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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARGARET SOWDERS,  
individually and on behalf of the  
Estate of MICHAEL BURRESS,  
deceased, and DENNIS SOWDERS,

Plaintiffs,

v.

TOYOTA MOTOR NORTH  
AMERICA, INC.; TOYOTA  
MOTOR ENGINEERING &  
MANUFACTURING NORTH  
AMERICA, INC.; TOYOTA  
MOTOR SALES, U.S.A., INC.; and  
TOYOTA MOTOR  
CORPORATION;

Defendants.

**COMPLAINT FOR DAMAGES**

(Products Liability – Toyota Unintended  
Acceleration Incident Resulting in  
Wrongful Death)

- 1) Negligence
- 2) Strict Products Liability: Design Defect
- 3) Strict Products Liability: Failure to Warn
- 4) Breach of Implied Warranty
- 5) Fraudulent Concealment
- 6) Wrongful Death and Survivorship
- 7) Claim for Punitive Damages

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs MARGARET SOWDERS, individually and on behalf of the Estate  
2 of MICHAEL BURRESS, deceased, and DENNIS SOWDERS (“Plaintiffs”), by  
3 and through their counsel, Lieff Cabraser Heimann & Bernstein, LLP, allege as  
4 follows:

### 5 **INTRODUCTION**

6 1. This is an action for the wrongful death of Michael Burress who was  
7 killed on December 23, 2010 when his 2008 Toyota Yaris suddenly accelerated  
8 out of control and crashed while he was driving on Interstate 640 in Knoxville,  
9 Tennessee.

10 2. At the time of the subject incident, Michael Burress, age 23, was  
11 driving to pick up his paycheck from his employer at around 8:50 a.m. on a clear  
12 and dry morning. He had recently been released from active duty with the U.S.  
13 Marine Corps after four years of service and after completing two tours of duty in  
14 Iraq. Michael Burress had started his civilian life and was working as a crane  
15 operator and attending college in Knoxville, Tennessee.

16 3. According to witnesses, at the time of the subject incident, it appeared  
17 that Michael Burress could not control the Toyota, which was traveling at a high  
18 rate of speed, and that rather than putting others in danger, Michael veered into the  
19 emergency lane and the vehicle accelerated off the road.

20 4. The subject 2008 Toyota Yaris was not equipped with a brake  
21 override system, also known as smart-throttle technology. Ironically, earlier  
22 models of the Toyota Yaris that were sold in Europe were equipped with the  
23 Bosch brake override system. Toyota elected not to use the Bosch brake override  
24 system in the vehicles that it sold in the United States.

25 5. According to ConsumerReports.org, “smart-throttle technology, also  
26 known as brake override, can mitigate the risks associated with unintended  
27 acceleration by allowing the driver to quickly, intuitively bring a car to a safe stop  
28 by depressing the brake pedal and therefore negating throttle input.”

1           6.     Virtually all Toyota, Lexus and Scion vehicles sold in the United  
2 States prior to 2010 lack this important brake override safety feature.

3           7.     For the past 50 years, Toyota has publicly committed itself to  
4 building the safest and most reliable cars on the road. Toyota gained trust and  
5 loyalty from American consumers, who, in turn, established Toyota's position in  
6 2008 as the number one brand of cars sold in the United States. However, Toyota  
7 breached that trust.

8           8.     In the fall of 2009, news spread that California Highway Patrol  
9 Officer Mark Saylor and his family died in a crash after a 2009 Lexus ES 350 that  
10 he was driving accelerated out of control. This incident shocked and alarmed the  
11 American public, sparking investigations into the extent of unintended  
12 acceleration ("UA") incidents, what Toyota knew, and when they knew it.  
13 Internal company documents revealed that Toyota concealed information about  
14 UA problems with its vehicles, including the true nature of the defect and the  
15 number of resulting incidents, injuries and deaths.

16          9.     From 2002 to 2010, Toyota continuously denied any problems with  
17 the throttle control systems on its vehicles. Meanwhile, as a Congressional probe  
18 uncovered, Toyota received more than 37,900 reports from customers describing  
19 unintended acceleration, surging and/or speed control problems across many  
20 models and years.

21          10.    The UA phenomenon is both real and terrifying. Toyota's own data  
22 projects that UA has accounted for, at least, 760 crashes. Independent safety  
23 researchers estimate that UA-related crashes have led to 341 injuries and 19  
24 deaths.

25          11.    All Toyota vehicles with the electronic throttle control system  
26 ("ETCS") (beginning extensively in Model Year 2002, and some dating back to  
27 Model Year 1998) contain design defects that cause sudden and uncontrolled  
28 acceleration to speeds of up to 100 miles per hour or more.

1           12. The affected vehicles are defective because they experience  
2 unintended acceleration events and because they lack a mechanism, such as a  
3 brake override system, to prevent, mitigate, or stop an unintended acceleration  
4 event.

5           13. Specifically, there are at least three design defects in these vehicles  
6 that cause or contribute to dangerous unintended acceleration incidents.

7           14. First, these vehicles have an inadequate fault detection system that is  
8 not robust enough to anticipate foreseeable unwanted outcomes, including  
9 unintended acceleration.

10          15. Second, the Electronic Throttle Control System and its components  
11 are highly susceptible to malfunction caused by various electronic failures,  
12 including but not limited to faulty circuit boards, short circuits, software glitches,  
13 and electromagnetic interference from sources outside the vehicle.

14          16. Third, these vehicles lack a brake override system, meaning that the  
15 driver is unable to manually stop or slow the engine during an unintended  
16 acceleration incident by stepping on the brakes. The absence of an effective fail-  
17 safe measure is particularly dangerous given the propensity of Toyota vehicles to  
18 suddenly accelerate.

19          17. These defects alone, or in combination, render certain Toyota  
20 vehicles unreasonably dangerous and unable to perform as safely as an ordinary  
21 consumer would expect.

22          18. Toyota could have easily implemented a brake override system years  
23 ago, which would have prevented UA-related incidents, regardless of the precise  
24 cause. With a brake override system, when a UA event begins to occur, drivers  
25 can override the acceleration or surging by pressing the brake. From at least 2002,  
26 Toyota knew or should have known that the state of the art in the automotive  
27 industry for electronic throttle control systems included the installation of a brake  
28 override system.

1           19. Internal company documents show that by at least 2007, Toyota knew  
2 that installing a brake override system could prevent UA events. Toyota manager  
3 Koji Sakakibara stated in a document dated September 1, 2009 that “during the  
4 floor mat sticking issue in 2007 TMS (likely refers to Toyota Motor Sales)  
5 suggested that there should be failsafe option similar to that used by other  
6 companies to prevent unintended acceleration.” (See Exhibit 1.) However,  
7 Toyota did not heed that suggestion. Sakakibara stated that “Information  
8 concerning the sequential inclusion of a failsafe system would be given by Toyota  
9 to NHTSA when Toyota was invited in 2008.”

10           20. Despite the feasibility and availability of a brake override system, and  
11 despite the fact that Toyota’s internal documents show that Toyota was aware of  
12 the UA problem, Toyota negligently and recklessly failed to install this protective  
13 measure in its vehicles.

14           21. Even in late 2009 and early 2010 when Toyota announced recalls  
15 involving a brake override system, Toyota purposely hid the fact that this redesign  
16 was safety-related and critical to preventing UA. Instead, Toyota claimed that the  
17 brake override system was “being added as an extra measure of confidence for  
18 Toyota owners.” (See Exhibit 2.)

19           22. When pressed to explain and implement solutions to UA, Toyota  
20 issued recalls to address alleged mechanical issues, such as defective floor mats  
21 and sticky accelerator pedals. While these problems undoubtedly posed real  
22 dangers for some drivers, a far greater number of vehicles were affected by the  
23 ETCS design defects described herein. Indeed, the “sticky pedal” and “floor mat”  
24 recalls have failed to adequately address the UA problem. Drivers continue to  
25 report UA incidents in vehicles that were not part of the recalls. Likewise, even  
26 among vehicles that were recalled and repaired, drivers continue to report  
27 experiences of UA.  
28

1           23.    Toyota effectively used these “floor mat” and “sticky pedal”  
2 problems to downplay and divert attention away from the major design defects and  
3 safety problems with the ETCS, including the need for a brake override system.  
4 Rather than revealing the truth about its UA electronic/software/hardware defects,  
5 Toyota highlighted and promoted the floor mat and pedal recalls as a “smoke  
6 screen,” while at the same time misleadingly characterizing the “reflashing” of the  
7 computer software to allow for brake override as merely a “confidence” boost.

8           24.    Statements from Toyota’s leadership at the highest levels reveal that  
9 Toyota knows and has known that its vehicles present an unreasonable danger, in  
10 that they are subject to UA as a result of defects in their design and manufacture,  
11 and confirm that Toyota has acted carelessly and recklessly in addressing this  
12 problem:

13               a.    Koji Sakakibara, a Toyota manager, knew in 2007 that other  
14 auto companies had installed brake override systems to prevent UA;

15               b.    Toyota Motor Corporation’s CEO, Akio Toyoda, acknowledged  
16 that Toyota had grown too quickly;

17               c.    Toyota Motor Sales President, James Lentz, admitted that the  
18 floor mat and pedal recalls do not totally solve the unintended acceleration  
19 problem;

20               d.    Toyota North America’s President, Yoshimi Inaba, conceded  
21 that “Toyota has not lived up to its high standards”; and

22               e.    Toyota Motor Corporation’s Executive Vice President, Shinichi  
23 Sasaki concluded that Toyota did not listen to “many voices” of unintended  
24 acceleration.

25           25.    Toyota promised trust and safety, but delivered neither. Rather than  
26 recalling the problematic vehicles and implementing a feasible and readily  
27 available brake override system, Toyota hid the problem and proposed inadequate  
28 and misleading solutions. Toyota’s actions have resulted in preventable UA



1 incidents, leading to numerous fatalities and injuries, including those suffered by  
2 Plaintiffs.

### 3 **JURISDICTION AND VENUE**

4 26. This Court has jurisdiction over the subject matter of this action  
5 pursuant to 28 U.S.C. § 1332 because the amount in controversy is greater than  
6 \$75,000, exclusive of interest and costs, and because there is complete diversity of  
7 citizenship among the parties.

8 27. This Court has personal jurisdiction over the Defendants because a  
9 substantial portion of the wrongdoing alleged in this Complaint took place in  
10 California, the Defendants are authorized to do business in California, the  
11 Defendants have minimum contacts with California, and/or the Defendants  
12 otherwise intentionally avail themselves of the markets in California through the  
13 promotion, marketing and sale of their products in California, each of which are  
14 sufficient bases to render the exercise of jurisdiction by this Court permissible  
15 under traditional notions of fair play and substantial justice.

16 28. Venue is proper in the Central District of California pursuant to  
17 28 U.S.C. § 1391(a) and (b) because a substantial part of the events, acts and  
18 omissions giving rise to these claims occurred in the Central District of California,  
19 where many of the Defendants are headquartered.

### 20 **PARTIES**

21 29. Prior to his death, MICHAEL BURRESS was a resident of  
22 Tennessee.

23 30. Plaintiff MARGARET SOWDERS is the natural mother of  
24 MICHAEL BURRESS, deceased, and is the successor in interest and executor of  
25 his estate. Margaret Sowders is a resident of Tennessee.

26 31. Plaintiff DENNIS SOWDERS is a resident of Tennessee and is the  
27 step-father of MICHAEL BURRESS, deceased.  
28

1           32. Prior to his death, Michael Burress was an active and vibrant young  
2 man who had served two tours of duty in Iraq as a Corporal in the United States  
3 Marine Corps. He was an avid reader who was recognized for reading the most  
4 recorded books in the history of his high school. At the time of his death, Michael  
5 Burress was attending college and working as a crane operator, and he was  
6 looking forward to restoring the historic home where he lived.

7           33. Michael Burress leased or purchased a white 2008 Toyota Yaris from  
8 an authorized seller of Toyota vehicles, Stevenson Toyota, 2325 N. Marine  
9 Boulevard, Jacksonville, North Carolina, 28546.

10          34. Michael Burress was unaware of the vehicle's hidden and potentially  
11 lethal defects, of which Toyota was or should have been aware.

12          35. On December 23, 2010, at approximately 8:50 a.m., Michael Burress,  
13 age 23, was the belted occupant in his 2008 Toyota Yaris. Michael Burress was  
14 driving the subject vehicle at a safe rate of speed westbound on Interstate 640 in  
15 Knoxville, Tennessee. The Toyota Yaris suddenly accelerated and went out of  
16 control. The Toyota Yaris crossed both lanes of traffic at a high rate of speed.  
17 According to witnesses, Michael Burress appeared to unable to control the Toyota  
18 Yaris, and rather than putting others in danger, he veered into the emergency lane  
19 where the vehicle continued off the highway and struck a metal pole.

20          36. As a result of the collision, Michael Burress suffered multiple  
21 traumatic injuries and was eventually pronounced dead at the Tennessee Medical  
22 Center after the terrifying incident.

23          37. At all times herein mentioned, Defendant Toyota Motor North  
24 America, Inc. was and is a California corporation and a resident and corporate  
25 citizen of California, with its principal place of business at 19001 South Western  
26 Avenue, in the City of Torrance, County of Los Angeles, in the State of California,  
27 within the Central District of California.  
28

1           38. At all times herein mentioned, Defendant Toyota Motor  
2 Engineering & Manufacturing North America, Inc. was and is a Kentucky  
3 corporation and a resident and corporate citizen of Kentucky, with its principal  
4 place of business located at 25 Atlantic Avenue, in the City of Erlanger, in the  
5 State of Kentucky.

6           39. At all times referenced herein, Defendant Toyota Motor Sales,  
7 U.S.A., Inc. was and is a California corporation and a resident and corporate  
8 citizen of California, with its principal place of business at 19001 South Western  
9 Avenue, in the City of Torrance, County of Los Angeles, in the State of California,  
10 within the Central District of California.

11           40. Upon information and belief, each Toyota entity named above is a  
12 wholly owned subsidiary of Defendant Toyota Motor Corporation, a Japanese  
13 corporation with its principal place of business located at 1 Toyota-Cho, Toyota  
14 City, Aichi Prefecture, 471-3571, Japan.

15           41. At all times herein mentioned, Defendants Toyota Motor North  
16 America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,  
17 Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, M.F. Salta  
18 Company, Inc., d/b/a West Covina Toyota (collectively, "Toyota Defendants" or  
19 "Toyota" or "Defendants") designed, engineered, developed, manufactured,  
20 fabricated, assembled, equipped, tested or failed to test, inspected or failed to  
21 inspect, repaired, retrofitted or failed to retrofit, failed to recall, labeled,  
22 advertised, promoted, marketed, supplied, distributed, wholesaled, and/or sold  
23 Toyota vehicles, including the vehicle operated by the decedent.

24           42. At all times referenced herein, Defendants were acting as the agents  
25 and employees of each of the other Defendants, and were acting within the scope,  
26 purpose, and authority of that agency and employment and with the full  
27 knowledge, permission, and consent of each of the other Defendants.  
28

## **FACTUAL ALLEGATIONS**

### **I. Toyota's Unintended Acceleration Defect**

#### **A. Overview of Toyota's Success and the Toyota Brand**

43. Toyota came to America in 1957, establishing its headquarters in Hollywood, California in an old Rambler dealership. After a disappointing start, Toyota quickly gained traction in the United States auto market and eventually became a leader. In 2003, Toyota sold 6,780,000 vehicles and overtook Ford Motor Company to become second in annual sales behind only General Motors. Three years later, Toyota passed General Motors as the number one brand of cars sold in the United States, with 8,800,000 vehicles sold.

44. Toyota is currently the world's largest manufacturer of vehicles. For the fiscal year ending in March 2010, Toyota reported more than \$200 billion in worldwide sales.

45. Toyota holds its brand out as synonymous with "innovation, quality and reliability," claiming that "safety and satisfaction" are its "top priorities." [http://www.toyota.com/about/our\\_business/sales/](http://www.toyota.com/about/our_business/sales/) (last visited August 17, 2010); Templin's Statement Regarding Lexus LS Voluntary Safety Recall, *available at*: <http://www.toyota.com/about/news/corporate/2010/05/21-3-LexusLS-Recall-MarkTemplin-Statement.html>.

46. Since at least 1998, Toyota has continuously promised trust and safety to prospective purchasers and the American public.

#### **B. The Toyota Electronic Throttle Control System's Susceptibility to Unintended Acceleration Problems and Lack of Adequate Safeguards**

47. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETCS vehicles" or "subject vehicles").

48. Unlike traditional throttle control systems, ETCS has no physical linkage from the accelerator pedal to the engine throttle. Rather, a sensor at the

1 accelerator detects how far the gas pedal is depressed and transmits that  
2 information to computer modules, which control a motorized engine throttle. The  
3 computer modules determine how far the accelerator is depressed, and, in turn, tell  
4 the engine throttle motor how far to open the throttle valve.

5 49. When Toyota first introduced the ETCS, it continued to include a  
6 mechanical linkage between the accelerator and the engine throttle control.

7 50. Beginning in Model Year 2002 on most models, and in approximately  
8 1998 on other higher end models, Defendants began manufacturing, distributing  
9 and selling vehicles without such mechanical linkage.

10 51. The ETCS, as a computer-based system, is highly susceptible to  
11 malfunction, or “glitches,” caused by various electronic and mechanical failures,  
12 including but not limited to short circuits, software errors, and electromagnetic  
13 interference from sources outside the vehicle.

14 52. Despite known hardware, software and component problems, ETCS  
15 vehicles do not have adequate safeguards to protect drivers from UA. The fault  
16 detection system in these vehicles is not robust enough to detect and prevent  
17 foreseeable UA events.

18 53. Additionally, the subject vehicles lack a brake override system,  
19 incorporated by other vehicle manufacturers, that instructs the ETCS to  
20 automatically reduce the engine power to idle whenever the brakes are applied.  
21 This measure is critical, as a significant number of motorists that experienced UA  
22 reported that no amount of braking would stop the vehicle. Moreover, the absence  
23 of a fail-safe brake override system is particularly dangerous given the  
24 susceptibility of the ETCS to malfunction in Toyota vehicles.

25 54. These defects alone, or in combination, are lethal. In the subject  
26 vehicles, an ETCS malfunction can set the engine throttle to any speed, regardless  
27 of the position of the accelerator, and the driver has no mechanism to effectively  
28 stop or slow the car.

1           55. While the full scope of the UA problem is still unfolding, Toyota's  
2 own data reveals that UA has accounted for at least 760 crashes. Independent  
3 safety experts at Safety Research and Strategies, Inc. estimate that UA-related  
4 crashes have led to approximately 341 injuries and 19 deaths.

5           **C. Unintended Acceleration Timeline: Toyota's Knowledge**  
6           **Regarding the Defects**

7           56. Toyota has received evidence for many years, from a variety of  
8 sources, that its vehicles have accelerated suddenly and unexpectedly in a variety  
9 of scenarios.

10          57. In February 2002, Toyota received what is believed to be the first  
11 consumer complaint alleging that the engine surged while the brakes were  
12 depressed. By August 2002, Toyota had received ten other similar complaints.  
13 Toyota Motor Corporation allegedly investigated the surging problem but failed to  
14 uncover the root cause. According to a May 20, 2002 internal report, Toyota  
15 claimed that the "root cause of the surging condition remains unknown" and "no  
16 known remedy exists for the surging condition at this time."

17          58. In February 2003, The National Highway Traffic Safety  
18 Administration ("NHTSA") conducted its first of many investigations regarding  
19 speed control problems in Toyota vehicles. The first two NHTSA investigations  
20 involved the Camry and Solara models.

21          59. On April 25, 2003, NHTSA issued Defect Petition DP03 003. The  
22 petitioner requested that the agency conduct an analysis of 1997 through 2000  
23 Lexus vehicles for "problems of vehicle speed control linkages which results [sic]  
24 in sudden, unexpected excessive acceleration even though there is no pressure  
25 applied to the accelerator pedal." The petitioner noted that the NHTSA website  
26 contained thirty-six complaints referring specifically to unintended acceleration in  
27 Lexus vehicles. Among the several complaints that described crashes, one  
28

1 complaint described a Lexus that “collided with five other cars in the space of [one  
2 half] mile before it could be stopped.”

3 60. In April 2003, Toyota dealt internally with an “unwanted  
4 acceleration” incident during production testing of the Sienna model.

5 61. In a May 5, 2003 Field Technical Report (FTR), Toyota admitted that  
6 “[s]udden acceleration against our intention,” was an “extremely serious problem  
7 for customers.” In the FTR, a Toyota technician internally reported an “unwanted  
8 acceleration” incident: “We found miss-synchronism between engine speeds and  
9 throttle position movement. . . . Even after replacement of those parts, this  
10 problem remains.” The technician requested immediate action due to the  
11 “extremely dangerous problem” and continued: “[W]e are also much afraid of  
12 frequency of this problem in near future.”

13 62. In July 2003, at an owner’s request, NHTSA opened the first probe  
14 into UA complaints regarding Lexus sedans.

15 63. In January 2004, another consumer filed a petition with NHTSA,  
16 requesting an investigation into 2002 and 2003 Lexus ES 300s, “alleging that [her]  
17 throttle control system malfunctioned on several occasions, one of which resulted  
18 in a crash.”

19 64. In March 2004, NHTSA opened a wider probe into Lexus sedans  
20 after receiving another complaint “alleging that the throttle control system fails to  
21 properly control engine speed resulting in vehicle surge.” NHTSA also notified  
22 Toyota that it was opening an investigation of unwanted acceleration and vehicle  
23 surge in 2002-2003 Camry and Solara models. Specifically, NHTSA investigated  
24 the following complaints from vehicle owners:

25 Allegations of (A) an engine speed increase without the  
26 driver pressing on the accelerator pedal or, (B) the engine  
27 speed failing to decrease when the accelerator pedal was  
28 no longer being depressed – both circumstances requiring

1 greater than expected brake pedal application force to  
2 control or stop the vehicle and where the brake system  
3 functioned normally.

4 65. On June 3, 2004, NHTSA investigator Scott Yon sent an email to  
5 Christopher Santucci (a high level Toyota employee in Technical and Regulatory  
6 Affairs) that shows a greater than 400 percent difference in “Vehicle Speed”  
7 complaints between Camrys with manually controlled throttles and those with  
8 electronically controlled throttles. (*See Exhibit 3.*) This statistically significant  
9 difference put Toyota on notice that its vehicles with ETCS had a defect that could  
10 potentially cause UA.

11 66. On July 22, 2004, NHTSA closed its investigation into the Lexus  
12 sudden acceleration complaints (petition PE04-021) without formally identifying a  
13 defect, stating that “[a] defect trend has not been identified at this time and further  
14 use of agency resources does not appear to be warranted.” Citing a lack of  
15 resources, NHTSA subsequently turned down two more requests from consumers  
16 to investigate the problem. Significantly, NHTSA conducted no testing of the  
17 integrity of the ETCS and did not review any records of Toyota’s test reports  
18 concerning the ETCS. Notably, NHTSA did not conduct any tests as to the  
19 efficacy of the braking system in an open-throttle condition.

20 67. In May 2004, a forensic technologist and mechanical engineer  
21 examined a vehicle in New Jersey that had experienced a UA event. They  
22 prepared a report that concluded that the vehicle’s ETCS was not operating  
23 correctly. Toyota received the report on January 13, 2005.

24 68. In August 2005, NHTSA evaluated the Toyota Camry after reports of  
25 some “inappropriate and uncontrollable vehicle accelerations.”

26 69. In November 2005, Toyota wrote to NHTSA and stated that a  
27 dealership-led review of 59 owner claims regarding their Toyotas found “no  
28



1 evidence of a system or component failure” and stated that the “vehicles operated  
2 as designed.”

3 70. In January 2006, NHTSA opened a second investigation into Toyota  
4 Camry models. NHTSA received questionnaires from Camry owners who  
5 reported hundreds of problems with acceleration and braking. After  
6 communicating with Toyota, NHTSA closed the investigation without identifying  
7 a specific defect and stated that the claims had “ambiguous significance.”

8 71. In August 2006, NHTSA continued to receive more complaints about  
9 accelerator problems with the 2002-2006 Camry models.

10 72. In September 2006, NHTSA opened a third investigation into  
11 reported “engine surging” incidents with Toyota vehicles. Toyota represented to  
12 NHTSA that there was no abnormality in the throttle control system, and instead  
13 blamed water damage. NHTSA closed this investigation without identifying a  
14 specific defect, citing “the need to best allocate limited administrative resources.”

15 73. In March 2007, NHTSA launched a probe into the floor mats of  
16 Lexus models. In response, Toyota claimed that the “issue is not a safety  
17 concern.” On August 8, 2007, NHTSA’s Office of Defect Investigation (“ODI”)  
18 upgraded this preliminary evaluation to an engineering analysis to investigate UA  
19 in a target population of 98,454 model year 2007 Lexus ES 350s. The Opening  
20 Resume for EA07-010 states, in part, as follows:

21 [T]he agency has 40 complaints; eight crashes and 12  
22 injuries. Complainants interviewed by ODI stated that  
23 they applied the throttle pedal to accelerate the vehicle  
24 then experienced unwanted acceleration after release.  
25 Subsequent (and sometimes repeated) applications of the  
26 brake pedal reduced acceleration but did not stop the  
27 vehicle. In some incidents drivers traveled significant  
28 distances (miles) at high vehicle speeds (greater than 90

1           mph) before the vehicle stopped (ODI notes that multiple  
2           brake applications with the throttle in an open position  
3           can deplete the brake system's power [vacuum] assist  
4           reserve resulting in diminished braking).

5           74.    In September 2007, Toyota recalled 55,000 Camry and Lexus models  
6           under pressure from NHTSA due to floor mats that purportedly interfered with the  
7           accelerator pedal.

8           75.    In January 2008, NHTSA launched a probe into UA problems in  
9           Tacoma pickups after receiving notice of 478 incidents with 2004-2008 models.  
10          In response, Toyota told NHTSA that an investigation was not warranted due to  
11          lack of evidence to support drivers' allegations.

12          76.    In August 2008, NHTSA closed its investigation of the Tacoma  
13          without specifically identifying a defect, despite hundreds of complaints. The  
14          Tacoma probe marked the eighth investigation into UA problems in Toyota  
15          vehicles since 2003. By August 2008, NHTSA had received more than 2,600  
16          complaints regarding "run away" Toyota vehicles.

17          77.    Rather than provide appropriate repairs, Toyota often blamed drivers  
18          for UA incidents. Yet, when pressed, Toyota technicians have acknowledged the  
19          defects in Toyota vehicles, such as the experience described in this consumer e-  
20          mail, dated February 6, 2009:

21                "We just got a 2008 LE 4Cyl with the 5spd auto. Only  
22                had it two weeks. When driving 35-45mph, the tranny  
23                will shift up into 5th gear and then basically STAY there.  
24                As we approach a slight upward grade, the tachometer is  
25                stuck at 1200 RPM and the whole car shudders and  
26                vibrates as the engine "lugs" down. We find ourselves  
27                constantly playing with the gas pedal in order to FORCE  
28                the tranny to downshift. Took it to dealer.

1 They.....experienced same thing. They said it was  
2 ‘Normal for this model - at this time.’ They quietly told  
3 me they are getting other complaints and look forward to  
4 Toyota releasing new programming for the ECU.”

5 78. In April 2009, NHTSA received another petition for an investigation  
6 into Toyota vehicles for throttle-control problems unrelated to floor mat issues.

7 **D. Officer Mark Saylor’s Tragic Accident and Resulting Worldwide**  
8 **Public Scrutiny, Congressional Probes, and Wider Recalls**

9 79. On August 28, 2009, California Highway Patrol officer Mark Saylor  
10 and his family were killed when the Toyota vehicle (Lexus ES350) he was  
11 operating accelerated out of control to over 100 mph. In a chilling “911 call,”  
12 moments before the crash, a passenger said, “We’re in trouble. There’s no  
13 brakes.”

14 80. In September 2009, NHTSA and Toyota issued consumer alerts,  
15 warning consumers to remove floor mats because of a potential to jam the  
16 accelerator, causing sudden unintended acceleration.

17 81. In October 2009, Toyota continued receiving reports in the United  
18 States and Canada that pedals were sticking in certain models. Toyota then issued  
19 a floor mat recall on 4.2 million Toyota and Lexus vehicles, advising consumers to  
20 remove floor mats and place them in the trunk, and directing dealers to use zip ties  
21 to secure floor mats to avoid gas pedal interference.

22 82. In November 2009:

23 a. Toyota expanded the floor mat recall by over a million vehicles,  
24 and issued a press release claiming that NHTSA found no defect in the vehicles.  
25 NHTSA publicly rebuked Toyota, calling Toyota’s press release “inaccurate” and  
26 “misleading,” noting that the floor mat recall was an “interim” measure and that it  
27 “does not correct the underlying defect.” Toyota publicly apologized for its  
28

1 inaccurate press release. Ultimately, Toyota included 5.3 million vehicles in the  
2 Floor Mat recall.

3           b. News outlets continued uncovering evidence of widespread  
4 problems, and Toyota's concealment of those problems. The Los Angeles Times  
5 reported that Toyota ignored more than 1,200 UA complaints over the preceding  
6 eight years. Toyota also issued another press release denying proliferating media  
7 reports that a problem existed with its ETCS.

8           c. Toyota instructed dealers to shorten the gas pedal so it would  
9 not interfere with floor mats.

10           83. In December 2009, NHTSA opened an investigation into whether the  
11 electronic control modules in Corolla and Camry models caused them to stall  
12 without warning. It opened another investigation into the 2003 Sequoia SUV  
13 model for problems with the computerized vehicle stability control system.

14           84. In January 2010:

15           a. Toyota told NHTSA that some vehicles may have "an issue"  
16 with sticking accelerator pedals, independent of the floor mat issue (though some  
17 vehicles contained both defects). At NHTSA's command, Toyota initially issued a  
18 recall for sticking accelerator pedals affecting 2.3 million vehicles. It subsequently  
19 expanded the "sticky pedal" recall to include a total of 3.4 million vehicles.

20           b. United States Transportation Secretary Ray LaHood told a  
21 Chicago radio station that the government had asked Toyota to stop selling recalled  
22 vehicles.

23           c. Toyota announced that a brake override software "fix" would be  
24 applied to its vehicles globally by 2011.

25           d. On January 26, 2010, after ever-increasing adverse publicity,  
26 Toyota stopped selling its recalled models, stating that preventing the sale of the  
27 vehicles was "necessary until a remedy is finalized." Then, approximately a week  
28 later, Toyota completely reversed course and began selling the defective vehicles.

1           85. In February 2010:

2           a. Transportation Secretary Ray LaHood testified before a  
3 Congressional panel cautioning drivers to seek repairs for sticking accelerators.

4           b. Kelly Blue Book said affected Toyota models were devalued as  
5 much as five percent. Edmunds stated that the average devaluation was between  
6 four and eight percent.

7           c. Toyota admitted that there was a brake software problem in  
8 2010 Prius Hybrids. Toyota later recalled the 2010 Prius, Lexus HS 250h and  
9 Camry Hybrids due to faulty brakes (437,000 vehicles worldwide).

10           **E. Toyota's Admitted Failure to Meet Consumers' Expectations for**  
11           **Safety**

12           86. In October 2009, Akio Toyoda (President and CEO of Toyota Motor  
13 Corporation) issued a public apology to the Saylor family and every customer  
14 affected by the recall, admitting: "Customers bought our cars because they  
15 thought they were the safest but now we have given them cause for grave concern.  
16 I can't begin to express my remorse."

17           87. Additionally, in his prepared testimony before the Committee on  
18 Oversight and Government Reform of the U.S. House of Representatives on  
19 February 24, 2010, Toyoda admitted that Toyota's growth in recent years was "too  
20 quick," and the company's priorities of "first, safety; second, quality; third,  
21 volume" had become "confused." Mr. Toyoda went on to apologize to American  
22 consumers, "I regret that this has resulted in the safety issues described in the  
23 recalls we face today, and I am deeply sorry for any accidents that Toyota drivers  
24 have experienced."

25           88. Yoshimi Inaba, President and Chief Executive Officer of Toyota  
26 Motor North America, Inc., likewise acknowledged that Toyota had failed its  
27 customers. Mr. Inaba testified in the Senate Sub-Committee hearings on the  
28 Toyota recalls as follows:

1 In recent months we have not lived up to the high  
2 standard our customers and the public have come to  
3 expect from Toyota, despite our good faith efforts. As  
4 our president, Akio Toyoda, told members of Congress  
5 last week, we sincerely regret our shortcomings have  
6 resulted in the issues associated with our recent recalls.

7 89. Shinichi Sasaki, executive Vice President for Toyota Motor  
8 Corporation admitted before Congress that Toyota “did not listen to its  
9 consumers”:

10 How this issue came about is because there were many  
11 vehicle – excuse me – many voices were sent to us from  
12 the customers, but we really did not listen to every one of  
13 them very carefully, one by one. We should have really  
14 listened to them carefully and rendered some technical  
15 analysis so that it would be connected to our following  
16 product improvement. However, the quality of this work  
17 or the efficiency of our work or speed with which we  
18 worked had become sluggish, or sort [sic] failed  
19 gradually, and this has come to a much larger issue.

20 **II. Toyota’s Purported Fixes Do Not Address The Root Causes Of**  
21 **Unintended Acceleration**

22 90. Despite the flurry of media attention, NHTSA activity and  
23 congressional scrutiny, Toyota has still not adequately addressed the root cause of  
24 UA.

25 91. While sticky pedals and floor mats likely did contribute to some UA  
26 incidents, Toyota used these issues as a smoke screen to hide the electronic defects  
27 in their vehicles.  
28

1           92.    Toyota never made any significant changes to improve the  
2 acceleration system and the ETCS, despite the availability of safe and inexpensive  
3 alternative designs and feasible modifications. Rather, Toyota has repeatedly  
4 stated to consumers, the media, its dealers, and Congress, that its vehicles'  
5 electronic acceleration systems are not the cause of UA incidents.

6           93.    Despite Toyota's public position, evidence continues to mount that  
7 the recalls focused on limited mechanical issues are inadequate to prevent UA, and  
8 that the vehicles' electronics cannot be ruled out as a likely cause of the incidents.

9           94.    As *The New York Times* reported on March 2, 2010, "an analysis of  
10 government documents shows that many Toyota Camrys built before 2007, which  
11 were not subject to recalls, have been linked to a comparable number of speed-  
12 control problems as recalled Camrys." A study of Japan's government records  
13 revealed a similar finding. As a result, the U.S. Department of Transportation has  
14 included pre-2007 Camrys in their broader investigation of the role that ETCS  
15 may be playing in these incidents.

16           95.    Further, affected vehicles that have been recalled and repaired  
17 continue to suffer UA incidents. On March 4, 2010, just months after Toyota  
18 issued two independent recalls related to UA, NHTSA revealed that it had  
19 received over 60 UA complaints in Toyota vehicles that had been repaired  
20 pursuant to the recalls. As *The Los Angeles Times* reported, the complaints  
21 included several crashes and at least three injuries. On March 17, 2010, the  
22 Associated Press reported that the number of post-recall incidents had reached  
23 over 100.

24           96.    The Camry findings and the post-recall incidents greatly undermine  
25 Toyota's public position, and confirm that the ETCS is the likely source of UA.

26           97.    Indeed, Toyota admits that the recalls have not addressed the UA  
27 problem. When questioned before a Congressional panel, Toyota's top U.S. sales  
28 executive, James Lentz, admitted that Toyota could not rule out electronics

1 problems, and that the two recalls would “not totally” solve the problem. Among  
2 other potential causes, Mr. Lentz identified software problems, faulty cruise  
3 control, and engine revs caused by engaging the air conditioner.

4 98. Additionally, numerous independent experts have spoken out in  
5 recent months to challenge Toyota’s inexplicable confidence in its electronic  
6 systems.

7 99. For example, David M. Cummings, executive vice president of the  
8 Kelly Technology Group in Santa Barbara, California, has 30 years’ experience in  
9 building computer systems embedded inside other devices, including nine years as  
10 a consultant for the Jet Propulsion Laboratory where he worked on the Mars  
11 Pathfinder spacecraft. In an opinion piece in *The Los Angeles Times* on March 12,  
12 2010, Mr. Cummings dismissed Toyota’s repeated statements that its electronics  
13 could not be faulted, and explained that there are “software bugs” that simply  
14 cannot be reproduced in a laboratory test environment.

15 100. Toyota knew by 2007 that UA was often not traceable, meaning that  
16 failure could not be effectively ruled out. In an October 19, 2007 e-mail, Chris  
17 Tinto admitted: “[O]ne big problem is that no codes are thrown in the ECU so the  
18 allege [sic] failure (as far as we know) can not be documented or replicated.” The  
19 implications were that “the service tech therefore can’t fix anything, and has no  
20 evidence that any problem exists.” (See Exhibit 4.)

21 101. The unpredictability of electronics and software is further highlighted  
22 by strange—and dangerous—incidents in affected vehicles that received a  
23 supposed software upgrade as part of the recall. As *The Los Angeles Times*  
24 summarized in a March 3, 2010 article:

25 A 2007 Camry driver from Sherrill, New York, for  
26 example, said that since the repair, the car idles fast in  
27 reverse, cruise control does not disengage properly and  
28 various check engine lights come on. The owner of a



1           2005 Avalon in Houston, meanwhile, said that following  
2           the recall service, his wife stepped on the gas and found  
3           that nothing happened, causing it to lose speed on the  
4           highway.

5           102. Toyota knows, or should know, that its electronics are not infallible.  
6       Indeed, software problems have arisen in other Toyota vehicles. On February 8,  
7       2010, Toyota announced a voluntary safety recall on some of its models to update  
8       software in the vehicle's anti-lock brake system (ABS), in response to braking  
9       problems experienced by drivers. This recall involves approximately 133,000  
10      Model Year 2010 Prius vehicles and 14,550 Model Year 2010 Lexus HS 250h  
11      vehicles.

12          103. More generally, over the last two decades, various Toyota and Lexus  
13      vehicles have been recalled due to electronics and software defects that led to  
14      engine surging, engine racing, and unintended engagement of headlights and  
15      taillights, according to a *Los Angeles Times*, February 14, 2010 article. As far  
16      back as 2003, Toyota had to "recalibrate" the Electronic Control Modules in  
17      certain 2003 Camrys due to engine "surging."

18          104. Further, Toyota has known for some time that the inherent  
19      complexity and unpredictability of vehicle electronics and software counsels the  
20      use of a properly designed brake-to-idle override system that allows drivers to  
21      bring a vehicle under control in the event of a UA incident. According to  
22      documents presented to Congress, and as reported in *The Los Angeles Times*, in  
23      2007, NHTSA asked Toyota to consider installing software to prevent sudden  
24      acceleration in its vehicles after receiving yet another round of UA complaints in  
25      Toyota vehicles.

26          105. In an internal August 2007 e-mail, entitled "UPDATE on ES 350  
27      investigation," Chris Santucci, a Toyota manager, stated that he and NHTSA  
28      investigators discussed fail-safe mechanisms used by other vehicle manufacturers

1 to protect against unintended acceleration, including “[u]sing ETC to shut down  
2 throttle control” and “cutting off the throttle when the brakes are applied.”  
3 Mr. Santucci also noted, “Jeff [Quandt, Chief, Vehicle Controls Division, Office  
4 of Defects Investigation] mentioned that another manufacturer allows the engine  
5 to be shut off if you press the ignition button repeatedly.”

6 106. Further, a September 1, 2009 email “[t]o all concerned staff” from  
7 Koji Sakakibara shows that Toyota was aware of the UA problem back in 2007,  
8 but opted not to develop additional safety measures at that time:

9 To all concerned staff,

10 The following information has been received from TMS-  
11 PQSS Public Affairs Group regarding the above (America  
12 ES350 article...addition #2). (Please see photos at the  
13 bottom of this mail.) Within America, there are 196  
14 articles on Google News, so the mass media is interested.

15 **- During the floor mat sticking issue of 2007, TMS**  
16 **suggested that there should be “a fail safe option**  
17 **similar to that used by other companies to prevent**  
18 **unintended acceleration”.** I remember being told by the  
19 accelerator pedal section Project General Manager at the  
20 time (Mr. M) that “This kind of system will be  
21 investigated by Toyota, not by Body Engineering Div”.  
22 Also, that information concerning the sequential inclusion  
23 of a fail safe system would be given by Toyota to NHTSA  
24 when Toyota was invited in 2008. **(The NHTSA knows**  
25 **that Audi has adopted a system that closes the throttle**  
26 **when the brakes are applied and that GM will also**  
27 **introduce such a system.)**

28 ==>In light of the information that “2 minutes before the

1 crash an occupant made a call to 911 stating that the  
2 accelerator pedal was stuck and the vehicle would not  
3 stop”, I think that Body Engineering Div. should act  
4 proactively first (investigate issues such as whether the  
5 accelerator assay structure is the cause, how to secure the  
6 floor mats, the timing for introducing shape  
7 improvements). - Furthermore, taking into account the  
8 circumstances that “in this event a police officer and his  
9 entire family including his child died”, TMS-PQSS Public  
10 Affairs Group thinks that “the NHTSA and the USA  
11 public already hold very harsh opinions in regards to  
12 Toyota”. (As I think you know, in some cases in the USA  
13 “killing a police officer means the death penalty”.)  
14 - In light of the above, it would not be an exaggeration to  
15 say that even more than the nuance of the information  
16 passed from Customer Quality Engineering Div. External  
17 Relations Dept. to Body Engineering Div, “the NHTSA is  
18 furious over Toyota’s handling of things, including the  
19 previous Tacoma and ES issues.  
20 Considering the importance of this matter, any  
21 correspondence regarding this issue including the reply  
22 from Body Engineering, no matter how small, must be  
23 sent to the Customer Quality Engineering Div. General  
24 Manager and the Customer Quality Engineering Div.  
25 External Relations Dept. General Manager. (If possible,  
26 please exchange information with the Customer Quality  
27 Engineering Div. rather than replying to me.)  
28 (See Exhibit 1) (emphasis added).

1           107. Not only did Toyota decline to develop additional safety measures,  
2 but its officials actually bragged in July 2009 about avoiding a costly whole-scale  
3 recall related to sudden acceleration complaints. According to an internal  
4 presentation from Toyota's Washington office, a limited recall saved Toyota more  
5 than \$100 million. The document notes that Toyota's safety officials had saved  
6 the company significant expense by limiting the recall to 55,000 floor mats in  
7 2007. "Negotiated 'equipment' recall on Camry/ES re SA (Sudden Acceleration);  
8 saved \$100M+, w/ no defect found," the document said. This internal document is  
9 further evidence that Toyota knew about the UA problem and nonetheless decided  
10 to avoid a recall of the affected vehicles, in conscious disregard for the safety of  
11 consumers, including Plaintiffs.

12           108. After profiting from the inadequate 2007 floor mat recall, and in  
13 response to increasing pressure from NHTSA, Toyota conducted an internal  
14 feasibility study of brake override technology in 2008. The study was prompted  
15 by a memo from a Toyota employee entitled "Unwanted Acceleration  
16 Investigations on Toyota Vehicles." In light of "increasing scrutiny" from  
17 NHTSA, the memo requested that Toyota Motor Corporation (in Japan) conduct a  
18 feasibility study evaluating the use of the electronic throttle control system "to  
19 reduce throttle opening/engine power" as a way to eliminate sudden acceleration.  
20 The memo's unidentified author noted that simultaneous application of both  
21 pedals during an unintended acceleration event "should be easily detectable by the  
22 engine ECU." Toyota ultimately declined to install this important safety feature in  
23 any of its vehicles at that time.

24           109. Unable to hide the risks imposed by its ETCS any longer, Toyota has  
25 announced a plan to put brake overrides in new vehicles by the end of 2010.  
26 Additionally, Toyota is allegedly installing the system on some of the following  
27 recalled vehicles: 2005-2010 Toyota Tacoma, 2009-2010 Venza, 2008-2010  
28 Sequoia, 2007-2010 Camry, 2005-2010 Avalon, 2007-2010 Lexus ES 350, 2006-

1 2010 Lexus IS 350, and 2006-2010 Lexus IS 250. As Toyota stated in connection  
2 with this second recall:

3 In addition, as a separate measure independent of the  
4 vehicle-based remedy, Toyota will install a brake override  
5 system into the involved Camry, Avalon, and Lexus ES  
6 350, IS 350 and IS 250 models as an extra measure of  
7 confidence. This system cuts engine power in case of  
8 simultaneous application of both the accelerator pedal and  
9 brake pedals.

10 110. Yet, Toyota has failed to install this safety feature on all of the  
11 recalled vehicles, let alone the larger universe of affected vehicles.

12 111. Not only has Toyota denied this important safeguard to millions of its  
13 customers, but the failsafe it has installed on select vehicles appears to be  
14 ineffective and inadequately tested. As noted above, drivers have reported more  
15 than 100 UA incidents in vehicles successfully recalled and repaired.  
16 Frighteningly, these new complaints involve the Avalon, Camry, and Matrix – all  
17 of which allegedly received brake override software as part of the recall, according  
18 to Toyota.

19 **III. Toyota's Concealment Of The Defects**

20 112. As demonstrated above, Toyota was aware of the defective nature of  
21 the acceleration control and throttle system in its vehicles since at least 2002, but  
22 failed to adequately and accurately disclose these facts to Plaintiffs, the public, and  
23 NHTSA. Toyota concealed these facts and continued to make statements touting  
24 the reliability and safety of its vehicles, including the subject vehicles with  
25 dangerous defects that Toyota knew had caused and were likely to cause further  
26 serious injuries and deaths.

1           **A. Toyota's Failure to Disclose that Certain Vehicles had Electronics**  
2           **Problems that Caused Unintended Acceleration**

3           113. Toyota has consistently denied any electronic causes of UA, while  
4 quietly issuing bulletins to fix problems with its electronic throttles.

5           114. Between August 2002 and May 2003, Toyota issued to its dealers  
6 three "Technical Service Bulletins," which acknowledged surging problems in  
7 certain Camry vehicles. Two of these bulletins advised dealers that Toyota made  
8 repairs to the Engine Control Model (an electronic system) to correct the problem.  
9 Toyota never disclosed the existence or content of these bulletins to NHTSA or the  
10 public.

11           **B. Toyota's Concealment of its Own Technicians' Ability to Replicate**  
12           **and Confirm Unintended Acceleration Events**

13           115. During the relevant period, Toyota failed to disclose to consumers  
14 how its own technicians were continuing to replicate UA events.

15           116. In April 2003, Toyota dealt internally with an "unwanted  
16 acceleration" incident during production testing of the Sienna model. Toyota  
17 blamed a "faulty trim panel clip," deemed it an isolated incident, and did not make  
18 such information available to NHTSA until five years later.

19           117. As discussed above, in a May 5, 2003 "Field Technical Report,  
20 Toyota admitted that "[s]udden acceleration against our intention," was an  
21 "extremely serious problem for customers." A Toyota technician internally  
22 reported an "unwanted acceleration" incident: "We found miss-synchronism  
23 between engine speeds and throttle position movement. . . . Even after replacement  
24 of those parts, this problem remains." The author requested immediate action due  
25 to the "extremely dangerous problem" and continued: "[W]e are also much afraid  
26 of frequency of this problem in near future."

27           118. Between 2006 and 2010, two Toyota technicians in Hong Kong  
28 witnessed eighteen incidents of UA. These incidents, documented in Field

1 Technical Reports (“FTR”), show that Toyota knew of the frequency of UA in  
2 their vehicles and that its own dealers recognized this and advised Toyota that it  
3 was urgent to investigate.

4 119. On June 8, 2007, in a FTR, one of the Toyota technicians in Hong  
5 Kong reportedly experienced UA during routine maintenance of a vehicle at a  
6 Lexus Service Center. The technician stated that “[a]lthough the accelerator pedal  
7 had been released, the engine still maintained at high speed (over 5500 rpm) and it  
8 went on to the red zone.” He goes on to describe how “[t]he accelerator pedal was  
9 inspected, but no abnormality was found, no DTC was found and the carpet is  
10 genuine Lexus parts and no aftermarket carpet was fitted.” The technician  
11 “strongly request[ed] TMC to investigate this case in a very top priority, since the  
12 case is highly related to vehicle safety and there is a highly potential danger [*sic*]  
13 of severe traffic accident.” This incident is the third of its kind within eight  
14 months. Over the course of three years, the same two technicians report fifteen  
15 more cases to Toyota.

16 120. In another FTR from one of the technicians in Hong Kong, dated  
17 September 28, 2007, a similar UA event was reported with a targeted investigation  
18 of the ETCS. There were no DTCs recorded and the root cause was unknown.  
19 The resulting report by Denso Corporation, the manufacturer of the accelerator  
20 pedals in many of the subject vehicles, confirmed that they could not find any  
21 abnormalities on any accelerator components. In the corresponding reply from  
22 TMC, dated April 21, 2008, Toyota acknowledged that this was an issue that  
23 needed to be monitored.

24 121. Additionally, in a December 12, 2008 Field Technical Report  
25 regarding a UA event, a technician stated: “After traveling 20-30 feet the vehicle  
26 exhibited a slight hesitation then began to accelerate on its own. Engine speed was  
27 estimated to have gone from 1500 rpm to 5500 rpm at the time of the  
28

1 occurrence...Probable Cause =Unknown.” Toyota hid these reports and continued  
2 to deny that UA existed.

3 **C. Toyota’s Attempts to Deliberately Frustrate Government**  
4 **Investigations and Conceal Information from the Public and**  
5 **NHTSA Regarding Unintended Acceleration Problems**

6 122. Toyota successfully delayed and narrowed NHTSA investigations  
7 through, in part, a cozy relationship between NHTSA’s designated Toyota  
8 investigator, Scott Yon, and Toyota executives, some of whom were former  
9 NHTSA employees.

10 123. In March 2004, NHTSA notified Toyota that it was opening an  
11 investigation of unwanted acceleration and vehicle surge in Lexus sedans and  
12 2002-2003 Camry and Solara models. The investigation was expected to cover  
13 more than one million 2002-2003 Camry, Camry Solara and Lexus ES 300  
14 vehicles, as the agency had received 37 complaints and reports of 30 crashes  
15 resulting in five injuries. Toyota successfully narrowed the investigation to eleven  
16 incidents involving five crashes.

17 124. At the outset of this March 2004 investigation, NHTSA asked Toyota  
18 for information on similar incidents including the number of complaints, field  
19 reports, crash reports, property damage claims and lawsuits. The decision on how  
20 to respond to NHTSA emanated from a group of Toyota employees, including  
21 Christopher Tinto and Christopher Santucci in Washington, D.C., as well as others  
22 from the Product Quality and Service Support group in Torrance, California. The  
23 scope of NHTSA’s information request became the subject of negotiations  
24 between Christopher Tinto and Christopher Santucci of Toyota and NHTSA  
25 representatives, with the result that certain relevant categories of incidents were  
26 excluded from Toyota’s reporting of events.

27 125. In its response to NHTSA’s 2004 information request, Toyota denied  
28 that a defect existed, stated that no defect trend had emerged, and that its ETCS  
could not fail in ways its engineers had not already perceived. Toyota reported



1 123 complaints that it said “may relate to the alleged defect.” Toyota excluded  
2 from its response, however, the following relevant categories of complaints,  
3 among others:

- 4 (1) an incident alleging uncontrollable acceleration that  
5 occurred for a long duration;
- 6 (2) an incident in which the customer alleged that he  
7 could not control a vehicle by applying the brake;  
8 and
- 9 (3) an incident alleging unintended acceleration  
10 occurred when moving the shift lever to the reverse  
11 or the drive position.

12 126. The Toyota Defendants thus concealed from NHTSA and the public  
13 an entire universe of potentially relevant customer complaints.

14 127. Toyota also failed to disclose expert reports concerning ETCS failure.  
15 As discussed above, in May 2004, a forensic technologist and mechanical engineer  
16 examined a vehicle in New Jersey that had experienced a UA event. Their report  
17 concluded that the vehicle’s ETCS was not operating properly. Toyota received  
18 the report on January 13, 2005, but did not disclose the results to NHTSA.

19 128. Internal documents show that Toyota management wanted to avoid  
20 NHTSA investigations. For example, in September 2006, when ODI opened  
21 Defect Petition DP06-003 to investigate incidents relating to vehicle surging in  
22 2002-2006 Camry and Camry Solara vehicles, Chris Santucci wrote to colleagues:  
23 “Hopefully, this is just an exercise that NHTSA needs to go through to meet its  
24 obligations to the petitioner. Hopefully, they will not grant the petition and open  
25 another investigation.” (*See Exhibit 5.*)

26 129. Moreover, Toyota leadership sought to avoid any tough questions  
27 from NHTSA regarding ETCS. In a February 27, 2007 e-mail to Christopher  
28 Santucci, Michiteru Kato wrote that he had decided against sending his most

1 knowledgeable ECU engineer to an ECU demonstration being conducted for  
2 NHTSA to avoid questions regarding ECU failures: “. . . I thought that 3 guys  
3 from TMS is too many (two at most), and if the engineer who knows the failures  
4 well attends the meeting, NHTSA will ask a bunch of questions about the ECU. (I  
5 want to avoid such situation).” (See Exhibit 6.)

6 130. On March 2007, Toyota attempted to prevent NHTSA from opening  
7 an investigation in 2007 Lexus 350 vehicles, offering to send a letter to owners  
8 “reminding them not to install all weather mats on top of existing mats.”  
9 Acknowledging the potential harm to Toyota’s bottom line, Chris Tinto wrote,  
10 “NHTSA feels that they have too many complaints on this one vehicle to drop the  
11 issue; The results of a stuck throttle are ‘catastrophic.’” (See Exhibit 7.)

12 131. Toyota also sought to keep information from the public regarding  
13 UA. For example, in December 2005, Toyota sent letters to owners in connection  
14 with the NHTSA IS 250 All Weather Drive investigation. An e-mail from Toyota  
15 employee George Marino reveals that Toyota Motor Company purposely removed  
16 any reference to speed control from the letters. Marino wrote, “They pulled out  
17 the ‘vehicle speed control’ part. NHTSA may come back, but TMC wanted to  
18 try.” (See Exhibit 8.)

19 132. Further, Toyota never fully disclosed to the regulators the actual  
20 numbers of customer reports of UA events in the various Toyota models under  
21 investigation that the company had received. In fact, Toyota disclosed that it had  
22 received only 1,008 such complaints. Three years later, however, Toyota would  
23 be required to disclose to Congressional investigators that it had received 37,900  
24 complaints potentially relating to sudden acceleration in defective vehicles from  
25 January 1, 2000 through January 27, 2010.

1           **D. Toyota's Use of the Floor Mat and Sticky Pedal Recalls as a**  
2           **Smoke Screen to Hide ETCS Defects**

3           133. Given the “potentially catastrophic” effects of an ETCS recall, Toyota  
4           tried to focus attention instead on “mechanical” problems, like floor mats and  
5           sticky pedals. In an email dated April 2, 2007, George Morino urged others within  
6           Toyota to re-frame the investigation as an “All Weather Floor Mat issue,” and  
7           carefully eliminated reference to the much broader and more alarming issue of  
8           unintended acceleration:

9                     Sorry we had a last minute change to the Q&A. Please

10                    utilize this revised version of the Statement and Q&A.

11                    The issue has been posted on the NHTSA website.

12                    Sorry!

13                    [Old]

14                    NHTSA has received five consumer complaints regarding  
15                    unintended throttle control in the subject vehicles.

16                    [New]

17                    NHTSA received five consumer where the All Weather  
18                    Floor Mat may have interfered with the accelerator pedal  
19                    operation.

20           (See Exhibit 9.)

21           134. A September 14, 2007 email from Chris Tinto demonstrates that  
22           internally, Toyota executives were pleased that NHTSA had limited the ES350  
23           unintended acceleration issue to a “floor mat” recall, and that this limitation saved  
24           the company “upwards of one hundred million dollars.”

25                    Of note, NHTSA was beginning to look at vehicle design  
26                    parameters as being a culprit, focusing on the accelerator  
27                    pedal geometry coupled with the push button “off”  
28                    switch. We estimate that had the agency instead pushed

1 hard for recall of the throttle pedal assembly (for  
2 instance), we would be looking at upwards of \$100M + in  
3 unnecessary cost.

4 (*See Exhibit 10.*)

5 135. In an internal Toyota PowerPoint presentation by Chris Tinto dated  
6 January 2008, Toyota characterized the Camry and Lexus ES floor mat  
7 investigation as a “difficult issue” that it “ha[d] been quite successful in  
8 mediating.” The presentation went on to note that such “mediations” were  
9 “becoming increasingly challenging” and that “despite the fact that we rigorously  
10 defend our products through good negotiation and analysis, we have a less  
11 defensible product.”

12 136. Further, Toyota continued to promote the floor mat recalls even  
13 though it knew that floor mat interference could not alone explain the propensity  
14 of certain makes and models to experience UA. As of September 2007, Toyota  
15 executives internally acknowledged that that “floor mat interference is possible in  
16 any vehicle with any combination of floor mats.” (*See Exhibit 11.*)

17 **E. Toyota’s Agreement to Pay a \$16.375 Million Fine for Hiding**  
18 **Safety Defects**

19 137. On April 5, 2010, NHTSA informed Toyota in a letter that it was  
20 imposing a record \$16.375 million fine for hiding safety defects related to sudden  
21 acceleration in 2.3 million vehicles. Under federal law, automakers are required to  
22 disclose defects to NHTSA within five business days. Yet, Toyota had failed to  
23 notify NHTSA for at least four months after learning that the accelerator pedals in  
24 some of its vehicles could stick and cause UA. In its April 5th letter, NHTSA  
25 noted how Toyota had sent instructions to its European operations in September  
26 2009 explaining how to fix sticky accelerator pedals, but decided not to provide  
27 the same instructions to U.S. dealers and government regulators. The NHTSA  
28

1 letter indicated that Toyota may have known about the UA defects for at least  
2 three years.

3 138. On April 19, 2010, Toyota agreed to pay the fine. That same day,  
4 NHTSA Secretary Ray LaHood released a statement saying, “By failing to report  
5 known safety problems as it is required to do under the law, Toyota put consumers  
6 at risk.”

7 **F. Toyota Executives’ Successful Concealment of the Defects**  
8 **Described Internally as a “Win” for the Company**

9 139. In May 5, 2009 Chris Santucci wrote an e-mail to Takeharu Nishida,  
10 a Toyota engineer, expressing pleasure that NHTSA would not ask Toyota to  
11 disclose all reports related to throttle issues in its pending investigation: “They  
12 [NHTSA] are struggling with sending an IR letter, because they shouldn’t ask us  
13 about floor mat issues because the petitioner contends that NHTSA did not  
14 investigate throttle issues other than floor mat-related. So they should ask us for  
15 non-floor mat related reports, right? But they are concerned that if they ask for  
16 other reports, they will have many reports that just cannot be explained. And since  
17 they do not think that they can explain them, they don’t really want them. Does  
18 that make sense? I think it is good news for Toyota.” (See Exhibit 12.)

19 140. Toyota took the same attitude toward the 2007 Floor Mat recall in a  
20 presentation dated July 6, 2009. Toyota’s lead executive in American Operations,  
21 Yoshi Inaba, described as a “win” the fact that Toyota saved \$100 million dollars  
22 by negotiating an “equipment” recall rather than some other alternative safety  
23 measure to address the sudden acceleration issue: “Wins for Toyota – Safety  
24 Group . . . Negotiated ‘equipment’ recall on Camry/ES re: SA, saved \$100M+, w/  
25 no defect found.” Toyota knew that it had saved millions of dollars through  
26 concealing the known potential for UA in its vehicles.

1           **G. Toyota's Concealment of Unintended Acceleration Defects and**  
2           **Incidents to Avoid the "Global" Ramifications of Disclosure**

3           141. An internal PowerPoint reveals that Toyota knew about recurring  
4 issues with UA. A slide entitled, "Key Safety Issues" included the following:

- 5           • 'Sudden Acceleration' on ES/Camry, Tacoma, LS,  
6           etc.  
7           • Recurring issue, PL/Design Implications.

8 (See Exhibit 13.)

9           142. A September 2009 Toyota internal document demonstrates how  
10 "global ramifications," rather than safety dictated Toyota's position with respect to  
11 "vehicle defect:"

12           TMC on the other hand will most likely not easily budge  
13 from their position that there is no vehicle defect.  
14 Especially considering the global ramifications. In  
15 addition, since no one of any rank (VP or higher) at TMS  
16 has communicated the significance and impact of this  
17 issue, TMC may feel that we can weather an investigation  
18 and additional media coverage.

19           143. On January 16, 2010, Irving Miller, a Toyota Executive, admitted  
20 "we need to come clean" about acceleration problems: "I hate to break this to you  
21 but WE HAVE a tendency for MECHANICAL failure in accelerator pedals of a  
22 certain manufacturer on certain models. We are not protecting our customers by  
23 keeping this quiet. The time to hide on this one is over. We need to come clean  
24 and I believe that Jim Lentz and Yoshi are on the way to DC for meetings with  
25 NHTSA to discuss options...We better just hope that they can get NHTSA to work  
26 with us in coming with a workable solution that does not put us out of business."  
27 (See Exhibit 14.) Toyota knew about this mechanical tendency for failure for  
28 years and still has not properly disclosed it.

1           **H. Toyota's Repeated Promises of Safety, Denial of the Defects, and**  
2           **Accusations Against Victims**

3           144. In a June 19, 2004 letter to NHTSA, Toyota falsely stated that its  
4           ETCS contained a built-in redundancy to prevent acceleration, and that in the  
5           event of sudden acceleration the “vehicle brakes would have restrained vehicle  
6           motion.” Toyota maintained this position for years, even though it knew that  
7           Toyota-manufactured vehicles can and do experience sudden unintended  
8           acceleration and that application of the brakes has failed to restrain vehicle motion.

9           145. Toyota consistently assured NHTSA and the public that the subject  
10          vehicles were not defective. For instance, in August 2005, NHTSA opened Defect  
11          Petition DP05-002 to investigate a consumer's claims relating to unintended  
12          acceleration in the 2002 Camry. Scott Yon again was assigned as NHTSA's  
13          investigator. The target vehicle population was 1,950,577 Model Year 2002-2005  
14          Camrys and Lexus ES models. After receiving the petition and reviewing the  
15          underlying complaints, Toyota concluded:

16                 [T]here is no factor or trend indicating that a vehicle or  
17                 component defect exists. Toyota believes that this Defect  
18                 petition to be similar to other, prior petitions and  
19                 investigations into mechanical throttle controls. Toyota  
20                 has found no evidence that differentiates that consumers  
21                 alleging vehicles equipped with electronic throttle  
22                 controls can suddenly accelerate when compared to those  
23                 equipped with mechanical throttle controls. Toyota has  
24                 not found any evidence on the subject vehicles of brake  
25                 failure, let alone brake failure concurrent with ETC  
26                 failure.

27          146. Throughout the relevant period, Toyota discounted its customer's  
28          experience with UA. For example, on September 22, 2005, Carol Hargrave of

1 TMS' Customer Relations Department wrote the following in a letter to a  
2 concerned Lexus owner who had complained to Toyota about her experiences of  
3 unintended acceleration:

4 It is our understanding that you reported that you  
5 stepped on the brake pedal and the vehicle accelerated  
6 and that this has happened several other times.

7 As you are aware your vehicle was inspected in  
8 regards to your concerns with the brakes and unintended  
9 acceleration. **Your concerns could not be duplicated.**

10 The throttle body was inspected and there was no binding  
11 and the cable operated freely. The vehicle was test driven  
12 and the brakes were functioning properly. There were no  
13 codes to indicate any type of failure of the system.

14 **It is virtually impossible for this type of incident**  
15 **to happen.** The brakes and the throttle are two totally  
16 separate systems and both would have to fail at exactly  
17 the same time. The brakes will always over ride the  
18 throttle.”

19 (Emphasis added.)

20 **TOLLING OF STATUTE OF LIMITATIONS AND ESTOPPEL**

21 147. Plaintiffs filed this lawsuit within two years of the subject incident  
22 and the death of Michael Burrese, and within two years of first suspecting that  
23 defects in the subject vehicle were a cause of Plaintiffs' injuries and damages.

24 148. Toyota is estopped from relying on any statutes of limitation because  
25 of its fraudulent concealment and misrepresentations of the true facts concerning  
26 the dangerously defective acceleration control and throttle system on the subject  
27 vehicles. Toyota was, at all relevant times, aware of the nature and existence of  
28 the defects in the subject vehicles, but at all times has continued to manufacture,



1 certify, market, advertise, distribute, and sell the subject vehicles without revealing  
2 the true facts concerning the defects, in order to sell Toyota and Lexus cars, to  
3 avoid bad publicity, and to avoid expensive recalls. The true facts about the  
4 subject vehicles continue to be concealed from the public, including Plaintiffs.

5 149. Toyota's fraudulent concealment scheme discussed above, includes,  
6 but is not limited to, intentionally covering up and refusing to publicly disclose  
7 critical internal memoranda, design plans, studies, Notices of Action, Problem  
8 Detail Reports and other reports of failure and injury. Through such acts of  
9 fraudulent concealment, Toyota was able to actively conceal from the public for  
10 years the truth about the existence of the dangerously defective acceleration  
11 control and throttle system in the subject vehicles, thereby tolling the running of  
12 any applicable statute of limitations.

13 150. Through such acts of fraudulent concealment, Toyota has  
14 successfully concealed from the public facts necessary to support the claims  
15 herein. Plaintiffs were and continue to be prevented from knowing and having  
16 knowledge of such unlawful, unfair, fraudulent, and deceptive conduct, or of facts  
17 that might have led to the discovery thereof.

18 151. Particularly given Toyota's past and continuing denials of, and  
19 concealment of, the existence of any defect in the acceleration control and throttle  
20 system, and Toyota's repeated past and continuing assertions that unintended  
21 acceleration episodes were due to other causes, Plaintiffs were not placed on  
22 inquiry notice regarding the defects in the acceleration control and throttle system  
23 until recently. In February 2010 Toyota stated publicly, in connection with  
24 Congressional hearings, that it does not, in fact, know the cause of the UA  
25 problem in the majority of cases (contrary to its repeated past claims about floor  
26 mats and sticking pedals). Toyota has continued to deny, and to conceal, that there  
27 is any flaw or defect in the acceleration control and throttle system itself. Toyota's  
28 April 19, 2010 agreement to pay NHTSA's \$16.4 million fine constitutes an

1 acknowledgement that Toyota engaged in a pattern and practice of concealing the  
2 true problems which resulted in unintended acceleration in its cars, the full extent  
3 of which will only become known through further governmental investigation and  
4 litigation.

5 152. For these same reasons, Defendants are estopped from claiming that  
6 Plaintiffs did not secure, preserve, maintain and/or otherwise continue to make  
7 available the subject vehicle for inspection by Defendants. Because Toyota  
8 actively and intentionally concealed the defects for years, Plaintiffs were never  
9 placed on notice that there was a need to preserve the subject vehicle. Due to the  
10 accident and Toyota's pattern of concealment, Plaintiffs' ability to obtain  
11 evidentiary proof in the form of an intact, easily inspected vehicle has been  
12 rendered difficult, if not unattainable.

### 13 **CLAIMS FOR RELIEF**

#### 14 **FIRST CLAIM FOR RELIEF** 15 **Negligence**

16 153. Plaintiffs incorporate by reference and reallege all paragraphs  
17 previously alleged herein.

18 154. At all times herein mentioned, Defendants Toyota Motor North  
19 America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,  
20 Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation ("Toyota  
21 Defendants"), designed, tested, manufactured, assembled, analyzed,  
22 recommended, merchandised, advertised, promoted, distributed, supplied, and sold  
23 to distributors and retailers for sale, the subject vehicle and/or its component parts.

24 155. Defendants owed Plaintiffs a duty to exercise reasonable care in the  
25 design, testing, manufacture, assembly, sale, distribution and servicing of the  
26 subject vehicle, including a duty to ensure that the subject vehicle did not cause  
27 Plaintiffs, decedent, other users, bystanders, or the public, unnecessary injuries or  
28 deaths.

1           156. Defendants knew or should have known that the subject vehicle was  
2 defectively designed and inherently dangerous and has a propensity to suddenly  
3 accelerate, lose control, and cause injuries.

4           157. Defendants knew or should have known that the subject vehicle was  
5 defectively designed and/or manufactured and was therefore prone to failure under  
6 normal driving conditions, potentially causing injuries and/or deaths.

7           158. Defendants failed to exercise ordinary care and breached their duty  
8 by, among other things:

9           a. Failure to use due care in the manufacture, distribution, design,  
10 sale, testing, and servicing of the subject vehicle and its component parts in order to  
11 avoid the aforementioned risks to individuals;

12           b. Failure to provide adequate warning of the UA problem and its  
13 propensity to cause and/or contribute to an accident;

14           c. Failure to incorporate within the vehicle and its design  
15 reasonable safeguards and protections against sudden acceleration and the  
16 consequences thereof;

17           d. Failure to make timely correction to the design of the subject  
18 vehicle to correct the sudden acceleration problems;

19           e. Failure to adequately identify and mitigate the hazards  
20 associated with UA in accordance with good engineering practices; and,

21           f. Were otherwise careless or negligent.

22           159. The aforementioned negligent acts and omissions of Defendants were  
23 the direct and proximate cause of Plaintiffs' damages.

24           160. Plaintiffs are entitled to damages in an amount to be proven at trial,  
25 together with interest thereon and costs.

26           WHEREFORE, Plaintiffs pray judgment against Defendants, and each of  
27 them, as hereinafter set forth.  
28

**SECOND CLAIM FOR RELIEF**  
**Strict Products Liability – Design Defect**

161. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

162. Defendants, and each of them, designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the subject vehicle and its component parts and constituents, which was intended by the Defendants, and each of them, to be used as a passenger vehicle and for other related activities.

163. Defendants, and each of them, knew that said vehicle was to be purchased and used without inspection for defects by its owner, Plaintiffs and the general public.

164. The subject vehicle was unsafe for its intended use by reason of defects in its manufacture, design, testing, components and constituents, so that it would not safely serve its purpose, but would instead expose the users of said product to serious injuries.

165. Defendants designed the subject vehicle defectively, causing it to fail to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

166. The risks inherent in the design of the subject vehicle outweigh significantly any benefits of such design.

167. Plaintiffs and decedent were not aware of the aforementioned defects at any time prior to recent revelations regarding problems with Toyota vehicles.

168. As a legal and proximate result of the aforementioned defects of the subject vehicle, the decedent and Plaintiffs sustained the injuries and damages set

1     forth herein while the decedent was using the subject vehicle in a reasonably  
2     foreseeable manner.

3             169. Plaintiffs are, therefore, entitled to damages in an amount to be  
4     proven at the time of trial.

5             WHEREFORE, Plaintiffs pray judgment against Defendants, and each of  
6     them, as hereinafter set forth.

7                             **THIRD CLAIM FOR RELIEF**  
8                             **Strict Products Liability - Failure to Warn**

9             170. Plaintiffs incorporate by reference and reallege all paragraphs  
10    previously alleged herein.

11            171. Defendants, and each of them, knew that the subject vehicle, and its  
12    component parts, would be purchased and used without inspection for defects in  
13    the design of the vehicle.

14            172. The subject vehicle was defective when it left the control of each of  
15    these Defendants.

16            173. At the time of the subject vehicle's design, manufacture, and sale, and  
17    continuing up to the time of Plaintiffs' injury, Defendants knew or should have  
18    known of the substantial dangers involved in the reasonably foreseeable use of  
19    these vehicles, whose defective design, manufacturing, and lack of sufficient  
20    warnings caused them to have an unreasonably dangerous propensity to suffer  
21    from sudden unintended acceleration and thereby cause injuries.

22            174. Defendants knew that these substantial dangers are not readily  
23    recognizable to an ordinary consumer and that consumers would purchase and use  
24    these products without inspection.

25            175. At all relevant times, Defendants failed to provide adequate warnings,  
26    instructions, guidelines or admonitions to members of the consuming public,  
27    including Plaintiffs, of the defects, which Defendants knew, or in the exercise of  
28

1 reasonable care should have known, to have existed in the subject vehicle, and its  
2 component parts.

3 176. At the time of Plaintiffs' injuries, the subject vehicle was being used  
4 in the manner intended by Defendants, and in a manner that was reasonably  
5 foreseeable by Defendants as involving substantial danger that was not readily  
6 apparent to its users.

7 177. Plaintiffs' damages were the legal and proximate result of  
8 Defendants' failure to provide adequate warnings. Defendants owed Plaintiffs a  
9 duty in designing, manufacturing, warning about, and distributing the subject  
10 vehicle.

11 178. WHEREFORE, Plaintiffs pray judgment against Defendants, and  
12 each of them, as hereinafter set forth.

13 **FOURTH CLAIM FOR RELIEF**  
14 **Breach of Implied Warranty of**  
15 **Merchantability**

16 179. Plaintiffs incorporate by reference and reallege all paragraphs  
17 previously alleged herein.

18 180. Prior to the time of the subject incident, the Defendants impliedly  
19 warranted to members of the general public, including Plaintiffs and decedent, that  
20 the subject vehicle was of merchantable quality.

21 181. Members of the consuming public, including consumers such as  
22 Plaintiffs and the decedent were intended third-party beneficiaries of the implied  
23 warranty of merchantability.

24 182. Plaintiffs and decedent relied on the skill and judgment of Defendants  
25 in the selection and use of the subject vehicle as a safe and reliable means for  
26 transportation.

27 183. The subject vehicle was not of merchantable quality as warranted by  
28 Defendants, in that it was defectively designed, thereby dangerously exposing the  
users of said vehicle and those around it to serious injury.

1           184. After Plaintiffs received the injuries complained of herein, notice was  
2 given by Plaintiffs to Defendants, by filing this lawsuit in the time and in the  
3 manner and in the form prescribed by law, of the breach of said implied warranty.

4           185. As a legal and proximate result of the breach of said implied  
5 warranty, Plaintiffs sustained the damages herein set forth.

6           186. Plaintiffs are, therefore, entitled to damages in an amount to be  
7 proven at the time of trial.

8           187. WHEREFORE, Plaintiffs pray judgment against Defendants, and  
9 each of them, as hereinafter set forth.

10                                   **FIFTH CLAIM FOR RELIEF**  
11                                   **Fraudulent Concealment**

12           188. Plaintiffs incorporate by reference and reallege all paragraphs  
13 previously alleged herein.

14           189. Throughout the relevant time period, Defendants knew that the  
15 subject vehicle was defective in that these vehicles have an unreasonably  
16 dangerous propensity to suddenly accelerate and thereby injure the users of these  
17 vehicles and others.

18           190. Defendants fraudulently concealed from and/or failed to disclose to  
19 Plaintiffs the true defective nature of the subject vehicle.

20           191. Defendants were under a duty to Plaintiffs to disclose and warn of the  
21 defective nature of the subject vehicles because: (1) Defendants were in a superior  
22 position to know the true state of the facts about the hidden defects in the subject  
23 vehicles, and those defects were latent; (2) Defendants made partial disclosures  
24 about the safety and quality of the subject vehicles while not revealing their true  
25 defective nature; and (3) Defendants fraudulently and affirmatively concealed the  
26 defective nature of the subject vehicles from Plaintiffs.

27           192. The facts concealed and/or not disclosed by Defendants to Plaintiffs  
28 were material facts that a reasonable person would have considered to be

1 important in deciding whether or not to purchase and/or operate the subject  
2 vehicles.

3 193. Defendants intentionally concealed and/or failed to disclose the true  
4 nature of the problems with the subject vehicles for the purpose of inducing  
5 Plaintiffs to act thereon, and Plaintiffs justifiably acted or relied upon, to their  
6 detriment, the concealed and/or non-disclosed facts, as evidenced by their  
7 purchase and operation of the subject vehicles.

8 194. Defendants have not adequately notified past purchasers or warned  
9 future purchasers of the defects, and have not taken appropriate action to recall,  
10 buy back, or retrofit their defective products.

11 195. As a direct and proximate cause of Defendants' misconduct, Plaintiffs  
12 have suffered actual damages.

13 196. WHEREFORE, Plaintiffs pray for judgment against Defendants, and  
14 each of them, as hereinafter set forth.

15 **SIXTH CLAIM FOR RELIEF**  
16 **Wrongful Death and Survivorship**

17 197. Plaintiffs incorporate by reference and reallege all paragraphs  
18 previously alleged herein.

19 198. Plaintiff MARGARET SOWDERS is the natural mother of  
20 MICHAEL BURRESS, deceased, and is the successor in interest and executor of  
21 his estate.

22 199. Plaintiff DENNIS SOWDERS is the step-father of MICHAEL  
23 BURRESS, deceased, and they were very close..

24 200. As a result of Defendants' actions and negligence, MICHAEL  
25 BURRESS, before his death, suffered extreme pain and suffering, medical  
26 expenses, general damage, and emotional distress. MICHAEL BURRESS did not  
27 die immediately and suffered much from his grave injuries before succumbing to  
28 them.



1                   201. The damages claimed for survivorship and wrongful death and  
2 the relationships of Plaintiffs to the deceased are as follows:

3                   a.       MARGARET SOWDERS, individually and on behalf of  
4 the Estate of MICHAEL BURRESS, deceased, sues as a personal representative  
5 and/or successor in interest and claims the following damages arising from the  
6 death of MICHAEL BURRESS: medical expenses from time of injury until time of  
7 death; punitive damages as provided by law against Defendants; and all other  
8 damages permitted by law, to be proven at time of trial.

9                   b.       MARGARET SOWDERS, individually and on behalf of  
10 the qualifying heirs and wrongful death claimants pursuant to law claims: loss of  
11 financial support; loss of services; recovery for grief, mental anguish, emotional  
12 pain, suffering and distress; medical, funeral and burial expenses; loss of lifetime  
13 earnings of MICHAEL BURRESS, deceased; and all other damages permitted by  
14 law.

15                  c.       DENNIS SOWDERS, individually: loss of financial  
16 support; loss of services; recovery for grief, mental anguish, emotional pain,  
17 suffering and distress; medical, funeral and burial expenses; loss of lifetime  
18 earnings of MICHAEL BURRESS, deceased; and all other damages permitted by  
19 law.

20                   **Additional Allegations Regarding Claim For Punitive Damages**

21                  202. Plaintiffs incorporate by reference and reallege all paragraphs  
22 previously alleged herein.

23                  203. At all times herein referenced, officers, directors, and managing  
24 agents of Toyota knew, and were aware, that the subject vehicles were defective  
25 and dangerous.

26                  204. At all times herein referenced, officers, directors, and managing  
27 agents of Toyota knew, and were aware, that numerous people had been injured or  
28 killed by Toyota vehicles.

1           205. The Toyota Defendants designed, engineered, developed,  
2 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected  
3 or failed to inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled,  
4 advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the  
5 subject vehicle, and its component parts, a product which said Defendants knew to  
6 be dangerous and unsafe for the purpose for which they intended it to be used,  
7 namely, as a passenger vehicle.

8           206. At all times herein mentioned, prior to and at the time that Defendants  
9 sold the subject vehicle to Plaintiffs, and prior to the time that said product was  
10 used, the Defendants knew, or should have known, that the subject vehicle, and its  
11 component parts, was defectively designed and manufactured, that it had  
12 extremely dangerous properties and defects, and that it had defects which would  
13 cause serious injuries and damage to users of said product, thereby threatening the  
14 life and health of the users. Further, at all times, all Defendants knew that the  
15 defects in the subject vehicles had caused serious injuries and damage to other  
16 users of these vehicles.

17           207. At all times herein mentioned, all Defendants, despite the actual  
18 knowledge described hereinabove, intentionally suppressed the aforementioned  
19 user complaints, criticisms, and other information to keep their knowledge from  
20 the general public, including Plaintiffs, and failed to take any steps to warn  
21 Plaintiffs, or other members of the general public, of the dangers of using the  
22 subject vehicle.

23           208. At all times herein mentioned, Defendants had actual knowledge of  
24 the facts hereinabove alleged demonstrating that serious injury to users of the  
25 subject vehicle, including Plaintiffs, would potentially result. Defendants  
26 nevertheless deliberately failed and refused to recall the subject vehicle, or to take  
27 any other effective steps whatsoever to prevent such injuries. Defendants  
28 misrepresented the safety of the subject vehicle, and failed and refused to take any

1 steps to prevent injuries from said vehicle, in order to increase the profits of  
2 Defendants from the sale of said vehicle.

3 209. As a legal and proximate result of Defendants' conduct, as herein  
4 alleged, Plaintiffs sustained the injuries and damages set forth above.

5 210. Defendants' conduct, as set forth above, in allowing such an  
6 extremely dangerous product to be used by members of the general public,  
7 including Plaintiffs, constitutes fraud, malice and oppression toward Plaintiffs and  
8 others, and a conscious disregard of the safety of Plaintiffs and others.

9 211. Plaintiffs are therefore entitled to exemplary or punitive damages,  
10 which would serve to punish the Defendants and to deter wrongful conduct in the  
11 future.

12 212. WHEREFORE, Plaintiffs pray for judgment against Defendants as  
13 hereinafter set forth.

14 **PRAYER FOR RELIEF**

15 Plaintiffs requests of this Court the following relief:

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

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

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

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

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

25 F. For exemplary or punitive damages against Defendants Toyota Motor  
26 North America, Inc., Toyota Motor Engineering & Manufacturing North America,  
27 Inc., Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation, as provided  
28 by law;

1 G. For funeral and burial expenses and all other wrongful death and  
2 survivorship damages as allowed by law;

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

4 I. For such other and further relief as this Court may deem just and  
5 proper.

6 Dated: December 20, 2011

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

8 By:

  
Todd A. Walburg

10 Elizabeth J. Cabraser (State Bar No. 083151)  
*ecabraser@lchb.com*

11 Todd A. Walburg (State Bar No. 213063)  
*twalburg@lchb.com*

12 Nimish R. Desai (State Bar No. 244953)  
*ndesai@lchb.com*

13 Sarah R. London (State Bar No. 267083)  
*slondon@lchb.com*

14 275 Battery Street, 29th Floor  
15 San Francisco, CA 94111-3339  
16 Telephone: (415) 956-1000  
17 Facsimile: (415) 956-1008

*Attorneys for the Plaintiffs*

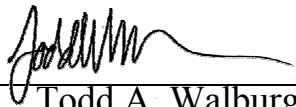
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues which may be tried by a jury.

Dated: December 20, 2011

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

By: \_\_\_\_\_  
Todd A. Walburg

Elizabeth J. Cabraser (State Bar No. 083151)  
*ecabraser@lchb.com*  
Todd A. Walburg (State Bar No. 213063)  
*twalburg@lchb.com*  
Nimish R. Desai (State Bar No. 244953)  
*ndesai@lchb.com*  
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Facsimile: (415) 956-1008

*Attorneys for the Plaintiffs*

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# EXHIBITS

Subject: Important information: America ES350 article...addition #2  
From: Koji Sakakibara@toyota.com  
Date: Tue, 1 Sep 2009 16:18:01 -0700  
To: yoshicka@mail.tec.toyota.co.jp, Shunsuke Noguchi <syun@nanc.tec.toyota.co.jp>, nkita@nanc.tec.toyota.co.jp, Kako Kiko <kako@email.tec.toyota.co.jp>  
CC: Kato <mkato@nanc.tec.toyota.co.jp>, Hirokazu Sakamoto@toyota.com, Koji Takara@toyota.com, Keiichi Fukushima@toyota.com, washino@mail.tec.toyota.co.jp, yamaguchi@earth.tec.toyota.co.jp, r-kawemu@earth.tec.toyota.co.jp, y-yamaji@earth.tec.toyota.co.jp, Kanamori <kanamori@earth.tec.toyota.co.jp>, esakami@earth.tec.toyota.co.jp, yoji@giga.tec.toyota.co.jp

To all concerned staff,  
Thank you for your continued business. I am Sakakibara from TEC-2Gr, CQE-LA.  
- The following information has been received from TMS-PQSS Public Affairs Group regarding the above (America ES350 article...addition #2). (Please see photos at the bottom of this mail.)  
Within America, there are 196 articles on Google News, so the mass media is interested.  
- During the floor mat sticking issue of 2007, TMS suggested that there should be "a fail safe option similar to that used by other companies to prevent unintended acceleration". I remember being told by the accelerator pedal section Project General Manager at the time (Mr. M) that "This kind of system will be investigated by Toyota, not by Body Engineering Div". Also, that information concerning the sequential inclusion of a fail safe system would be given by Toyota to NHTSA when Toyota was invited in 2008. (The NHTSA knows that Audi has adopted a system that closes the throttle when the brakes are applied and that GM will also introduce such a system.)  
==>In light of the information that "2 minutes before the crash an occupant made a call to 911 stating that the accelerator pedal was stuck and the vehicle would not stop", I think that Body Engineering Div. should act proactively first (investigate issues such as whether the accelerator assy structure is the cause, how to secure the floor mats, the timing for introducing shape improvements).  
- Furthermore, taking into account the circumstances that "in this event a police officer and his entire family including his child died", TMS-PQSS Public Affairs Group thinks that "the NHTSA and the USA public already hold very harsh opinions in regards to Toyota". (As I think you know, in some cases in the USA "killing a police officer means the death penalty".)  
- In light of the above, it would not be an exaggeration to say that even more than the nuance of the information passed from Customer Quality Engineering Div. External Relations Dept. to Body Engineering Div, "the NHTSA is furious over Toyota's handling of things, including the previous Tacoma and ES issues".  
Considering the importance of this matter, any correspondence regarding this issue including the reply from Body Engineering, no matter how small, must be sent to the Customer Quality Engineering Div. General Manager and the Customer Quality Engineering Div. External Relations Dept. General Manager. (If possible, please exchange information with the Customer Quality Engineering Div. rather than replying to me.)

If you have any question, please feel free to contact me.

Thank you for your support and cooperation.

Sincerely yours,  
K. Sakakibara

Note : Please do not disclose the message above to 3rd parties as it would contain some confidential items.

\*\*\*\*\*  
Koji Sakakibara 榎原 幸二  
Manager  
TEMA CQE-LA Technical Group #2  
19001 South Western Avenue, Mail Drop S-205  
Torrance, CA 90501-1108  
Phone : 310-466-6076  
Fax : 310-466-6181  
Cell : 310-292-8552  
E-Mail: koji.sakakibara@toyota.com  
\*\*\*\*\*

----- Forwarded by Koji Sakakibara/TEMA/Toyota on 09/01/2009 02:47 PM -----

George Marino/TMS/Toyota

09/01/2009 12:50 PM

To: Koji Sakakibara/TEMA/Toyota@Toyota

cc

Subject: ES 350 News Story...

Sakakibara-san:

You may have already heard about this, but FYI..

<http://www3.sjnewsdisco.com/stories/2009/sep/01/answers-elusive-flery-car-crash/>

196 news articles on a google news search..

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**Answers chive in fiery car crash**  
San Diego Union Tribune - [Debbi Baker, Craig Gustafson](#) - 10 hours ago  
Witnesses said the car was traveling northbound on state Route 125 in Santee at more than 100 mph when it entered a T-intersection with Mission Gorge Road. ...  
[California automobile accident attorneys news: Runaway Lexus kills 4!](#) Justice News Flash  
[4 killed in apparent runaway car crash](#) The Associated Press  
[CHP: Veteran officer, family members killed in Santee crash](#) Examiner.com  
[abc7.com - NDC San Diego](#)  
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**4 Killed in fiery Santee crash**  
KUSI - Aug 29, 2009  
The driver of a Lexus reported a stuck accelerator to a 911 operator just before crashing into another car. Victims believed to have been a father, ...

**Men's Golf**  
McGoBlue - Aug 27, 2009  
Taking its spring break in California, the Maize and Blue will close out the trip, March 8-9, playing at the Fresno State Lexus Classic at the San Joaquin ...

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<http://www.rioceanso.com/news/local-beat/CHP-Officer-Family-Killed-in-Crash-58828472.html>



CHP Officer, Family Killed in Crash | NBC San Diego - Microsoft Internet Explorer provided by Toyota Motor Sales, U.S.A., Inc.

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Address http://www.nbcsandiego.com/news/local-beat/CHP-Officer-Family-Killed-in-Crash-56629472.html

A 911 call made minutes before the accident said the car's accelerator was stuck

By RORY DEVINE, MARI PAYTON and R. STICKNEY

Updated 11:41 AM PDT, Tue. Sep 1, 2009

PRINT EMAIL SHARE BUZZ UP! TWITTER FACEBOOK



Four people died Friday when a Lexus sedan lost control on the highway, crashed near Mission Gorge Road in Santee and burst into flames.

The victims include veteran CHP officer Mark Saylor, 45, his wife Cleofe Lastrella Saylor, 45, his brother-in-law Chris Lastrella, 38, and his daughter Mahala, 13.

CHP investigators said they received a 911 call before 7 p.m. August 28 Cleofe Saylor saying their car's accelerator was stuck.

Witnesses reported seeing a Lexus heading northbound on 125 weaving through traffic at a high rate of speed. CHP officials said the driver tried to make a left turn when the freeway ended at Mission Gorge Road, but he was going too fast and struck a Ford Explorer.

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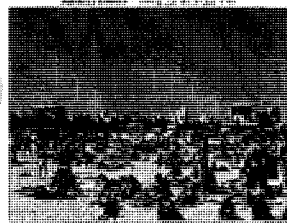
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1 of 9



Can't find a good spot in this last weekend of summer vacay!!!

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29 minutes ago

**One Missing After Boat Capsizes**

Coast Guard crews are sweeping the seas near the Coronado Islands for a person who has been missing since early on Tuesday morning.

READ IT

POLITICS

George Morino  
National Manager  
Quality Compliance Department  
Product Quality and Service Support  
Toyota Motor Sales, U.S.A., Inc.  
Tel. 310-468-3392  
Fax 310-468-3399

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From: Wayne Hutchinson/=TMS/Toyota. Sent:2/2/2010 3:59 PM.  
To: [ - ] ADP\_Boston\_Service; ADP\_CAT\_Service; ADP\_Los\_Angeles\_Service; ADP\_San\_Francisco\_Service;  
ADP\_Portland\_Service; ADP\_Denver\_Service; ADP\_New\_York\_Service; ADP\_Chicago\_Service;  
ADP\_Cincinnati\_Service; ADP\_Kansas\_City\_Service; Betty Tooson/=Lexus/Toyota@Toyota.  
Cc: [ - ] .  
Bcc: [ - ] George Morino/=TMS/Toyota.  
Subject: Safety Recall (Special Service Campaign) - 90L Phase 1 Certain 2007 – 2010 Model Year Camry and Camry Hybrid Vehicles Potential Floor Mat Interference with Accelerator Pedal Vehicles Equipped with Accelerator Pedals Manufactured by Denso Corporation (SM).

Toyota will initiate phase 1 of Safety Recall 90L - Certain 2007 - 2010 model year Camry and Camry Hybrid Vehicles - Potential Floor Mat Interference with Accelerator Pedal - Vehicles Equipped with Accelerator Pedal Manufactured by Denso Corporation.

#### Condition

As communicated last Fall, the defect is the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position. 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. Toyota has determined that this defect does not exist in vehicles in which the driver's side floor mat is compatible with the vehicle and properly secured.

#### Remedy:

To make it less likely that an unsecured or incompatible driver's floor mat can interfere with the accelerator pedal, dealerships will be requested to do the following:

Modify both the rigid plastic accelerator pedal and the floor surface in the driver's foot-well. (On February 1, 2010, a dealer kit containing an accelerator template and gauge, an orbital sander and a reciprocating saw will be sent to each dealer via overnight air. The campaign tool kit will be marked with a florescent (green, orange, yellow, pink) label.)

If the vehicle is equipped with a set of optional genuine Toyota All Weather Floor Mats (AWFM), it must be inspected to determine if the AWFM set is of an older design. If it is, the older design AWFMs for the driver and the front seat passenger positions will be replaced with newly designed mats.

As an additional measure independent of the vehicle-based recall remedy, a newly designed override system will be installed on non-hybrid Camry vehicles to provide an extra measure of confidence. This system will cut engine power in case of simultaneous application of both accelerator and brake pedals at certain speeds and driving conditions. The Camry Hybrid already contains a fuel supply cut feature for Hybrid motor protection that achieves a similar result as the override system newly designed for the non-hybrid models.

#### Involved Vehicles:

There are approximately 787,000\* Toyota 2007 – 2010 model year Camry and Camry Hybrid vehicles involved in the U.S.

The following SSC 90L Summary Reports will be provided shortly:

The number of involved vehicles in your dealership's primary marketing area for this phase.

The suggested initial parts order quantities for this phase.

A VIN List containing vehicles in dealer stock.

\*NOTE: Due to the number of vehicles involved in the first phase of this campaign, the VINs will be loaded into TIS and the Warranty System in 2 groups over two days. Group 1 will include all affected Camry and Camry Hybrid vehicles produced up to December 31, 2009. Group 2 will include all affected Camry and Camry Hybrid vehicles produced from January 1, 2010, to the production change.

Please refer to the attached Region-PD Notification for additional information.

(We are currently working on several different SSCs and ask for your patience in allowing a few extra days for hard copies to arrive at each Dealer.)

[Dealer Notification, Owner Letter and TI]

[Dealer Daily Message]

(Q&A will be provided shortly. We apologize for the inconvenience.)

**Owner Notification**

Owner notifications will begin in mid-February, 2010.

Thank you for your continued support,

**Product Quality and Service Support**  
Toyota Motor Sales, U.S.A., Inc.

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[REDACTED]

---

**From:** Yon, Scott  
**Sent:** Thursday, June 03, 2004 9:15 AM  
**To:** Chris Santucci [REDACTED]  
**Subject:** For review  
**Categories:** PE04021-ToyotaThrottleControl  
**Attachments:** CamryVSCtrend-200402.pdf

See attached. Give me a call when you have time; I want to discuss the submission and the attached.

Scott

D. Scott Yon  
U.S. Department of Transportation  
National Highway Traffic Safety Administration  
Office of Defects Investigation  
[REDACTED]  
400 7th Street S.W.  
Washington, DC  
20590  
[REDACTED]

-----  
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2/21/2010

Exhibit '

Feb 2004 VOQs: MY >1994, Make = Toyota, Model = Camry, Comp Desc like "Vehicle Speed%". Populations from EWR submission tables.

		<b>Camry VOQs</b>	<b>CamPopEWR</b>	<b>Camry/YIS/100k</b>
<b>1995</b>	MTC	10	314066	0.35
<b>1996</b>	MTC	22	344599	0.80
<b>1997</b>	MTC	12	365752	0.47
<b>1998</b>	MTC	35	404850	1.44
<b>1999</b>	MTC	19	435654	0.87
<b>2000</b>	MTC	25	396646	1.58
<b>2001</b>	MTC	5	312208	0.53
<b>2002</b>	ETC	32	433112	3.69
<b>2003</b>	ETC	14	390691	3.58
<b>2004</b>	ETC	0	??	

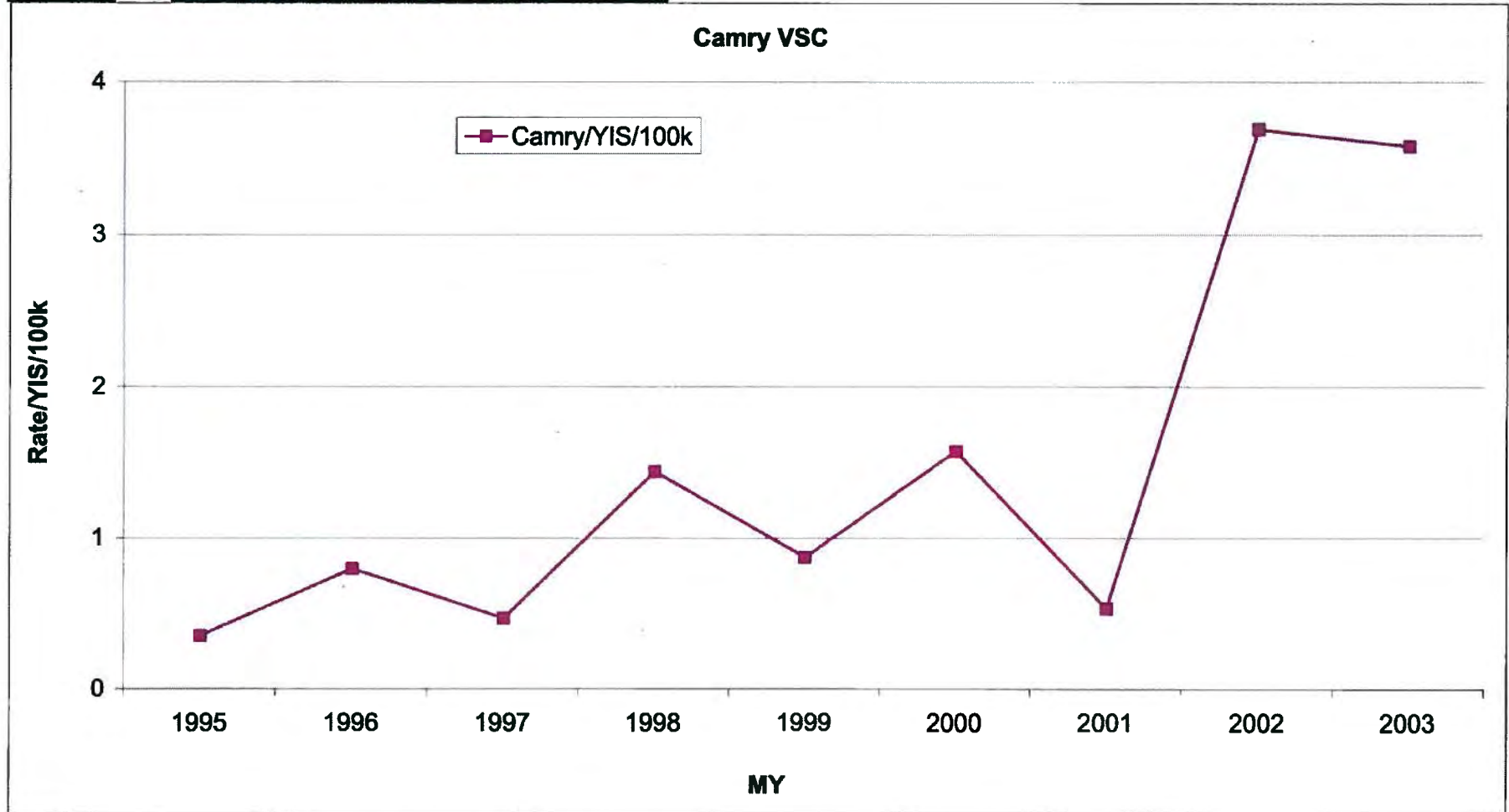
Avg Rate/YIS/100k

0.86

MTC

3.64

ETC



From: Mark Johnson/=WDC/Toyota\_NY.

Sent: 10/19/2007 12:15 PM.

To: [ - ] Christopher Tinto/=WDC/Toyota\_NY@Toyota\_NY.

Cc: [ - ] Chris Santucci/=WDC/Toyota\_NY@Toyota\_NY.

Bcc: [ - ] .

Subject: Re: URGENT Fw: Committee Letter.

Great. I will draft it on Monday

From: Christopher Tinto

Sent: 10/19/2007 03:00 PM

To: Mark Johnson

Cc: Chris Santucci

Subject: Re: URGENT Fw: Committee Letter

I think if we couple it with the attached TMS Q&A it can work. Basically, its all we know right now.

- 1) We are aware of it
- 2) We are looking into it
- 3) NHTSA is investigating, and NHTSA is testing, NHTSA has sent us a letter
- 4) This 'sounds' like sudden accel, which NHTSA has found time and time again typically is pedal misap (we wont say this overtly, as to not blame consumers) - but one big problem is that no codes are thrown in the ECU, so the alleged failure (as far as we know) can not be documented or replicated. The service tech therefore cant 'fix' anything, and has no evidence that any problem exists.
- 5) It is too soon to tell what is going on here.

After you chew on it a bit, lets regroup and see what holes we need to fill in...

THANKS SIR

Best Regards,  
Chris

Chris Tinto

\*\*\*\*\*

Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.

601 13th St. NW

Suite 910 South

Washington, DC 20005

Phone (202) 463-6824

NEW CELL NUMBER - (202) 412-7822

email: Chris\_Tinto@tma.toyota.com

Mark Johnson/WDC/Toyota\_NY

10/19/2007 02:52 PM

To Christopher Tinto/WDC/Toyota\_NY@Toyota\_NY

cc

Subject Re: URGENT Fw: Committee Letter

Works for my purposes. But - does it get enough of our message out for your purposes if she releases this to the media or do you think we need more info?

----- Original Message -----

From: Christopher Tinto  
Sent: 10/19/2007 02:36 PM  
To: Chris Santucci  
Cc: Christopher Tinto; Jo Cooper; Kevin Ro; Mark Johnson  
Subject: Re: URGENT Fw: Committee Letter

Chris :

Thanks for this veryquick response - I appreciate it.

Mark - will this work for your purposes? Can you draft something to go back to your folks on the Hill if/when needed?

Best Regards,  
Chris

Chris Tinto

\*\*\*\*\*

Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.  
601 13th St. NW  
Suite 910 South  
Washington, DC 20005  
Phone (202) 463-6824  
NEW CELL NUMBER - (202) 412-7822  
email: Chris\_Tinto@tma.toyota.com

Chris Santucci/WDC/Toyota\_NY  
10/19/2007 02:14 PM  
To Christopher Tinto/WDC/Toyota\_NY@Toyota\_NY  
cc Chris\_Tinto@tma.toyota.com, Jo Cooper/WDC/Toyota\_NY@Toyota\_NY, Kevin  
Ro/WDC/Toyota\_NY@Toyota\_NY, Mark Johnson  
Subject Re: URGENT Fw: Committee Letter

Chris,

Attached is the Q&A dated October 3 from TMS on this issue. Since the time this Q&A was approved by TMS, I contacted NHTSA and obtained 19 owner complaint reports from NHTSA on the Tacoma. The complaint reports mention engine surge and vehicle lurch, etc. There are some low speed crashes alleged. TMC and TMS are looking into them as we speak.

NHTSA has been reviewing the complaints in their own database, as well as some owner forums on the internet. They have not opened a defect investigation. The Office of Defects Investigation (ODI) did ask the Office of Vehicle Safety Compliance (OVSC) to confirm the compliance of the 2007 MY Tacoma with FMVSS 124, as you noted. As

such, NHTSA issued a standard compliance IR (Information Request) to us on September 26, which I just received a draft response this morning from TMC-QD. Our response is due October 23. I also spoke with Harry Thompson at OVSC (he's the responsible branch chief) about this letter and they have purchased a vehicle (a 2WD V6) that will be tested at VRTC after we respond to the IR. TMS is aware of the issue and media inquiries can be directed to Corporate Communications if needed.

[attachment "2007 Tacoma Throttle Control System Q&A 10-03-07 v3.doc" deleted by Mark Johnson/WDC/Toyota\_NY]

Regards,

Chris Santucci - Assistant Manager  
Technical and Regulatory Affairs  
Toyota Motor North America, Inc.  
Ofc (202) 463-6856 Cell (202) 651-1581 Fax (202) 463-8513  
email: Chris\_Santucci@tma.toyota.com

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Christopher Tinto/WDC/Toyota\_NY

10/19/2007 01:45 PM

To chris santucci

cc Kevin Ro/WDC/Toyota\_NY@Toyota\_NY, Chris\_Tinto@tma.toyota.com, Mark Johnson, jo cooper

Subject URGENT Fw: Committee Letter

Chris :

See below. Please give me a one paragraph write up on what is going on for this issue with NHTSA. (i.e. what the complaint/allegation is, note that NHTSA is doing a compliance investigation into 124 , note that we got a letter and are cooperating, NHTSA bought a truck, TMC is looking into it, etc. Whatever you can think of, please add it...

Also, was there a Q&A on this issue out of TMS?

Mark will write a letter up for the committee to try to stop this from moving forward - We need to keep this within NHTSA rather than have it expand to a hearing.

Thanks - I need this NO LATER than Monday 12:00 OK?

Best Regards,  
Chris

Chris Tinto

\*\*\*\*\*

Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.  
601 13th St. NW  
Suite 910 South  
Washington, DC 20005  
Phone (202) 463-6824  
NEW CELL NUMBER - (202) 412-7822  
email: Chris\_Tinto@tma.toyota.com



----- Forwarded by Christopher Tinto/WDC/Toyota\_NY on 10/19/2007 01:40 PM -----

Mark Johnson/WDC/Toyota\_NY

10/19/2007 10:55 AM

To ctinto@tma.toyota.com

cc Jo Cooper/WDC/Toyota\_NY@Toyota\_NY, Anna Schneider/WDC/Toyota\_NY, Charlie Ing/WDC/Toyota\_NY

Subject Fw: Committee Letter

Chris, I got a heads up from a friend of mine in Rep. Blackburn's office about a letter his boss sent to the Energy and Commerce Committee asking for an investigation into sudden acceleration on the 2007 Tacoma. Apparently, a local news station in Nashville (see the links below) has been doing a story on this and interviewed Rep. Blackburn and asked her about the issue. She was on the spot and said she would look into it, thus the attached letter. Do you have any information I can provide her or any recommendations on how to proceed?

Thanks,

Mark

----- Forwarded by Mark Johnson/WDC/Toyota\_NY on 10/19/2007 10:50 AM -----

"Louer, Greg" <Greg.Louer@mail.house.gov>

10/19/2007 10:19 AM

To <mark\_johnson@tma.toyota.com>

cc "Brophy, Steve" <Steve.Brophy@mail.house.gov>

Subject Committee Letter

Mark,

Thanks for taking the call this morning, and if you have any questions just let me know.

Best regards,

- Greg L.

<http://www.wsmv.com/iteam/14295351/detail.html>

<http://www.wsmv.com/iteam/14304072/detail.html>

Greg Louer

Office of Rep. Marsha Blackburn

509 Cannon House Office Building

202-225-2811 (Voice)

202-225-3004 (Fax)

greg.louer@mail.house.gov

[attachment "10-18-2007\_Letter\_Toyota Safety Issue\_version two.doc" deleted by Mark Johnson/WDC/Toyota\_NY]

From: Chris Santucci/=WDC/Toyota\_NY. Sent:9/18/2006 1:26 PM.  
To: [ - ] Michiteru Kato/=HINPO/TMC0@TMC0.  
Cc: [ - ] Tetsuya Ito/=HINPO/TMC0@TMC0;Christopher Tinto/=WDC/Toyota\_NY@Toyota\_NY;Kevin Ro/=WDC/Toyota\_NY@Toyota\_NY;Kenji Ogata/=WDC/Toyota\_NY@Toyota\_NY.  
Bcc: [ - ] George Morino/=TMS/Toyota.  
Subject: Defect Petition - Camry/Solara Engine Surge.

Mitch,

I spoke with the investigator about the DP. It sounds like the he will only follow up with the petitioner, probably visit him and check the vehicle. The petitioner told him that at one point the vehicle surged to 3000 rpms with it in gear, stopped, and with his foot on the brake. I believe this is impossible given the stall speed of the torque converter, and the investigator agreed that this was probably incorrect. Anyway, he will probably not ask us for any data on this one, but he promised to send us the VIN of the petitioner's vehicle. More to follow.

Regards,

Chris Santucci - Safety Engineer  
Technical and Regulatory Affairs  
Toyota Motor North America, Inc.  
Phone (202) 463-6856 Fax: (202) 463-8513  
email: Chris\_Santucci@tma.toyota.com

Mitch,

Today TMA received a fax from NHTSA informing us that they have agreed to consider a petition to open a defect petition on the 2002-2006 Toyota Camry and Solara for engine surge. Attached is a copy of the petition. While NHTSA has investigated these vehicles before, (see PE04-021) TMA demonstrated the maximum surge that could be caused by the electronic throttle control system during operation. I was under the impression that NHTSA realized that, even in the worst case, surge was minimal and always controllable by the brakes. I will speak with NHTSA on Monday to gather their impressions. Hopefully, this is just an exercise that NHTSA needs to go through to meet its obligations to the petitioner. Hopefully, they will not grant the petition and open another investigation. More details to follow...

Regards,

Chris Santucci - Safety Engineer  
Technical and Regulatory Affairs  
Toyota Motor North America, Inc.  
Phone (202) 463-6856 Fax: (202) 463-8513  
email: Chris\_Santucci@tma.toyota.com

From: Christopher Tinto/=WDC/Toyota\_NY.

Sent:2/27/2007 6:06 AM.

To: [ - ] chris santucci.

Cc: [ - ] .

Bcc: [ - ] .

Subject: Re: Demonstration.

Hey - when you get time to nail it down - please fill me in on the demo plans (location, etc.) + any plans with Mitch...

Thanks  
Chris

Chris Tinto

\*\*\*\*\*

Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.  
601 13th St. NW  
Suite 910 South  
Washington, DC 20005  
Phone (202) 463-6824 Fax: (202) 463-8513  
email: Chris\_Tinto@tma.toyota.com

Michiteru Kato/HINPO/TMC0@TMC0

02/27/2007 07:27 AM

To Chris Santucci/WDC/Toyota\_NY@TOYOTA\_NY@TOYOTA@TMCE

cc Christopher Tinto/WDC/Toyota\_NY@TOYOTA\_NY, Kevin Ro/WDC/Toyota\_NY@TOYOTA\_NY, Hisaaki Kato/WDC/Toyota\_NY@Toyota\_NY@TOYOTA@TMCE, Hajime Kitamura/HINPO/TMC0@TMC0, Shinichiro Ogata/HINPO/TMC0@TMC0, Takezo Oba/HINPO/TMC0@TMC0, Seiko Takeuchi/HINPO/TMC0@TMC0

Subject Re: Demonstration

Chris,

Thank you for fixing the date for the demonstration. I talked to the travel agency today and asked her to finalize my trip to DC(flight and hotel). As planed, I will leave Japan on 3/4(Sun) and arrive in DC on the same day, and leave DC on 3/9(Thu).

I will bring an engineer of a design department, who knows EPS system well, for the demonstration and technical meeting. His name is Mr. Iwasaki. I think he may speak English well because he has been in the U.S. for 2 or 3 years to get a master degree 10 years ago.

I wondered whether it's better to ask another engineer, who is in charge of the EPS ECU, to attend the meeting, because he knows the ECU failures well. However, I thought that 3 guys from TMC is too many (two at most), and if the engineer who knows the failures well attends the meeting, NHTSA will ask a bunch of questions about the ECU.(I want to avoid such situation.) Also considering the purpose of the technical meeting and demonstration, I think the EPS system engineer is the best to attend it this time.

Currently Mr. Iwasaki is preparing the technical presentation material, which includes the explanation of the outline of the EPS system(each related component) and the each fail-safe mode. Probably I will be able to sent that material to you for your advance review by Thursday. Let's discuss the detail of the contents in the pre-meeting and modify it if necessary.

And as I told you, I sent you a sample of the EPS ECU, special ECU and three samples of the EPS motor shaft by FedEx today and they will reach you in the morning of Wednesday. Please treat the special ECU carefully. Do not drop/disassemble it. Please have it sit in your cabinet. In addition, if you touch the motor shaft by naked hands, there

is a possibility that the shaft may corrode, because the shafts do not have an anticorrosive treatment.

If you have any concerns, let me know.

Best regards,

Mitch

宛先: Michiteru Kato/HINPO/TMC0@TMC0@TMCE@TOYOTA

cc:

件名: Re: Demonstration

Fixed for March 7.

I am looking for an area to test.

Regards,

Chris Santucci - Assistant Manager

Technical and Regulatory Affairs

Toyota Motor North America, Inc.

Ofc (202) 463-6856 Cell (202) 651-1581 Fax (202) 463-8513

email: Chris\_Santucci@tma.toyota.com

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.exe, .com, .pif, .scr, .cmd, .bat, .vbs, .lnk, .htm, .html, .shs, or .zip

From: Christopher Tinto/=WDC/Toyota\_NY. Sent:3/28/2007 10:17 AM.  
To: [ - ] Michiteru Kato/=HINPO/TMC0@TMC0@TMCE@TOYOTA.  
Cc: [ - ] Shinichiro Ogata/=HINPO/TMC0@TMC0;Takezo Oba/=HINPO/TMC0@TMC0;George Morino/=TMS/Toyota@TOYOTA;chris santucci;Kevin Ro/=WDC/Toyota\_NY@Toyota\_NY;Hisaaki Kato/=WDC/Toyota\_NY@Toyota\_NY.  
Bcc: [ - ] Jim Press/=Exec/=TMS/Toyota@TOYOTA;jo cooper;anna\_schneider@tma.toyota.com.  
Subject: URGENT\*\*\*\*\*ES350 ISSUE\*\*\*\*\*

Further to my earlier email, I spoke to Demeter about our proposal. As I noted, they have decided to open a PE on the floor mat issue, regardless of whether we send a letter or not.

Although I noted that our proposal was basically a 'recall', and that a PE would result in little else as far as what Toyota could do, Demeter noted that the reasons for opening were as follows:

NHTSA feels that they have too many complaints on this one vehicle to drop the issue;  
The results of a stuck throttle are 'catastrophic';  
And therefore, they want to ask Toyota for its data on complaints, etc.,  
NHTSA may also go out with its own "owner survey" or "dealer survey" to try to get a better feel for the magnitude of the problem.

Nonetheless, I would recommend that we go ahead with the letter mailing campaign as planned and get in front of this issue.

Please let us know if we have any questions.

Best Regards,  
Chris

Chris Tinto

\*\*\*\*\*  
Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.  
601 13th St. NW  
Suite 910 South  
Washington, DC 20005  
Phone (202) 463-6824 Fax: (202) 463-8513  
email: Chris\_Tinto@tma.toyota.com

----- Forwarded by Christopher Tinto/WDC/Toyota\_NY on 03/28/2007 11:44 AM -----

Christopher Tinto/WDC/Toyota\_NY  
03/27/2007 02:24 PM  
To Mitch Kato  
cc Shinichiro Ogata/HINPO/TMC0@TMC0, Takezo Oba/HINPO/TMC0@TMC0, George Morino/TMS/Toyota@TOYOTA, chris santucci, Kevin Ro/WDC/Toyota\_NY@Toyota\_NY, Hisaaki Kato/WDC/Toyota\_NY@Toyota\_NY  
Subject Fw: URGENT\*\*\*\*\*ES350 ISSUE\*\*\*\*\*

I spoke to NHTSA management today (K. Demeter) about a potential compromise on the ES350 floor mat issue. In lieu of a Part 573 safety recall, I offered the following:  
Toyota will send a letter to all 2007MY ES350 owners reminding them not to install all weather mats on top of existing mats;  
In addition, we will enclose a caution label advising owners of the same, and ask owners to affix the label on the flat surface on the backside of the mat;  
We will also alert dealers of the issue, and remind them not to install mats on top of existing mats;

If the owners want to have the dealer affix the label to the mat, Toyota will offer that they bring their vehicles to the dealer to ask them to do it, free of charge.  
However, we will NOT file a 573 (i.e. this is not a safety recall), because a) this is an 'aftermarket' install b) there is no design or manufacturing defect in the mat or vehicle, and c) the issue really boils down to improper installation of the mats by the owner or the dealer (but I noted that Toyota has no evidence that dealers are actually doing this.)

Ms. Demeter said that there is precedent in NHTSA's history for safety recalls in this area, but understood our idea - she pledged that they would discuss it internally and get back to me with a response to our proposal in a few days. She also insured me that NHTSA would not open a formal PE until she gets back to me.

I will keep everyone informed.

Regards,  
Chris

From: George Morino/=TMS/Toyota.

Sent: 12/8/2005 9:21 PM.

To: [ - ] Kathy Wachs/=Lexus/Toyota@Toyota.

Cc: [ - ] Stefan\_Brand@toyota.com; Mark\_kubota@toyota.com; kirk\_forsht@toyota.com.

Bcc: [ - ] dave\_zellers@toyota.com.

Subject: CONFIDENTIAL - IS 250 AWD Draft Owner Letter and Q&A.

Kathy:

Approved by TMC.

They pulled out the "vehicle speed control" part. NHTSA may come back, but TMC wanted to try.

George Morino  
Quality Compliance Manager  
Toyota Motor Sales, U.S.A., Inc.  
Tel. 310-468-3392  
Fax 310-468-3399

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From: George Morino/=TMS/Toyota.

Sent:4/2/2007 7:59 AM.

To: [ - ] Chuck Yaeger;Denise Jacobson/=Lexus/Toyota@Toyota.

Cc: [ - ] Kirk Forsht/=TMS/Toyota.

Bcc: [ - ] george\_morino@toyota.com.

Subject: (REVISED) ES 350 NHTSA Preliminary Evaluation Q&A.

Chuck and Denise:

Sorry we had a last minute change to the Q&A. Please utilize this revised version of the Statement and Q&A. The issue has been posted on the NHTSA website.

Sorry!

[Old]

NHTSA has received five consumer complaints regarding unintended throttle control in the subject vehicles.

[New]

NHTSA received five consumer where the All Weather Floor Mat may have interfered with the accelerator pedal operation.

[Changed Version]

Statement:

On March 29, 2007, the National Highway Traffic Safety Administration ("NHTSA") opened an investigation called a Preliminary Evaluation on certain 2007 model year Lexus ES 350 vehicles. NHTSA is concerned that if the Lexus All Weather Floor Mat is installed on top of the existing Lexus Carpeted Floor Mats, the All Weather Floor Mats would not be secured by the retaining hooks (clips) and may slip forward interfering with the accelerator pedal. NHTSA has received five consumer complaints where the All Weather Floor Mat may have interfered with the accelerator pedal operation.

A Preliminary Evaluation is an early-stage inquiry to determine if further analysis (an Engineering Analysis) is warranted; this is not a recall. Lexus is currently cooperating fully with the agency in its efforts to investigate the allegations.

Q2: What prompted NHTSA to investigate these issues?

A2: NHTSA received five consumer where the All Weather Floor Mat may have interfered with the accelerator pedal operation. Based upon consumer interviews, the agency believes that the accessory Lexus All Weather Floor Mat, if not properly installed, may interfere with the accelerator pedal on certain 2007 model year Lexus ES 350 vehicles.

George Morino  
National Manager  
Quality Compliance Department  
Product Quality and Service Support  
Toyota Motor Sales, U.S.A., Inc.  
Tel. 310-468-3392  
Fax 310-468-3399

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From: Christopher Tinto/=WDC/Toyota\_NY. Sent:9/16/2007 10:26 AM.  
To: [ - ] Jo Cooper/=WDC/Toyota\_NY@Toyota\_NY.  
Cc: [ - ] .  
Bcc: [ - ] .  
Subject: Re: ES350 recall/NHTSA meeting.

U da best ma'am.

Thanks

Chris

-----  
Chris Tinto  
Vice President, Toyota Motor North America Inc  
Sent from Wireless hand held

From: Jo Cooper  
Sent: 09/15/2007 07:16 PM  
To: Christopher Tinto  
Subject: Fw: ES350 recall/NHTSA meeting

Fyi...

Have a good weekend! Jo

-----  
Josephine S. Cooper  
Group Vice President  
TOYOTA MOTOR NORTH AMERICA  
(202) 468-1990

From: Jo Cooper  
Sent: 09/15/2007 07:15 PM  
To: Jim Lentz; Don Esmond; Bob Carter; Dave Illingworth  
Cc: Shigeru Hayakawa; Shinichi Goto  
Subject: Fw: ES350 recall/NHTSA meeting

Gentlemen:

thought you would be interested in the outcome--and the avoidance of much bigger issues (and costs). The TMA and TMS team did a good job...

Best regards, Jo

-----  
Josephine S. Cooper  
Group Vice President  
TOYOTA MOTOR NORTH AMERICA  
(202) 468-1990

From: Christopher Tinto  
Sent: 09/14/2007 04:40 PM  
To: Jo Cooper

Subject: ES350 recall/NHTSA meeting (Revised - IGNORE PREVIOUS VERSION)

Jo:

I just wanted to fill you in on the NHTSA meeting and negotiations yesterday regarding the ES350 floor mat issue. Working with TMC QD and TMS service, we were able to put together enough material in the short time allotted by the agency to convince NHTSA to accept our proposal.

In a nutshell - we will 'recall' the '07 ES and Camry floor mat, however, we will NOT declare that a 'safety defect' exist in either the vehicles or the mat, for the purposes of the required notification to the agency (under Part 573). (Of course, the owner letter will say that a defect WAS found in the mat, to insure that owners pay attention to the notice and secure the mats correctly - the language of which is required by law). Customers will be notified that they should correctly install the mats to insure no interference with the throttle until Toyota is ready to provide replacement mats.

We believe that this remedy is a reasonable response on Toyota's part, given that the cause of the problem is that the mats are being improperly installed (i.e. double stacked) and left unsecured, contrary to their intended design. We also believe that there is nothing unique about Prius, Avalon, and IS250/350 (i.e. NHTSA's other interest) vs. other make/models on the road, and therefore no field action is required.

Of note, NHTSA was beginning to look at vehicle design parameters as being a culprit, focusing on the accelerator pedal geometry coupled with the push button 'off' switch. We estimate that had the agency instead pushed hard for recall of the throttle pedal assembly (for instance), we would be looking at upwards of \$100M + in unnecessary cost.

Please let me know if you have any questions.

Best Regards,  
Chris

PS - Special thanks should be noted for the TMS-service guys, as they did the lions share of the work at the last minute, providing enough good information to convince the agency that this issue is NOT unique to Toyota products.

Chris Tinto

\*\*\*\*\*

Vice President, Technical and Regulatory Affairs, Safety  
Toyota Motor North America, Inc.  
601 13th St. NW  
Suite 910 South  
Washington, DC 20005  
Phone (202) 463-6824  
NEW CELL NUMBER - (202) 412-7822  
email: Chris\_Tinto@tma.toyota.com

From: George Morino/=TMS/Toyota. Sent: 9/18/2007 11:28 AM  
To: [ - ] Christopher Tinto/=WDC/Toyota\_NY@TOYOTA\_NY;csantucci@tma.toyota.com.  
Cc: [ - ] Kirk Forsht/=TMS/Toyota;Michiteru Kato/=HINPO/TMC0@TMC0.  
Bcc: [ - ]  
Subject: CONFIDENTIAL - DRAFT Documents.

Hi Chris and Chris:

We greatly appreciate your hard work in dealing with these issues. Mitch requested that I have you review the DRAFT Owner Letter and Press Release prior to us taking it further within TMS. Please don't share these documents with any other party yet.

[DRAFT Owner Letter (Lexus version)]

The Camry letter would basically be the same with the exception of the vehicle brand/name (picture of the mat will also say Camry) and the following additional bullet point in the "What if you experience accelerator pedal interference prior to your appointment?" section:

In a traditional key ignition vehicle, if you can safely stop the vehicle, turn the ignition key to the ACC position. Again, by turning the key to the ACC position, you will lose both power brake assist and power steering. Do not remove the key from the ignition. If you remove the key from the ignition, the steering wheel will lock.

[DRAFT Press Release]

I thought about including the following paragraph in the Press Release, but then it starts to sound like something is wrong with the vehicle and we are trying to hide it. It begs the question, "why don't you fix something in all the vehicles so it can't happen with any mat?" therefore I didn't include it. What do you think?

If the 2007 through early 2008 model year Camry or ES 350 vehicle does not have the Toyota or Lexus All Weather Floor Mat, it is NOT involved in this recall. However, during our investigation, it was noted that floor mat interference is possible in any vehicle with any combination of floor mats. Therefore, if non-Lexus floor mats are utilized, please owners are requested to make sure they are also properly secured using the appropriate retention device and not place them on top of another floor mat.

We also didn't include the START/STOP button procedures in the Press Release. A person hearing what to do on news radio, a spouse communicating to spouse that they saw something on the news, running to the get a paper and pencil to write down the information just lends itself to mass confusion. Instead, we are preparing to quickly begin mailing the owner letter (within one week) of x-day. We felt an owner letter is something the customer can refer to and keep.

A slightly earlier version of both DRAFT Owner Letter and was already reviewed with TMS Legal. We need to run the Press Release by Corporate Communications after you have an opportunity to comment and as we get closer to x-day.

We greatly appreciate your assistance.

George Morino  
National Manager  
Quality Compliance Department  
Product Quality and Service Support  
Toyota Motor Sales, U.S.A., Inc.  
Tel. 310-468-3392  
Fax 310-468-3399

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From: Chris Santucci/=WDC/Toyota\_NY. Sent:5/5/2009 12:50 PM.  
To: [ - ] Takeharu Nishida/=HINPO/TMC0@TMC0@TMCE@TOYOTA.  
Cc: [ - ] Christopher Tinto/=WDC/Toyota\_NY@Toyota\_NY;Jyunji Ogata/=HINPO/TMC0@TMC0;Michiteru Kato/=HINPO/TMC0@TMC0@TMCE@TOYOTA.  
Bcc: [ - ] .  
Subject: Re:Defect Petition.

Nishida-san,

For background, NHTSA did inspect the petitioner's vehicle. While they did not see clearly the witness marks of the carpeted floor mat on the carpet in the forward, unhooked position, they do suspect that the floormat was responsible for the petitioner's issue.

I have discussed our rebuttal with them, and they are welcoming of such a letter. They are struggling with sending an IR letter, because they shouldn't ask us about floormat issues because the petitioner contends that NHTSA did not investigate throttle issues other than floormat-related. So they should ask us for non-floormat related reports, right? But they are concerned that if they ask for these other reports, they will have many reports that just cannot be explained. And since they do not think that they can explain them, they don't really want them. Does that make sense? I think it is good news for Toyota.

Regards,

Chris Santucci - Assistant Manager  
Technical and Regulatory Affairs  
Toyota Motor North America, Inc.  
Ofc (202) 463-6856 Cell (202) 651-1581 Fax (202) 463-8513  
email: csantucci@tma.toyota.com

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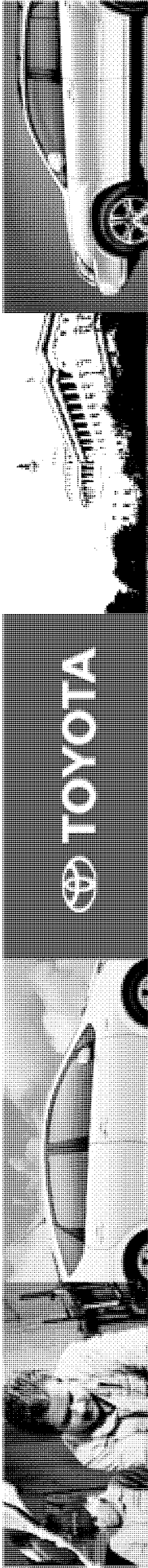
Nishida-san,

Here is the draft rebuttal to the Defect Petition. Let me know what you think.

Regards,

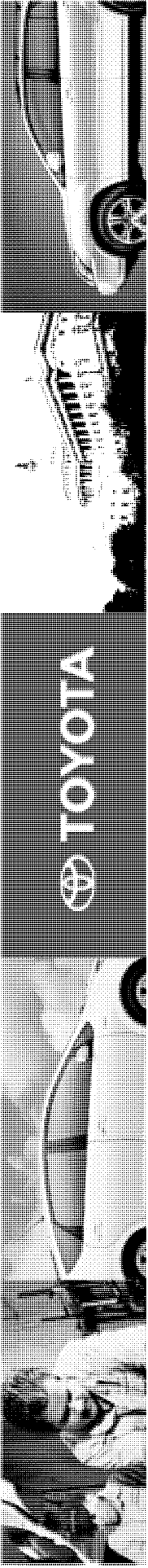
Chris Santucci - Assistant Manager  
Technical and Regulatory Affairs  
Toyota Motor North America, Inc.  
Ofc (202) 463-6856 Cell (202) 651-1581 Fax (202) 463-8513  
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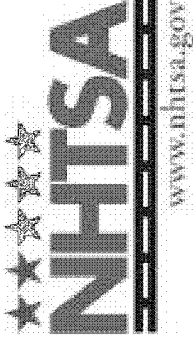


# TRA Safety - Current Responsibilities

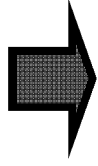
1. **Monitor and Affect Regulation & Legislation**
  - NHTSA, Congress, OMB, FCC, etc.
  - Alliance SPC & WGs Policy; Public/Docket comments
  - Meetings with Gov't agencies/Hill
2. **Vehicle Defect/Compliance and 3<sup>rd</sup> Party Crash Testing**
  - Coordinate Responses/Negotiations on NHTSA Investigations/Recalls/EWR with Gov't /test labs
  - NCAP Consumer Info / IIHS testing; Attend Tests, Provide Data and Analysis
3. **Manage/Coordinate/Expand TMC Safety Research w/Outside Entities**
  - Universities/Labs (VT, UVA, etc.); CIREN Trauma Center
  - GM/CAT Cooperative Project (Safety); ACAT/NHTSA
  - Sponsorship of Crash Safety Conferences /Safety Initiatives
4. **ITS/VII activities (Regulatory/legislative implications)**
  - Privacy/Policy issues; TMC/TTC coordination
  - ITS America/World Congress; VII Executive Leadership Team; VII-C issues
5. **Support PR Activity to Enhance Toyota's Image w/ Government/Public**
  - Work with TMS PR; Media interviews/ background
  - Affiliate Technical briefings
6. **Monitor Market Trends Related to Safety**
  - Competitors, media, NGOs



## Key Safety Issues

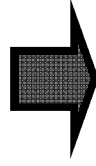


- U.S. DOT/NHTSA under Obama Administration not industry-friendly

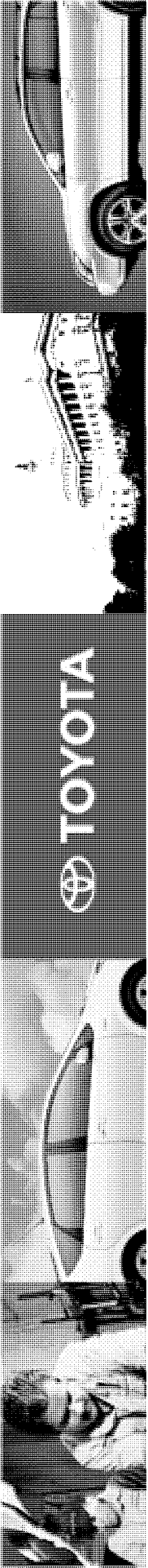


OEMs anticipate a more challenging regulatory and enforcement environment, with potential for revisiting key regulatory proposals

- NHTSA's new, more aggressive management includes more attorneys at the agency, even in the leadership of Rulemaking and Enforcement



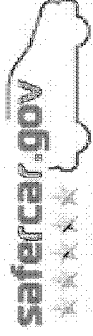
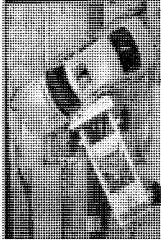
The new regime has less understanding of engineering issues and are primarily focused on legal issues



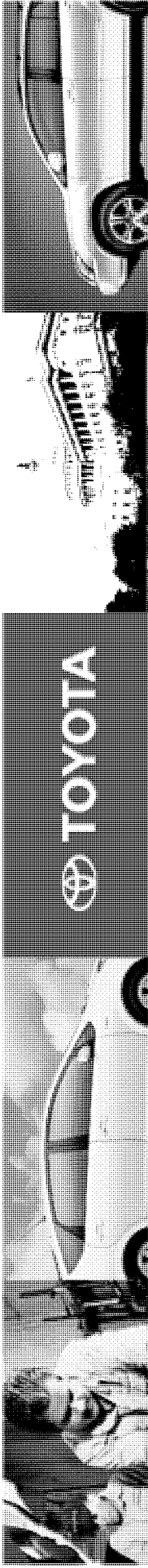
## Key Safety Issues

### Impact on “Quality”

- Number of UIO (units in operation) increasing
- NHTSA is testing more vehicles under NCAP
- Nov 2000 “TREAD Act” requires new, more intensive, and regular reporting
  - A 5-day notification is required when recall determinations are made
  - New strong civil and criminal penalties were implemented
    - e.g. Ford/Firestone/rollover issue
- NHTSA is more sensitive to public/congressional criticism

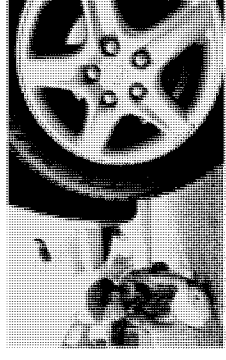
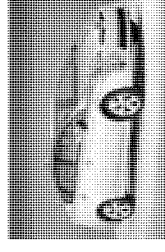
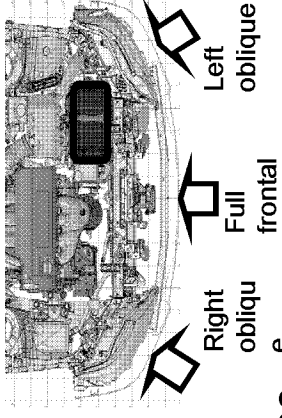


**Resulting in more Investigations, and more forced recalls**

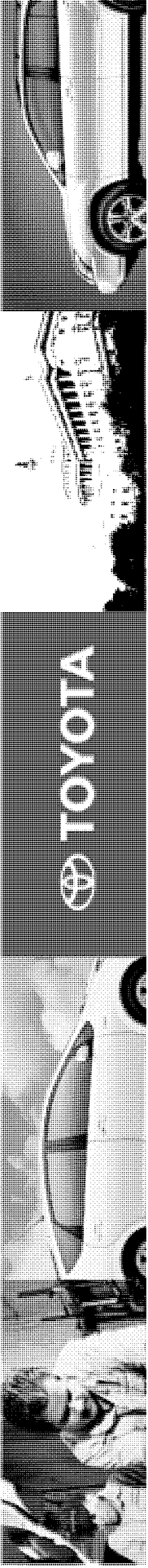


## Key Safety Issues

- **FMVSS 305 Compliance/Hybrid Sales**
  - Compliance Concerns/Sales Impact
- **New NCAP Test Protocol**
  - Lower Safety Ratings Affect Sales - Tundra Case
- **“Sudden Acceleration” on ES/Camry, Tacoma, LS, etc.**
  - Recurring issue, PL/Design implications
- **Cargo Carrying Capacity/FMVSS 110 Compliance**
  - Flaws in Toyota Regulatory and Defect Process
- **Prius Headlamps Investigation - Class Action**
- **“Quiet Cars” (Hybrids, EVs, FCHVs)**
  - NFB/Congressional/NHTSA/SAE activity
- **Kids in Cars**
  - BTSI, Power Windows, Rear Visibility Standards







## Key Safety Issues

### Challenges

- Expectations are rapidly rising for more Toyota leadership
- Detroit 3 unable to carry the burden on safety initiatives/regulatory work
  - Bankruptcy, conflicting interest with US gov't
  - Alliance is a difficult working atmosphere
  - Toyota resources challenged

### Recommendations

- Need improved process and tighter framework for decisions
  - Need better streamlining and faster decisions
  - Need much more support within Toyota for quality-related issues
    - Need more legal tie-in
- Regular communication with top levels of TMC
- Need to speak out more independently when appropriate for company

# Slide Notes

## **Slide 1:**

Monitor and Affect Regulatory and Legislative Movement

NHTSA., OMB, Congress, etc.

Act Through Alliance, Toyota independently

Technical Meetings with Automakers

Comments, Private mtgs, Industry

Vehicle Defect/Non Compliance Issues

NCAP consumer information/IIHS/3rd party testing

Attend tests, Provide data and analysis

Negotiation with stakeholders/Gov't/test labs

Manage/Coordination TMC safety research w/ Outside entities

Universities/Labs, etc.

Monitor market trends related to safety

Competitors, media, NGOs

Support PR activity to enhance Toyota's image w/Gov't/public

Work with TMS PR

Improved understanding amongst affiliates/technical briefings

Media interviews/background

## **Slide 2:**

U.S. DOT/NHTSA under Obama Administration

Not industry friendly

Aligned with the safety advocate community

## Slide Notes

OEMs anticipate a more challenging regulatory and enforcement environment, with potential for revisiting key regulatory proposals

NHTSA's new, more aggressive management includes more attorneys at the agency, even in the leadership of Rulemaking and Enforcement

The new regime has less understanding of engineering issues and are primarily focused on legal issues

### **Slide 3:**

On "Quality" (i.e. Defects, Compliance, NCAP testing)

Number of UIO (units in operation) is increasing rapidly (i.e. increased exposure for defects/quality issues)

NHTSA is testing more vehicles under NCAP

Nov 2000 "TREAD Act" requires new, more intensive, and regular reporting of warranty, field reports, customer complaints, death and injury claims, etc.

A 5 day notification is required when recall determinations are made

New strong civil and criminal penalties were implemented for knowingly hiding a defect/recall, or less-than-timely reporting

e.g. Ford/Firestone/rollover issue

NHTSA is more sensitive to public/congressional criticism (now that all the tools have been granted to them by Congress)

Resulting in more Investigations, and more forced Recalls - even those that historically were not deemed "safety" in nature

### **Slide 4:**

# Slide Notes

FMVSS 305 Compliance/Hybrid Sales

Serious Compliance Concerns

Potential Sales Impact

New NCAP Test Protocol

Lower Safety Ratings Potentially Affect Sales

Tundra Case

"Sudden Acceleration" on ES/Camry, Tacoma, LS, etc.

Recurring issue

PL implications/TMC design

Cargo Carrying Capacity/FMVSS 110 Compliance

Flaws in Toyota Regulatory and Defect Process

Prius Headlamps Investigation

Class Action Implications

"Quiet Cars" (Hybrids, EVs, FCHVs)

NFB/Congressional/NHTSA/SAE activity

Roof Crush

Phase-in costly and difficult, Longer model life

Kids in Cars

BTSL, Power Windows, Rear Visibility Standards (cameras)

## **Slide 5:**

Expectations are rapidly rising from NHTSA, Alliance, and the Public for more participation and leadership

Toyota's leadership is not only welcomed, it is expected

No longer bit player/importer

The Detroit 3 are unable to carry the burden on safety initiatives/regulatory work

Severely limited budgets, reduced manpower, bankruptcy

## Slide Notes

US Gov't controls large portion of GM, DCX – conflicting interest

Alliance is a difficult working atmosphere

Toyota resources challenged

Increasing need for informal outside Alliances (e.g. GM CAT)

Therefore, TMA prioritized key issues with TMC to insure focus and coordination

Better focused research/participation in key initiatives with full TMC support

Agreement on relative importance of issues

### Recommendations

Process and tighter framework for getting decisions

need better streamlining and decision makers

Need much more support within Toyota for quality-related issues

Toyota needs to major on the majors

Regular communication with top levels of TMC

E.g. sudden accel, defect issues

Need to speak out more independently

Should embrace safety as a core value vs. model by model

Safety seminar

Sustainability seminar

Tighter coordination with TTC, TEMA, TMS; Regular Reporting

From: Katsuhiko Koganei/=TMS/Toyota. Sent: 1/16/2010 7:57 PM.  
To: [-] Irv Miller/=Exec/=TMS/Toyota@Toyota;mike\_michels@toyota.com;hiro\_fukui@toyota.com.  
Cc: [-] .  
Bcc: [-] .  
Subject: Re: Email from Koganei on Jan. 16 Re: Draft statement to respond to ABC News story.

Irv san, thank you for your message, and I understand our status. Kogi@BB

From: Irv Miller  
Sent: 01/16/2010 07:05 PM PST  
To: Katsuhiko Koganei  
Cc: Mike Michels  
Subject: Re: Email from Koganei on Jan. 16 Re: Draft statement to respond to ABC News story  
Kogi,

I hate to break this to you but WE HAVE A tendency for MECHANICAL failure in accelerator pedals of a certain manufacturer on certain models. We are not protecting our customers by keeping this quiet. The time to hide on this one is over. We need to come clean and I believe that Jim Lentz and Yoshi are on the way to DC for meetings with NHTSA to discuss options.

We better just hope that they can get NHTSA to work with us in coming with a workable solution that does not put us out of business.

Irv Miller  
Group Vice President, Environmental and Public Affairs  
Toyota Motor Sales, Inc  
19001 S. Western Ave.  
Torrance, CA 90509

Katsuhiko Koganei/TMS/Toyota  
01/16/2010 11:55 AM  
To Mike Michels/TMS/Toyota@Toyota  
cc masami\_doi@mail.toyota.co.jp, keisuke\_kirimoto@mail.toyota.co.jp, amiko\_tomita@mail.toyota.co.jp, Akiko Kita/E/TMC0@TMC0@TMCE, John Hanson/TMS/Toyota@Toyota, Brian Lyons/TMS/Toyota@Toyota, Hiroshi Yoshihashi/TMS/Toyota@Toyota, Hiro Fukui/TMS/Toyota@Toyota, Ryo Sakai/Admin/Avalon/Toyota\_NY@TOYOTA\_NY, Sumio Ohtsuji/WDC/Toyota\_NY@Toyota\_NY, Iwao Kimura/Admin/Avalon/Toyota\_NY@Toyota\_NY, wtCocpkc41@ezweb.ne.jp, wtCocpkc110@docomo.ne.jp, yfb22060@nifty.com, 1028m.doi@ezweb.ne.jp, Irv Miller/Exec/TMS/Toyota@Toyota  
Subject Email from Koganei on Jan. 16 Re: Draft statement to respond to ABC News story

Dear Mike-san,

Thank you for your hard work while under this sunny weather...

Now I talked with you on the phone, we should not mention about the mechanical failures of acc. pedal, because we have not clarified the real cause of the sticking acc pedal formally, and the remedy for the matter has not been confirmed. I talked over this matter with Ryo-san, KC Kirimoto-san, and Doi-san, and all of them are concerned about the comment with mechanical failures might raise another uneasiness of customers.

(See the attached file. Red highlighted parts should be removed , I think.)

[attachment "Post ABC release 1-15 Kogi suggest.doc" deleted by Katsuhiko Koganei/TMS/Toyota]

Anyway, if you know further new information about this matter, following the conference call done between TMS PQSS, TMA (W.DC) and TMC JCQE, please update the information over this matter.

Especially, before the conference call of tomorrow (7PM at PST), I think we need to have consensus within TMS, (and also within TMA CC and TMC-PR, if possible).

So I would appreciate if you sent the newly drafted statement, and Q&A to the all CC members.

Now I myself is staying in Torrance (for some preparations of the movement to the new house)  
I can have some meetings with you over this matter anytime, so do not hesitate to ask me to meet at TMS office.

Katsuhiko Koganei (Kogi)

Executive Coordinator  
Corporate Communications

Toyota Motor Sales U.S.A. Inc.,

Tel +1-310-468-4725  
Mobile +1-310-941-6946  
e-mail Katsuhiko\_Koganei@toyota.com

Ryo\_Sakai@tma.toyota.com

01/16/2010 09:07 AM

To "Iwao Kimura" <IKimura@tma.toyota.com>, "Katsuhiko Koganei" <Katsuhiko\_Koganei@toyota.com>  
cc

Subject Fw: Draft statement to respond to ABC News story

I'm forwarding you this since you were not on the distribution.

----- Original Message -----

From: Mike Michels

Sent: 01/15/2010 06:37 PM PST

To: Gary Smith; Rick LoFaso; Webster Burns; Steve Haag; Dave Zellers;

Nancy Fein; Jane Beseda; Ko Igarashi; Shinji Yamaguchi

Cc: Charley Roberts; Ron Kirkpatrick; Christopher Reynolds; Bob Waltz;

Jim Wiseman; Ryo Sakai; Jo Cooper; Christopher Tinto; Sumio Ohtsuji; Martha

Voss; Cindy Knight; ejones@mayerbrown.com; Christopher Reynolds;

Masami\_Doi@mail.toyota.co.jp; keisuke\_kirimoto@mail.toyota.co.jp; Hiro

Fukui; mgross@rlmnet.com; Alicia McAndrews; Brian Lyons; Irv Miller; John

Hanson; Jim Wiseman

Subject: Draft statement to respond to ABC News story

REDACTED - PRIVILEGE

REDACTED - PRIVILEGE

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[attachment "Post ABC release 1-15 6pm.doc" deleted by Katsuhiko Koganei/TMS/Toyota]