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8
9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
10 (WESTERN DIVISION – LOS ANGELES)

11 SANDRA LIVINGSTON,
individually and on behalf of the
12 Estate of Tyrene Livingston,
deceased,

13 Plaintiff,

14 v.

15 TOYOTA MOTOR NORTH
16 AMERICA, INC., TOYOTA
MOTOR ENGINEERING &
17 MANUFACTURING NORTH
AMERICA, INC., TOYOTA
18 MOTOR MANUFACTURING,
CALIFORNIA, INC., TOYOTA
19 MOTOR SALES, U.S.A., INC,
TOYOTA MOTOR
20 CORPORATION, CTS
CORPORATION and DOES 1
21 through 10, inclusive,

22 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES

**[Products Liability – Toyota Sudden
Unintended Acceleration Resulting in
Personal Injuries and Wrongful
Death]**

- 1) Negligence
- 2) Strict Products Liability: Design Defect
- 3) Strict Products Liability: Failure to Warn
- 4) Breach of Implied Warranty
- 5) Fraud and Deceit: Fraudulent Concealment
- 6) Violation of California's False Advertising Laws, California Business and Professions Code §§ 17500 *et seq.*)
- 7) Wrongful Death and Survivorship
- 8) Claim for Punitive Damages

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff SANDRA LIVINGSTON, individually and
2 on behalf of the Estate of Tyrene Livingston, deceased, (“Plaintiff”), by and
3 through her counsel, Lieff Cabraser Heimann & Bernstein, LLP, and alleges as
4 follows:

5 **INTRODUCTION**

6 1. This product liability action involves the 2007 Toyota Yaris,
7 which was designed, manufactured, marketed, promoted, sold and distributed by
8 the Toyota entity defendants.

9 2. Certain of Toyota’s cars and trucks have a defect that causes
10 sudden uncontrolled acceleration to speeds of up to 100 miles per hour or more.
11 This defect is combined with the operator’s inability to stop the vehicle during such
12 an incident due to defective electronics and the absence of a fail-safe, such as a
13 brake-to-idle override system. These defects alone, or in combination, are lethal.

14 3. Data compiled by Safety Research and Strategies, Inc., an
15 automotive safety research organization, Safety Research and Strategies, Inc.,
16 shows that Toyota sudden acceleration incidents have accounted for, at least, 725
17 crashes, 304 injuries, and 18 fatalities.

18 4. Toyota has known about the problems associated with sudden
19 unintended acceleration for some time. Instead of recalling the vehicles and
20 changing their design to improve safety, Toyota essentially hid the problem. This
21 has resulted in numerous injuries and fatalities, including the death of Tyrene
22 Livingston.

23 **PARTIES**

24 5. At all times herein mentioned, Plaintiff SANDRA
25 LIVINGSTON was a resident of Roosevelt, New York.

26 6. At all times herein mentioned, Tyrene Livingston, deceased,
27 resided in Pittsburgh, Pennsylvania, and she was the natural daughter of SANDRA
28 LIVINGSTON.

1 7. At all times herein mentioned, Defendant Toyota Motor North
2 America, Inc. was and is a California corporation, and a corporate citizen of
3 California, with its principal place of business at 19001 South Western Avenue, in
4 the City of Torrance, County of Los Angeles, in the State of California.

5 8. At all times herein mentioned, Defendant Toyota Motor
6 Manufacturing, California, Inc., was and is a California corporation and a corporate
7 citizen of California, with its principal place of business in California.

8 9. At all times herein mentioned, Defendant Toyota Motor
9 Engineering & Manufacturing of North America was and is a Kentucky
10 corporation, with its principal place of business located at 25 Atlantic Avenue,
11 Erlanger, Kentucky 41018.

12 10. At all times referenced herein, Defendant Toyota Motor Sales,
13 Inc. was and is a California corporation existing under and by virtue of the laws of
14 incorporation of the State of California, having its headquarters and its principal
15 place of business at 19001 South Western Avenue, in the City of Torrance, County
16 of Los Angeles, in the State of California.

17 11. Upon information and belief, each Toyota entity named above is
18 a wholly owned subsidiary of the Japanese corporation, Toyota Motor Corporation.
19 At all times herein mentioned, Defendants Toyota Motor North America, Inc.,
20 Toyota Motor Engineering & Manufacturing of North America, Toyota Motor
21 Manufacturing, California, Inc., Toyota Motor Sales, Inc., and Toyota Motor
22 Corporation and DOES 1 through 10, inclusive, designed, engineered, developed,
23 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or
24 failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled,
25 advertised, promoted, marketed, supplied, distributed, wholesaled, and sold Toyota
26 vehicles, including the vehicle operated by Plaintiff.

27 12. At all times herein mentioned, Defendant CTS Corporation was
28 and is an Indiana corporation, with its principal place of business located at Elkhart,

1 Indiana. Plaintiff alleges that CTS Corporation and DOES 1 through 10, inclusive,
2 designed and manufactured accelerator pedals for the Toyota entities.

3 13. At all times referenced herein, Defendants, and each of them,
4 were acting as agents and employees of each of the other Defendants, and were
5 acting within the scope, purpose, and authority of that agency and employment and
6 with the full knowledge, permission, and consent of each of the other Defendants.

7 14. Plaintiff is ignorant of the true and correct names and capacities
8 of the Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues
9 these Defendants by such fictitious names. Plaintiffs will amend this Complaint to
10 allege their true names and capacities when ascertained. Plaintiffs are informed and
11 believe and thereon allege that each of the fictitiously named Defendants is a
12 company that placed a defective product into the stream of commerce, and/or is an
13 agent, employee, joint venturer, or affiliate of the other Defendants, and is
14 responsible for the unlawful conduct herein alleged, and that said Defendants
15 proximately caused the harm alleged herein.

16 **JURISDICTION AND VENUE**

17 15. This Court has jurisdiction over the subject matter of this action
18 pursuant to 28 U.S.C. § 1332 because the amount in controversy is greater than
19 \$75,000, exclusive of interest and costs, and because there is complete diversity of
20 citizenship among the parties.

21 16. This Court has personal jurisdiction over the Defendants
22 because Defendants have transacted business and their affairs in the Central District
23 of California, and because Defendants have committed acts and omissions
24 complained of in the State of California.

25 17. Venue is proper in the Central District of California pursuant to
26 28 U.S.C. § 1391(a) and (b) because a substantial part of the events or omissions
27 giving rise to these claims occurred in this judicial district. In addition, all of the
28 Defendants are subject to personal jurisdiction in this judicial district.

FACTUAL BACKGROUND

1
2 18. Toyota is currently the world’s largest manufacturer of vehicles
3 with net revenues in 2009 of over \$227 billion.

4 19. Beginning in the late 1990s, Toyota manufactured, distributed
5 and sold vehicles with an electronic throttle control system (“ETC”).

6 20. Unlike that of traditional throttle control systems, where a
7 physical linkage connects the accelerator pedal to the engine throttle, in the ETC
8 system, the engine throttle is controlled by electronic signals sent from the gas
9 pedal to the engine throttle. A sensor at the accelerator detects how far the gas
10 pedal is depressed and transmits that information to a computer module which
11 controls a motorized engine throttle. The computer module determines how far the
12 accelerator is depressed, and, in turn, tells the engine throttle motor how far to open
13 the throttle valve.

14 21. When Toyota first introduced the ETC, they continued to
15 include a mechanical linkage between the accelerator and the engine throttle
16 control.

17 22. Beginning with the 2002 model year, however, Defendants
18 began manufacturing, distributing, and selling vehicles without such mechanical
19 linkage.

20 23. Further, Defendants’ ETC system also fails to include a failsafe
21 measure incorporated by other vehicle manufacturers which instructs the ETC
22 system to automatically reduce the engine to idle whenever the brakes are applied
23 without success.

24 24. The combination of the lack of these two safety systems allows
25 the ETC to set the engine throttle to any position regardless of the position of the
26 accelerator, and with no mechanical or electronic failsafe mechanism to allow the
27 driver to effectively stop or slow the car in such circumstances, resulting in
28 numerous injuries and deaths.

1 25. According to an article in the November 8, 2009 issue of the *Los*
2 *Angeles Times* (“*LA Times*”), the *LA Times* located federal and other records of
3 19 fatalities and over 1,000 reports by owners involving the unintended acceleration
4 of Toyota vehicles from the 2002 model year and newer.

5 26. The *LA Times* further quotes an independent safety expert as
6 stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota
7 vehicles built since 2001.

8 27. The *LA Times* further states that other experts believe the
9 numbers may be far higher, citing to a 2007 NHTSA survey of 600 Lexus owners
10 that found that 10% complained they had experienced sudden acceleration.

11 28. The *LA Times* further states that when Toyota reported
12 complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden
13 acceleration occurred for “a long duration” or more than a few seconds.

14 29. The *LA Times* further states that in an investigation of reports of
15 sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota
16 eliminated all reports in five broad categories when responding to NHTSA’s
17 request, excluding all cases in which the drivers said they were unable to control a
18 runaway engine by applying the brakes.

19 30. Thus, at all relevant times, Toyota had full knowledge of the
20 numerous complaints regarding its vehicles, that such vehicles were susceptible to
21 incidents of sudden unintended acceleration, and thus that such vehicles posed a
22 significant risk of injury and death to vehicle occupants, other motorists, and
23 pedestrians.

24 31. Toyota knew, or should have known, about the risks of sudden
25 unintended acceleration present in Toyota vehicles for many years, based upon the
26 following timeline of events:

27 **1992**

28 NHTSA’s Office of Defects Investigation

1 undertook an investigation of 1987-1989 Toyota Camry
2 and Toyota Celica vehicles based upon 556 complaints
3 and 30 accidents resulting from sudden acceleration when
4 a sticking throttle caused unwanted engine power.

5 **2001**

6 2002 Model Year Camry is substantially
7 redesigned on a new platform. The ETCS-i system was
8 one of several new or revised vehicle systems (including
9 transmission and braking system) introduced for the
10 model year 2002 subject vehicles, consisting of an
11 accelerator pedal sensor, a throttle control motor, a
12 throttle position sensor and the engine control module
13 (ECM). To control throttle position and monitor system
14 operation, the system uses redundant hardware at the APS
15 and TPS main and sub sensor and the ECM (main and sub
16 processor).

17 Toyota warns that the installation of a mobile two-
18 way radio system could affect electronic systems,
19 including the fuel injection, electronic throttle control
20 system, cruise control system, and other electronics.
21 Owner's are told to "be sure to check with your Toyota
22 dealer for precautionary measures or special instructions
23 regarding installation."

24 **2002**

25 *February 2, 2002:* First consumer complaint of
26 2002 Camry engine surging when the brakes were
27 depressed.

28 *August 30, 2002:* Toyota issues Technical Service

1 Bulletin TSB EG017-02 to update the Electronic Control
2 Module calibration to address “engine surging” on 2002
3 Camrys with 1MZ-FE engine.

4 “Vehicles may exhibit a surging during light
5 throttle input at speeds between 38 – 42 MPH . . . The
6 Engine Control Module (ECM) calibration has been
7 revised to correct this condition.”

8 *August 31, 2002:* First warranty claim noted by
9 Toyota to correct a throttle problem on a 2002 Camry.

10 **2003**

11 *April, 2003:* Driver of a Toyota Sienna experiences
12 an unwanted acceleration incident that occurred during
13 production Dynamometer testing. The incident was
14 allegedly caused by a missing retaining clip that allowed
15 the center console trim panel to interfere with (trap) the
16 accelerator pedal after it had been depressed. In the
17 aftermath, Toyota reviewed their manufacturing processes
18 and other data and concluded this was an isolated
19 incident. As a secondary measure in June 2003, Toyota
20 changed the design of the trim panel to eliminate the
21 potential for pedal interference in the event the retaining
22 clip is not present.

23 *April 17, 2003:* Peter Boddaert of Braintree, Mass.
24 reports sudden unintended acceleration incident to
25 NHTSA involving his 1999 Lexus LS 400.

26 *April 25, 2003:* Peter Boddaert petitions NHTSA
27 to conduct an analysis of 1997 through 2000 model year
28 Lexus 300 and 400 series vehicles for problems of vehicle

1 speed control linkages and sudden unexpected excessive
2 acceleration. Boddart cites 271 other complaints to the
3 agency about these vehicles, with 36 referring specifically
4 to sudden unintended acceleration, including several
5 crashes. Boddaert previously complained to the agency
6 about sudden unintended acceleration when he
7 experienced the first of three sudden unintended
8 acceleration events. The final instance resulted in
9 Boddeart rear-ending another vehicle.

10 *May 16, 2003:* Toyota issues Technical Service
11 Bulletin TSB EG008-03 to update the Electronic Control
12 Module calibration to address “engine surging” in 2003
13 Camry’s with 1MZ-FE engine.

14 “Vehicles may exhibit surging during light throttle
15 input at speeds between 38 – 42 mph... The Engine
16 Control Module (ECM) calibration has been revised to
17 correct this condition.”

18 *June 3, 2003:* Toyota changes the shape of the trim
19 panel on the 2004 Sienna after an incident during
20 production in which trim panel interference resulted in a
21 sudden unintended acceleration event.

22 *September 22, 2003:* NHTSA denies the Boddaert
23 petition (DP03003). The agency says that its analysis of
24 speed control complaints involving the Lexus and other
25 peer luxury vehicles shows that Toyota is not a statistical
26 stand-out.

27 **2004**

28 *January 15, 2004:* Ms. Carol J. Mathews of

1 Rockville, Maryland submits a petition to NHTSA
2 requesting an investigation of 2002 and 2003 Lexus
3 ES300 for a defect in the vehicle speed control linkages.
4 She alleged that the throttle control system in her vehicle
5 malfunctioned on multiple occasions and was the cause of
6 a vehicle crash.

7 *February 17, 2004:* NHTSA formally begins
8 DP04003 to investigate Matthews request.

9 *March 5, 2004:* NHTSA grants Matthews petition
10 request and opens defect investigation into 2002 – 2003
11 Camry, Camry Solara and Lexus ES300. The agency
12 reports 37 complaints and 30 crashes resulting in 5
13 injuries in the subject vehicles.

14 According to the complaints, the Toyota vehicles
15 suddenly and unexpectedly surge or accelerate, generally
16 of short duration; some reports allege multiple
17 occurrences or occurrences during slow speed vehicle
18 maneuvers and/or after shifting the transmission and/or at
19 higher speeds under cruise control operation. In most
20 cases, the brake system was reportedly functional and
21 could be used to control the vehicle when the condition
22 occurred.

23 *June 4, 2004:* Toyota sends response to NHTSA
24 investigation into unexpected acceleration in Camry /
25 Lexus ES 300 (PE04021). Toyota denies a defect exists,
26 claims there is no trend, and that its electronic control
27 system cannot fail in ways its engineers have not already
28 perceived.

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July 22, 2004: NHTSA’s Office of Defects Investigation closes its investigation of 2002-2003 Camrys, Camry Solara and Lexus 300ES vehicles without finding a defect (PE04021). The agency concluded with its standard caveat: “A defect trend has not been identified at this time and further use of agency resources does not appear to be warranted. Accordingly, this investigation is closed. The closing of this investigation does not constitute a finding by NHTSA that a safety-related defect does not exist. The Agency will take further action if warranted by the circumstances.”

November 3: Toyota reports first consumer complaint of engine surging in a 2005 Tacoma.

2005

July 8, 2005: Jordan Ziprin of Phoenix, AZ petitions NHTSA to open a defect investigation into sudden unintended acceleration in the 2002 – 2005 Toyota / Lexus models for sudden unintended acceleration. Ziprin previously reported a sudden unintended acceleration event in his 2002 Toyota Camry which resulted in a property damage crash.

August 5, 2005: NHTSA opens Defect Petition investigation (DP05002), based on the request of Jordan Ziprin. Target population is 2002-2005 Camrys and Lexus ES models.

November 15, 2005: Toyota files final response in DP05002, in which it says that it believes no defect or defect trend exists. Toyota completely discounts drivers’

1 experiences noting that the experiences as described could
2 not have occurred without the fault detection system
3 taking note. Toyota also noted that it reviewed the
4 complaints to NHTSA and found that there are two major
5 allegations; one is that the vehicle unintentionally or
6 suddenly “ACCELERATED” and the other is that the
7 vehicle “SURGED” or “LURCHED”. Toyota believes
8 that these two descriptions of vehicle behavior are two
9 completely different issues.

10 **2006**

11 *January 5, 2006:* NHTSA closes DP05002 and
12 denies the Ziprin petition. NHTSA says it examined 1172
13 owner complaints in a population of 7 million vehicles
14 and could find no trend.

15 *July, 2006:* Toyota changes Floor Carpet Cover on
16 Toyota Highlander and Lexus RX vehicles.

17 *August 24, 2006:* William Jefferson III petitions
18 NHTSA to investigate 2002 – 2006 Camry and Camry
19 Solara vehicles for incidents relating to vehicle surging.
20 The petitioner owned a 2006 Camry and previously
21 owned a 2003 Camry. He alleged that both vehicles
22 exhibited “Engine Surging” which he described as a short
23 duration (1 to 2 second) increase in engine speed
24 occurring while the accelerator pedal is not depressed. For
25 the 2006 vehicle, the petitioner estimated 6 to 8 surge
26 incidents, of varying magnitude, occurred over the course
27 of 10,000 miles and nearly 7 months of ownership.

28 *September 14, 2006:* ODI opens Defect Petition

1 DP06003 in response to petition from William Jefferson
2 III.

3 *December 20, 2006:* Toyota responds to NHTSA
4 request in DP06003. Toyota noted the results of an
5 investigation of the throttle actuator recovered from the
6 Petitioner's vehicle, and said that it could find no
7 abnormality. During the investigations of other returned
8 throttle actuators, Toyota found that some parts inside the
9 throttle actuator had corroded due to water intrusion,
10 concentrated in specific areas where water could intrude
11 into the throttle actuator from the drain hose. Toyota
12 blamed this on heavy weather conditions such as a
13 flooded road or a hurricane. "Although the rate of
14 occurrence of this type of failure is low, to eliminate any
15 possibility of water intrusion under such circumstances,
16 Toyota modified the drain hose.

17 **2007**

18 *February 5, 2007:* Ezal fatal crash in San Luis
19 Obispo, CA involving 2005 Camry.

20 *March 5, 2007:* NHTSA denies the Jefferson
21 Petition stating it has not identified a vehicle-based
22 defect, nor was it able to witness such an event when road
23 testing the Petitioner's vehicle. An evaluation of a suspect
24 throttle actuator removed from the Petitioner's vehicle did
25 not reveal a component problem.

26 NHTSA notes: "This in no way implies that we doubt the
27 Petitioner's reported experiences with his vehicle. Rather,
28 the agency simply lacks evidence of a safety related

1 defect in his vehicle or a trend of such defects in the
2 subject vehicles. In view of the foregoing, it is unlikely
3 that NHTSA would issue an order for the notification and
4 remedy of a safety-related defect as alleged by the
5 Petitioner in the subject vehicles at the conclusion of the
6 requested investigation. Therefore, in view of the need to
7 allocate and prioritize NHTSA's limited resources to best
8 accomplish the agency's safety mission, the petition is
9 denied."

10 *March 29, 2007:* NHTSA opens a low-level
11 investigation (PE07016) into 80,000 2007 Lexus ES350
12 for accessory floor mat interference with the throttle
13 pedal. NHTSA's Office of Defects Investigation notes
14 that these vehicles come equipped with a standard floor
15 mat made from a carpeted material.

16 *April 12, 2007:* Toyota sends notification to
17 dealers that it will be contacting Lexus customers about
18 proper floor mat usage.

19 *August 8, 2007:* NHTSA upgrades PE07016 to
20 EA07010 to further investigate unintended acceleration in
21 2007 Lexus ES350s. The agency notes 40 complaints;
22 eight crashes and 12 injuries. Complainants interviewed
23 by ODI stated that they applied the throttle pedal to
24 accelerate the vehicle then experienced unwanted
25 acceleration after release. Subsequent (and sometimes
26 repeated) applications of the brake pedal reduced
27 acceleration but did not stop the vehicle.

28 *August 30, 2007:* NHTSA files memo in EA07010

1 about the inspection of a Lexus ES350 that experienced a
2 sudden unintended acceleration incident and conducted a
3 telephone interview with the owners. An inspection of the
4 vehicle found all weather mats are installed at all four
5 seating positions. The driver side all weather mat was
6 found to be installed by itself; it was not on top of another
7 floor mat. The installed mat was found to be unsecured by
8 the retention hooks; the mat did not interfere with the
9 accelerator pedal in the position it was originally
10 inspected.

11 *September, 2007:* Bookout fatal crash in Oklahoma
12 involving 2005 Camry.

13 *September 26, 2007:* Toyota issues Recall 07E-082
14 involving 55,000 Lexus/Toyota with optional All Weather
15 Floor Mats manufactured January 3, 2006-September 13,
16 2007. All owners of 2007 and early 2008 model year
17 Lexus ES350 and Toyota Camry vehicles were to be
18 notified of the safety campaign and the timing when the
19 replacement mats will become available. Toyota also
20 stopped the sale of the Toyota/Lexus All Weather Floor
21 Mat designed specifically for 2007 and early 2008 model
22 year Camry and ES 350 Lexus vehicles.

23 *October 10, 2007:* NHTSA's Office of Defects
24 Investigation interviews another complainant in
25 EA07010, in which she tells investigator about the run-up
26 to a rollover involving a Lexus ES350. The investigator
27 concludes it resulted from an unsecured floor mat.

28 *October 11, 2007:* ODI closes EA07010 into

1 accessory floor mat interference in 2002 – 2008 Lexus
2 ES350 and Camry vehicles in the wake of Recall 07E-
3 082.

4 **2008**

5 *January 10, 2008:* William Kronholm of Helena,
6 MT files a request for a defect investigation into Sudden
7 Unintended Acceleration in 2006 Tacomas. Kronholm
8 experienced two incidents of sudden unintended
9 acceleration and investigated the agency complaints
10 database and found 32 complaints involving the trucks.

11 *January 31, 2008:* NHTSA's Office of Defects
12 Investigation opens investigation DP08001 into sudden
13 unintended acceleration in 2006, 2007 Tacomas, based
14 Kronholm's defect petition and on 31 complaints to the
15 agency.

16 *April 10, 2008:* NHTSA opens low-level
17 investigation PE08025 into SUA involving 54,000 2004
18 Toyota Siennas, based on a report alleging unwanted
19 acceleration on a subject vehicle. The complainant
20 reported that he applied the accelerator pedal to accelerate
21 the vehicle and experienced unwanted acceleration upon
22 release. Field data collected by NHTSA's Office of
23 Defects Investigation indicates that when a retainer pin is
24 missing from the driver's side center stack/console trim
25 panel, the panel can detach from the console and the
26 accelerator pedal can become entrapped under the trim
27 panel causing unwanted acceleration.

28 *April 18, 2008:* Toyota responds to NHTSA

1 information request in the Kronholm petition and reports
2 a total of 326 unique vehicle complaints of sudden
3 unintended acceleration in Tacomas.

4 As part of PE08025, the NHTSA Vehicle Research
5 and Test Center is asked to conduct tests of 2004 Toyota
6 Sienna vans for a condition that can cause the engine to
7 produce power when the accelerator is not depressed.
8 NHTSA notes that the driver's side trim panel, which is
9 secured by a trim clip to the center console, can become
10 detached and prevent the pedal from returning to the fully
11 closed position.

12 *April 25, 2008:* Toyota's response to NHTSA's
13 request in response to the Kronholm petition on Tacoma
14 SUA (DP08001) claims that there is no trend; the
15 complaints have been artificially inflated by media
16 attention and by Tacoma web groups.

17 *April 30, 2008:* ODI issues Final Report in its
18 investigation of floor mats (EA07010). The Vehicle
19 Research and Test Center (VRTC) tested a Lexus ES-350.
20 During its tests of the vehicle electronics, the VRTC said
21 that it introduced multiple electrical signals into the
22 electrical system to test the robustness of the electronics
23 against single point electrical interference failures and
24 could not identify the problem.

25 The VTRC also sent surveys to 1986 registered
26 owners of a 2007 Lexus ES-350 requesting information
27 regarding episodes of unintended acceleration. Of the 600
28 people that responded, 59 stated that they experienced

1 unintended acceleration and 35 complained of pedal
2 interference with the Lexus rubber all-weather floor mats.

3 *June 25, 2008:* In response to the Sienna
4 investigation (PE08025) regarding 2004 Siennas, Toyota
5 reported complaints about sudden unintended acceleration
6 in Siennas that take two forms: allegations of excessive
7 engine speed and/or power output without the driver
8 pressing on the accelerator pedal or the engine speed and
9 or power output failing to decrease (subside) when the
10 accelerator pedal was no longer being depressed by the
11 driver. Toyota also says that it sees no evidence of a
12 defect and explains how the trim could catch the
13 accelerator and the design changes it made to the trim
14 panel to correct this.

15 *August 8, 2008:* NHTSA upgrades its investigation
16 of 2004 Sienna sudden unintended acceleration to an
17 Engineering Analysis (EA08014).

18 *August 27, 2008:* NHTSA closes investigation its
19 investigation into Tacomas (DP08001) and denies
20 Kronholm petition. The agency concludes that it is unable
21 to find an explanation and have been unable to determine
22 a cause for sudden unintended acceleration complaints in
23 Tacomas.

24 *October 15, 2008:* Toyota made a presentation to
25 NHTSA on sudden unintended acceleration and trim
26 interference in 2004 Siennas. Toyota demonstrated how
27 an unrestrained early design level trim panel interacts
28 with the accelerator after pedal depression. Toyota also

1 advised that it was conducting a field survey to examine
2 panel retention and that preliminarily one vehicle had
3 been identified with a concern.

4 **2009**

5 *January 26, 2009:* NHTSA closes its investigation
6 into 2004 Sienna sudden unintended acceleration after
7 Toyota agrees to recall vehicles built between January 10,
8 2003 and June 11, 2003, when the original design floor
9 carpet cover was used in production.

10 Toyota issues Recall 09V-023 for 26,501 2004
11 Siennas. Toyota does not concede that this is a defect, but
12 calls the actions a “safety improvement campaign” that is
13 not being conducted under the Safety Act. Toyota’s recall
14 instructs dealers to replace the original floor carpet cover
15 with the newer design floor carpet (and retention clip) at
16 no charge to the owner. The repair will reduce the
17 potential for trim panel interference with the accelerator
18 pedal travel should the retaining clips become missing
19 because of improper service or other reasons.

20 *March 19, 2009:* Jeffrey Pepski of Plymouth
21 Minnesota files a defect petition requesting NHTSA to re-
22 open the sudden unintended acceleration investigation
23 into Lexus vehicles requesting “an additional
24 investigation into the unwanted and unintended
25 acceleration of model year [MY] 2007 Lexus ES350 as
26 the initial investigation (PE7-016) was too narrow in
27 scope and did not adequately address all complaints made
28 to the NHTSA with respect to vehicle speed control

1 concerns.” Additionally the petitioner requested an
2 “investigation of MY 2002-2003 Lexus ES300 for those
3 ‘longer duration incidents involving uncontrollable
4 acceleration where brake pedal application allegedly had
5 no effect’ that were determined not to be within the scope
6 of Investigation PE04-021.

7 *May 14, 2009:* Toyota files a direct response to
8 Pepski’s petition in DP09001. Toyota dismisses all of the
9 issues Pepski raises in his petition and says there is no
10 basis for an investigation. Toyota claims that when Lexus
11 inspected Pepski’s vehicle, it found that the floor mat was
12 unsecured and blamed the event on that

13 *August 28, 2009:* Fatal Saylor crash in Santee, CA
14 involving a 2009 Lexus ES350.

15 *September 29, 2009:* The National Highway
16 Traffic Safety Administration and Toyota issues
17 consumer alerts urging owners of a wide range of Toyota
18 and Lexus models to take out any removable driver’s
19 floor mat and not replace it with any other floor mat.
20 Toyota says that an examination of recent events
21 prompted the alert. The affected models are:

22 2007 – 2010 Camry

23 2005 – 2010 Avalon

24 2004 – 2009 Prius

25 2005 – 2010 Tacoma

26 2007 – 2010 Tundra

27 2007 – 2010 ES350

28 2006 – 2010 IS250 and IS350

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October 5, 2009: Toyota initiates Recall 09V-388 to address potential accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles.

October 28, 2009: NHTSA closes Defect Petition 09001. The Office of Defects Investigations' analysis concludes 78 percent of the complaints involved incidents of floor mat interference, including all of the crashes and injuries:

November 3, 2009: Toyota issues a statement characterizing the closing of Defect Petition 09-001 as proof "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."

November 4, 2009: NHTSA swiftly issues a statement to correct Toyota's statement that the investigation is over:

"Toyota has announced a safety recall involving 3.8 million vehicles in which the accelerator pedal may become stuck at high vehicle speeds due to interference by the driver's side floor mat, which is obviously a very dangerous situation. Toyota has written to vehicle owners stating that it has decided that a safety defect exists in their vehicles and asking owners to remove all floor mats while the company is developing a remedy. We believe consumers should follow Toyota's recommendation to address the most immediate safety risk. However, removal of the mats is simply an interim measure, not a remedy of the underlying defect in the vehicles. NHTSA

1 is discussing with Toyota what the appropriate vehicle
2 remedy or remedies will be. This matter is not closed until
3 Toyota has effectively addressed the vehicle defect by
4 providing a suitable remedy.”

5 *November 25, 2009:* Toyota announces plans to
6 reconfigure the accelerator pedal on 3.8 million vehicles
7 going back to the 2004 model year. Other fixes include
8 modifying the floor area around the pedal and in some
9 models, installing a brake-to-idle override that allows the
10 driver to quickly stop a vehicle in an unintended
11 acceleration incident and newly-designed replacement
12 driver- and front-passenger side all-weather mats.

13 The recalled vehicles include:

14 2007-2010 Camry

15 2005 -2010 Avalon

16 2004 -2009 Prius

17 2005-2010 Tacoma

18 2007-2010 Tundra

19 2007-2010 Lexus ES 350

20 2006-2010 Lexus IS 250

21 2006 – 2010 Lexus IS 350.

22 *November 27, 2009:* NHTSA receives anonymous
23 tip from a Kentucky city that just happens to be the home
24 of a Toyota-owned supplier of throttle bodies to check out
25 the probability that cracked throttle body shafts are
26 causing SUA. “Concerned Citizen” says Toyota
27 management knows about the problem, but has remained
28 silent.

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January 4, 2010: NHTSA posts the anonymous complaint to the public file.

January 22, 2010: Toyota announces a new recall for sticky accelerator pedals, separate and apart from the floor mat recall. Toyota says: “Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles’ pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return.” The affected vehicles are:

- 2009-2010 RAV4,
- 2009-2010 Corolla,
- 2009-2010 Matrix,
- 2005-2010 Avalon,

1 2007-2010 Camry,
2 2010 Highlander,
3 2007-2010 Tundra,
4 2008-2010 Sequoia

5 32. Toyota never made any significant changes to improve the
6 acceleration system and the electrical system, in spite of the availability of several
7 safe and inexpensive alternative designs and feasible modifications.

8 33. According to a Toyota internal document obtained by *The*
9 *Detroit News* on February 21, 2010, Toyota officials bragged in July 2009 about
10 avoiding a costly whole-scale recall related to sudden acceleration complaints. A
11 limited recall saved Toyota more than \$100 million, according to the document,
12 which is an internal presentation from Toyota's Washington office. The document
13 notes that Toyota's safety officials had saved the company significant expense by
14 limiting the recall to 55,000 floor mats in 2007. "Negotiated 'equipment' recall on
15 Camry/ES re SA (Sudden Acceleration); saved \$100M+, w/ no defect found," the
16 document said. This internal document is further evidence that Toyota knew about
17 the sudden acceleration problem and nonetheless decided to avoid a recall of the
18 affected vehicles, in conscious disregard for the safety of consumers, including
19 Plaintiff.

20 34. Toyota knew that a brake-to-idle override system was necessary
21 to allow drivers to bring a vehicle under control in the event of a sudden
22 acceleration incident. Toyota made the following statement in November 2009
23 when they announced their solution to the sudden acceleration problem:

24 In addition, as a separate measure independent of the
25 vehicle-based remedy, Toyota will install a brake override
26 system into the involved Camry, Avalon, and Lexus ES
27 350, IS 350 and IS 250 models as an extra measure of
28 confidence. This system cuts engine power in case of

1 simultaneous application of both the accelerator pedal and
2 brake pedals.

3 Yet, Toyota has failed to install this feature on all of the affected
4 vehicles, including the 2007 Toyota Yaris being operated by Tyrene Livingston.

5 35. On February 8, 2010, Toyota Motor Sales, U.S.A., Inc, also
6 announced a voluntary safety recall on 2010 Prius vehicles and 2010 Lexus HS
7 250h vehicles to update software in the vehicle's anti-lock brake system (ABS).
8 This recall involves approximately 133,000 2010 Prius vehicles and 14,550 2010
9 Lexus HS 250h vehicles.

10 36. As a result of Toyota's conscious disregard for the safety of
11 consumers, numerous individuals have been killed or severely injured.

12 37. As a result of Toyota's marketing campaigns, and the guise of
13 safety created by Toyota, numerous consumers purchased and drove Toyota cars
14 and trucks.

15 38. Tyrene Livingston purchased a 2007 Toyota Yaris, unaware of
16 the hidden and potentially lethal dangers, of which Toyota was or should have been
17 aware. Tyrene was a safe driver with an excellent driving record.

18 39. Four days prior to the subject incident, Tyrene Livingston
19 brought her 2007 Toyota Yaris to a Toyota dealership and complained of problems
20 with the vehicle, including what she perceived to be issues with braking. The
21 vehicle was inspected and tested, and Tyrene was ensured that nothing was wrong.

22 40. Prior to her untimely death, Tyrene Livingston was a promising
23 21 year-old graduate student who was pursuing her Master's Degree in Education at
24 the University of Pittsburgh. Tyrene was a confident and inspirational young lady
25 who often helped others and volunteered her time to assist disadvantaged students.

26 41. On October 26, 2007, at approximately 8:45 a.m., Tyrene
27 Livingston was the belted driver of her 2007 Toyota Yaris. She was on her way to
28 her teaching internship at a local high school. She was driving eastbound on U.S.

1 Route 30 in East Pittsburgh, Pennsylvania at a safe rate of speed. As she traveled
2 down the highway, the Yaris suddenly accelerated out of control and Tyrene was
3 unable to stop the vehicle by braking. The Yaris crossed four lanes of the highway
4 at a high rate of speed, went over a curb, crashed through a guardrail, went down an
5 embankment, and into some trees, eventually resulting in her death.

6 **TOYOTA DEFENDANTS' CONCEALMENT OF THE DEFECTS**

7 42. The Toyota Defendants' failure to document or follow up on the
8 known defects in its cars and trucks, and especially in the 2007 Toyota Yaris, and
9 concealment of known defects from the NHTSA, Plaintiff, and the community,
10 constitutes fraudulent concealment that equitably tolls applicable statutes of
11 limitation.

12 43. According to *Bloomberg*, as reported on February 12, 2010,
13 former regulators hired by Toyota Motor Corp. helped end at least four U.S.
14 investigations of unintended acceleration by company vehicles in the last decade,
15 warding off possible recalls, court and government records show. According to
16 *Bloomberg*, Christopher Tinto, vice president of regulatory affairs in Toyota's
17 Washington office, and Christopher Santucci, who works for Tinto, helped
18 persuade the National Highway Traffic Safety Administration to end probes
19 including those of 2002-2003 Toyota Camrys and Solaras, court documents show.
20 According to *Bloomberg*, both men joined Toyota directly from NHTSA, Tinto in
21 1994 and Santucci in 2003. According to *Bloomberg*, in one example of the Toyota
22 aides' role, Santucci testified in a Michigan lawsuit that the company and NHTSA
23 discussed limiting an examination of unintended acceleration complaints to
24 incidents lasting less than a second. "We discussed the scope" of the investigation,
25 Santucci testified. "NHTSA's concerns about the scope ultimately led to a decision
26 by the agency to reduce that scope. You say it worked out well for Toyota, I think
27 it worked out well for both the agency and Toyota." As reported by *Bloomberg*,
28 NHTSA opened eight investigations of unintended acceleration of Toyota vehicles

1 and retailers for sale, the vehicle known as “2007 Yaris,” and/or its component
2 parts, including the subject vehicle at issue in this lawsuit.

3 48. Defendants manufactured, designed, promoted and/or sold the
4 2007 Yaris and its component parts to the public, including the subject Yaris that
5 suddenly accelerated and killed Tyrene Livingston.

6 49. Defendants owed Plaintiff a duty to exercise reasonable care in
7 the design, testing, manufacture, assembly, sale, distribution and servicing of the
8 Yaris, including a duty to assure that the subject vehicle did not cause decedent,
9 Plaintiff, other users, bystanders, or the public, unnecessary injuries or deaths.

10 50. Defendants knew or should have known that the Yaris is
11 defectively designed and inherently dangerous and has a propensity to suddenly
12 accelerate, lose control, and cause injuries and death.

13 51. Defendants knew or should have known that the Yaris was
14 defectively designed and/or manufactured and was therefore prone to failure under
15 normal driving conditions, potentially causing injuries and/or deaths.

16 52. Defendants failed to exercise ordinary care and breached their
17 duty by, among other things:

18 a. Failure to use due care in the manufacture, distribution,
19 design, sale, testing, and servicing of the Yaris and its component parts in order to
20 avoid the aforementioned risks to individuals;

21 b. Failure to provide adequate warning of the sudden
22 acceleration problem and its propensity to cause and/or contribute to an accident;

23 c. Failure to incorporate within the vehicle and its design
24 reasonable safeguards and protections against sudden acceleration and the
25 consequences thereof;

26 d. Failure to make timely correction to the design of the
27 Yaris to correct the sudden acceleration problems;

28

1 e. Failure to adequately identify and mitigate the hazards
2 associated with sudden unintended acceleration in accordance with good
3 engineering practices and other ways; and,

4 f. Were otherwise careless or negligent.

5 53. The aforementioned negligent acts and omissions of Defendants
6 were the direct and proximate cause of Plaintiff's damages.

7 54. Plaintiff is, therefore entitled to damages in an amount to be
8 proven at trial, together with interest thereon and costs.

9 WHEREFORE, Plaintiff prays judgment against Defendants, and each
10 of them, as hereinafter set forth.

11 **SECOND CAUSE OF ACTION:**
12 **Strict Products Liability: Design Defect**

13 55. Plaintiff incorporates by reference and realleges all paragraphs
14 previously alleged herein.

15 56. Defendants, and each of them, designed, engineered, developed,
16 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or
17 failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled,
18 advertised, promoted, marketed, supplied, distributed, wholesaled, and sold a
19 certain 2007 Toyota Yaris and its component parts and constituents, which was
20 intended by the Defendants, and each of them, to be used for the purpose of use as
21 passenger vehicle, and other related activities.

22 57. Defendants, and each of them, knew that said Yaris was to be
23 purchased and used without inspection for defects by decedent, Plaintiff and the
24 general public.

25 58. The subject Yaris was unsafe for its intended use by reason of
26 defects in its manufacture, design, testing, components and constituents, so that it
27 would not safely serve its purpose, but would instead expose the users of said
28 product to serious injuries because of the failure of Defendants, and each of them,

1 to properly guard and protect the users of the subject Toyota Yaris from the
2 defective design of said product.

3 59. Defendants designed the Yaris defectively, causing it to fail to
4 perform as safely as an ordinary consumer would expect when used in an intended
5 or reasonably foreseeable manner.

6 60. The risks inherent in the design of the Yaris outweigh
7 significantly any benefits of such design.

8 61. Plaintiff was not aware of the aforementioned defects at any
9 time prior to recent revelations regarding problems with the Toyota Yaris.

10 62. As a legal and proximate result of the aforementioned defects of
11 the subject Yaris, Plaintiff and decedent sustained the injuries and damages set forth
12 herein.

13 63. Plaintiff is, therefore, entitled to damages in an amount to be
14 proven at the time of trial.

15 WHEREFORE, Plaintiff pray judgment against Defendants, and each
16 of them, as hereinafter set forth.

17 **THIRD CAUSE OF ACTION:**
18 **Strict Product Liability - Failure to Warn**

19 64. Plaintiff hereby incorporates by reference and realleges all
20 paragraphs previously alleged herein.

21 65. Defendants, and each of them, knew that the 2007 Toyota Yaris,
22 and its component parts, would be purchased and used without inspection for
23 defects in the design of the vehicle.

24 66. The subject Yaris was defective when it left the control of each
25 of these Defendants.

26 67. Defendants knew or should have known of the substantial
27 dangers involved in the reasonably foreseeable use of the Yaris, whose defective
28 design, manufacturing, and lack of sufficient warnings caused them to have an

1 unreasonably dangerous propensity suffer from sudden unintended acceleration and
2 thereby cause catastrophic injuries.

3 68. Defendants failed to adequately warn of the substantial dangers
4 known or knowable at the time of the defective Yaris' design, manufacture, and
5 distribution.

6 69. Defendants failed to provide adequate warnings, instructions,
7 guidelines or admonitions to members of the consuming public, including decedent
8 and Plaintiff, of the design and manufacturing defects, which Defendants knew, or
9 in the exercise of reasonable care should have known, to have existed in the Yaris,
10 and its component parts.

11 70. Defendants knew that these substantial dangers are not readily
12 recognizable to an ordinary consumer and that consumers would purchase and use
13 these products without inspection.

14 71. At the time of decedent's and Plaintiff's injuries, the subject
15 Yaris was being used in the manner intended by Defendants, and in a manner that
16 was reasonably foreseeable by Defendants as involving substantial danger that was
17 not readily apparent to its users.

18 72. Plaintiff's damages were the legal and proximate result of the
19 actions and inactions of the Defendants, who owed a duty to Plaintiff in designing,
20 manufacturing, warning about, and distributing the Yaris.

21 WHEREFORE, Plaintiff prays judgment against Defendants, and each
22 of them, as hereinafter set forth.

23 **FOURTH CAUSE OF ACTION:**
24 **Breach of Implied Warranties of Merchantability**
25 **and Fitness for a Particular Purpose**

26 73. Plaintiff hereby incorporates by reference and realleges all
27 paragraphs previously alleged herein.

28 74. Prior to the time that the Toyota Yaris was being used by Tyrene
Livingston at the time of the subject incident, the Defendants, and each of them,

1 propensity to suddenly accelerate and thereby injure the user of these vehicles and
2 others.

3 82. In violation of California Civil Code Sections 1709 and 1710,
4 Defendants fraudulently concealed from and/or failed to disclose to or warn
5 decedent and Plaintiff of the true defective nature of the Toyota Yaris.

6 83. Defendants were under a duty to decedent and Plaintiff to
7 disclose and warn of the defective nature of the Toyota Yaris because: (1)
8 Defendants were in a superior position to know the true state of the facts about the
9 hidden defect in the Toyota Yaris, and that defect was latent; (2) Defendants made
10 partial disclosures about the safety and quality of the Toyota Yaris while not
11 revealing their true defective nature; and (3) Defendants fraudulently and
12 affirmatively concealed the defective nature of the Toyota Yaris from decedent and
13 Plaintiff.

14 84. The facts concealed and/or not disclosed by Defendants to
15 decedent and Plaintiff were material facts that a reasonable person would have
16 considered to be important in deciding whether or not to purchase and/or operate
17 the Toyota Yaris.

18 85. Defendants intentionally concealed and/or failed to disclose the
19 true nature of the problems with the Yaris for the purpose of inducing decedent and
20 Plaintiff to act thereon, and they justifiably acted or relied upon, to their detriment,
21 the concealed and/or non-disclosed facts as evidenced by their purchase and
22 operation of the Yaris.

23 86. Defendants have not adequately notified past purchasers or
24 warned future purchasers of the defect, and have not taken appropriate action to
25 recall, buy back or retrofit their defective products.

26 87. As a direct and proximate cause of Defendants' misconduct,
27 Plaintiff has suffered actual damages.

28 WHEREFORE, Plaintiff demands judgment against Defendants for

1 compensatory damages for herself in an amount to be proven at trial, punitive
2 damages, equitable and/or declaratory relief, plus attorneys' fees, interest and costs.

3 **SIXTH CAUSE OF ACTION:**
4 **Violation of California's False Advertising Laws,**
5 **California Business and Professions Code §§ 17500 *et seq.*, Against the Toyota**
6 **Defendants Only**

7 88. Plaintiff hereby incorporates, as if set forth in full, the
8 paragraphs above.

9 89. Business and Professions Code § 17500 provides that "[i]t is
10 unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal
11 property . . . to induce the public to enter into any obligation relating thereto, to
12 make or disseminate or cause to be made or disseminated . . . from this state before
13 the public in any state, in any newspaper or other publication, or any advertising
14 device, or by public outcry or proclamation, or in any other manner or means
15 whatever, including over the Internet, any statement . . . which is untrue or
16 misleading, and which is known, or which by the exercise of reasonable care should
17 be known, to be untrue or misleading . . ."

18 90. Defendants' representations, including statements made in
19 Defendants' television, radio, and print advertising, websites, brochures, and all
20 other written and oral materials disseminated by Defendants to promote their
21 vehicles constitute advertising for purposes of this cause of action.

22 91. Such advertising contained statements which were false,
23 misleading, or which omitted material information which Defendants were under a
24 duty to disclose and which were known or should have been known to Defendants
25 to be false, misleading, or deceptive.

26 92. As a direct and proximate result of Defendants' misleading
27 advertising, Plaintiff has suffered injury in fact and has lost money or property.

28 93. The misleading advertising described herein presents a
continuing threat to Plaintiffs and members of the public in that Defendants persist

1 and continue to engage in these practices, and will not cease doing so unless and
2 until forced to do so by this Court. Defendants' conduct will continue to cause
3 irreparable injury to Plaintiffs and consumers unless restrained.

4 **SEVENTH CAUSE OF ACTION:**
5 **Wrongful Death and Survivorship**

6 94. Plaintiff incorporates by reference and realleges all paragraphs
7 previously alleged herein.

8 95. Plaintiff SANDRA LIVINGSTON is the natural mother of
9 Tyrene Livingston, deceased.

10 96. As a result of Defendants' actions and negligence, Tyrene
11 Livingston, deceased, before her death, suffered extreme pain and suffering, wage
12 loss, loss of use of property, hospital and medical expenses, general damage, loss of
13 earning capacity and emotional distress. Tyrene Livingston did not die
14 immediately and suffered much from her grave injuries before succumbing to them.

15 97. The damages claimed for wrongful death and the relationships
16 of Plaintiff to the deceased are as follows:

17 a. SANDRA LIVINGSTON, individually and on behalf of
18 the Estate of Tyrene Livingston, deceased: loss of consortium; loss of
19 wages/financial support; loss of services; recovery for grief, mental anguish,
20 emotional pain, suffering and distress; loss of inheritance; and medical, funeral and
21 burial expenses.

22 b. Tyrene Livingston: loss of lifetime earnings; and punitive
23 damages as provided by law against Defendants.

24 c. SANDRA LIVINGSTON, individually and on behalf of
25 the Estate of Tyrene Livingston, deceased, sues as a personal representative and/or
26 successor in interest under C.C.P. 377.30, and as a qualifying heir and wrongful
27 death claimant pursuant to C.C.P. Section 377.60, claims the following damages
28

1 arising from the death of Tyrene Livingston: hospital and medical expenses from
2 time of injury until time of death, funeral and burial expenses, general damages and
3 pain and suffering from time of injury until time of death, loss of services, wage
4 loss, loss of financial support, and other damages to be proven at time of trial.

5 **ADDITIONAL ALLEGATIONS REGARDING**
6 **CLAIM FOR PUNITIVE DAMAGES AGAINST THE TOYOTA**
7 **DEFENDANTS**

8 98. Plaintiff incorporates by reference and hereby realleges all
9 paragraphs previously alleged herein.

10 99. At all times herein referenced, officers, directors, and managing
11 agents of Toyota knew, and were aware, that the Toyota Yaris was defective and
12 dangerous.

13 100. At all times herein referenced, officers, directors, and managing
14 agents of Toyota knew, and were aware, that numerous people had been injured or
15 killed by the Toyota Yaris, as well as other Toyota trucks and cars with similar
16 sudden acceleration defects.

17 101. The Toyota Defendants, and each of them, designed,
18 engineered, developed, manufactured, fabricated, assembled, equipped, tested or
19 failed to test, inspected or failed to inspect, repaired, retrofit or failed to retrofit,
20 failed to recall, labeled, advertised, promoted, marketed, supplied, distributed,
21 wholesaled, and sold the subject Yaris, and its component parts, a product which
22 said Defendants knew to be dangerous and unsafe for the purpose for which they
23 intended it to be used, namely, for use as a passenger vehicle.

24 102. At all times herein mentioned, prior to and at the time
25 Defendants, and each of them, sold the subject Yaris to decedent and Plaintiff, and
26 prior to the time that said product was used by decedent, the Defendants, and each
27 of them, knew, or should have known, that the subject Toyota Yaris, and its
28 component parts, was defectively designed and manufactured, that it had extremely

1 dangerous properties and defects, and that it had defects which would cause serious
2 injuries and damage to users of said product, thereby threatening the life and health
3 of the users; and at all of those times, Defendants, and each of them, knew that the
4 defects in the subject Yaris had caused serious injury and damage to other users of
5 Toyota Yaris and other cars and trucks.

6 103. At all times herein mentioned, Defendants, and each of them,
7 despite the actual knowledge described hereinabove, intentionally suppressed the
8 aforementioned complaints of users, criticisms, and other information to keep such
9 knowledge from the general public, including decedent and Plaintiff, and failed to
10 take any steps to warn decedent or Plaintiff, or other members of the general public,
11 of the dangers of using the subject Yaris.

12 104. At all times herein mentioned, Defendants, and each of them,
13 had actual knowledge of the facts hereinabove alleged demonstrating that serious
14 injury to users of the subject Yaris, including decedent, would potentially result.
15 Defendants, and each of them, nevertheless deliberately failed and refused to recall
16 the 2007 Yaris, or to take any other steps whatsoever to prevent such injuries.
17 Defendants, and each of them, misrepresented the safety of the subject Yaris, and
18 failed and refused to take any steps to prevent injuries from said vehicle in order to
19 increase the profits of Defendants, and each of them, from the sale of said vehicle.

20 105. As a legal and proximate result of the said defects and the acts
21 and conduct of Defendants, and each of them, as hereinabove alleged, decedent and
22 Plaintiff sustained the injuries and damages hereinabove set forth.

23 106. The conduct and acts of Defendants, and each of them, as
24 hereinabove set forth, in allowing such an extremely dangerous product to be used
25 by members of the general public, including decedent, constitute fraud, malice and
26 oppression toward decedent, Plaintiff and others, and a conscious disregard of the
27 safety of decedent and others.

28 107. Plaintiff is therefore entitled to exemplary or punitive damages,

1 which would serve to punish the Defendants, and each of them, and to deter
2 wrongful conduct in the future.

3 WHEREFORE, Plaintiff prays for judgment against Defendants, and
4 each of them, as hereinafter set forth.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests of this Court the following relief:

7 A. For general damages, in an amount to be proven at the time of
8 trial;

9 B. For medical, incidental, hospital, psychological care and other
10 expenses, in an amount to be proven at the time of trial;

11 C. For loss of earnings and earning capacity, in an amount to be
12 proven at the time of trial;

13 D. For an award of pre-judgment and post-judgment interest as
14 provided by law;

15 E. For consequential damages, in an amount to be proven at the
16 time of trial;

17 F. For exemplary or punitive damages against Defendants Toyota
18 Motor North America, Inc., Toyota Motor Engineering & Manufacturing of North
19 America, Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, Inc.
20 and Toyota Motor Corporation, as provided by law;

21 G. For funeral and burial expenses and other wrongful death and
22 survivorship damages as allowed by law;

23 H. For an award providing for payment of costs of suit;

24 I. For such other and further relief as this Court may deem just and
25 proper.

1 Dated: February 22, 2010

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

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By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues which may be tried by a jury.

Dated: February 22, 2010

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

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