARTIES**

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

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

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

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

26 21. Defendant Toyota Motor Engineering & Manufacturing North America,
27 Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of
28

1 business in Kentucky. It is registered² to do business in California.

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

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

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

23

24

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26

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² "Qualified" is the technically correct term

1 **V. FACTS IN MORE DETAIL**

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

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

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

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

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

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

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

4 c. A woman in Medford, Oregon reported three frightening incidents
5 of unintended acceleration, including one with her 15-year-old daughter behind
6 the wheel. She took her 2007 Prius to the dealership. But mechanics and a
7 Toyota field representative told her that they believed the problem lay in the pedal,
8 which was replaced. Not trusting this explanation, she traded in her Prius for a
9 2008 BMW 5-series.

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

19 e. A woman awoke in an Oklahoma hospital a month after a crash in her
20 2005 Camry. She said the car sped out of control on a freeway, then smashed into
21 an embankment after she swerved it onto an exit ramp, leaving behind long skid
22 marks from attempts to stop the vehicle with her brakes and emergency brake.
23 She reports she sustained permanent memory loss, and her best friend died.

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

1 her car.

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

7 h. In 2004, NHTSA began a probe into a defect petition filed by a
8 registered nurse who was then director of health services for the Montgomery
9 County, Md., school system. She reported that she had her foot on the brake of her
10 2002 Lexus ES when it took off and hit a tree.

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

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

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

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

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

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

2 28. Owner complaints helped trigger at least eight investigations into sudden
3 acceleration in Toyota and Lexus vehicles by the NHTSA since 2002.³

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

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

25
26 ³ The *Times* reports the following about those investigations. Federal officials systematically
27 excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had
28 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.

1 reported by the Alabama registered nurse, NHTSA and Toyota both winnowed down
2 other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry
3 models. When NHTSA asked Toyota to disgorge all of the reports it knew about, Toyota
4 eliminated an unknown number in five broad categories, including cases in which drivers
5 said they were unable to control a runaway engine by applying the brakes. Federal
6 investigators said only 20 cases were considered relevant. But *The Times'* examination
7 of consumer complaints and a sampling of reports from Toyota dealers found more than
8 400 reports of sudden acceleration involving those models. And federal records show
9 that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

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

16 32. In 2005, a Phoenix man who had experienced a minor accident he blamed
17 on sudden acceleration, filed a defect petition with the NHTSA that included nearly
18 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority
19 should be eliminated because they dealt "with two completely different issues."

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

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

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

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

9 36. Toyota continues its advertising and public statements touting “safety.”
10 Toyota’s video of November, 2009, placed on its website, states that NHTSA
11 “thoroughly investigated” Toyota uncontrolled acceleration and used “stringent safety
12 testing. . . . Toyota and Lexus take public safety very seriously. We believe our vehicles
13 are among the safest on the road. Your best source of information can be found at
14 Toyota.com and Lexus.com.” The video also states that Toyota’s November 2009
15 “recall” is “voluntary.” The video is at:

16 <http://pressroom.toyota.com/pr/tms/electronic.aspx?fid=84801>

17 37. Toyota website statement dated November 18, 2009 states: “Toyota is
18 confident its vehicles are among the safest on the road today and is committed to the
19 highest levels of vehicle safety and quality. [¶] “In 2009, Toyota won more IIHS Top
20 Safety Pick (TSP) awards than any other manufacturer. Toyota continues to improve
21 vehicle passive and active safety, including improvement of past winners of IIHS TSP”.

22 The statement is at:

23 <http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2273>.

24

25 **B. Toyota’s So-Called “Recall”**

26 38. Toyota’s “Interim Notice,” published in the press and on the Internet, has
27 caused serious misinformation and misunderstanding about what to do about the
28 problem.

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

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

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

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

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

25
26 **C. Toyota’s “Interim Notice” Instructions to Owners.**

27 44. In connection with what Toyota refers to as a “recall,” beginning October
28 30, 2009, Toyota mailed the “Interim Notice,” and put it on Toyota’s website. On

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

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

7 "What should you do if you experience accelerator pedal interference?

8 "Should the vehicle continue to accelerate rapidly after releasing the accelerator
9 pedal, this could be an indication of floor mat interference. If this occurs, Toyota
recommends you take the following actions:

10 "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it**
11 **from the accelerator pedal [while the vehicle is accelerating]**; then pull over and
stop the vehicle.

12 "If the floor mat cannot be dislodged, then firmly and steadily step on the brake
13 pedal with both feet. Do NOT pump the brake pedal repeatedly as this will
increase the effort required to slow the vehicle.

14 "**Shift the transmission gear selector to the Neutral (N) position [eliminating**
15 **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.

16 "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC [engine**
17 **will be off, but there will be power to some accessories]**. This will not cause loss
18 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]."

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

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

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

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

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

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

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

23
24 **D. The Risks and Dangers Caused By Toyota’s “Interim Notice” Instructions**

25 47. The risks caused by Toyota’s “Interim Notice” are unacceptable for many
26 reasons, including these and others:

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

1 traffic.”

2 b. Loss of vehicle control by drivers has been repeatedly recognized as
3 a cause of serious and fatal crashes. As recently as September of this year, the
4 National Highway Traffic Administration [NHTSA] noted the role of driver
5 distraction and loss of control in crash causation. “Distraction from the primary
6 task of driving could present a serious and potentially deadly danger. In 2008,
7 5,870 people lost their lives and an estimated 515,000 people were injured in
8 police-reported crashes in which at least one form of driver distraction was
9 reported on the crash report.” NHTSA urges drivers: “Avoid conditions that lead
10 to a loss of control.”

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

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

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

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

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

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

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

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

20
21 **E. Plaintiff's Damages, Injuries and Losses**

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

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

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

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

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

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

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

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

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

21 22 VI. CLASS ACTION ALLEGATIONS

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

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

6 **A. Definition of California 2009 Notice Class**

7 All individuals, entities, and organizations who purchased or leased any of the
8 2009 Notice Vehicles in California, or who purchase or lease any of them in
9 California while this case is pending.

10 As stated above, the 2009 Notice Vehicles are: 2007 to 2010 MY (model
11 year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to
12 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350,
13 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

14 **B. Definition of California 2002 - 2010 Vehicles Class**

15 All individuals, entities, and organizations who purchased or leased any of the
16 2002 - 2010 Vehicles in California, or who purchase or lease any of them in
17 California while this case is pending.

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

23 **C. Definition of National 2009 Notice Class**

24 All individuals, entities, and organizations who purchased or leased any of the
25 2009 Notice Vehicles in the United States, or who purchase or lease any of them
26 in the United States while this case is pending.

27 **D. Definition of National 2002 - 2010 Vehicles Class**

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

1 2002 - 2010 Vehicles in the United States, or who purchase or lease any of them
2 in the United States while this case is pending.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11
12 **FIRST CLAIM FOR RELIEF**

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

15 50. Plaintiff incorporates paragraphs 1 through 49.

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

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

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

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

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

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

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

12 b. Extra wear and tear on the carpet that otherwise would be covered by
13 the floor mat.

14 c. Lost of use of the vehicle and payments for substitute vehicles.

15 d. The cost to correct the defective condition, and loss of use of the
16 vehicles while the corrections are made.

17 e. Payments of the purchase price and lease payments.

18 56. This claim for relief is limited to those class members who are individuals.
19 The Song-Beverly Consumer Warranty Act violations are limited to those class members
20 who purchased or leased new Subject Vehicles primarily for personal, family, or
21 household purposes.

22 57. Plaintiff and the class gave Toyota all notices and demands required to
23 recover under this claim for relief.

24 58. By its conduct described above, at all relevant times, Toyota has been aware
25 of the unintended acceleration defective condition, and has consciously disregarded the
26 rights and safety of plaintiff and the other class members. The misconduct by Toyota
27 was done with malice, fraud, and oppression and in willful and conscious disregard of
28 the rights and safety of plaintiff and others. Toyota's conduct is despicable conduct

1 carried on by the Toyota with a willful and conscious disregard of the rights or safety of
2 others. It is despicable conduct that subjects persons to cruel and unjust hardship in
3 conscious disregard of their rights. It was intentional misrepresentation, deceit, or
4 concealment of a material fact known to Toyota, with the intention on the part of Toyota
5 of thereby depriving persons of property or legal rights. Plaintiff and the class are
6 entitled to punitive damages.

7
8 **SECOND CLAIM FOR RELIEF**

9 **(Class Action Against All Defendants for Injunction and Declaratory Relief for**
10 **Unlawful, Fraudulent, and Unlawful Practices in Violation of the**
11 **California Unfair Competition Law)**

12 59. Plaintiff incorporates paragraphs 1 through 58.

13 60. On information and belief, all the conduct by Toyota described in this
14 complaint took place, originated, or emanated at the headquarters of Toyota in Los
15 Angeles County, California.

16 61. Plaintiff owns a 2009 Camry, which he purchased in California
17 approximately in February, 2009.

18 62. This conduct by Toyota constitutes unlawful, fraudulent, and unfair
19 competition under the California Unfair Competition Law.

20 63. Toyota's conduct is unlawful because, among other things, it constitutes
21 breach of warranty and violation of the Song-Beverly Consumer Warranty Act.

22 64. Toyota's conduct is fraudulent within the meaning of the Unfair
23 Competition Law because, among other things, as stated more particularly above, it is
24 and has been likely to deceive the class members and members of the public about the
25 safety of the Subject Vehicles, the unintended acceleration and its risks, what can and
26 has been done about it, and the safety of the instructions in the "Interim Notice," all as
27 stated in above.

28 65. Toyota's conduct is unfair within the meaning of the Unfair Competition

1 Law (UCL) because, among other things, as the facts above show:

2 a. The gravity of the harm to the class members and the public far
3 outweighs the utility of Toyota's conduct. The risk and actuality of crashes,
4 injuries, and deaths far outweigh any legitimate reasons or utility Toyota could
5 have had in not correcting the unintended acceleration long ago, in not recalling
6 all the Subject Vehicles, in not manufacturing them with the smart pedal, in not
7 installing the smart pedal on all the Subject Vehicles years ago, certainly by now,
8 in not sending the class members a new notice correcting the "Interim Notice."
9 conduct is unfair within the meaning of the Unfair Competition Law (UCL)

10 b. Toyota's conduct offends established public policy, and is immoral,
11 unethical, oppressive, unscrupulous and substantially injurious to the class
12 members.

13 c. Toyota's conduct violates the policy or spirit of one of the various
14 antitrust laws because its effects are comparable to or the same as a violation of
15 the law, or otherwise significantly threatens or harms competition, because, among
16 other things, Toyota has, for many years, for many years Toyota has sold the
17 Subject Vehicles without devoting to them the necessary cost and effort to
18 sufficiently protect against unintended acceleration, and without the smart pedal
19 and other technology that would sufficiently protect against it.

20 66. In this Claim for Relief, additional common questions of law and fact exist
21 as to all Class members, and additionally predominate over any questions that affect only
22 individual members of the Class. These common questions of law and fact include, but
23 are not limited to:

24 a. Do the Subject Vehicles have a defective condition that causes unintended
25 acceleration?

26 b. What did Toyota know about the defective condition, and when did Toyota
27 know it?

28 c. What did Toyota conceal or fail to disclose regarding the defective

1 condition?

2 d. What did Toyota fail to do that would have ameliorated the defective
3 condition?

4 e. What did Toyota fail to do that would have ameliorated the number or
5 severity of the crashes, injuries, and deaths that have resulted from defective condition?

6 f. What is the proper injunctive and declaratory relief for Toyota's violation
7 of the Unfair Competition Law?

8 g. What are the proper measures of restitution for Toyota's violation of the
9 Unfair Competition Law?

10 h. What would have been the cost to Toyota to manufacture the Subject
11 Vehicles so as to sufficiently protect against unintended acceleration?

12 i. What would have been the cost to Toyota to manufacture the Subject
13 Vehicles with smart pedal technology?

14

15

THIRD CLAIM FOR RELIEF

16

(Additional Class Action Claim Against All Defendants for Injunction and

17

Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in

18

Violation of the California Unfair Competition Law)

19

67. Plaintiff incorporates paragraphs 1 through 49.

20

69. NHTSA has a legislative mandate to issue motor vehicle safety standards.

21

Toyota, like all manufacturers of motor vehicles, is required to adhere to the standards.

22

The purpose of the standards is to protect the public against unreasonable risk of crashes

23

occurring as a result of the design, construction, or performance of motor vehicles.

24

70. Toyota, like all motor vehicle manufacturers, is required to certify that its

25

vehicles comply with all the standards, and must place on its vehicles a manufacturer's

26

certificate of compliance with all the standards. A motor vehicle manufacturer may not

27

issue the certificate if, in exercising reasonable care, the manufacturer has reason to

28

know the certificate is false or misleading in a material respect. Toyota placed the

1 certificate on plaintiff's Camry and all the Subject Vehicles. They are representations
2 that the vehicles comply with all the standards, but the representations are false, and they
3 were false when they were made, as Toyota knew.

4 68. Standard 124, in 49 C.F.R. 571.124, states:

5 "S5.1 There shall be at least two sources of energy **capable of returning**
6 **the throttle to the idle position** within the time limit specified by S5.3 from any
7 accelerator position or speed **whenever the driver removes the opposing**
8 **actuating force**. In the event of failure of one source of energy by a single
9 severance or disconnection, **the throttle shall return to the idle position** within
10 the time limits specified by S5.3, from any accelerator position or speed whenever
11 the driver removes the opposing actuating force.

12 "S5.2 The throttle shall return to the idle position from any accelerator
13 position or any speed of which the engine is capable whenever any one component
14 of the accelerator control system is disconnected or severed at a single point. The
15 return to idle shall occur within the time limit specified by S5.3, measured either
16 from the time of severance or disconnection or from the first removal of the
17 opposing actuating force by the driver.

18 "S5.3 Except as provided below, maximum time to return to idle position
19 shall be 1 **second** for vehicles of 4536 kilograms or less GVWR, and 2 **seconds**
20 for vehicles of more than 4536 kilograms GVWR. **Maximum time to return to**
21 **idle position shall be 3 seconds for any vehicle** that is exposed to ambient air at
22 -18 degrees Celsius to -40 degrees Celsius during the test or for any portion of
23 the 12-hour conditioning period.

24 69. The Subject Vehicles do not meet this standard. The vehicles do not have
25 a source of energy capable of returning the throttle to the idle position within specified
26 times, maximum 3 seconds, **whenever** the driver removes the opposing actuating force.
27 Instead, in the Subject Vehicles, the throttle does not return to the idle position at all
28

1 when there is unintended acceleration. This is shown by the enormously higher
2 incidence of uncontrolled acceleration in the Subject Vehicles than in all other vehicles
3 combined.

4 70. A notice to owners is required by the National Traffic and Motor Vehicle
5 Safety Act⁴ whenever a manufacturer “decides” there is a defect that relates to vehicle
6 safety. On October 30, 2009, Toyota began mailing a notice, although the notice does
7 not comply with the Act. Toyota calls it an “Interim Notice.” The “Interim Notice” is
8 Exhibit A to this complaint.⁵ It states:

9 “Toyota has decided that a defect which relates to motor vehicle safety exists”
10 in specified Toyota and Lexus vehicles. Toyota claims on its website that the “Interim
11 Notice” is “in compliance with the National Traffic and Motor Vehicle Safety Act.” It
12 is not.

13 71. Section 30118 of the National Traffic and Motor Vehicle Safety Act
14 requires that when a manufacturer “decides” that its vehicles have a “defect . . . related
15 to motor vehicle safety,” the manufacturer must send a mailed notice to “the owners
16 [and] purchasers. Section 30119 requires that the notice “shall contain”, among other
17 things:

- 18 “(2) an evaluation of the risk to motor vehicle safety reasonably related to the
19 defect or noncompliance;
20 “(3) the measures to be taken to obtain a remedy of the defect or noncompliance;
21 “(4) a statement that the manufacturer giving notice will remedy the defect or
22 noncompliance without charge under section 30120 of this title;
23 “(5) the earliest date on which the defect or noncompliance will be remedied
24 without charge, and for tires, the period during which the defect or noncompliance
25 will be remedied without charge under section 30120 of this title”

26 72. As to “(2) an evaluation of the risk to motor vehicle safety reasonably
27 related to the defect or noncompliance,” the “Interim Notice,” rather than stating the true

28 _____
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.

1 risk, contains horribly dangerous instructions⁶ about the risk. It falsely implies that the
2 risk is avoidable or controllable by taking steps that are terribly dangerous, and that in
3 fact add to the risk. It falsely and strongly implies that if the safety risk of the defect
4 occurs, namely uncontrolled acceleration, the car can still be safe, and can safely be
5 stopped at the side of the road. That is dangerously misleading. It is the opposite of a
6 truthful "evaluation of the risk to motor vehicle safety." Specifically, the notice tells the
7 reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of
8 control:

9 a. First, go down and try to "pull back the floor mat." In other words,
10 at high speeds, take your eyes and mind off the road, reach down to the floor and
11 try to move the mat;

12 b. If that doesn't work, instructs Toyota, then stall the car right on the
13 road. Do so regardless of whether it is in the middle of traffic or on a freeway.
14 Toyota doesn't use the word "stall," but that is precisely what happens if you
15 follow Toyota's instructions to put the car in neutral or turn off the engine. The
16 car necessarily slows to a stop. The wheels cannot receive power to move out of
17 the way of traffic on the right or behind. And with the engine off, the power
18 steering and power brakes do not work. Nevertheless, the notice instructs the
19 impossible: after putting the car in neutral, or turning off the engine, "make a
20 controlled stop at the side of the road."

21 73. As to items (3), (4) or (5), the "Interim Notice" states that this information
22 will be given in a later notice, but it doesn't say now much later. The Act does not
23 provide that some of the information required by section 30119 can be given in one
24 notice, and some in a later notice. It provides that all the information is to be in a single
25 notice. The Act does provide for a second notice, but not for the purposes Toyota is
26 using it. Section 30119(e) provides as follows for a second notice:

27 (e) Second Notification.— If the Secretary decides that a notification sent by a
28

⁶ On its own website, Toyota calls them "instructions".

1 manufacturer under this section has not resulted in an adequate number of motor
2 vehicles or items of replacement equipment being returned for remedy, the
3 Secretary may order the manufacturer to send a 2^d notification in the way the
4 Secretary prescribes by regulation.”

5 Toyota violates the Act by not including all the section 30119 information in its “Interim
6 Notice,” and by using a second notice for a different purpose.

7 74. This conduct by Toyota constitutes unlawful, fraudulent, and unfair
8 competition under the California Unfair Competition Law.

9 75. As stated above, Toyota has mailed a notice that violates the National
10 Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful
11 conduct because:

- 12 a. Toyota’s notice violates the National Traffic and Motor Vehicle Safety Act.
13 b. Any conduct that violates any law, federal or state, also violates the Unfair
14 Competition Law, under its unlawful “prong.”
15 c. Therefore, Toyota’s “Interim Notice” violates the Unfair Competition Law.

16 76. On information and belief, the “Interim Notice” was devised and written at
17 the headquarters of Toyota in Los Angeles County, California, and all of Defendants’
18 conduct described in this complaint emanated from there.

19 77. The “Interim Notice” is required by the National Traffic and Motor Vehicle
20 Safety Act⁸ whenever a manufacturer “decides” there is a defect that relates to vehicle
21 safety.

22 78. In this Claim for Relief, additional common questions of law and fact exist
23 as to all Class members, and additionally predominate over any questions that affect only
24 individual members of the Class. These common questions of law and fact include, but
25 are not limited to:

- 26 i. Did Toyota violate section 30119 of the Act, which requires the
27 notice to contain “(2) an evaluation of the risk to motor vehicle safety reasonably

28 ⁷ “2d” is how the statute reads

⁸ 49 U.S.C. 30101 *et seq.*

1 related to the defect or noncompliance”?

2 ii. Did Toyota violate section 30119 because the notice, rather than
3 stating the true risk, contains very dangerous instructions about the risk?

4 iii. Did Toyota violate section 30119 because the notice falsely implies
5 that the risk is avoidable or controllable by taking steps that are dangerous, and
6 add to the risk?

7 iv. Did Toyota violate section 30119 because the notice falsely and
8 strongly implies that if the safety risk of the defect occurs, namely uncontrolled
9 acceleration, the car can still be safe, and can safely be stopped at the side of the
10 road?

11 v. Did Toyota violate section 30119 because the notice is dangerously
12 misleading and is the opposite of a truthful “evaluation of the risk to motor vehicle
13 safety”?

14 vi. Does the Act require that all the information specified in section
15 30119 be in a single notice?

16 vii. Does the Act require that a second notice can be used only for the
17 purpose provided in section 30119(e)?

18 viii. Did Toyota violate section 30119 of the Act by not including in the
19 notice “(3) the measures to be taken to obtain a remedy of the defect or
20 noncompliance” and/or by using a second notice to do so, and using a second
21 notice for a different purpose other than provided for in section 30119(e)?

22 ix. Did Toyota violate section 30119 of the Act by not including in the
23 notice “(4) a statement that the manufacturer giving notice will remedy the defect
24 or noncompliance without charge under section 30120 of this title” and/or by
25 using a second notice to do so, and using a second notice for a different purpose
26 other than permitted by section 30119(e)?

27 x. Did Toyota violate section 30119 of the Act by not including in the
28 notice “(5) the earliest date on which the defect or noncompliance will be

1 remedied without charge, and for tires, the period during which the defect or
2 noncompliance will be remedied without charge under section 30120” and/or by
3 using a second notice to do so, and using a second notice for a different purpose
4 other than permitted by section 30119(e)?
5

6 **PRAYER**

7 WHEREFORE, Plaintiff prays judgment for himself and all others on whose
8 behalf this suit is brought, against Defendants, jointly and severally:

9 a. For preliminary injunction and permanent injunctions, including but not limited
10 to the following:

11 1. Defendants are enjoined from any further mailing or communicating the
12 following, quoted from the “Interim Notice,” or anything substantially similar
13 concerning what to do when unintended acceleration occurs in Toyota vehicles:

14 “pull back the floor mat and dislodge it from the accelerator pedal”.

15 “Shift the transmission gear selector to the Neutral (N) position”.

16 “If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC”.

17 2. Defendants are ordered to mail a corrective notice to all owners of the same
18 vehicles⁹ that were the subject of the “Interim Notice,” including lessees. Toyota shall
19 also place the notice on its website on a page directly accessible from the website home
20 page. The corrective notice shall state:

21 A. “The safest means to protect yourself from the defect in the vehicles
22 is not to drive them.

23 B. “Earlier, Toyota instructed that if you experience acceleration
24 problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the
25 floor mat and dislodge it from the accelerator pedal. But if there is an acceleration
26

27
28 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.

1 problem, it is not possible to do that safely. Do not attempt it.”

2 C. “Toyota also instructed that if you experience acceleration problems
3 in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N)
4 position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to
5 ACC”. But if there is an acceleration problem, it is very dangerous to shift into
6 neutral or turn the engine OFF, or to ACC. Do not do that.”

7
8 b. For restitution and disgorgement in amounts exceeding \$5 million.

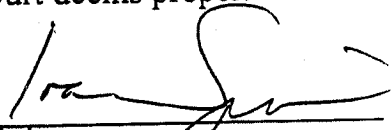
9 c. For claims other than those under the Unfair Competition Law, for damages in
10 amounts exceeding \$5 million, and punitive damages in an amounts to be determined.

11 d. For claims other than those under the Unfair Competition Law, for attorneys’ fees.

12 e. For costs of suit.

13 f. For such other relief as the Court deems proper.


14
15 Dated: December 28, 2009


Ira Spiro
of Spiro Moss LLP

16
17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a trial by jury for himself and the class on any claims and issues
19 that are triable by jury.

20 Dated: December 28, 2009


Ira Spiro
of Spiro Moss LLP

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	
--	--

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.

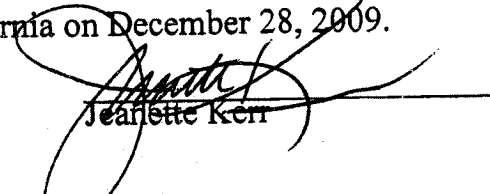
BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to 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.

(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

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 21 days after service of this summons on you (not counting the day you received it), you
must serve on the plaintiff an answer to the attached complaint amended complaint
 counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer
or motion must be served on the plaintiff's attorney, 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.

Dated: 28 DEC 2009

Clerk, U.S. District Court

By: _____

MARY 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)].

(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 **H Scott Leviant**
Spiro Moss LLP
11377 West Olympic Boulevard
5th Floor
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Fax: 310-235-2456
Email: scott@spiomoss.com
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ATTORNEY TO BE NOTICED

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V.

Defendant

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

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1201 West Peachtree Street
Atlanta, GA 30309
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Fax: 404-881-7777
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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)
*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	<u>1</u>	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: # <u>1</u> Notice of Assignment, # <u>2</u> Summons, # <u>3</u> Civil Cover Sheet) (ds). (Entered: 12/22/2009)
12/22/2009	<u>2</u>	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	<u>3</u>	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), <u>2</u> , filed by Plaintiff Dale Baldiseeri. (car) (Additional attachment(s) added on 12/29/2009: # <u>1</u> Exhibits A - C, # <u>2</u> Exhibits D - H, # <u>3</u> Exhibit I, Part 1, # <u>4</u> Exhibit I, Part 2) (ds). (Entered: 12/22/2009)
12/22/2009		21 DAY Summons Issued re Complaint - (Discovery), <u>1</u> 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	<u>4</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Dale Baldiseeri (car) (ds). (Entered: 12/22/2009)
12/23/2009	<u>5</u>	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	<u>6</u>	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	<u>7</u>	Filed Stamped Copy of Complaint filed by Plaintiff Dale Baldiseeri (Spiro, Ira) (Entered: 12/24/2009)
12/24/2009	<u>8</u>	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	<u>9</u>	NOTICE of Manual Filing filed by Plaintiff Dale Baldiseeri of First Amended Complaint. (Spiro, Ira) (Entered: 12/28/2009)
12/28/2009	<u>10</u>	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) <u>1</u> , filed by plaintiff Dale Baldiseeri. (rrey) (Entered: 12/29/2009)

12/28/2009		21 DAY Summons Issued re Amended Complaint, <u>10</u> 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	<u>11</u>	DISMISSAL OF PARTIES DESIGNATED BY A FICTITIOUS NAME filed by Plaintiff Dale Baldiseeri (Spiro, Ira) (Entered: 12/30/2009)
01/04/2010	<u>12</u>	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	<u>13</u>	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	<u>14</u>	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	<u>15</u>	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	<u>16</u>	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor North America, Inc. served on 12/29/2009, answer due 1/19/2010. <i>FIRST AMENDED COMPLAINT</i> 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	<u>17</u>	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. <i>FIRST AMENDED COMPLAINT</i> 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	<u>18</u>	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. <i>FIRST AMENDED COMPLAINT</i> 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	<u>19</u>	PROOF OF SERVICE Executed by Plaintiff Dale Baldiseeri, upon Toyota Motor Manufacturing, California, Inc. served on 12/29/2009, answer due 1/19/2010. <i>FIRST AMENDED COMPLAINT</i> 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	<u>20</u>	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: # <u>1</u> Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiff's First Amended Complaint, # <u>2</u> Proposed Order) (Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	<u>21</u>	NOTICE OF MOTION AND MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> 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: # <u>1</u> Memorandum of Points and Authorities in Support of Motion to Strike Allegations from First Amended Complaint, # <u>2</u> Proposed

		Order)(Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	<u>22</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> , MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> <u>21</u> 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	<u>23</u>	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 <u>20</u> MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> MOTION to Strike Allegations from First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> <u>21</u> , MOTION to Dismiss Plaintiff's First Amended Complaint <u>20</u> (Attachments: # <u>1</u> Exhibit Appendix-Part 1/Exhibits 1-5, # <u>2</u> Exhibit Appendix-Part 2/Exhibits 6-7, # <u>3</u> Exhibit Appendix-Part 3/Exhibits 8-10, # <u>4</u> Exhibit Appendix-Part 4/Exhibits 11-13, # <u>5</u> Exhibit Appendix-Part 5/Exhibits 14-16, # <u>6</u> Exhibit Appendix-Part 6/Exhibits 17-18, # <u>7</u> Exhibit Appendix-Part 7/Exhibits 19-20, # <u>8</u> Exhibit Appendix-Part 8/Exhibits 21-23, # <u>9</u> Exhibit Appendix-Part 9/Exhibits 24-27, # <u>10</u> Exhibit Appendix-Part 10/Exhibits 28-30, # <u>11</u> Exhibit Appendix-Part 11/Exhibits 31-33, # <u>12</u> Exhibit Appendix-Part 12/Exhibits 34-40, # <u>13</u> Exhibit Appendix-Part 13/Exhibits 41-50, # <u>14</u> Exhibit Appendix-Part 14/Exhibits 51-53, # <u>15</u> Exhibit Appendix-Part 15/Exhibits 54-56, # <u>16</u> Exhibit Appendix-Part 16/Exhibits 57-60, # <u>17</u> Exhibit Appendix-Part 17/Exhibits 61-63, # <u>18</u> Exhibit Appendix-Part 18/Exhibits 64-68)(Gilford, Lisa) (Entered: 01/19/2010)
01/19/2010	<u>24</u>	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	<u>25</u>	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: # <u>1</u> Proposed Order)(Gilford, Lisa) (Entered: 01/19/2010)
01/20/2010	<u>26</u>	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 <u>25</u> 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	<u>27</u>	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: # <u>1</u> 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	<u>28</u>	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)

PACER Service Center			
Transaction Receipt			
02/01/2010 11:00:50			
PACER Login:	bg0149	Client Code:	Toyota
Description:	Docket Report	Search Criteria:	2:09-cv-09386-GAF-FMO End date: 2/1/2010

Exhibit E

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7 Counsel for Plaintiffs and all
8 others similarly situated

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CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

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13 JOSEPH HAUTER and FRANK
14 PALOMARES, on behalf of themselves
and all others similarly situated,

15 Plaintiffs,

16 v.

17 TOYOTA MOTOR SALES, U.S.A.,
18 INC., TOYOTA MOTOR
CORPORATION, and DOE
19 DEFENDANTS 1-10

20 Defendants.

Case No. SACVID-00105-CJCCANx

21 CLASS ACTION

22 COMPLAINT FOR:

23 1. VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES
ACT;

24 2. VIOLATION OF THE UNFAIR
COMPETITION LAWS;

25 3. VIOLATION OF THE FALSE
ADVERTISING LAWS;

26 4. BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY;

27 5. BREACH OF IMPLIED
WARRANTY OF FITNESS FOR A
PARTICULAR PURPOSE;

28 6. NEGLIGENCE

DEMAND FOR JURY TRIAL

02208-00001 0138117.01

CLASS ACTION COMPLAINT

1 Plaintiffs Joseph Hauter and Frank Palomares, on behalf of themselves and
2 all others similarly situated ("Plaintiffs"), allege the following upon information
3 and belief based upon investigation of counsel and published reports, except to
4 their own acts, which they allege upon personal knowledge:

5 **JURISDICTION AND VENUE**

- 6 1. This Court has diversity jurisdiction over this class action pursuant to 28
7 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because
8 the matter in controversy exceeds \$5,000,000, exclusive of interest and costs,
9 and is a class action in which some members of the class are citizens of
10 different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).
- 11 2. This Court also has personal jurisdiction over Defendants because
12 Defendants are authorized to do business, and currently do business, in this
13 state.
- 14 3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
15 Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District
16 and is subject to personal jurisdiction and a substantial portion of the conduct
17 complained of herein occurred in this District.

18 **PARTIES**

- 19 4. Plaintiff Joseph Hauter is a resident of Los Angeles County. Plaintiff owns
20 and drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a
21 dealership located in Downey, California. Plaintiff's vehicle is equipped
22 with Toyota's electronic throttle control system. Plaintiff has experienced
23 sudden, unexpected acceleration of his vehicle while in the normal process of
24 operating his vehicle. In one incident, Plaintiff was pulling into a service
25 station with his foot solely on the brake pedal when his vehicle suddenly
26 accelerated. Plaintiff slammed on the brakes, and the vehicle lurched still,
27 came to a stop, but he could feel it still attempting to accelerate. Plaintiff
28 threw the vehicle into park, at which point the acceleration attempts stopped.

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1 In a second incident, Plaintiff was coming up to a left turn lane with his son
2 in the vehicle, began to apply the brakes, when the vehicle suddenly
3 accelerated. Plaintiff stood on the brakes with both feet until the truck
4 slowed. Plaintiff could feel the anti-lock brakes pumping and the vehicle
5 continuing to attempt to accelerate. When the vehicle had slowed to a slow-
6 roll, he threw the vehicle gearshift into park, at which point the acceleration
7 attempts stopped. Plaintiff's vehicle has further suffered a diminution in
8 resale value due to these incidents and press reports and recalls related to the
9 sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover,
10 one of Toyota's main selling points for its vehicles is that such cars are
11 reputed to be safe and reliable. Plaintiff relied upon Toyota's carefully
12 crafted reputation for safety and reliability in choosing his vehicle. But for
13 Toyota's failure to disclose that its vehicles are susceptible to incidents of
14 sudden, unintended acceleration, and thus such vehicles posed a significant
15 risk of injury and death to vehicle occupants, other motorists, and
16 pedestrians, Plaintiff would not have purchased his vehicle, or would not
17 have purchased his vehicle for the price paid.

18 5. Plaintiff Frank Palomares is a resident of Orange County. Plaintiff owns and
19 drives a 2008 Toyota Tundra. Plaintiff purchased his vehicle from a
20 dealership located in Orange County, California. Plaintiff's vehicle is
21 equipped with Toyota's electronic throttle control system. Plaintiff's vehicle
22 has suffered a diminution in resale value due to press reports and recalls
23 related to the sudden, unexpected acceleration of Toyota and Lexus vehicles.
24 Further, one of Toyota's main selling points for its vehicles is that such cars
25 are reputed to be safe and reliable. Plaintiff relied upon Toyota's carefully
26 crafted reputation for safety and reliability in choosing his vehicle. But for
27 Toyota's failure to disclose that its vehicles are susceptible to incidents of
28 sudden, unintended acceleration, and thus such vehicles posed a significant

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- 1 risk of injury and death to vehicle occupants, other motorists, and
2 pedestrians, Plaintiff would not have purchased his vehicle, or would not
3 have purchased his vehicle for the price paid.
- 4 6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all
5 relevant times was, a California Corporation headquartered in Los Angeles,
6 California. Defendant TMS-USA is a wholly owned subsidiary of Toyota
7 Motor Corporation, and is responsible for the manufacture, distribution, and
8 sale of all Toyota and Lexus automobiles and trucks in the United States.
- 9 7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant
10 times was, a Japanese Corporation with its headquarters in Japan. Toyota
11 Motor Corporation, at all relevant times, wholly owned and controlled TMS-
12 USA, and thus, conducted business in Los Angeles County and is subject to
13 the personal jurisdiction of this Court.
- 14 8. The above named Defendants, and their subsidiaries and agents, are
15 collectively referred to as "Toyota."
- 16 9. The true names and capacities of the Defendants sued herein as DOE
17 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs,
18 who therefore sue such Defendants by fictitious names. Each of the
19 Defendants designated herein as a DOE is legally responsible for the
20 unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this
21 Complaint to reflect the true names and capacities of the DOE Defendants
22 when such identities become known.
- 23 10. At all relevant times, each and every Defendant was acting as an agent and/or
24 employee of each of the other Defendants and was acting within the course of
25 scope of said agency and/or employment with the full knowledge and consent
26 of each of the other Defendants. Each of the acts and/or omissions
27 complained of herein were alleged and made known to, and ratified by, each
28 of the other Defendants.

FACTUAL ALLEGATIONS

- 1
2 11. Toyota is currently the world's largest manufacturer of vehicles with net
3 revenues in 2009 of over 227 billion dollars.
4 12. Toyota has carefully crafted and attempted to maintain a reputation for
5 quality and safety in order to increase sales of its cars.
6 13. Evidence of this include various advertisements by Toyota regarding their
7 vehicles crash safety ratings, design, quality, and resale value.
8 14. As the Los Angeles Times ("Times") reported in a front page story on
9 December 23, 2009:

10 A peerless reputation for quality and safety has helped
11 Toyota become the world's largest automaker. But even
12 as its sales have soared, the company has delayed recalls,
13 kept a tight lid on disclosure of potential problems and
14 attempted to blame human error in cases where owners
15 claimed vehicles were defective. After Toyota this fall
16 announced its biggest recall to address the sudden-
17 acceleration problem, it insisted publicly that no defect
18 existed. This drew a rare public rebuke from the National
19 Highway Traffic Safety Administration, which chastised
20 the automaker for making 'inaccurate and misleading
21 statements.'

- 22 15. Toyota's carefully crafted attempts to minimize any public revelation of the
23 problems with its vehicles are further discussed in that same Times article:
24 "The automaker knew of a dangerous steering defect in vehicles, including
25 the 4Runner sport utility vehicle, for years before issuing a recall in Japan in
26 2004." However, in 2004, it told U.S. regulators that no such recall was
27 necessary in here because Toyota "has received field information from the
28 Japanese market, but no similar information from the U.S. markets has been

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1 received." This statement to regulators was false, as "company records show
2 that Toyota had received numerous complaints about the problem before that
3 date," including ones as far back as the year 2000. In 2005, it was finally
4 forced to recall over 1 million vehicles with that part, a full five years after it
5 knew of such complaints in the United States. "Japanese police, in an
6 investigation of the defect, said that Toyota employees had known about the
7 problem *since 1992*, and should have initiated a recall immediately"
8 (emphasis added).

9 16. The same Times article reports that a former Toyota lawyer who handled
10 safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in
11 a "calculated conspiracy to prevent the disclosure of damaging evidence" as
12 part of a scheme to "prevent evidence of its vehicles shortcomings from
13 becoming known."

14 17. Beginning in the late 1990s, Toyota manufactured, distributed and sold
15 vehicles with an electronic throttle control system ("ETC").

16 18. Unlike that of traditional throttle control systems, where a physical cable
17 connected the accelerator pedal to the engine throttle, under the ETC system,
18 the engine throttle is controlled by electronic signals sent from the gas pedal
19 to the engine throttle. A sensor at the accelerator detects how far the gas
20 pedal is depressed and transmits that information to a computer module
21 which controls a motorized engine throttle. The computer module determines
22 how far the accelerator is depressed, and, in turn, tells the engine throttle
23 motor how far to open the throttle valve.

24 19. When Toyota first introduced the ETC, they continued to include a
25 mechanical linkage between the accelerator and the engine throttle control.

26 20. Beginning with the 2001 model year, however, Defendants began
27 manufacturing, distributing, and selling vehicles without such mechanical
28 linkage.

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- 1 21. Further, Defendants' ETC system also fails to include a failsafe measure
2 incorporated by other vehicle manufacturers which instructs the ETC system
3 to automatically reduce the engine to idle whenever the brakes are applied.
- 4 22. Moreover, many of Defendants' vehicles now include an electronic ignition
5 button rather than a mechanical ignition key-turned switch. In such cars, no
6 mechanical means exists to turn off the engine in the case of unintended
7 acceleration.
- 8 23. The combination of the lack of these safety systems creates a situation in
9 which there are no mechanical or electronic failsafe mechanism to allow the
10 driver to effectively stop or slow the car in such circumstances.
- 11 24. According to an article in the November 8, 2009 issue of the Times, the
12 Times located federal and other records of 19 fatalities and over 1,000 reports
13 by owners involving the unintended acceleration of Toyota vehicles from the
14 2002 model year and newer.
- 15 25. The Times further quotes an independent safety expert as stating that he had
16 identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built
17 since 2001.
- 18 26. The Times further states that other experts believe the numbers may be far
19 higher, citing to a 2007 National Highway Traffic and Safety Administration
20 ("NHTSA") survey of 600 Lexus owners that found that 10% complained
21 they had experienced sudden acceleration.
- 22 27. The Times further states that when Toyota reported complaint data to
23 NHTSA, Toyota eliminated all reports claiming that the sudden acceleration
24 occurred for "a long duration" or more than a few seconds.
- 25 28. The Times further states that in an investigation of reports of sudden
26 acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota
27 eliminated all reports in five broad categories when responding to NHTSA's
28 request, including all cases in which the drivers said they were unable to

1 control a runaway engine by applying the brakes.

2 29. Thus, at all relevant times, Toyota had full knowledge of the numerous
3 complaints regarding its vehicles, that such vehicles were susceptible to
4 incidents of sudden, unintended acceleration, and thus such vehicles posed a
5 significant risk of injury and death to vehicle occupants, other motorists, and
6 pedestrians.

7 30. On August 28, 2009, a 2009 Lexus ES350 vehicle, driven by California
8 Highway Patrolman Mark Saylor, and carrying his family, experienced an
9 instance of unintended acceleration. Mr. Saylor's brother-in-law called 911
10 from the back seat of the vehicle and said "the accelerator is stuck...we're
11 approaching an intersection." Moments later, the Saylor family was dead.

12 31. The national attention garnered by this tragedy caused Toyota to finally,
13 publicly, acknowledge that unintended acceleration was an issue in Toyota
14 vehicles, yet, it still attempted to minimize the damage.

15 32. On or about September 29, 2009, Toyota announced a recall of 3.8 million
16 vehicles, which was later expanded to 4.2 million vehicles, due to what
17 Toyota claimed was an issue with aftermarket or improperly installed floor-
18 mats causing unintended acceleration of its vehicles.

19 33. In a press release issued regarding the recall, however, Toyota unequivocally
20 stated "no defect exists in vehicles in which the driver's floor mat is
21 compatible with the vehicle and properly secured."

22 34. On November 3, 2009, ABC News's Nightline program focused its attention
23 on the unintended acceleration of Toyota vehicles. Significantly, individuals
24 interviewed during their program gave lie to Toyota's claims that all
25 unintended acceleration problems could be traced back to improper driver's
26 side floormats.

27 35. For example, the program interviewed Elizabeth James, a driver of a Toyota
28 Prius, who stated:

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1 I'm absolutely certain, that in my situation, it was not the
2 floor mats. I kept going faster and faster and all of a
3 sudden my foot was pressing on the brakes super, super
4 hard and I wasn't slowing down. My car just kept
5 accelerating. And it wasn't until I landed in the river that
6 it stopped.

7 36. The same ABC News show reported that approximately 2,000 incidents of
8 unintended acceleration of Toyota vehicles have been reported since Toyota
9 moved to an ETC system.

10 37. A January 21, 2010 article on ConsumerAffairs.com by Truman Lewis
11 documents additional cases of unintended acceleration unrelated to floormats.

12 38. For example, the article cites the story of "Radha" of Philadelphia, who was
13 in a parking lot when his 2009 Prius experienced unintended acceleration:

14 'I went all in for the brakes – no reaction from the car,' he
15 said. 'Car crashed into a light pole, tilted to its right
16 crashed down in parking spot right next to where I wanted
17 to park. With me hanging by the seat belt, car still
18 accelerating, I went for the power button. No response to
19 that either.' Radha managed to crawl through the window
20 to escape from the car, the engine running wide open as
21 the car lay on its side. When police arrived, they managed
22 to switch the car off, Radha said.

23 39. The same article also tells the story of "Mary" of Medford, Oregon, which
24 further shows that Toyota knew of these problems:

25 'Mary of Medford, Oregon, also reported that four
26 incidents of unintended acceleration in her 2007 Prius
27 were accompanied by an apparent lack of response from
28 the brakes. She said her dealer was able to duplicate

- 1 **the problem twice but couldn't resolve it. 'It has**
2 **nothing to do with the floor mat,' Mary said. (emphasis**
3 **added).**
- 4 40. **Contrary to its clear and unequivocal statements in November, 2009 that the**
5 **only issue with its vehicles regarding unintended acceleration was improper**
6 **floor mats, on January 21, 2010, Toyota announced that it had "newly**
7 **discovered" a mechanical defect with its accelerator pedal mechanism which**
8 **allows the pedal, according to Toyota's press release, to be "harder to**
9 **depress, slower to return or, in the worst case, stuck in a partially depressed**
10 **position."**
- 11 41. **Toyota has admitted that the throttle control systems in certain model year**
12 **vehicles contain defective mechanisms.**
- 13 42. **Toyota has admitted that the throttle can stick "in a partially depressed**
14 **position."**
- 15 43. **Toyota has admitted that if the driver pumps the brakes, he or she can deplete**
16 **the "power assist."**
- 17 44. **A vehicle with the throttle stuck in a partially depressed position can lead to**
18 **accidents which can kill or maim not only the drivers and passengers of the**
19 **defective vehicles, but other whom the vehicles might run into.**
- 20 45. **Toyota has admitted that their investigation is incomplete, and that they do**
21 **not know the origin, cause, failure mechanism, or fix for the defective**
22 **product.**
- 23 46. **Because Toyota's investigation is incomplete, and they do not know the**
24 **origin, cause, failure mechanism, or fix for the defective vehicles, they have**
25 **announced that their cars are defective, but they have not yet instituted a**
26 **recall to fix their vehicles, do not know when they might do so, what such fix**
27 **might be, how extensive it might be, nor how long it might take.**
- 28 47. **Toyota also continues to fail to address the fact that this new explanation still**

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1 does not fully address the facts and circumstances of many of the incidents of
2 unintended acceleration reported in press accounts.

3 48. For example, in the vast majority of unintended acceleration incidents
4 reported in the press, the drivers state that depressing the brake pedal is
5 ineffective at slowing or stopping the vehicle. Yet, Toyota's temporary
6 solution states "[i]n the event the driver experiences an accelerator pedal that
7 sticks in a partial open throttle position or returns slowly to idle position, the
8 vehicle can be controlled with firm and steady application of the brakes. The
9 brakes should not be pumped repeatedly because it could deplete vacuum
10 assist, requiring stronger brake pedal pressure."

11 49. Both the September, 2009 recall and the January, 2010 recall includes
12 vehicles as far back as the 2005 model year. Given the numerous press
13 reports that Toyota had received approximately 2,000 complaints of
14 unintended acceleration during that time period, it is clear that Toyota failed
15 to properly and appropriately investigate these incidents and to issue
16 appropriate remedies while being on notice of the defects in its vehicles.

17 50. Further, regardless of this knowledge, Toyota has taken no steps, even to this
18 date, to effectively remedy this dangerous condition. Although Toyota has
19 announced that it will begin installing accelerator-override systems in new
20 vehicles which will reduce engine power to idle at any time the brake pedal is
21 depressed, it has not agreed to recall and retrofit its prior vehicles with such a
22 safety feature. Further, Toyota continues to turn a blind eye to the numerous
23 incidents of unintended acceleration which fit neither the floor-mat nor the
24 sticking-accelerator pedal profile.

25 51. Toyota had and has a duty to disclose the vehicle defects because 1) it
26 publicly created, through its marketing campaign, the image of its vehicles as
27 safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to
28 become inherently dangerous products to the driver, passengers, and the

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1 general public.

2 **CLASS ACTION ALLEGATIONS**

3 52. Plaintiffs bring this action on behalf of themselves and all others similarly
4 situated, as a member of the proposed nationwide plaintiff class and
5 California class (collectively hereafter the "Class") defined as follows:
6 Nationwide class: All persons who reside in the United States and who
7 presently own a Toyota vehicle equipped with an electronic throttle control system.

8 California class: All persons who reside in California or are California
9 citizens and who presently own a Toyota vehicle equipped with an electronic
10 throttle control system.

11 53. Specifically excluded from the proposed Class are Defendants, any entities in
12 which Defendants have a controlling interest, and the officers, directors,
13 affiliates, legal representatives, successors, subsidiaries and/or assigns of
14 Defendant. Also specifically excluded from the proposed Class are any
15 claims by any persons who have suffered or possess a right of action for
16 personal injury or wrongful death as a result of the sudden unintended
17 acceleration of their Toyota vehicle.

18 54. This action is brought and may be properly maintained as a class action
19 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4)
20 and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
21 predominance and superiority requirements of those provisions.

22 55. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
23 joinder of all of its members is impractical. While the exact number and
24 identities of Class members are unknown to Plaintiff at this time and can only
25 be ascertained through appropriate discovery, Plaintiff is informed and
26 believes the Class includes millions of members. Plaintiffs allege that the
27 Class may be ascertained by the records maintained by Toyota and its
28 network of dealerships, and/or through the records of public agencies.

- 1 56. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
2 members of the Class which predominate over any questions affecting only
3 individual members of the Class. These common legal and factual questions,
4 which do not vary from class member to class member, and which may be
5 determined without reference to the individual circumstances of any class
6 member, include, but are not limited to, the following:
- 7 a. Whether Toyota vehicles equipped with electronic throttle control
8 systems are prone to sudden unintended acceleration;
 - 9 b. What the mechanism is for unintended acceleration of Toyota vehicles
10 equipped with an electronic throttle control system;
 - 11 c. Whether Toyota vehicles equipped with electronic throttle control
12 systems are dangerous when used as designed due to such sudden
13 unintended acceleration;
 - 14 d. Whether Toyota vehicles equipped with electronic throttle control
15 systems are dangerous when used as designed because they fail to
16 incorporate safety systems that would allow drivers to control their
17 vehicle in the case of sudden unintended acceleration;
 - 18 e. Whether Toyota knew of the dangerous propensity of its vehicles
19 equipped with an electronic throttle control system;
 - 20 f. Whether Toyota failed to remedy the dangerous propensity of its
21 vehicles equipped with an electronic throttle control system;
 - 22 g. Whether Toyota vehicles equipped with ETC are unreasonably
23 dangerous, constituting a breach of the implied warranty;
 - 24 h. Whether Toyota vehicles equipped with ETC are not fit for their
25 intended use, constituting a breach of the implied warranty;
 - 26 i. Whether Toyota was negligent in the manufacture, distribution, and
27 sale of vehicles equipped with ETC;
 - 28 j. Whether Toyota's conduct described herein violated California's

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- 1 Unfair Competition Law;
- 2 k. Whether Toyota's conduct described herein violated California's False
- 3 Advertising Act;
- 4 l. Whether Toyota's conduct described herein violated California's
- 5 Consumer Legal Remedies Act;
- 6 m. Whether Toyota's conduct described herein violated the Magnusson-
- 7 Moss Consumer Warranty Act.
- 8 n. The nature and extent of damages and other remedies to which the
- 9 conduct of Toyota entitles the Class members.
- 10 57. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the
- 11 members of the Class. Plaintiffs and all members of the Class have sustained
- 12 injury and are facing irreparable harm arising out of Defendants' common
- 13 course of conduct as complained of herein. The losses of each member of the
- 14 Class were caused directly by Defendants' wrongful conduct as alleged
- 15 herein.
- 16 58. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the
- 17 interests of the members of the Class. Plaintiffs have retained attorneys
- 18 experienced in the prosecution of class actions, including complex consumer
- 19 and mass tort litigation.
- 20 59. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
- 21 methods of fair and efficient adjudication of this controversy, since
- 22 individual litigation of the claims of all Class members is impracticable.
- 23 Even if every Class member could afford individual litigation, the court
- 24 system could not. It would be unduly burdensome to the courts in which
- 25 individual litigation of numerous issues would proceed. Individualized
- 26 litigation would also present the potential for varying, inconsistent, or
- 27 contradictory judgments and would magnify the delay and expense to all
- 28 parties and to the court system resulting from multiple trials of the same

- 1 complex factual issues. By contrast, the conduct of this action as a class
2 action, with respect to some or all of the issues presented herein, presents
3 fewer management difficulties, conserves the resources of the parties and of
4 the court system, and protects the rights of each Class member.
- 5 60. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
6 thousands of individual Class members would create the risk of inconsistent
7 or varying adjudications with respect to, among other things, the need for and
8 the nature of proper notice which Defendants must provide to all Class
9 members.
- 10 61. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
11 individual class members would create a risk of adjudications with respect to
12 them that would, as a practical matter, be dispositive of the interests of the
13 other Class members not parties to such adjudications or that would
14 substantially impair or impede the ability of such non-party Class members to
15 protect their interests.
- 16 62. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects
17 generally applicable to the Class, thereby making appropriate final and
18 injunctive relief with regard to the members of the Class as a whole.

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF CALIFORNIA'S**
21 **CONSUMER LEGAL REMEDIES ACT**

22 (By Plaintiffs and the Class Against All Defendants)

- 23 63. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
24 above.
- 25 64. The Defendants' acts and omissions violate the following portions of the
26 *California Consumer Legal Remedies Act*:
- 27 • *Civil Code* § 1770(a)(5) "Representing that goods or
28 services have ... characteristics ... uses, benefits ... which

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- 1 they do not have ...”
- 2 • *Civil Code* § 1770(a)(7) “Representing that goods or
- 3 services are of a particular standard, quality, or grade ... if
- 4 they are of another”
- 5 • *Civil Code* § 1770(a)(9) “Advertising goods or services
- 6 with intent not to sell them as advertised.”
- 7 65. Plaintiffs and the members of the Class risk irreparable injury as a result of
- 8 the Defendants’ acts and omission in violation of the CLRA and these
- 9 violations present a continuing risk to the class and members of the public.
- 10 66. Plaintiffs have filed concurrently herewith the venue affidavit required by
- 11 *Civil Code* § 1780(d). In addition Plaintiffs are concurrently providing the
- 12 notice to Defendants required under *Civil Code* § 1782(a) with the sending
- 13 of a letter, sent via certified mail return receipt requested.
- 14 67. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining
- 15 Defendants from selling any vehicles with an electronic throttle control in the
- 16 United States which has not been revised in such a manner as to eliminate the
- 17 possibility of sudden unintended acceleration and to which have been added
- 18 such safety measures that in the case of sudden unintended acceleration, the
- 19 driver will be able to take measures to slow and stop the vehicle. Plaintiffs
- 20 further seek restitution from Defendants for the cost paid for their inherently
- 21 unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory
- 22 injunction against Defendants requiring them to repair and/or replace
- 23 Plaintiffs’ and the putative Class’ vehicles, at Defendants’ expense, to
- 24 eliminate the possibility of sudden unintended acceleration and to add such
- 25 safety measures that in the case of sudden unintended acceleration, the driver
- 26 will be able to take measures to safely slow and stop the vehicle. Unless
- 27 Defendants are enjoined from violations of the CLRA alleged herein, the
- 28 members of the class and the general public, who lack an adequate remedy at

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1 law to deter Defendants' wrongful conduct, will be irreparably harmed.
2 68. If Defendants do not adequately correct the defects and take the appropriate
3 remedies asked for in Plaintiffs' *Civil Code* § 1782(a) notice, Plaintiffs will
4 amend the Complaint to add the following: Plaintiffs have suffered economic
5 damage as a result of Defendant's violations of *Civil Code* § 1770 in that they
6 now own a vehicle which is defective and inherently dangerous, regardless of
7 the manifestation of the defect. Plaintiffs have further suffered economic
8 damage in that their vehicle's resale value has been reduced. As the factual
9 allegations make clear, Defendants have known of the inherently dangerous
10 defect for a long period of time and have, during that time, not only failed to
11 correct it, but actively suppressed evidence of its existence. Defendants'
12 conduct is sufficiently blameworthy to merit the imposition of punitive
13 damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an
14 example of Defendants. In addition, Plaintiffs and the class are entitled to an
15 award of attorneys' fees and costs against Defendants pursuant to the
16 provisions of *Civil Code* § 1780(e).

17 **SECOND CAUSE OF ACTION**
18 **VIOLATION OF CALIFORNIA'S**
19 **UNFAIR COMPETITION LAW**

20 (By Plaintiffs and the Class Against All Defendants)

21 69. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
22 above.
23 70. California *Business and Professions Code* § 17200 *et seq.*, also known as the
24 California Unfair Competition Law ("UCL"), prohibits acts of "unfair
25 competition," including any unlawful, unfair, fraudulent or deceptive
26 business act or practice as well as "unfair, deceptive, untrue or misleading
27 advertising."
28 71. Defendants violated and continue to violate the UCL through one or more of

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- 1 the following unfair, unlawful, or fraudulent practices:
- 2 a. Selling to Plaintiffs and Class members vehicles which contain a defect
- 3 or design which makes them inherently more dangerous than other
- 4 similar vehicles;
- 5 b. Failing to disclose to Plaintiffs and Class members that the vehicles
- 6 sold to such consumers contain a defect or design which makes them
- 7 inherently more dangerous than other similar vehicles;
- 8 c. Failing to remedy the defect or design which makes Defendants'
- 9 vehicles inherently more dangerous than other similar vehicles;
- 10 d. Failing to manufacture, distribute, and sell a product which would
- 11 perform in a safe manner when used in a reasonably foreseeable
- 12 manner by a reasonable consumer;
- 13 e. Violating the other statutes and common law causes of action as
- 14 alleged in the instant Complaint.
- 15 72. As a direct and proximate result of Defendants' illegal business practices,
- 16 Plaintiffs and the members of the Class have suffered injury and have lost
- 17 money or property.
- 18 73. Defendants' conduct has further injured Plaintiffs and Class members by
- 19 impairing competition within the motor vehicle markets and preventing
- 20 Plaintiffs and Class members from making fully informed decisions about the
- 21 motor vehicles they purchase.
- 22 74. Plaintiffs respectfully request that the Court enjoin Defendants from
- 23 engaging in the unlawful conduct alleged herein and require Defendants to a)
- 24 stop selling any vehicles with an electronic throttle control in the United
- 25 States which has not been revised in such a manner as to eliminate the
- 26 possibility of sudden unintended acceleration and to which have been added
- 27 such safety measures that in the case of sudden unintended acceleration, the
- 28 driver will be able to take measures to slow and stop the vehicle; b) require

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1 Defendants to repair and/or replace Plaintiffs' and the putative Class'
 2 vehicles, at Defendants' expense, to eliminate the possibility of sudden
 3 unintended acceleration and to add such safety measures that, in the case of
 4 sudden unintended acceleration, would allow the driver to take measures to
 5 safely slow and stop the vehicle; c) in the interim time period, provide
 6 immediate notice to Plaintiffs and Class members of the potential for sudden
 7 unintended acceleration of their vehicle and provide instructions for how best
 8 to mitigate the situation were it to occur; d) require Defendants to notify all
 9 affected persons affected of the Court's injunction; e) require Defendants to
 10 provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or
 11 Class members reasonable attorneys' fees and expenses, and g) award such
 12 other relief as the Court may deem just and proper.

13 75. The illegal business practices described herein present a continuing threat to
 14 Plaintiffs, members of the Class, and members of the general public in that
 15 Defendants continue to engage in these practices, and will not cease doing so
 16 unless and until forced to do so by this Court. Defendants' conduct will
 17 continue to cause irreparable injury to Plaintiffs and the Class unless enjoined
 18 or restrained.

19 **THIRD CAUSE OF ACTION**
 20 **VIOLATION OF CALIFORNIA'S**
 21 **FALSE ADVERTISING LAWS**

22 (By Plaintiffs and the Class Against All Defendants)

23 76. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
 24 above.

25 77. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for
 26 any ... corporation ... with intent ... to dispose of ... personal property ... to
 27 induce the public to enter into any obligation relating thereto, to make or
 28 disseminate or cause to be made or disseminated ... from this state before the

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1 public in any state, in any newspaper or other publication, or any advertising
2 device, or by public outcry or proclamation, or in any other manner or means
3 whatever, including over the Internet, any statement ... which is untrue or
4 misleading, and which is known, or which by the exercise of reasonable care
5 should be known, to be untrue or misleading....”

6 78. Defendants’ representations, including statements made in Defendants’
7 television, radio, and print advertising, websites, brochures, and all other
8 written and oral materials disseminated by Defendants to promote their
9 vehicles constitute advertising for purposes of this cause of action.

10 79. Such advertising contained statements which were false, misleading, or
11 which omitted material information which Defendants were under a duty to
12 disclose and which were known or should have been known to Defendants to
13 be false, misleading, or deceptive.

14 80. As a direct and proximate result of Defendants’ misleading advertising,
15 Plaintiffs and the members of the putative Class have suffered injury in fact
16 and have lost money or property.

17 81. The misleading advertising described herein presents a continuing threat to
18 Plaintiffs, the Class, and members of the public in that Defendants persist and
19 continue to engage in these practices, and will not cease doing so unless and
20 until forced to do so by this Court. Defendants’ conduct will continue to
21 cause irreparable injury to plaintiff and the class unless enjoined or
22 restrained.

23 **FOURTH CAUSE OF ACTION**

24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

25 (By Plaintiffs and the Class Against All Defendants)

26 82. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
27 above.

28 83. Defendants impliedly warrant that their vehicles are fit for the ordinary

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1 purpose for which the product is sold.
2 84. The ordinary purpose for which Defendants' vehicles are sold is to provide
3 the purchaser with a vehicle that is capable of transporting the driver and
4 passengers in reasonable safety, and without unduly endangering them or
5 members of the public.

6 85. Defendants breached their implied warranty of merchantability by selling a
7 vehicle which has a propensity to suddenly and unintentionally accelerate,
8 and which does not contain safety systems which would 1) prevent such
9 acceleration from happening at all; and 2) which would allow a driver, in
10 case of such acceleration, to safely slow and stop the vehicle.

11 86. Plaintiffs, and every member of the classes alleged herein, have been
12 similarly damaged as a result of this breach of warranty.

13 **FIFTH CAUSE OF ACTION**

14 **BREACH OF IMPLIED WARRANTY**

15 **OF FITNESS FOR A PARTICULAR PURPOSE**

16 (By Plaintiffs and the Class Against All Defendants)

17 87. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
18 above.

19 88. Toyota is, and at all relevant times has been, in the business of designing,
20 manufacturing, distributing, and selling vehicles to consumers.

21 89. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles
22 would be used by Plaintiffs and putative Class members for the specific
23 purpose of attempting to safely transport the driver and passengers from one
24 point to another.

25 90. Toyota knew that consumers who purchased their vehicles relied upon
26 Defendants' expertise and skill, judgment and knowledge in furnishing
27 vehicles which were capable of transporting the driver and passengers of
28 such vehicle without unreasonable risk of harm to them or to members of the

1 general public.
2 91. Toyota's vehicles are not fit for that purpose in that their design or
3 manufacture is so defective as to cause such vehicles to suddenly and
4 unintentionally accelerate and, subsequent to such acceleration, provide an
5 insufficient safety mechanism to allow the driver to slow and stop the vehicle
6 safely.

7 92. Plaintiffs, and every member of the classes alleged herein, have been
8 similarly damaged as a result of this breach of warranty.

9 **SIXTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 (By Plaintiffs and the Class Against All Defendants)

12 93. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 62
13 above.

14 94. Defendants had a duty to their consumers, as a manufacturer of motor
15 vehicles, to provide vehicles which, in their ordinary operation, would be
16 safe. Defendants also had a duty to sufficiently test their vehicles' safety
17 before selling hundreds or thousands of vehicles. Defendants had further
18 duties once they were on notice by consumers of the propensity of their
19 vehicles to suddenly and unintentionally accelerate, and of the inability of the
20 driver to slow or stop such vehicles.

21 95. Defendants breached their duty to Plaintiffs and class members. Plaintiffs
22 and class members have been and are currently dealing with vehicles that are
23 inherently unsafe and more dangerous than similar vehicles manufactured by
24 other companies.

25 96. Defendants' breach proximately caused the damages to Plaintiffs and class
26 members, namely that Plaintiffs and Class members have been financially
27 and economically damaged by owning vehicles which are inherently unsafe,
28 and have also been further damaged in the potential risk of injury to

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1 themselves and others every time they operate their vehicles.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, on behalf of themselves and all others similarly situated,
4 Plaintiffs pray for the following relief:

- 5 1. An order certifying this action as a plaintiff class action, as set forth
- 6 herein above;
- 7 2. For compensatory damages as to all causes of action where
- 8 compensatory damages are available;
- 9 3. For restitution;
- 10 4. For disgorgement of all wrongfully obtained compensation;
- 11 5. For preliminary and permanent injunctive relief prohibiting Defendants
- 12 from continuing the wrongful practices alleged in the Complaint;
- 13 6. For exemplary damages as to all causes of action where exemplary
- 14 damages are available;
- 15 7. For reasonable costs and attorneys' fees as permitted by law; and
- 16 8. For such other and further relief as the Court may deem proper.

17
18 DATED: January 22, 2009

19 Respectfully submitted,
20 KIRTLAND & PACKARD LLP

21
22 By: _____

23 MICHAEL LOUIS KELLY
24 BEHRAM V. PAREKH
25 HEATHER M. PETERSON

26 *Counsel for Plaintiffs and all others*
27 *similarly situated.*
28

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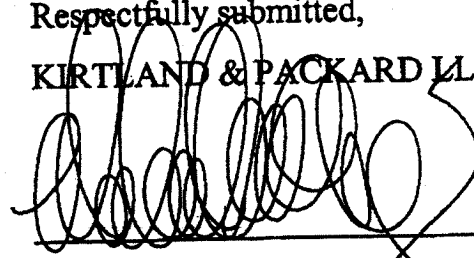
DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 22, 2010

Respectfully submitted,
KIRTLAND & PACKARD LLP



By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

*Counsel for Plaintiffs and all others
similarly situated.*

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AFFIDAVIT OF JOSEPH HAUTER

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1. I, Joseph Hauter, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

4. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county in which Defendants are doing business

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 22 day of January, 2010, at LAKENWOOD, California.



Joseph Hauter

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(ANx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Southern Division - Santa Ana)
CIVIL DOCKET FOR CASE #: 8:10-cv-00105-CJC-AN

Joseph Hauter et al v. Toyota Motor Sales USA Inc et al
Assigned to: Judge Cormac J. Carney
Referred to: Magistrate Judge Arthur Nakazato
Cause: 28:1332 Diversity-Fraud

Date Filed: 01/22/2010
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Joseph Hauter
*on behalf of themselves and all others
similarly situated*

represented by **Behram V Parekh**
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Plaintiff

Frank Palomares

represented by **Behram V Parekh**

*on behalf of themselves and all others
similarly situated*

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Heather Marie Peterson
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Michael L Kelly
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V.

Defendant

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Corporation

represented by **John D. Arya**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lisa Gilford
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Roger A Cerda
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vincent Galvin , Jr
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Doe Defendants

1 -10

Date Filed	#	Docket Text
01/22/2010	<u>1</u>	COMPLAINT against defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales USA Inc.(Filing fee \$ 350 paid) jury demand., filed by plaintiffs Joseph Hauter, Frank Palomares.(twdb) (twdb). (Entered: 01/27/2010)
01/22/2010	<u>2</u>	CERTIFICATE of Interested Parties filed by plaintiffs Joseph Hauter, Frank Palomares, (twdb) (twdb). (Entered: 01/27/2010)
01/22/2010		21 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales USA Inc. (twdb) (Entered: 01/27/2010)
01/27/2010	<u>3</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Corporation answer now due 3/12/2010; Toyota Motor Sales USA Inc answer now due 3/12/2010, filed by Defendants Toyota Motor Corporation; Toyota Motor Sales USA Inc.(Gilford, Lisa) (Entered: 01/27/2010)

PACER Service Center			
Transaction Receipt			
02/01/2010 11:14:41			
PACER Login:	bg0149	Client Code:	Toyota
Description:	Docket Report	Search Criteria:	8:10-cv-00105-CJC-AN End date: 2/1/2010
Billable Pages:	3	Cost:	0.24

Exhibit F

**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 known 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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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

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A

 <p>U.S. Department of Transportation National Highway Traffic Safety Administration</p>	<h2 style="margin: 0;">ODI RESUME</h2>		
	<p>Investigation: DP09-001 Date Opened: 04/08/2009 Closing Date: 10/29/2009 Principal Investigator: Stephen McHenry Subject: Unwanted and Unintended Acceleration</p>		
<p>Manufacturer: Toyota Motor North America, Inc., Toyota Motor Corporation Products: 2007 Lexus ES350 and 2002-2003 Lexus ES300 Population: 230,517 (estimated)</p>			
<p>Problem Description: Petition request for an investigation into unwanted and unintended acceleration not caused by accelerator pedal interference.</p>			
<h3 style="margin: 0;">FAILURE REPORT SUMMARY</h3>			
	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
<p>*Description of Other: Number of incidents attributable to accelerator pedal interference</p>			
<p>Action: This petition has been denied. Recall 09V-388</p> <p>Engineer: <u>Stephen McHenry</u> <i>SMH</i> Date: <u>10/29/2009</u> Div. Chief: <u>Jeffrey L. Quandt</u> Date: <u>10/29/2009</u> Office Dir.: <u>Kathleen C. DeMeter</u> Date: <u>10/29/2009</u></p>			
<p>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.</p> <p>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.</p>			

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.

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 Telephone: 305-536-8220
 155 South Miami Ave. Suite 600 Facsimile: 305-536-8229
 Miami, FL 33130

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)
 Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business in This State PTF DEF 4 4
 Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 930 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

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 # _____ IFF _____

REF_PTRL, 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	#	<u>clear</u>	Docket Text
01/04/2010	<u>1</u>	<input type="checkbox"/>	COMPLAINT against Toyota Motor Sales U.S.A., Inc.. Filing fee \$ 350.00 receipt number 113C-2552407, filed by Jonathan Gellman. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet)(Harke, Lance) (Entered: 01/04/2010)
01/04/2010	<u>2</u>		Clerks Notice of Judge Assignment on Electronic Case to Judge Marcia G. Cooke (gme) (Entered: 01/05/2010)
01/05/2010	<u>3</u>		Summons Issued as to Toyota Motor Sales U.S.A., Inc.. (jua) (Entered: 01/05/2010)

		<input type="checkbox"/>	01/05/2010)
01/25/2010	<u>4</u>	<input type="checkbox"/>	Corporate Disclosure Statement by Toyota Motor Sales U.S.A., Inc.. (Tein, Michael) (Entered: 01/25/2010)
01/25/2010	<u>5</u>	<input type="checkbox"/>	Unopposed MOTION for Extension of Time to File Answer <i>Respond to Initial Complaint</i> by Toyota Motor Sales U.S.A., Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Tein, Michael) (Entered: 01/25/2010)
01/26/2010	<u>6</u>		ORDER granting <u>5</u> 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	<u>7</u>		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# <u>9</u> . Modified on 1/26/2010 (dgj). (Entered: 01/26/2010)
01/26/2010	<u>8</u>	<input type="checkbox"/>	Order Requiring Joint Scheduling Report. Signed by Judge Marcia G. Cooke on 1/25/10. (tm) (Entered: 01/26/2010)
01/26/2010	<u>9</u>	<input type="checkbox"/>	Clerks Notice of Docket Correction re <u>7</u> 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)

or

PACER Service Center			
Transaction Receipt			
02/01/2010 13:57:37			
PACER Login:	bg0149	Client Code:	Toyota
Description:	Docket Report	Search Criteria:	1:10-cv-20006-MGC
Billable Pages:	2	Cost:	0.16

Exhibit G

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

**MICHAEL GRAVES, and MICHAEL C.
GRAVES, and JEFF MULLINS,
Individually, and on Behalf of
all others similarly situated,**

Plaintiffs,

v.

CASE NO. 2:09-cv-1247

**TOYOTA MOTOR MANUFACTURING,
WEST VIRGINIA, INC., a West Virginia
Corporation; TOYOTA MOTOR NORTH
AMERICA INC., a California corporation;
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH
AMERICA, INC., a Kentucky corporation; and
TOYOTA MOTOR SALES U.S.A., INC.,
a California corporation, TOYOTA MOTOR
CORPORATION, a Japanese Corporation.**

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

Hereinafter all Defendants are referred to collectively as "Toyota" or the "Toyota Defendants."

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration ("NHTSA") investigators. Specifically, Defendant Toyota Motor North America ("TMNA") was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

15. When the NHTSA opened an investigation¹ of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

¹ Defect Petition DP04-003; Investigation PE04-021

same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;²

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

² "long duration" is defined as lasting longer than one (1) second

reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."³

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floor mats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

³ ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," also supports this action under the Consumers Credit and Protection Act. The agency's analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 through 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of \$33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of \$30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of \$30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;
- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.
- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

- Toyota FJ Cruisers from MY 2007 through MY 2008;
- Toyota Highlanders from MY2004 through 2009;
- Toyota Tacoma pickup trucks from MY 2003 through 2008;
- Toyota Camrys from Model Year (MY) 2002 though 2009;
- Lexus models from MY 1998 through 2009;
- Toyota Tundra pickup trucks MY 2000 through 2009;
- Toyota 4Runner SUVs from MY 2001 through 2009;
- Toyota Avalons from MY 2005 through 2009;
- Toyota Land Cruisers from MY 2001 through 2009;
- Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

- a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?
- b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?
- c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?
- d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?
- e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?
- f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?
- g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?
- h. Did Plaintiff and others similarly situated suffer ascertainable loss?
- i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?
- j. Was Toyota unjustly enriched?
- k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

- l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?
- m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?
- n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

- a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

- b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;
- c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;
- d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;
- e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;
- f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;
- g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

vehicle, with the attendant risk of severe bodily injury and/or death.

- h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

65. Plaintiffs and each member of the Class are “consumers” within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia’s Consumer Credit and Protection Act (“CCPA”) codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota’s actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs’ purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota, via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of \$200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

76. The Toyota is a "manufacturer" within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia's Consumer Protection – New Motor Vehicle Warranties Act ("Lemon Law") codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because the stated legislative intent of this law is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs' vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota has a duty to replace the Sub-Class Plaintiffs' vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

- (1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;
- (2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
- (3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and
- (4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

- a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;
- b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;
- c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;
- d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;
- e. All equitable remedies available under West Virginia law;
- f. Awarding each Plaintiff its actual damages or \$200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);
- g. Awarding attorneys' fees, expenses and costs;
- h. Punitive Damages
- i. Awarding pre- and post-judgment interest; and
- j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

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CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

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/s/ Eric B. Snyder

25BC

**United States District Court
Southern District of West Virginia (Charleston)
CIVIL DOCKET FOR CASE #: 2:09-cv-01247**

Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc. et al
Assigned to: Judge Joseph R. Goodwin
Cause: 28:1332 Diversity-Motor Vehicle Product Liability

Date Filed: 11/13/2009
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Diversity

Plaintiff

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and

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ATTORNEY TO BE NOTICED

Eric B. Snyder
(See above for address)
ATTORNEY TO BE NOTICED

Robert P. Lorea
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jeff Mullins
Individually, and on Behalf of all others
similarly situated

represented by **Benjamin L. Bailey**
(See above for address)
ATTORNEY TO BE NOTICED

Edgar F. Heiskell , III
(See above for address)
ATTORNEY TO BE NOTICED

Eric B. Snyder
(See above for address)
ATTORNEY TO BE NOTICED

Robert P. Lorea
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Manufacturing, West Virginia, Inc.
a West Virginia Corporation

represented by **Nicholas S. Johnson**
ALLEN GUTHRIE & THOMAS
P. O. Box 3394
Charleston, WV 25333-3394
304/345-7250
Fax: 304/345-9941
Email: nsjohnson@agmtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
ALLEN GUTHRIE & THOMAS
P. O. Box 3394
Charleston, WV 25333-3394

304/345-7250
Fax: 304/345-9941
Email: rabetts@agmtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
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333 South Hope Street, 16th Floor
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Email: lisa.gilford@alston.com
ATTORNEY TO BE NOTICED

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P. O. Box 3394
Charleston, WV 25333-3394
304/345-7250

Fax: 304/345-9941
Email: dbthomas@agmtlaw.com
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor North America Inc.
a California corporation

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G.A. Wallace
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa M. Gilford
(See above for address)
ATTORNEY TO BE NOTICED

David B. Thomas
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.
a Kentucky corporation; and

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson

(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G.A. Wallace
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa M. Gilford
(See above for address)
ATTORNEY TO BE NOTICED

David B. Thomas
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Sales U.S.A., Inc.
a California corporation

represented by **Nicholas S. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca A. Betts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cari K. Dawson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Derin B. Dickerson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kyle G.A. Wallace
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lisa M. Gilford
(See above for address)

11/25/2009	<u>7</u>	SUMMONS ACCEPTED FOR SERVICE BY SECRETARY OF STATE as to Toyota Motor North America Inc., re: <u>1</u> Complaint. Accepted by Secretary of State on 11/23/2009 as to Toyota Motor North America Inc.; answer due 12/14/2009. (taq) (Modified text to correctly note summons has been accepted by the secretary of state on 12/1/2009) (skh). (Entered: 11/30/2009)
12/14/2009	<u>8</u>	STIPULATION EXTENDING TIME to answer <u>1</u> Complaint to January 13, 2010 by Michael Graves, Michael C. Graves, Jeff Mullins, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. (Betts, Rebecca) Modified on 12/15/2009 for clarity (rap).
12/22/2009	<u>9</u>	STATEMENT OF VISITING ATTORNEY from Cari K. Dawson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164799. (Thomas, David)
12/22/2009	<u>10</u>	STATEMENT OF VISITING ATTORNEY from Derin B. Dickerson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164805. (Thomas, David)
12/22/2009	<u>11</u>	STATEMENT OF VISITING ATTORNEY from Kyle G.A. Wallace on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164808. (Thomas, David)
12/22/2009	<u>12</u>	STATEMENT OF VISITING ATTORNEY from Lisa M. Gilford on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor North America Inc.. Local counsel: David B. Thomas. Fee \$50.00. Receipt # 0425-1164921. (Thomas, David)
12/29/2009	<u>13</u>	RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Engineering & Manufacturing North America, Inc. re: <u>4</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras)
12/29/2009	<u>14</u>	RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Manufacturing West Virginia, Inc. re: <u>5</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras)
12/29/2009	<u>15</u>	RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for Toyota Motor Sales U.S.A., Inc. re: <u>6</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Sharon Borth on 11/30/2009; answer deadline previously set. (ras)
12/29/2009	<u>16</u>	RETURN RECEIPT NOTIFICATION FROM SECRETARY OF STATE for

		Toyota Motor North America Inc. re: <u>7</u> Summons Returned Executed by Secretary of State. Return Receipt Card signed by Pablo Ch___ on 11/30/2009; answer deadline previously set. (ras)
01/11/2010	<u>17</u>	INCORRECT ENTRY; SEE ENTRY #19. (Modified on 1/12/2010 to remove image and file as entry #19) (skh).
01/11/2010	<u>19</u>	FIRST AMENDED COMPLAINT by Michael Graves, Michael C. Graves and Jeff Mullins against 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. and Toyota Motor Corporation. (Attachment: # <u>1</u> Exhibit A) (skh) (Entered: 01/12/2010)
01/12/2010	<u>18</u>	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Rebecca A. Betts on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc.. (Betts, Rebecca)
01/12/2010		NOTICE OF DOCKET CORRECTION re: <u>17</u> MOTION by Michael Graves, Michael C. Graves, Jeff Mullins to Amend <u>1</u> Complaint. ERROR: Incorrect event selected. CORRECTION: Removed image and filed using the event Complaint - Amended (event not available to e-filers). (skh)
01/13/2010	<u>20</u>	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Nicholas S. Johnson on behalf of Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc.. (Johnson, Nicholas) (Modified on 1/14/2010 to remove extra filer) (skh).
01/13/2010	<u>21</u>	STIPULATION EXTENDING TIME for defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Respond to <u>19</u> First Amended Complaint to 1/28/2010 by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc., Michael Graves, Michael C. Graves, Jeff Mullins (Johnson, Nicholas) (Modified text to conform to filed document and to add additional filers on 1/14/2010) (skh).
01/13/2010		SET DEADLINE: Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc. and Toyota Motor Sales U.S.A., Inc. answer to first amended complaint due 1/28/2010 pursuant to the <u>21</u> Stipulation. (skh) (Entered: 01/14/2010)
01/22/2010	<u>22</u>	UNOPPOSED MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. for Leave to Exceed Page Limitation for memorandum in support of motion to dismiss (Betts, Rebecca) (Modified text to conform to filed document on 1/24/2010) (skh).
01/25/2010	<u>23</u>	ORDER granting defendants' <u>22</u> UNOPPOSED MOTION for Leave to Exceed

		Page Limitation; the defendants may submit a memorandum of not more than 25 pages in support of their motion to dismiss, and the plaintiff may submit a response of not more than 25 pages. Signed by Judge Joseph R. Goodwin on 1/25/2010. (cc: attys; any unrepresented party) (mkw)
01/28/2010	<u>24</u>	MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Dismiss re: <u>19</u> First Amended Complaint (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Betts, Rebecca)
01/28/2010	<u>25</u>	MEMORANDUM by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. in support of <u>24</u> MOTION by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor North America Inc., Toyota Motor Sales U.S.A., Inc. to Dismiss re: <u>19</u> First Amended Complaint (Betts, Rebecca) (Modified on 1/29/2010 to remove duplicate text) (skh).
01/29/2010	<u>26</u>	ORDER AND NOTICE: Rule 12(b) Motions 3/1/2010. Rule 26(f) Meeting 3/29/2010. Last day to file report of Rule 26(f) Meeting 4/5/2010. Scheduling Conference at 10:30 AM on 4/19/2010 in Charleston. Entry of Scheduling Order 5/3/2010. Last Day to make Rule 26(a)(1) disclosures 5/7/2010. Signed by Judge Joseph R. Goodwin on 1/29/2010. (cc:attys; any unrepresented parties) (taq)

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PACER Login:	bg0149	Client Code:	Toyota
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Billable Pages:	8	Cost:	0.64